



**U. S. Department of Housing and Urban Development
Public and Indian Housing**

Special Attention of:
All HUD Recipients

Notice PIH 2013-30

Issued: December 17, 2013

Expires: Effective until Amended,
Superseded, or Rescinded

Cross Reference(s): 24 CFR 5.609;
Office of Native Americans (ONAP),
Program Guidance 2013-05(R)

1. Subject: Exclusion from Income of Payments under Recent Tribal Trust Settlements

2. Purpose: The purpose of this notice is to provide guidance to PHAs, Indian tribes, tribally designated housing entities (TDHE), and other recipients of HUD programs on the treatment of certain trust settlement payments recently received by members of Indian tribes. This Notice covers how PHAs, Indian tribes, TDHEs, and other recipients of HUD programs should treat settlement payments received pursuant to the settlement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.* (*Cobell Settlement*). This Notice also provides guidance on the exclusion of payments received pursuant to a number of other recent Tribal Trust Settlements with Indian tribes.

3. Background: Recently, the United States settled a number of lawsuits filed by individual tribal members and Indian tribes. These settlements have resulted in some Indian families receiving monetary payments. On May 6, 2013, the Office of Native American Programs issued Program Guidance (Recipient) 2013-05, which explained how to calculate annual income and determine program eligibility under the Indian Housing Block Grant (IHBG) program. Since that time, recipients of other HUD programs have questioned how these payments should be counted for purposes of calculating a family's annual income under other HUD programs that, similar to the IHBG program, adopt the definitions of annual income found in 24 CFR § 5.609, the Census Long Form, or the IRS Form 1040.

Generally, *per capita* payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained below, payments under the *Cobell Settlement*, and certain *per capita* payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of annual income in 24 CFR § 5.609, the Census Long Form, and the IRS Form 1040.

Note: A payment received by a tribal member from the tribe for distribution of Indian gaming profits is not a per capita payment within the meaning of the Per Capita Distribution Act and does not qualify for income exclusion. If a tribal member receives the Internal Revenue Service (IRS) Form 1099-Misc, Miscellaneous Income, from the tribe for reporting Indian gaming profits, this payment must be counted towards a family's annual income.

4. Per Capita Payments and Recent Trust Case Settlements:

Cobell Settlement: In *Elouise Cobell et al. v. Ken Salazar et al.*, a class of individual members of Indian tribes filed suit against the United States for its failure to adequately manage certain trust assets. The settlement was authorized pursuant to the Claims Resolution Act of 2010 (Pub. L. 111–291). In accordance with the Act, lump sum or periodic payments received by an individual Indian under the *Cobell* Settlement are statutorily excluded from counting towards a family's annual income, or as a resource, for purposes of determining initial eligibility or level of HUD assistance, for a period of one year from the time of receipt of that payment. This exclusion from income applies to all HUD programs. This exclusion is also included in the attached list of Federally Mandated Exclusions from Annual Income that HUD periodically publishes in the Federal Register. The exclusions are listed in the **Attachment** to this Notice and are also available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-12-14/pdf/2012-30210.pdf>

Note: For a more extensive list of federally mandated exclusions specific to Indian families, please refer to the following comprehensive list compiled in 2011 by the United States Department of Agriculture:
http://www.fns.usda.gov/fdd/programs/fdpi/Excluded_Native_American_Funds_2011.pdf

Tribal Trust Settlements: In addition to the *Cobell* Settlement, the United States recently entered into settlements with a number of federally recognized Indian tribes, settling litigation in which the tribes alleged that the Department of the Interior and the Department of the Treasury mismanaged monetary assets and natural resources the United States holds in trust for the benefit of the tribes. In some circumstances, proceeds from these settlements have resulted, or will result in, *per capita* payments being provided to Indian families by Indian tribes.

Unlike payments under the *Cobell Settlement*, Congress did not enact a law that provided for a separate statutory exclusion for these payments. However, PHAs, Indian tribes, TDHEs, and other HUD recipients that apply the definitions of annual income in 24 CFR § 5.609, the Census Long Form, or the IRS Form 1040, should note that *per capita* payments received from these Tribal Trust Settlements may also be excluded from a family's annual income if they fall under one of the exclusions from annual income found in these definitions. For example, under 24 CFR § 5.609(c), nonrecurring or lump sum *per capita* payments made to tribal members may be excluded as "lump sum additions" to a family's assets, or as excluded "temporary, nonrecurring or sporadic income."

On January 14, 2013, the IRS issued IRS Notice 2013-1, which is available at: http://www.irs.gov/irb/2013-03_IRB/ar08.html, and is entitled "Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases." The Notice clarifies that, under 25 U.S.C. § 117b(a), *per capita* payments made from the proceeds of these Tribal Trust Settlements are

excluded from the gross income of the members of the tribe receiving the *per capita* payments. Therefore, all recipients that adopt the IRS Form 1040 definition of annual income should exclude payments from these Tribal Trust Settlements from a family's annual income.

This IRS Notice provides some additional limitations. For instance, *per capita* payments that exceed the amount of the Tribal Trust Settlement proceeds and that are made from an Indian tribe's private bank account in which the tribe has deposited the settlement proceeds are included in the gross income of the members of the tribe receiving the *per capita* payments. The IRS periodically publishes an updated list of Indian tribes that have entered into these Tribal Trust Settlements with the United States. See IRS Notice 2013-55, available at:

<http://www.irs.gov/pub/irs-drop/n-13-55.pdf>. PHAs, Indian tribes and TDHEs, and other HUD recipients should note that to date, at least 70 Indian tribes have settled Tribal Trust cases.

For questions on how to calculate these payments under HUD programs, please contact your local HUD field office. Persons with hearing or speech impairments may access their field office via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/s/

Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

Attachment

Attachment

Federally Mandated Exclusions from Annual Income

The following is a list of benefits that currently qualify for 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 Service Act of 1973 (42 U.S.C. 5044(f)(1), 5058)
3. Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
4. Income derived from certain sub marginal 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. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, section 6)
7. The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, and 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)

Please note the recipient 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;

8. 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).
9. Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056g).
10. 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.).
11. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, 25 U.S.C. 1721).
12. 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).
13. 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).
14. Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).
15. 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)).
16. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2)).
17. 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).
18. Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b)).
19. 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 an HUD recipient adopts the Section 8 definition of annual income.

20. 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). This exclusion will apply for one year from the time that payment is received.

21. 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)).