

HUD Expands List of Federally Mandated Income Exclusions

On January 31, 2024, the Department of Housing and Urban Development (HUD) published an updated list of income excluded for HUD-assisted housing programs. Since the Low-Income Housing Tax Credit Program (LIHTC) must follow HUD rules regarding income determination, these exclusions also apply to the LIHTC program.

Four new income exclusions were added, and existing exclusions were modified to specifically identify which sources of income are excluded from income calculations and asset determinations. This is the first comprehensive update of income exclusions since May 2014, and it incorporates the Housing Opportunities Through Modernization Act (HOTMA) exclusions.

New Income Exclusions

HUD has added four types of income that will no longer be counted for affordable housing program purposes. These include specific tax refunds, allowances for children of some veterans, distributions from ABLE accounts, and emergency rental assistance payments.

- **Tax Refunds:** The amount of any refund (or advance payment for a refundable credit) issued under the Internal Revenue Code is excluded from income. Such refunds are also excluded from assets for 12 months after being received.
- **Children of Certain Service Members:** Allowances paid to children of certain Thailand service veterans born with spina bifida are excluded from income and assets. This is in addition to any allowances paid to children of Vietnam veterans born with spina bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spina bifida.
- **ABLE Account Distributions:** Any amount in an Achieving a Better Life Experience (ABLE) account is excluded from income and assets. This includes the value of distributions from and certain contributions to ABLE accounts.
- **Emergency Rental Payments:** Payments received by a household under the Emergency Rental Assistance Program, which was part of the Consolidated Appropriations Act of 2021 and the American Rescue Plan Act of 2021, are excluded from income and assets.

Modifications to Existing Exclusions

In addition to adding new income exclusions, HUD is modifying existing exclusions.

- **AmericorpsVISTA payments:** In the past, payments to volunteers under the Domestic Volunteer Service Act of 1973 were always excluded. Now, such payments are included in income if the CEO of the Corporation for National and Community Service determines that the value of the payments, adjusted to reflect the number of hours served by volunteers, is equal to or greater than the federal or state/local minimum wage, whichever is greater.

- **Tribal Trust Settlements:** The first \$2,000 of per capita payments are excluded unless the per capita payments exceed the amount of the original Tribal Trust Settlement.
- **NAHASDA Benefits:** The change more accurately captures the language in the United States Code that describes the exclusion of programs under the Native American Housing Assistance & Self-Determination Act.
- **Individual Development Accounts (IDA):** Any amounts in an IDA are excluded from assets, and any assistance, benefit, or amounts earned by or provided to an individual development account are excluded from income. This exclusion was updated to clarify that an IDA is excluded from assets, and any IDA benefits are also excluded from income. This program was defunded in 2017, so the exclusion is moot.

It is important to note that HUD's updated list of federally mandated income exclusions is not a comprehensive list of all exclusions from income. Following are the types of income that are expressly excluded by federal law. Other income exclusions, as listed in various HUD Handbooks and Notice H 2023-10/PIH 2023-27, remain applicable. Also note that the exclusions listed below apply to income only, except where noted concerning assets.

1. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977. **This exclusion also applies to assets.**
2. Payments, including for supportive services and reimbursement of out-of-pocket expenses, for volunteers under the Domestic Volunteer Service Act of 1973 are excluded from income except that the exclusion shall not apply in the case of such payments when the Chief Executive Officer of the Corporation for National and Community Service appointed under 42 U.S.C. 12651c determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater. **This exclusion also applies to assets.**
3. Certain payments received under the Alaska Native Claims Settlement Act. **This exclusion also applies to assets.**
4. Income derived from certain submarginal land of the United States is held in trust for certain Indian tribes. **This exclusion also applies to assets.**
5. Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program. **This exclusion also applies to assets.**
6. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians. **This exclusion also applies to assets.**
7. The first \$2,000 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 \$2,000 per year of income received by individual Indians from

funds derived in interests held in such trust or restricted lands. This exclusion does not include proceeds of gaming operations regulated by the Commission. **This exclusion also applies to assets.**

8. Amounts of student financial assistance funded under Title IV of the Higher Education Act of 1965, including awards under Federal work-study programs or the Bureau of Indian Affairs student assistance programs.
 1. For Section 8 programs only, 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 from private sources or an institution of higher education (as defined under the Higher Education Act of 1965), shall not be considered income to that individual if the individual is over the age of 23 with dependent children.
9. Payments received from programs funded under Title V of the Older Americans Act of 1965.
10. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in Re Agent Orange Product Liability Litigation, M.D.L. No 381 (E.D.N.Y.). **This exclusion also applies to assets.**
11. Payments received under the Maine Indian Claims Settlement Act of 1980. **This exclusion also applies to assets.**
12. The value of any childcare 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.
13. 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 & Urban Development Act of 1965, and Sections 221(d)(3), 235, and 236 of the National Housing Act. **This exclusion also applies to assets.** Note – while this income exclusion addresses EITC refund payments for certain HUD programs, the exclusion in 26 U.S.C. 6409 excludes Federal tax refunds more broadly for any Federal program or under any State or local program financed in whole or in part with Federal funds.
14. The amount of any refund (or advance payment for a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for 12 months after receipt.
15. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation. **This exclusion also applies to assets.**
16. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990.

17. Any allowance paid to children of Vietnam veterans born with spina bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean and Thailand service veterans born with spina bifida. **This exclusion also applies to assets.**
18. Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime. **This exclusion also applies to assets.**
19. Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1988, reauthorized as the Workforce Innovation and Opportunity Act of 2014.
20. Any amount received under the Richard B. Russell School Lunch Act and the Child Nutrition Act of 1966, including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC). **This exclusion also applies to assets.**
21. Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990. **This exclusion also applies to assets.**
22. Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum or in prospective monthly payments.
23. Any amounts (i) not received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. §1382b(a)(7), and (iii) received for service-connected disability under 38 U.S.C. chapter 11 or dependency and indemnity compensation under 38 U.S.C. chapter 13 as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 to the definition of income applicable to programs under the Native American Housing Assistance and Self Determination Act (NAHASDA).
24. A lump sum or a periodic payment received by an individual Indian under the class action settlement agreement in the case titled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F. Supp.2d 10 (Oct 5, 2011, D.D.C), for one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010. **This exclusion also applies to assets.**
25. As provided by the Assets for Independence Act, as amended, any amounts in an “individual development account” are excluded from assets, and any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income.
 1. An Individual Development Account (IDA) is a special bank account that assists a family in saving for education, purchasing a first home, or starting a business. To enroll in the program, participants must (1) Have a paying job, (2) earn less than 200% of the federal poverty level, and (3) not have more than \$10,000 in assets, excluding one car and one home. The owner of the account contributes money from their job to the account. The

contributions are matched from the State TANF program or a special state fund. These additional funds *are excluded from income or assets*.

26. Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013-1 and 2013-55 must be excluded from annual income unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013-1. The first \$2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds.
27. Individuals and families receiving federal assistance for a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance that is provided by States, local governments, and disaster assistance organizations. **This exclusion also applies to assets.**
28. Any amount in an Achieving Better Life Experience (ABLE) account, distributions from, and certain contributions to an ABLE account established under the ABLE Act of 2014, as described in Notice PIH 2019-09/H 2019-06 or a subsequent or superseding notice. **This exclusion also applies to assets.**
29. Assistance received by a household under the Emergency Rental Assistance Program under the Consolidated Appropriates Act of 2021 and the American Rescue Plan Act of 2021.

While all these exclusions will be reflected in a future update of HUD Handbook 4350.3, that update is not yet available. Therefore, owners and managers of properties subject to HUD income and asset exclusions should keep this list handy.

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