

Internal Revenue Service
Notice 88-80
(Income Determination)

Notice 88-80

The purpose of this Notice is to inform taxpayers that regulations to be issued under section 42(g)(1) of the Internal Revenue Code of 1986 (the "Code") (relating to the determination of a qualified low-income housing project) will provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under section 8 of the United States Housing Act of 1937 (H.U.D. section 8).

For purposes of H.U.D. section 8, annual income is defined under 24 CFR 813.106 (1987). HUD section 8 median family income estimates (i.e., area median gross income estimates) are based on decennial Census data updated with bureau of the Census P-60 income data and Department of Commerce County Business Patterns employment and earnings data. The determination of annual income and median family income estimates are based on definitions of income that include some items of income that are not included in a taxpayer's gross income for purposes of computing Federal Income Tax liability. Thus, the income of individuals and area median gross income (adjusted for family size) for purposes of section 42(g)(1) of the Code will NOT be made by reference to items of income used in determining gross income for purposes of computing Federal Income Tax liability.

This document serves as an "administrative pronouncement" as that term is described in section 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a

revenue ruling or revenue procedure.

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H.U.D. DEFINITION OF ANNUAL INCOME
24 CFR 813.106

§ 813.106 Annual Income.

(a) Annual income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income as provided in paragraph (c) of this section.

(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 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 a deduction 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 payments 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 payment for the delayed start of a periodic payment;

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

(6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the

amount of Welfare Assistance income to be included as income shall consist of:

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

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

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

(8) All regular pay, special pay and allowances of a member of the Armed Forces (but see paragraph (c)(7) of this section); and Any earned income Tax Credit to the extent it exceeds income tax liability.

(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;

(3) Lump-sum additions of Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement of personal or property losses (but see 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 section 813.102;

(6) Amounts of educational scholarships paid by the Government to a veteran, for use in meeting the cost of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

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

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

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

(10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility of benefits

under a category of assistance programs that includes assistance under the United State Housing Act of 1937. A notice will be published in the Federal Register and distributed to PHAs and owners identifying the benefits that qualify for this exclusion.

Updates will be published and distributed when necessary.

(d) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

(49 FR 19936, May 10, 1954, as amended at 50 FR 29591, June 24, 1985; 50 FR 39097, Sept. 27, 1985; 51 FR 21308, June 11, 1986; 52 FR 34113, Sept. 9, 1987; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar 10, 1988