



Office of Native American Programs

TO: All Tribal Government Leaders and Tribally Designated Housing Entities (TDHE)

FROM: Jacqueline Johnson, Deputy Assistant Secretary, 8APIN

TOPIC: Annual Income

SUBJECT: Calculating Annual Income under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA)

Purpose: This provides guidance and documentation needed for determining annual income for use by a tribe or a tribally designated housing entity (TDHE) that administers affordable housing programs and screens applicants for income-based eligibility. This guidance covers the definitions of annual income and includes the current list of Federally Mandated Exclusions.

Background: The NAHASDA-assisted housing program covered by this guidance consider annual income for eligibility for program participation and determination of the amount of homebuyer payment or rent paid by a participating family.

Section 4 (8) of NAHASDA defines the term “income” as “income from all sources of each member of the household as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:

(A) Any amounts not actually received by the family.

(B) Any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act.”

How to Calculate Annual Income: Implementing NAHASDA regulations, dated March 12, 1998, define the term “annual income” in Section 1000.10 as:

Annual income has one of the following meaning, as determined by the Indian tribe:

1. Annual Income as defined for HUD’s Section 8 programs in 24 CFR part 5, subpart F (except when determining the income of a homebuyer for an owner-occupied rehabilitation project, the value of the homeowner’s principal residence may be excluded from the calculation of Net Family assets). Attachment A contains the regulation needed if this definition of annual income is used, Also, if using the HUD’s Section 8 program definition of annual income, the tribe/TDHE must also exclude from annual income any amounts that are on the list of Federally Mandated Exclusions. This list is published from time to time in the Federal Register and the latest copy is included as Attachment B.

2. Annual income as reported under the Census long-form for the most recent available decennial Census. To further clarify, this means the definition of income used by the census, not the dollar amount reported. Attachment C contains the census definition. This will be used if this definition of annual income is chosen.

3. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

On the 1997 1040 Form, this is line 32 and includes such adjustments as alimony paid, moving expenses, and individual retirement arrangement (IRA).

Keep in mind, that the only adjustment to gross income on the 1040A Form is the IRA deduction (adjusted gross income is on line 16) and there are no adjustments to gross income on the 1040EZ Form (use line 4).

Policies: The tribe/TDHE must indicate in their written policies that govern the eligibility, admission, and occupancy of families for housing assisted with NAHASDA funds the definition(s) of annual income that they will use. The tribe/TDHE does not need to limit their definition to only one of the three outlined in this guidance. For example, the policy may state that the tribe or TDHE will use the definition most advantageous to the family or to the housing entity.

Verification: Section 1000.128 of NAHASDA requires the tribe/TDHE to verify that the family is income eligible based on anticipated annual income. The family household's annual income may not exceed the applicable income limit (see NAHASDA Guidance No. 98-14, Income Limits, dated June 22, 1998).

The family is required to provide income documentation to verify this determination. The tribe/TDHE is required to maintain the documentation on which the determination of eligibility is based. The tribe/TDHE may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with locally adopted policies.

Questions?

If you have any questions regarding the calculation of annual income for applicants and participants, please call your local Area Office of Native American Programs.

Attachment A - 24 CFR, Part 5, Subpart F (Section 5.609)- Annual Income

(a) Annual income means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in

paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated or shelter or utilities; plus

(ii) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in Sec. 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a plan to attain self-sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) Does not apply to tribes/TDHEs.

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for

purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

Attachment B - Federally Mandated Exclusions From Annual Income

Federally mandated exclusions are amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937 and NAHASDA. A notice is published from time to time in the Federal Register identifying the benefits that qualify for this exclusion. Following is the comprehensive list of benefits that currently qualify for the income exclusion:

- 1. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));**
- 2. Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g));**
- 3. The first \$2,000 per-person, per-annum of payments received under the Alaska Native Claims Settlement Act (Pub L. No. 102-415; 43 U.S.C. 1626c);**
- 4. Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C.459e);**
- 5. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));**
- 6. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552 (b)). Amounts received under AmeriCorps are to be treated like amounts received under the Job Training Partnership Act -- to be excluded;**
- 8. Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-040);**
- 9. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claim Commission or the Court of Claim (25 U.S.C. 1407-08) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117b, 1407).**

Please note the tribe or THDE may need to examine certain per capita shares to determine whether the proceeds are covered by this provision, such as bingo and gambling proceeds. Although some gaming funds are called "per capita payments", the National Indian Gaming Commission's General Counsel and the Solicitor's office of the Department of the Interior confirmed that the proceeds of gaming operations regulated by the Commission are not funds that are held in trust by the Secretary for the benefit of an Indian tribe, therefore, they do not qualify as per capita payments within the meaning of the Per Capita Distribution Act.

Also, if a tribal member receives the Form 1099-Misc, Miscellaneous Income, from the tribe for reporting Indian gaming profits, this payment does not qualify for this provision. These gaming profits are income that must be included as annual income as defined by HUD's Section 8 Program, the Census, and the IRS. Further, the tribal member must report this

miscellaneous income on the “other income” line of the Federal Income tax 1040 Form;

10. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087);

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

12. 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” product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

13. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub.L. 96-420, 94 Stat. 1785);

14. 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. 9858);

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

Attachment C - 1990 U.S. Census's Definition of Income

For each person 15 years old and over, the Census counted income from the following sources:

1. Earnings. The Census Bureau classifies earnings from longest job (or self-employment) and other employment earnings into three types:

a. Money wage or salary income is the total income people receive for work performed as an employee during the income year. This category includes wages, salary, armed forces pay, commissions, tips, piece-rate payments, and cash bonuses earned, before deductions are made for items such as taxes, bonds, pensions, and union dues.

b. Net income from nonfarm self-employment is the net money income (gross receipts minus expenses) from one's own business, professional enterprise, or partnership.

c. Net income from farm self-employment is the net money income (gross receipts minus operating expenses) from the operation of a farm by a person on their own account, as an owner, renter, or sharecropper.

2. Unemployment compensation includes payments the respondent received from government unemployment agencies or private companies during periods of unemployment and any strike benefits the respondent received from union funds.

3. Workers' compensation includes payments people receive periodically from public or private insurance companies for injuries received at work.

4. Social security includes social security pensions and survivors' benefits and permanent disability insurance payments made by the Social Security Administration prior to deductions for medical insurance.

5. Supplemental security income includes federal, state, and local welfare agency payments to low-income people who are 65 years old and over or people of any age who are blind or disabled.
6. Public assistance or welfare payments include cash public assistance payments low-income people receive, such as aid to families with dependent children (AFDC, ADC), temporary assistance to needy families (TANF), general assistance, and emergency assistance.
7. Veterans' payments include payments disabled members of the armed forces or survivors of deceased veterans receive periodically from the Department of Veterans Affairs for education and on-the-job training, and means-tested assistance to veterans.
8. Survivor benefits include payments people receive from survivors' or widows' pensions, estates, trusts, annuities, or any other types of survivor benefits.
9. Disability benefits include payments people receive as a result of a health problem or disability (other than those from social security).
10. Pension or retirement income includes payments from the following sources: companies or unions; federal government (Civil Service); military; state or local governments; railroad retirement; annuities or paid-up insurance policies; individual retirement accounts (IRAs), Keogh, or 401(k) payments; or other retirement income.
11. Interest income includes payments people receive (or have credited to accounts) from bonds, treasury notes, IRAs, certificates of deposit, interest-bearing savings and checking accounts, and all other investments that pay interest.
12. Dividends include income people receive from stock holdings and mutual fund shares.
13. Rents, royalties, and estates and trusts includes net income people receive from the rental of a house, store, or other property, receipts from boarders or lodgers, net royalty income, and periodic payments from estate or trust funds.
14. Educational assistance includes Pell Grants; other government educational assistance; any scholarships or grants; or financial assistance students receive from employers, friends, or relatives not residing in the student's household.
15. Child support includes all periodic payments a parent receives from an absent parent for the support of children, even if these payments are made through a state or local government office.
16. Alimony includes all periodic payments people receive from ex-spouses. Alimony excludes one-time property settlements.
17. Financial assistance from outside of the household includes periodic payments people receive from nonhousehold members. This type of assistance excludes gifts or sporadic assistance.
18. Other income includes all other payments people receive regularly such: state programs such as foster child payments, military family allotments, and income received from foreign government pensions.

The Census Bureau does not count the following receipts as income:

- (1) capital gains people received (or losses they incur) from the sale of property, including stocks, bonds, a house, or a car (unless the person was engaged in the business of selling such

property, in which case the CPS counts the net proceeds as income from self-employment); (2) withdrawals of bank deposits; (3) money borrowed; (4) tax refunds; (5) gifts; and (6) lump-sum inheritances or insurance payments.

For the prevailing information on the Bureau of the Census, U.S. Department of Commerce, visit their home page on the World Wide Web at <http://www.census.gov>.