



NHHBG 2013-02
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PROGRAM GUIDANCE

PROGRAM: Native Hawaiian Housing Block Grant (NHHBG)

FOR: Department of Hawaiian Home Lands (DHHL)

R.J.B.

FROM: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, PN

TOPIC: Calculating Annual Income under the NHHBG Program

Purpose: This guidance provides instructions on how to calculate annual income under the NHHBG program for the purpose of program eligibility. It covers the three definitions of annual income that DHHL may adopt in its written policies, and identifies statutory and federally mandated exclusions from annual income.

Background: Housing assistance under the NHHBG program is generally limited to low-income native Hawaiian families. A low-income family is defined in 24 CFR Part 1006.10 as a family whose income does not exceed 80 percent of the median income for the area. Therefore, to determine if a family is eligible to receive assistance under the NHHBG program, DHHL must first determine a family's annual income.

Calculating Annual Income: To calculate a family's annual income for purposes of NHHBG eligibility, DHHL must follow these steps:

Step 1: Adopt a Definition in NHHBG Policies – DHHL must indicate in its written policies that govern the eligibility, admission, and occupancy of families for NHHBG assistance, the definition(s) of annual income it will use. DHHL may choose any one or more of the following three definitions of “annual income”:

1. Section 8 Definition. 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 Section 8 definition of annual income.
2. Census Definition. Annual income as reported under the U.S. Census long form for the most recent available decennial Census. This means the definition of income

used by the Census, not the dollar amount reported. **Attachment B** contains the Census definition.

3. IRS Definition. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual federal annual income tax purposes. DHHL should review the program participant's appropriate past IRS 1040 Forms to obtain this information. On the 1040 Form (in 2012), this is line 37. On the 1040A Form, this is line 21. On the 1040EZ Form, this is line 4. **Attachment C** contains additional information on what is included and excluded in adjusted gross income on IRS Form 1040.

DHHL does not need to limit its definition to only one of the three outlined in this guidance. For example, DHHL's policy may state that it will use the definition most advantageous to the family or to DHHL. However, DHHL must ensure that its policy is implemented consistently (internally at DHHL and by subrecipients) so that the eligibility of each family is considered consistently and fairly.

Step 2: Exclude Any NAHASDA Exclusions – Section 4(9) of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA) defines the term “income” as income from all sources of each member of the household, as determined in accordance with criteria prescribed by HUD, except that the following amounts may not be considered as income:

1. Any amounts not actually received by the family.
2. Any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act. This relates to certain amounts received from the United States that are attributable to underpayments of benefits due for one or more prior months under the Social Security Act.
3. 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 relates to amounts received from the Department of Veterans Affairs by a family for service-related disabilities of a member of the family, and survivor benefits. (See PIH Notice 2011-15).

After calculating a family's annual income under Step 1, be sure to exclude any payments that are expressly excluded from annual income under these NAHASDA exclusions.

Step 3: Exclude Any Federally Mandated Exclusions – Federally mandated exclusions are amounts specifically excluded under other federal statutes from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs; which includes assistance under NAHASDA. HUD periodically publishes a notice in the *Federal Register* identifying the benefits that qualify for this exclusion from income. DHHL should search the *Federal Register* for the most current notice of “Federally Mandated Exclusions from Income,” and ensure that these amounts are not included in its calculation of annual income. As

of this date, the most recent notice was published December 14, 2012, and can be found in the *Federal Register* at 77 FR 74495. The most recently published Federally Mandated Exclusions are also provided in **Attachment D** of this guidance.

Step 4: Income Verification -- DHHL must verify that a family is income-eligible based on anticipated annual income. The family's annual income may not exceed the applicable income limit. The family is required to provide income documentation to verify this determination. DHHL must have income verification policies in place, and is required to maintain the documentation on which the determination of eligibility is based. DHHL may choose to use third party income verification methods or request documentation, such as income tax returns, W-2s, pay stubs, and other appropriate information as stipulated by its policies to adequately estimate annual income.

Timing of income verification:

- For rental housing, the family must be low-income at the time of their initial occupancy.
- The low-income eligibility requirement applies only at the time of purchase for homebuyers, or at the time of assistance for owner-occupied homeownership units receiving homeownership assistance.
- Families purchasing housing under a lease purchase agreement are eligible as long as they were low-income at the time the lease purchase agreement was signed.
- Families purchasing housing to be constructed must be low-income at the time the contract is entered into.

Further Information: *Annual Income* is used to determine if a household is income-eligible to receive NHHBG assistance. Adjusted Income, as defined in 24 CFR Part 1006.10, means the annual income that remains after excluding the amounts listed in that section of the NHHBG program regulations. In contrast to annual income, *Adjusted Income* is used to determine how much a household can afford to pay for housing costs. Payments made by low-income families for rents and payments in lease-purchase housing units may not exceed 30 percent of the family's monthly adjusted income.

If you have any questions regarding the information provided in this Program Guidance, contact Claudine Allen, Native Hawaiian Program Specialist, at 808-457-4674 or by email at claudine.c.allen@hud.gov.

Attachments

Attachment A – Section 8 Definition of Annual Income

Annual Income as defined for HUD’s Section 8 programs in 24 CFR Part 5, Subpart F

§ 5.609 Annual income.

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

- 1) Go to, or go to 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) 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 payments.* (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
 - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and
 - (B) Are not otherwise excluded under paragraph (c) of this section.(ii) 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:

- (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (B) 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 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).
 - 9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.
- (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 § 5.403;
 - 6) Subject to paragraph (b)(9) of this section, 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 that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and that 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, resident initiatives coordination, and serving as a member of the PHA's

governing board. 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) [Reserved]
- 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. [Federally Mandated Exclusions listed below in **Attachment D**]

Attachment B - U.S. Census 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 website at <http://www.census.gov>.

Attachment C – IRS Form 1040 Adjusted Gross Income

This lists the inclusions and exclusions as they appear on the 2012 IRS Form 1040.

Inclusions

1. Wages, salaries, tips, etc.
2. Taxable interest.
3. Dividends.
4. Taxable refunds, credits or offsets of State and local income taxes. There are some exceptions – refer to Form 1040 instructions.
5. Alimony (or separate maintenance payments) received.
6. Business income (or loss).
7. Capital gain (or loss).
8. Other gains (or losses) (i.e., assets used in a trade or business that were exchanged or sold).
9. Taxable amount of individual retirement account (IRA) distributions. (Includes simplified employee pension [SEP] and savings incentive match plan for employees [SIMPLE] IRA).
10. Taxable amount of pension and annuity payments.
11. Rental real estate, royalties, partnerships, S corporations, trusts, etc.
12. Farm income (or loss).
13. Unemployment compensation payments.
14. Taxable amount of Social Security benefits.
15. Other income. (Includes: prizes and awards; gambling, lottery or raffle winnings; jury duty fees; Alaska Permanent fund dividends; reimbursements for amounts deducted in previous years; income from the rental of property if not in the business of renting such property; and income from an activity not engaged in for profit).

Exclusions

1. Educator expenses.
2. Certain business expenses of reservists, performing artists, and fee-basis government officials.
3. Health savings account deduction.
4. Moving expenses.
5. Deductible part of self-employment tax.
6. Self-employed SEP, SIMPLE, and qualified plans.
7. Self-employed health insurance deduction.
8. Penalty on early withdrawal of savings.
9. Alimony paid.
10. IRA deduction.
11. Student loan interest deduction.
12. Tuition and fees.
13. Domestic production activities deduction.

Attachment D - Federally Mandated Exclusions From Income

[as published on December 14, 2012, in the *Federal Register* at 77 FR 74495]

The following updated list of federally mandated exclusions republishes and corrects the notice published in the *Federal Register* on July 24, 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), (xx), 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 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 (Pub. L. 94-540, section 6);
- (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);
- (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 that individual is over the age of 23 with dependent children (Pub. L. 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 (Pub. L. 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 (Pub. L. 96–420, 25 U.S.C. 1721);
- (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 (Pub. L. 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(c));
- (xvii) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));
- (xviii) 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);
- (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. 1437A) by section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289). This exclusion will apply when the Section 8 definition of annual income is adopted;
- (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 (Pub. L. 111–269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under NAHASDA and administered by the Office of Native American Programs;
- (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.*, 816 F.

Supp. 2d 10 (Oct. 5, 2011 D.D.C.), as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291); and

(xxiii) 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) comparable disaster assistance provided by States, local governments, and disaster assistance organizations shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs (42 U.S.C. 5155(d)).