

Tribal Trust Fund Settlement Payments

Who is this publication for?

Read this if:

- You have received or may be receiving money as a result of the Tribal Trust Accounting and Management lawsuits filed by tribes against the United States; AND
- You receive or may apply for needs-based public benefits including Supplemental Security Income (SSI), food assistance, public or subsidized housing, Temporary Assistance for Needy Families (TANF) or Medicaid.
- You may file a tax statement for 2012 or 2013.

Background: In 2012, 61 tribes entered into settlement agreements resolving claims that the Department of the Interior and the Department of the Treasury mismanaged trust funds and natural resources held for the benefit of the tribes. Each tribe will decide how it will use the settlement funds and whether it will distribute funds to individual members.

If I receive settlement funds, will they affect my eligibility for public benefits or cause an overpayment?

Social Security Income (SSI): The Social Security Administration (SSA) has determined that it will not count per capita payments paid to tribal members under the settlement agreements as income or resources. The

exclusion also applies to initial purchases made with settlement funds, but does not apply to sale or conversion of initial purchases.

Example: Joe is a member of the Confederated Tribes of the Colville Reservation. He received a \$4000 per capita payment, paid from Tribal Trust Accounting and Management settlement funds. Joe used the money to buy a car. SSA excludes the \$4000 per capita payment as income and a resource. They also exclude the car as a resource because it was an initial purchase made with settlement funds. However, if Joe sells the car, the SSA may count the money he gets from the sale unless he spends it by the end of the month.

DSHS (cash, food, and medical assistance): The Department of Social and Health Services (DSHS) and the state Health Care Authority have indicated that for those eligible for or receiving cash, food or medical assistance, the settlement funds will be treated as exempt income and resources as long as they are separately identifiable from countable resources.

Federally Subsidized Housing: The U.S. Department of Housing and Urban Development (HUD) issued program guidance stating that per capita payments generated from the settlement funds that are not distributed regularly may be excluded as “temporary, nonrecurring or sporadic income” for purposes of Section 8 and public housing under [24 CFR 5.609\(c\)](#).

Example: Tribal member participates in Section 8 housing program. Tribe disburses a per capita payment to members from

settlement funds. Several months later, tribe disburses a second payment of a different amount. Tribe does not indicate that it will be disbursing future periodic payments. These payments should be excluded from calculation of annual income.

Are the settlement funds taxable?

No. The IRS advised that payments directly attributable to the proceeds of tribal trust settlements are not taxable. **If the tribe invests the settlement money**, then distributes to you and other members the settlement amount, plus interest, the additional interest payments will be taxable.

I get public benefits. Do I need to report any funds I receive from the trust settlement?

Yes. Even though these funds should not be counted as income or a resource, the funds must be reported.

You should report all changes in income and assets. For SSA and DSHS, you must report all changes in your income and resources by the tenth day of the month following the month you receive the funds. [20 CFR § 416.714](#); [WAC 388-418-0007](#). You should report in writing and keep a copy (with a date stamp from the agency). For HUD or tribal housing programs, follow your housing authority policies regarding when you must report a change in family income. [24 CFR § 982.516](#). **If you believe the office is improperly counting these funds, contact**

a supervisor or legal services office for help.

May I keep the settlement funds in the same bank account as my benefits?

No. If possible, open a separate account for the settlement funds, so there is no doubt that the money is exempt. IRS, Social Security, or DSHS might doubt that money you have is from the tribal trust settlement. **Do not mix the settlement funds with other money**. Keep records of the settlement funds and how you spend/save them. You might have to prove later that certain money you have is from the settlement.

Does this info also apply to individual trust claims?

No. This publication covers only tribal trust settlements from the group of lawsuits sometimes referred to as *Nez Perce Tribe, et al. v. Salazar, et al.* The settlement funds were made to tribes for mismanagement of tribal trust property. These *tribal* trust settlement funds are different than the *Cobell* lawsuit. *Cobell* involved **individual** tribal trust accounts.

In the *Cobell* lawsuit, distributions will be made to individuals after the settlement agreement has been finalized. Under the terms of that settlement, those funds will also not be taxable. For purposes of public benefits, those funds will also not be treated as income in the month received or as a resource for one year after receipt.

What if I need legal help?

- **The Northwest Justice Project’s Native American Unit (NAU)** provides free civil (non-criminal) legal services for Native Americans who cannot afford a lawyer in Washington. To reach us, call the toll-free hotline at **(888) 201-1014**,

then press 5 to leave a message for the NAU. **You can leave a message 24 hours a day, seven days a week.** We will return your call within two business days.

- **Persons 60 and Over**: You may call CLEAR*^{Sr} at 1-888-387-7111, regardless of income.

**This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.
This information is current as of March 2014.**

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Social Security

Official Social Security Website

MENU

Program Operations Manual System (POMS)

TN 119 (12-12)

SI 00830.853 Tribal Trust Accounting and Management Settlement Agreements

A. Background on the Tribal Trust Accounting and Management Settlement

American Indian tribes filed lawsuits alleging that the Federal Government mismanaged monetary assets and natural resources held in trust by the United States for the benefit of the tribes. On April 11, 2012, several tribes agreed to settle their cases with the Government.

Under these agreements, the Government will pay about \$1 billion to the tribes in total. The amount paid to each tribe varies considerably. Under the agreements, each tribe may decide how to use the settlement funds and whether to distribute these funds as per capita payments to individual tribe members. Per capita payments are payments made according to the number of individuals in a specific group and in which each individual shares equally.

B. Policy for income and resource exclusion

1. For purposes of determining eligibility for Supplemental Security Income (SSI) and Medicare Part D Extra Help, we exclude the Tribal Trust Accounting and Management Settlement per capita payments received by individual tribe members, pursuant to these settlement agreements from income and resources.

NOTE: For instructions on applying the income and resource exclusions for the Claims Resolution Act of 2010 (Cobell v. Salazar), refer to SI 00830.852.

2. The resource exclusion also applies to initial purchases made with funds received from these settlements. However, the resource exclusion does not apply to proceeds from the sale or conversion of initial purchases or subsequent purchases. For more information on the

conversion or the sale of a resource, see SI 00815.200.

EXAMPLE: Lisa Madison receives a per capita payment of \$7000 from her tribe based on the Tribal Trust Accounting and Management Lawsuit Settlement Agreement. We exclude the initial receipt of the per capita payment from income and resources. Lisa purchases a car with the funds. We also exclude the car as a resource because it is an initial purchase made with settlement funds. Later, Lisa sells the car to her brother for \$3,000. The money she receives from the sale of the car is not income because it is the conversion of a resource. If Lisa retains the funds, they are countable as a resource the first moment of the following month.

C. Documenting the receipt of settlement funds for SSI

If an applicant or recipient reports receipt of a per capita payment pursuant to a Tribal Trust Accounting and Management Settlement, explain that the payment does not affect eligibility for SSI.

1. Documenting the allegation on a Report of Contact (DROC) screen

Identify and document the following:

- the settlement fund;
- the amount of the per capita payment;
- the date of receipt;
- the status of the funds (retained as cash, in a financial account, or used for an initial purchase); and
- that the Tribal Trust Accounting and Management Settlement payment is excludable from income and resources.

EXAMPLE of DROC input: "The recipient reported receipt of \$5,000 from the (name of tribe) Tribal Trust Accounting and Management Settlement on May 10, 2012. The recipient deposited the per capita payment into his or her savings account. This payment is excludable from income and resources."

2. Documenting an initial purchase with settlement money within MSSICS

Document the value and exclusion amount of an initial purchase on the appropriate MSSICS screen (e.g., RFIA, RVEH). This documentation will be helpful for determining if the resource exclusion applies, if the recipient later reports making a purchase with settlement funds. For example, documentation of a vehicle on the RVEH screen would indicate whether the recipient

already made an initial purchase with settlement funds.

D. Tribes with settlement agreements

The following is a list of the tribes with settlement agreements (Names appear on this list as they appear on the settlement agreement.)

Ak-Chin Indian Community
*Arapaho Indian Tribe of the Wind River Reservation (Northern Arapaho Tribe)
Assiniboine & Sioux Tribes of the Fort Peck Reservation
*Bad River Band of Lake Superior Chippewa Indians (Bad River Band of Lake Superior Chippewa Indians of the Bad River Reservation)
Blackfeet Tribe of the Blackfeet Indian Reservation
*Bois Forte Band of Chippewa (Bois Forte Band Nett Lake), a component of the Minnesota Chippewa Tribe)
*Cachil Dehe Band of Wintun Indians of the Colusa Rancheria (Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of Colusa Rancheria)
Chippewa Cree Tribe of the Rocky Boy's Reservation
Cheyenne River Sioux.
Coeur d'Alene Tribe
Confederated Tribes of the Goshute Reservation
Confederated Salish and Kootenai Tribes
Confederated Tribes and Bands of the Yakama
Confederated Tribes of the Colville Reservation
*Confederated Tribes of Siletz Indians (Confederated Tribes of Siletz Indians of Oregon)
Crow Creek Sioux
Eastern Shawnee Tribe of Oklahoma
Hoop Valley Tribe
*Hualapai Tribe (Hualapai Indian Tribe of the Hualapai Indian Reservation)
Iowa Tribe of Kansas and Nebraska
*Kaibab Band of Paiute Indians of Arizona (Kaibab Band of Paiute Indians of the Kaibab

Indian Reservation)
Kaw Nation of Oklahoma
*Kickapoo Tribe of Kansas (Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas)
*Lac Courte Oreilles Band of Lake Superior Chippewa Indians (Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin)
*Lac du Flambeau Band of Lake Superior Chippewa Indians (Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin)
*Leech Lake Band of Ojibwe (Leech Lake Band of Chippewa Indians or Leech Lake Band of Minnesota Chippewa Tribe)
Lower Brule Sioux Tribe
Makah Indian Tribe of the Makah Indian Reservation
Mescalero Apache Nation
Miami Tribe of Oklahoma
Minnesota Chippewa Tribe
Nez Perce Tribe
Native Village of Atka
*Nooksack Indian Tribe (Nooksack Tribe and Nooksack Indian Tribe of Washington)
Northern Cheyenne Tribe of Indians
Northwestern Band of Shoshone Indians
Oglala Sioux Tribe
Omaha Tribe of Nebraska
Otoe-Missouria Tribe of Oklahoma
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony
Passamaquoddy Tribe of Maine
Pawnee Nation of Oklahoma
Prairie Band of Potawatomi Nation
Pueblo of Zia
Pueblo of Laguna

Qawalangin Tribe
Quechan Tribe of the Fort Yuma Indian Reservation
Red Cliff Band of Lake Superior Chippewa
*Rincon Band of Luiseno Indians (Rincon Band of Luiseno Mission Indians of the Rincon Reservation)
Rosebud Sioux Tribe
Round Valley Tribes
Salt River Pima-Maricopa Indian Community
Samish Indian Nation
*Santee Sioux Tribe of Nebraska (Santee Sioux Nation)
*Sault Ste. Marie Tribe (Sault Ste. Marie Tribe of Chippewa Indians of Michigan)
Seminole Nation of Oklahoma
Shoshone-Bannock Tribes of the Fort Hall Reservation
*Shoshone Indian Tribe of the Wind River Reservation (Eastern Shoshone Tribe)
Soboba Band of Luiseno Indians
Spirit Lake Dakotah Nation (Spirit Lake Tribe)
*Spokane Tribe of Indians (Spokane Tribe of the Spokane Reservation)
Standing Rock Sioux Tribe
Stillaguamish Tribe of Indians
Summit Lake Paiute Tribe
Swinomish Indian Tribal Community
Te-Moak Tribe of Western Shoshone Indians
Tlingit and Haida Tribes of Alaska
Tohono O'odham Nation
Tonkawa Tribe.
Tulalip Tribes
*Tule River Indian Tribe (Tule River Indian Tribe of the Tule River Reservation)

Ute Indian Tribe of the Uintah and Ouray Reservation
*Ute Mountain Ute Tribe (Ute Mountain Tribe of the Ute Mountain Reservation)
Winnebago Tribe of Nebraska Reservation
Yurok Tribe

*The tribe has more than one name according to the settlement agreement. Additional names are within the parenthesis.

E. References

- SI 00830.830 Indian-Related Exclusions
- SI 00815.200 Conversion or Sale of a Resource
- SI 00830.852 The Claims Resolution Act of 2010 (Cobell v. Salazar)
- SI 01130.700 Identifying Excluded Funds That Have Been Commingled With Non-Excluded Funds

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0500830853>

SI 00830.853 - Tribal Trust Accounting and Management Settlement

Agreements - 02/24/2014

Batch run: 02/24/2014

Rev:02/24/2014

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Region VIII

1600 Broadway, Suite 700

Denver, CO 80202-4967

REGIONAL INFORMATION LETTER

RIL NO. 12-02
DATE: August 15, 2012
TO: State Medicaid Directors
SUBJECT: Tribal Settlements and Medicaid

Due to a number of questions the Centers for Medicare and Medicaid Services (CMS) Regional Office has received from many State Medicaid Agencies, we wanted to provide this informational letter regarding Tribal settlements and their impact on eligibility for federally-assisted public assistance benefits.

Any settlement/judgment funds distributed to members of Indian tribes per capita or otherwise through trust accounts, as such, are excluded from consideration as income or resources. P.L. 93-134 excludes these funds from resources for ALL Social Security Act (SSA) benefits. The SSA guidance does apply to Medicaid/CHIP eligibility for treatment of income and resources. In addition ARRA 5006(b) excludes ALL payments from judgment or trust funds from counting as income or resources even when the payments exceed \$2,000 in a year. Please see the January 22, 2010 State Medicaid Director's (SMD) letter.

If you have any questions please call Cindy Smith, the Native American Coordinator (NAC) for Region VIII 303-844-7041 or email at Cindy.Smith@cms.hhs.gov.

Sincerely,



Richard C. Allen

Associate Regional Administrator


Division of Medicaid & Children's Health Operations



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

August , 2012

TO: CSD Regional Administrators
CSD CSC Administrators
CSD CSO Administrators
HCS Regional Administrators

FROM: Babs Roberts, Director 
Community Services Division, ESA

Bill Moss, Director 
Home and Community Services Division, ADSA

Manning Pellanda, Director 
Eligibility and Services Delivery Division, HCA

**SUBJECT: TREATMENT OF TRIBAL TRUST ACCOUNTING AND
MANAGEMENT-FUNDED PER CAPITA PAYMENTS**

The Department of Justice announced a \$1 billion settlement with 44 Tribes under the Tribal Trust Accounting and Management lawsuits. These settlements (which may also be known as *Nez Perce et al v. Salazar*) may affect the following six Tribes located within Washington State:

- The Confederated Tribes of the Colville Reservation
- Makah Tribe of the Makah Reservation
- Nooksack Tribe
- Spokane Tribe
- Swinomish Indian Tribal Community
- Tulalip Tribes

Please see the attached list of all 44 Tribes who have received these settlements, as any of them may decide to issue some of the proceeds as per capita payments to their tribal members who live in Washington State.

Per capita payments funded by the proceeds of these types of settlements are exempt as income for cash, all medical, child care and food assistance programs. They are also exempt as a resource for cash and medical assistance as long as they are separately identifiable from countable resources. These payments are also exempt even if they are reportable income to the Internal Revenue Services.

As tribal members report receipt of a Tribal Trust Accounting and Management per capita payment verify as needed, and document the following in the record:

- It is a per capita payment funded by a Tribal Trust Accounting and Management settlement.
- The date and amount of the payment.
- That the payment is exempt as income; and exempt as a resource as long as it is separately identifiable.

Treatment of Tribal Trust Accounting and Management-Funded Per Capita Payments

August 31, 2012

Page 2

Headquarters will be contacting tribal governments to see if they are willing to provide the information needed to document and verify these types of per capita payments. We will post the information on the CSD Programs page at <http://csd.esa.dshs.wa.lcl/programs/default.aspx>. To date, The Confederated Tribes of the Colville Reservation has provided information on their August 2012 per capita distribution. Please use the posted information, when available, to verify a payment. If a payment has gone out and information isn't posted, contact the tribal administration.

The federal government has also entered into separate *individual* trust-related settlement, called **Cobell et al v. Salazar**. Under this settlement, the federal government will be issuing payments directly to individual tribal members. **The Cobell payments will be exempt as income in the month of receipt and as a resource for the one-year period beginning on the date of receipt for cash, medical, child care and food assistance. We will send further instructions once payments begin.**

Please contact the following staff if you have questions:

- **Medicaid:** Kevin Cornell, Health Care Authority, Kevin.cornell@hca.wa.gov,
- **Long Term Care:** David Armes, ArmesJD@dshs.wa.gov
- **Working Connections Child Care:** Aurea Nicolet-Dones, DonesAL@dshs.wa.gov
- **SNAP:** Bob Thibodeau, robert.thibodeau@dshs.wa.gov
- **Cash:** Sandy Jsames, jsamesm@dshs.wa.gov

Attachment

cc: David Armes
Barbara Bucsko
Bill Callahan
John Camp
Deborah Collier
Kevin Cornell
Rebecca Henrie
Vicki Hobbs
Sandy Jsames
Rena Milare
Dasha Mitchell
Aurea Nicolet-Dones
Terre Penn
Jason Ramynke
Carla Reyes
Don Seim
Jolene Sullivan
Bob Thibodeau
Marla Thompson
Mary Wood
Jane Seidel
CSD Financial Coordinators
HCS Financial Program Managers

THE 44 TRIBES WITH TRIBAL TRUST ACCOUNTING AND MANAGEMENT
SETTLEMENT AGREEMENTS

1. **Assiniboine & Sioux Tribes of the Fort Peck Reservation**
2. ***Bad River Band of Lake Superior Chippewa Indians (Bad River Band of Lake Superior Chippewa Indians of the Bad River Reservation)**
3. **Blackfeet Tribe of the Blackfeet Indian Reservation**
4. ***Bois Forte Band of Chippewa (Bois Forte Band (Nett Lake), a component of the Minnesota Chippewa Tribe)**
5. ***Cachil Dehe Band of Wintun Indians of the Colusa Rancheria (Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of Colusa Rancheria)**
6. **Coeur d'Alene Tribe**
7. **Chippewa Cree Tribe of the Rocky Boy's Reservation**
8. ***Confederated Salish & Kootenai Tribes (CSKT) (Confederated Salish & Kootenai of the Flathead Reservation)**
9. **Confederated Tribes of the Colville Reservation**
10. ***Confederated Tribes of Siletz Indians (Confederated Tribes of Siletz Indians of Oregon)**
11. ***Hualapai Tribe (Hualapai Indian Tribe of the Hualapai Indian Reservation)**
12. ***Kaibab Band of Paiute Indians of Arizona (Kaibab Band of Paiute Indians of the Kaibab Indian Reservation)**
13. ***Kickapoo Tribe of Kansas (Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas)**
14. ***Lac Courte Oreilles Band of Lake Superior Chippewa Indians (Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin)**
15. ***Lac du Flambeau Band of Lake Superior Chippewa Indians (Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin)**
16. ***Leech Lake Band of Ojibwe (Leech Lake Band of Chippewa Indians or Leech Lake Band of Minnesota Chippewa Tribe)**
17. **Makah Indian Tribe of the Makah Indian Reservation**
18. ***Mescalero Apache Tribe (Mescalero Apache Tribe of the Mescalero Reservation)**
19. **Minnesota Chippewa Tribe**
20. **Nez Perce Tribe**

*Also known under more than one name according to the settlement agreement. Additional names are listed within the parenthesis.

THE 44 TRIBES WITH TRIBAL TRUST ACCOUNTING AND MANAGEMENT
SETTLEMENT AGREEMENTS

21. ***Nooksack Indian Tribe (Nooksack Tribe and Nooksack Indian Tribe of Washington)**
22. **Northern Cheyenne Tribe of Indians**
23. **Passamaquoddy Tribe of Maine**
24. **Pawnee Nation of Oklahoma**
25. **Pueblo of Zia**
26. **Quechan Tribe of the Fort Yuma Indian Reservation**
27. ***Rincon Band of Luiseno Indians (Rincon Band of Luiseno Mission Indians of the Rincon Reservation)**
28. **Round Valley Indian Tribes**
29. **Salt River Pima-Maricopa Indian Community**
30. ***Santee Sioux Tribe of Nebraska (Santee Sioux Nation)**
31. ***Sault Ste. Marie Tribe (Sault Ste. Marie Tribe of Chippewa Indians of Michigan)**
32. **Shoshone-Bannock Tribes of the Fort Hall Reservation**
33. **Soboba Band of Luiseno Indians**
34. ***Spirit Lake Dakota Nation (Spirit Lake Tribe)**
35. ***Spokane Tribe of Indians (Spokane Tribe of the Spokane Reservation)**
36. **Standing Rock Sioux Tribe**
37. **Summit Lake Palute Tribe**
38. **Swinomish Indian Tribal Community**
39. **Te-Moak Tribe of Western Shoshone Indians**
40. **Tohono O'odham Nation**
41. **Tulalip Tribes**
42. ***Tule River Indian Tribe (Tule River Indian Tribe of the Tule River Reservation)**
43. ***Ute Mountain Ute Tribe (Ute Mountain Tribe of the Ute Mountain Reservation)**
44. **Ute Indian Tribe of the Uintah and Ouray Reservation**



STATE OF WASHINGTON
HEALTH CARE AUTHORITY

626 8th Avenue, S.E. • P.O. Box 45502 • Olympia, Washington 98504-5502

August 24, 2012

SUBJECT: Tribal Trust Accounting and Management Lawsuits

Dear Tribal Leader:

The purpose of this letter is to share information concerning recent federal tribal trust settlements and how they may affect your tribal members' eligibility for medical assistance programs.

The Health Care Authority (HCA) received guidance from the Centers for Medicare and Medicaid Services (CMS) that per capita payments issued as a result of the Nez Perce, et al v. Salazar lawsuits are exempt as income for medical assistance, and exempt as a resource, as long as the funds are separately identifiable from countable resources. Settlement payments made directly to tribal members as a result of Cobell, et al v. Salazar are also exempt as income for medical assistance, and exempt as a resource, for a period of one year.

HCA is working on a notice to eligibility staff explaining how to verify and document these exempt payments. We want to ensure that HCA clients do not have their coverage interrupted. An email alert has already been sent to state staff regarding one tribe's distribution of per capita payments. If your tribe would like to make similar arrangements please contact us. Our staff will need to confirmation the following elements:

- The distribution is a per capita payment funded by the Nez Perce, et al v. Salazar or a Tribal Trust Accounting and Management settlement.
- The amount of the per capita payment (including shares or special treatment for minors).
- The date that it will be sent to tribal members.

This information will confirm that the payments are exempt and give state staff the information they need to properly document the information.

Since we have staff from all over the state processing cases, we also encourage your administrations to provide a contact name for our staff so they know who to contact when state staff need to verify a payment for a tribal member. If you have a specific process our staff should follow to obtain the information, please share details so we can make staff aware.

Please feel free to contact us if there is anything we can do to be of assistance. The agency's goal is to help identify these funds so tribal members do not lose health care coverage if the funds are not clearly identified as exempt.

You may contact either of the staff below if you require further information or would like to arrange for an alert to state staff.

- Kevin Cornell, Health Care Authority, Kevin.cornell@hca.wa.gov, (360) 725-1423
- Deborah Sosa, Health Care Authority, Deborah.sosa@hca.wa.gov, (360) 725-1649

Very truly yours,



Manning Pellanda, Assistant Director

cc: IPAC Delegates
Tribal TANF/Social Services Directors
ESA Directors
Sheryl Lowe, Executive Director, American Indian Health Commission for Washington State
Robin Arnold-Williams, Secretary, WA State Department of Social and Health Services
MaryAnne Lindeblad, Director, WA State Health Care Authority
Colleen Cawston, Executive Director, Office of Indian Policy, WA State Department of Social and Health Services
David Armes, Financial Program Manager, Home and Community Services, WA State Department of Social and Health Services
Deb Sosa, Tribal Program Manager and Agency Tribal Liaison, WA State Health Care Authority
Mike Mowrey, Tribal Relations Program Manager, WA State Department of Social and Health Services
Nathan Johnson, Assistant Director, Health Care Policy, WA State Health Care Authority
Jim Stevenson, Chief Communications Officer, WA State Health Care Authority
Jane Seidel, Section Manager, MEDS, HCA
Mary Wood, Section Manager, OMMEP, HCA



**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)).

Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases

Notice 2015-20

BACKGROUND

Notice 2013-1, 2013-3 IRB 281, provides guidance on the federal tax treatment of per capita payments that members of Indian tribes receive from proceeds of certain settlements of tribal trust cases between the United States and those Indian tribes.

Additional tribes have settled tribal trust cases against the United States since publication of Notice 2013-1. This notice provides an updated Appendix that reflects the additional settlement agreements.

EFFECT ON OTHER DOCUMENTS

Notice 2013-1 Appendix is modified and superseded.

FURTHER INFORMATION

For further information regarding this notice, please contact Telly Meier at phone number (202) 317-8494(not a toll-free call).

Appendix Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe of the Blackfeet Indian Reservation
4. Bois Forte Band of Chippewa
5. Cachil Dehe Band of Wintun Indians of the Colusa Rancheria
6. Chippewa Cree Tribe of the Rocky Boy's Reservation
7. Coeur d'Alene Tribe
8. Confederated Salish and Kootenai Tribes
9. Confederated Tribes of Siletz Indians
10. Confederated Tribes of the Colville Reservation
11. Confederated Tribes of the Goshute Reservation
12. Crow Creek Sioux Tribe
13. Eastern Shawnee Tribe of Oklahoma
14. Hualapai Indian Tribe
15. Iowa Tribe of Kansas and Nebraska
16. Kaibab Band of Paiute Indians of Arizona

17. Kickapoo Tribe of Kansas
18. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
19. Lac du Flambeau Band of Lake Superior Chippewa Indians
20. Leech Lake Band of Ojibwe
21. Lower Brule Sioux Tribe
22. Makah Indian Tribe of the Makah Reservation
23. Mescalero Apache Tribe
24. Minnesota Chippewa Tribe
25. Nez Perce Tribe
26. Nooksack Indian Tribe
27. Northern Cheyenne Tribe of Indians
28. Omaha Tribe of Nebraska
29. Passamaquoddy Tribe of Maine
30. Pawnee Nation
31. Prairie Band of Potawatomi Nation
32. Pueblo of Zia
33. Quechan Tribe of the Fort Yuma Reservation
34. Red Cliff Band of Lake Superior Chippewa Indians
35. Rincon Luiseño Band of Indians
36. Rosebud Sioux Tribe
37. Round Valley Indian Tribes
38. Salt River Pima-Maricopa Indian Community
39. Santee Sioux Tribe of Nebraska
40. Sault Ste. Marie Tribe
41. Shoshone-Bannock Tribes of the Fort Hall Reservation
42. Soboba Band of Luiseno Indians
43. Spirit Lake Dakotah Nation
44. Spokane Tribe of Indians
45. Standing Rock Sioux Tribe
46. Stillaguamish Tribe of Indians
47. Summit Lake Paiute Tribe
48. Swinomish Indian Tribal Community
49. Te-Moak Tribe of Western Shoshone Indians
50. Tohono O'odham Nation
51. Tulalip Tribes
52. Tule River Indian Tribe
53. Ute Indian Tribe of the Uintah and Ouray Reservation
54. Ute Mountain Ute Tribe
55. Winnebago Tribe of Nebraska
56. Qawalangin Tribe of Unalaska
57. Tlingit & Haida Tribes of Alaska
58. Northwestern Band of Shoshone Indians
59. Hoopa Valley Tribe
60. Ak-Chin Indian Community
61. Oglala Sioux Tribe
62. Yoruk Tribe
63. Cheyenne River Sioux Tribe

64. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony
65. Seminole Nation of Oklahoma
66. Otoe-Missouria Tribe of Oklahoma
67. Samish Indian Nation
68. Tonkawa Tribe of Indians of Oklahoma
69. Yakama Nation
70. Miami Tribe of Oklahoma
71. Shoshone Indian Tribe and the Northern Arapahoe Indian Tribe of the Wind River Reservation
72. Pueblo of Laguna
73. Navajo Nation
74. Caddo Nation of Oklahoma
75. Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation