

# To: Owners and Managers of TDHCA Sponsored Developments

**From: Patricia Murphy**

**Chief of Compliance**

**Date: March 13, 2018**

**RE: Military Basic Housing Allowance**

In 2008, the Housing and Economic Recovery Act (“HERA”) was passed. That legislation permitted certain properties to exclude the basic housing allowance received by persons in the military when determining if they were income qualified for admission. The exclusion from income provide through HERA was temporary. In 2015, Congress passed the Protecting Americans from Tax Hikes Act and made that exclusion from income (for certain properties) permanent. In order for a property to exclude the Basic Housing Allowance for persons in the military from the determination of income, the property must be located in a county or an adjacent county with a "qualified military installation."

In March 2018, the Department contacted the owners of existing properties in the portfolio to inform them of the proper treatment of this type of income. At this time, the IRS Guide for Completing Form 8823 indicates that this exclusion was temporary. However the guide also states:

*“The guide, or chapters of the guide, may become obsolete if the underlying authority is revised subsequent to the Guide’s revision date. Examples include: (1) IRC §42 is revised by Congress, (2) the IRS provides formal guidance, or (3) HUD revises the definition or treatment of income as explained in HUD Handbook 4350.3, Chapter 5.”*

This memo serves as the documentation an owner needs to establish that the exception is applicable and serves to supplement Chapter 4 of the IRS guide.

This exclusion from income applies to Housing Tax Credit, tax credit exchange, tax exempt bond and developments that received the initial tax credit assistance funds administered by the Department. This change does not apply to State Housing Trust Fund, National Housing Trust Fund, HOME, or developments that received recycled tax credit assistance funds.

Eligible properties in the following counties may exclude the basic housing allowance received by persons in the military:

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| --- | --- |
| El Paso | Hudspeth |
| Bell | Milam |
| Falls | McLennan |
| Coryell | Lampasas |
| Burnet | Williamson |

Note that only the basic housing allowance and hostile fire pay are excluded. **All other types of military income must be included when determining resident eligibility, and Leave and Earnings Statements (LES) are the only acceptable form of verification for military.** For example, suppose a person in the military presents their Leave and Earnings Statement that shows the amounts below. In determining eligibility, the bolded amounts would be considered the household’s income. Only the Basic Housing Allowance of $1290.30 would be excluded.

|  |  |
| --- | --- |
| Basic Pay: | **$2497.80** |
| Basic Allowance for Subsistence | **$294.43** |
| Flight pay: | **$25** |
| Hazardous Duty Pay: | **$35** |
| Basic Housing Allowance: | $1290.30 |