



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5635-N-01]

Federally Mandated Exclusions from Income

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD's regulations provide that HUD will periodically publish a Federal Register notice listing the amounts specifically excluded by any Federal statute from consideration as income for purposes of determining eligibility or benefits. This notice lists those exclusions. This notice also lists federal statutes that require certain income sources to be disregarded with regard to specific HUD programs. This notice updates the list of exclusions last published on April 20, 2001, by amending, removing, and adding exclusions.

FOR FURTHER INFORMATION CONTACT: For the Rent Supplement, section 236, and Project-based Section 8 programs administered under 24 CFR parts 880, 881, and 883 through 886: Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6138, Washington, DC 20410, telephone number 202-401-7914. For other Section 8 programs administered under 24 CFR part 882 (Moderate Rehabilitation) and under part 982 (Housing Choice Voucher), and the Public Housing Programs: Shauna Sorrells, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4206, Washington, DC 20410, telephone: number 202-402-2769, or the Public and Indian Housing Information Resource Center at 1-800-955-2232. For Indian Housing Programs: Rodger Boyd, Deputy Assistant Secretary, Office of

Native American Programs, Department of Housing and Urban Development, Room 4126, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number 202-401-7914. With the exception of the telephone number for the PIH Information Resource Center, these are not toll-free numbers. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Relay Service at 1-800-877-8339 or by visiting <http://federalrelay.us/> or <http://www.federalip.us/>.

Please note: Members of the public who are aware of other Federal statutes that require any benefit not listed in this notice to be excluded from consideration as income in these programs should submit information about the statute and the benefit program to one of the persons listed in the For Further Information Contact section above. Members of the public may also submit this information to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

SUPPLEMENTARY INFORMATION:

Under several HUD programs (Rent Supplement under 24 CFR 200.1303 (although loans in existence immediately before May 1, 1996, continue to be governed by 24 CFR part 215); Mortgage Insurance and Interest Reduction Payment for Rental Projects under 24 CFR part 236; Section 8 Housing Assistance programs; Public Housing programs), the definition of income excludes amounts of other benefits specifically excluded by federal law. This notice updates the list of federally mandated exclusions last published on April 20, 2001 (66 FR 20318) to include the following:

- (1) assistance from the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771);
- (2) payments from the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f);

(3) payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts;

(4) compensation received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity compensation in programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs; and

(5) a lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled Elouise Cobell et al. v. Ken Salazar et al.

Background

In certain HUD-subsidized housing programs, annual income is a factor in determining eligibility and the level of benefits. Annual income is broadly defined as the anticipated total income from all sources received by every family member. HUD excludes certain types of benefits from applicants' and participants' annual income, as listed in 24 CFR 5.609, this notice, or otherwise specified by statute or regulation.

Federal statutes that require certain income sources be disregarded as income are universally applicable to all HUD programs where income is a factor in determining eligibility and benefits. Other federal statutes specify that income exclusions are specific to certain HUD programs, and are applicable only to the particular HUD program referenced.

Changes to the Previously Published List

Exclusions Amended: Exclusion (viii) in the updated list below has been clarified to describe its applicability to Section 8 programs.

Exclusions Removed: Certain exclusions from the previously published list have been removed because they have been repealed by Congress. These exclusions are as follows:

1. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)). When the Workforce Investment Act was enacted in 1998, it simultaneously repealed the Job Training Partnership Act. The exclusion that still applies to HUD programs is listed as exclusion (xvii) in the updated list below.

2. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran. This exclusion was repealed by Public Law 106-419 in 2000.

Exclusions Added: The exclusions that are being added to the previously published list are as follows:

1. Section 1780 of the School Lunch Act and the Child Nutrition Act of 1966, provides: The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or state laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from state and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this Act.

The effective date of this provision was October 11, 1966. This exclusion is added to the list as paragraph (xviii).

2. Section 8 of the Seneca Nation Settlement Act of 1990, provides: None of the payments, funds or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca

Nation or its members for, or be used as a basis for denying, or reducing funds under any Federal program.

The effective date of this provision was November 3, 1990. This exclusion is added to the list as paragraph (xix).

3. Section 2608 of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 4501), amended the definition of annual income in the United States. Housing Act of 1937 (42 U.S.C. 1437) to exclude payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts. The law provides:

Section 3(b)(4) of the United States Housing Act of 1937 (42 U.S.C. 1437a(3)(b)(4)) is amended by inserting “or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts” before “may not be considered.”

This exclusion is applicable only to the Section 8 and Public Housing programs. The effective date of this provision was July 30, 2008. This exclusion is added to the list as paragraph (xx).

4. The Indian Veterans Housing Opportunity Act of 2010 (Public Law 111-269, approved October 10, 2010), amended the definition of income contained in the Native NAHASDA applicable to programs authorized under NAHASDA and administered by the Office of Native American Programs to exclude compensation received by or on behalf of a veteran for service-connected disability, death, dependency or indemnity compensation. The law provides:

Paragraph (9) of section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(9)) is amended by adding at the end the following new subparagraph: “(C) Any amounts received by any member of the family

as disability compensation under chapter 11 of title 38, United States Code, or dependency and indemnity compensation under chapter 13 of such title.”

This exclusion only applies to the programs authorized under NAHASDA. The effective date of this provision was October 12, 2010. This exclusion is added to the list as paragraph (xxi).

5. The Claims Resolution Act of 2010 (Public Law 111-291, approved December 8, 2010), excludes a lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled Elouise Cobell et al. v. Ken Salazar et al. The law provides:

Notwithstanding any other provision of law, for purposes of determining initial eligibility, ongoing eligibility, or level of benefits under any Federal or federally assisted program, amounts received by an individual Indian as a lump sum or a periodic payment pursuant to the Settlement shall not be treated for any household member, during the 1-year period beginning on the date of receipt—

(A) as income for the month during which the amounts were received; or

(B) as a resource.

The effective date of this provision was December 8, 2010. This exclusion is added to the list as paragraph (xxii).

Updated List of Federally Mandated Exclusions from Income:

The following updated list of federally mandated exclusions supersedes that notice published in the Federal Register on April 20, 2001. The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion in either any federal program or in specific federal programs. Exclusions (viii) and (xxi) have provisions that apply only to specific HUD programs.

(i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(ii) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(f)(1), 5058);

(iii) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Public Law 94-540, 90 Stat. 2503-04);

(vii) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-8);

(viii) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Public Law 109-247);

(ix) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g);

(x) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange liability litigation, M.D.L. No. 381 (E.D.N.Y.) (Public Law 101-201 and 101-39);

(xi) Payments received under the Maine Indian Claims Settlement Act of 1980 (Public Law 96-420, 25 U.S.C. 1721) pursuant to 25 U.S.C. 1728(c);

(xii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(l));

(xiv) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Public Law 95-433);

(xv) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

(xvi) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);

(xvii) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931);

(xviii) Any amount received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

(xix) Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(xx) Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437) by Section 2608 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289, 42 U.S.C. 4501);

(xxi) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Public Law 111-269) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101) and administered by the Office of Native American Programs; and

(xxii) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., United States District Court, District of Columbia, as provided in the Claims Resolution Act of 2010 (Public Law 111-291).

Dated: July 17, 2012

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Assistant Secretary for Public and Indian Housing

Carol J. Galante
Acting Assistant Secretary for Housing-
Federal Housing Commissioner

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