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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5741-N-01]

Federally Mandated Exclusions from Income –Updated Listing

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 for HUD to periodically publish in the Federal Register a notice that lists amounts specifically excluded by any Federal statute from consideration as income for purposes of determining eligibility or benefits in a HUD program. HUD last published a notice that listed Federally mandated exclusions from consideration of income on December 14, 2012. This notice replaces the previously published version adds a new exclusion, includes an inadvertent omission, and corrects two previously listed 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: Yvette Viviani, Director, Housing Assistance Policy Division, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW, Room 6138, Washington, DC 20410, telephone number 202-708-3000. 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 7th 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, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4126, 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 (1995 ed.)); 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.

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. 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. As directed by various statutes, HUD excludes from consideration of income certain types of benefits from applicants' and participants' annual income, as listed in 24 CFR 5.609, this notice, or otherwise specified by statute.

Changes to the Previously Published List

HUD last published in the Federal Register a notice of Federally mandated exclusions from income on December 14, 2012, at 77 FR 74496. Today's notice replaces the previously published version by adding a new exclusion, including an inadvertent omission, and correcting two previously listed exclusions:

- 1) Adds exclusion of any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Public Law 107-110, 42 U.S.C. 604(h)(4)), listed as exclusion (xxiv);
- 2) Includes previously omitted exclusion of any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821)), listed as exclusion (xvi);
- 3) Clarifies the criteria for Section 8 participants for exclusion (viii); and
- 4) Corrects the timeline of exclusion (xxiii) for settlements payments pursuant to the case entitled Elouise Cobell et al. v. Ken Salazar et al.

Updated List of Federally Mandated Exclusions from Income:

The following updated list of federally mandated exclusions supersedes the notice published in the Federal Register on December 14, 2012. 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), (xiii), (xxi), and (xxii) 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 Service Act of 1973 (42 U.S.C. 5044(f)(1), 5058);

(iii) Certain 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, section 6);

(vii) The first \$2000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and 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. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(viii) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), 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 only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Public Law 109-115, section 327)(as amended);

(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 (Public Law 101-201) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

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

(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, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (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 allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 USC 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821).

(xvii) 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(c));

(xviii) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(xix) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) 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);

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

(xxi) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));

(xxii) 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; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;

(xxiii) 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., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Public Law 111-291);

(xxiv) Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Public Law 107-110, 42 U.S.C. 604(h)(4));

(xxv) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. § 117b(a)); and

(xxvi) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

Dated: May 12, 2014

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for Public and Indian Housing

Laura M. Marin, Associate General Deputy Assistant Secretary
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