LIHTC: Avoiding Costly Errors Implementing HOTMA

HANDOUT

Breakout Session

Thursday, February 22, 2024
1:45 pm – 3:00 pm
Speaker: Scott Michael Dunn

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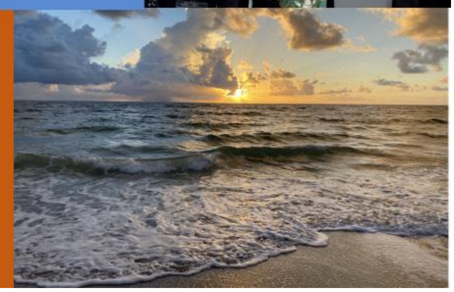

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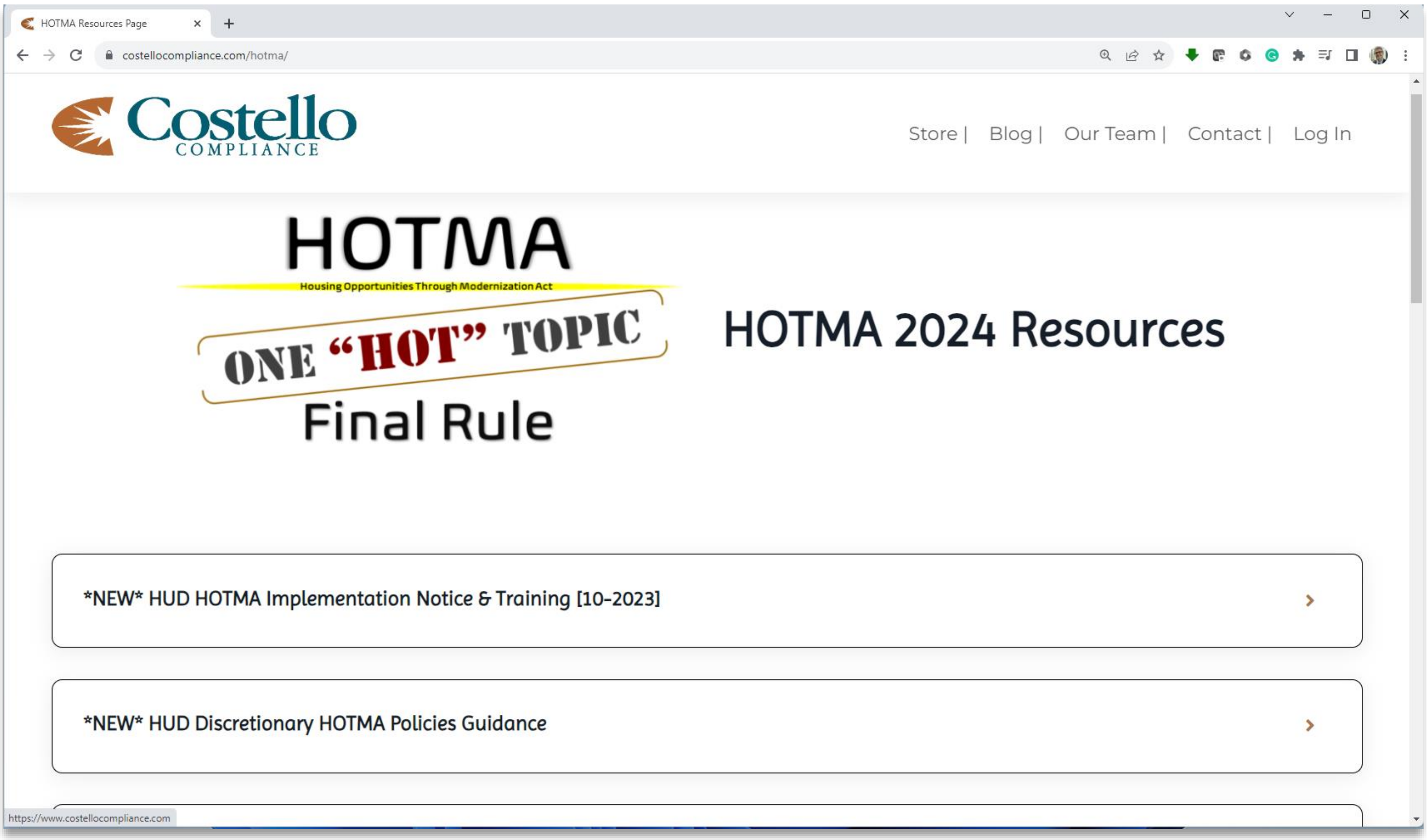
Important note: this is a story in progress…

Although the industry must gear up to apply HOTMA and we have most of what we need, there may be adjustments over time after the implementation date. We've got you covered and will keep you posted on breaking HOTMA news!

Besides Costello's *Housing Rules* Blog, updates to this course can be found along with a wealth of other resources at:

https://www.costellocompliance.com/hotma



Introduction to HOTMA for LIHTC/HOME/NHTF

Memory Aid To retain tax credits, an owner/agent must meet the following requirements:

IRS I __________ R __________ S __________

Bonus! These work for all affordable housing programs. Just the details differ.

BONUS! This basic concept works for most affordable housing programs – only the details differ. This includes the HOME and the National HTF programs.

LIHTC FAQ 1 |

What defines income eligibility for the LIHTC program?

Treas. Reg. 1.42-5 (B)(vii) | IRS Notice 88-80 | 8823 Guide Chapter 1

"Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937." The statute and regulations make it clear that Section 8 methodologies are to be used, not those that determine taxable income under IRS rules. The IRS tells us that this means that the legal authority for income and asset questions is the HUD Handbook 4350.3. When this document is changed by HUD, the tax credit income and asset rules change with it.

LIHTC FAQ 2 |

Should we wait until the IRS issues guidance, such as in a new 8823 Guide? How about the HUD Handbook 4350.3?

8823 Guide 1-2

In their guidance to state agencies, the IRS has said: "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***…The guide (or chapter) is obsolete as of the effective date of the revised legal authority. State agencies and owners should disregard affected text and legal references."

Conclusion | Per existing LIHTC guidance, once HOTMA is effective for HUD programs, the income provisions legally automatically apply to the LIHTC program.

The *Joint Implementation Notice* for HUD PIH and MFH has specifically stated that the Notice updates the 4350.3 for now. The Notice is very specific, down to the chapters that will be revised. Waiting for the revised handbook in light of the likely lengthy delay in revision of the HUD Handbook while HOTMA legally applies risks the LIHTC funding. The 8823 Guide guidance above further supports moving to HOTMA as soon as practical. See the Implementation Schedule section below for more information and a workable model for LIHTC agencies.

HOME / NHTF FAQ 1 |
What defines income eligibility for the HOME and NHTF programs?

HOME | § 92.203 NHTF | § 93.151

HOME PJs and NHTF grantees may choose from two definitions of income for properties in their jurisdiction.

1. Annual income as used in HUD programs like Section 8 (as well as Low-Income Housing Tax Credit and Rural Development housing). This is defined in HUD regulation 24 CFR 5.609. HOME and NHTF guidance most often refers to this as "Part 5" income.
   Note | Per HOTMA § 92.203(a) and 93.151(a), this definition MUST be used for households receiving project-based federal rental assistance (PBRA) for both HOME and NHTF units, using the determination of the subsidy program. This definition MUST also be used for tenant-based rental assisted-households (TBRA) in NHTF units and MAY be allowed by the PJ for HOME purposes (per written HOME policy).
2. Adjusted gross income as defined by the Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax reporting purposes.

🡐 A web-based income calculator of family income that meets HOME and NHTF requirements is available on HUD's CPD Program web page at www.hudexchange.info, keyword search "income eligibility calculator."

HOTMA rules directly govern the HOME and NHTF programs in several ways.

- Some rules apply to the extent that the PJ uses the Part 5 definition of income.
- Other provisions apply regardless of the income definition chosen.

HOTMA Highlight

A brief history of HOTMA

2016 (Jul 29)	The Housing Opportunities Through Modernization Act (HOTMA) was passed into law. It is the largest revision of HUD processes in many decades. The stated goal was to simplify the program for PHAs, owners/agents, HOME PJs, and residents of HUD program housing. Title I of HOTMA contains 14 sections that affect the public housing and Section 8 rental assistance programs.
2019 (Sep 17)	HUD published a proposed rule for sections and solicited public comments to regulate HOTMA Sections 102, 103, and 104.
2023 (Feb 14)	HUD published the Final rule, first as a draft in January, and then officially in the Federal Register in February. It covers Sec. 102 ["Income reviews"], Sec.103 ["Limitation on public housing tenancy for over-income families"], and Sec. 104 ["Limitation on eligibility for assistance based on assets"]. LIHTC, HOME, and NHTF are affected by Sec. 102 provisions.
2023 (Mar 16)	Section 103 provisions for PHAs become effective.
2023 (Sep 29)	HUD published the joint MFH/PIH HOTMA Implementation Guidance
2024 (Jan 1)	Sections 102 and 104 rules become effective. Deadline for PHAs to have their ACOPs and HCV Admin Plans updated for HOTMA.
2024 (Mar 31)	Deadline for MFH owners/agents to have policies, procedures, and Tenant Selection Policies adapted for HOTMA. As soon as HUD and owner/agent software allows, the Owner/agent must come into compliance with HOTMA. Although noncompliance with HOTMA will not create negative scoring for Management Occupancy Reviews (MORs) conducted in 2024 by HUD or the Contract Administrator, the owner/agent will have to correct the noncompliance.
2025 (Jan 1)	Latest that PHAs have to bring public housing and HCV programs into compliance with HOTMA, although they are to have it in compliance "as soon as possible" after January 1, 2024. Pending HUD and subsequent PHA software upgrades required that HUD PIH defer the date for PHAs to get into full compliance. The starting date when HUD MFH HOTMA noncompliance will result in MOR findings.

Fast Fact | HOTMA extensively changes how HUD calculates income for a property. This involves both periodic income and income calculated from assets. Besides HUD rental assistance programs, LIHTC, HOME, NHTF, tax-exempt bond, and Rural Development programs.

Guidance from HUD

- ❑ HUD Multifamily Housing (MFH) Resources page:
  https://www.hud.gov/program_offices/housing/mfh/hotma
- ❑ HUD Public & Indian Housing (PIH) Resources page:
  https://www.hud.gov/program_offices/public_indian_housing/hotmaresources

  On these pages, please find a few especially important documents.
  - **HOTMA Final Rule 2023.**
  - ***Joint Implementation Notice H 2023–10 & PIH 2023–27.*** *HOTMA* implementation guidance for HUD MFH & PIH programs was released in late September 2023.
  - HUD's lists of ***Discretionary Policies to Implement HOTMA*** (one each for MFH and PIH).

Coming Soon! At the time this workbook was published, the below-listed resources were pending from HUD's MFH, PIH, and CPD Offices.

- **HOTMA Implementation Guidance for CPD Programs** [HOME and NHTF]
- **HOTMA webinars (MFH).** Although the recordings available online so far have been for PHAs from HUD PIH, these may provide insight for MFH owners/agents and state Agencies. Registration and downloadable information is available at the below link.
  https://www.hudexchange.info/news/hotma-income-and-assets-training-series/
- **Notice on Inflationary Adjustments (will be provided annually).**
  - Annual adjustments for items related to inflation or other adjustments. Some of these include imputed asset income rates, the amount of assets that determine if imputing is necessary and if non-necessary assets are counted, and the dependent deduction that determines the amount of income counted for dependent full-time students and adoption assistance payments. **HUD has announced that these will be released no later than September each year, effective January 1 of the following year.**
- Revisions to HUD Multifamily Handbook 4350.3.
  https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4350.3
  - The *Joint Implementation Notice* (listed above) indicates that the Notice replaces any conflicting information in the HUD Handbook. It will replace much of what is found in six of the nine chapters of the Handbook.
  - Until the 4350.3 is changed, HUD has promised an additional page on the Handbook's webpage explaining which handbook portions will be superseded by HOTMA.

Factors to be adjusted annually by inflation (bold apply to LIHTC/HOME/NHTF)

Joint Implementation Notice Table H1 Note: smaller font items are not applicable to LIHTC or NHTF, and only applicable to HOME under very limited circumstances. A notice will be published by HUD annually before September 1 of each year to be effective January 1 of the following year.

24 CFR § 5.618(a)(1)(i)

1. Eligibility restriction on net family assets
   24 CFR §§ 5.609(a)(2) and (b)(1)
2. **Threshold above which imputed income is calculated on assets**
   24 CFR § 5.603(b) Net family assets
3. **Threshold above which non-necessary personal property is included in net family assets**
   24 CFR § 5.618(b)(1) and several others, by program
4. **The amount of net assets for which the Owner may accept self-certification by the family**
   24 CFR § 5.611(a)(1)
5. **Mandatory deduction for a dependent**
   24 CFR § 5.611(a)(2)

6. Mandatory deduction for elderly and disabled households [applies to HOME over-income households]
   24 CFR § 5.609(b)(14)
7. **Income exclusion for earned income of dependent full-time students**
   24 CFR § 5.609(b)(15)
8. **Income exclusion for adoption assistance payments**

The Remaining Big LIHTC/HOME/NHTF Issue | Implementation Schedule

Legally, HOTMA applies to income determinations after 1/01/2024. Realistically, however, HUD realizes that the industry needs time to get policies and procedures in place and that software has to be reprogrammed by private vendors for owners/agents to comply. First, however, for HUD programs HUD has to have PIH software updated and TRACS needs to be revised for private software to be able to meet owner/agent needs. In light of these changes, HUD has set an implementation model for Multifamily Housing (MFH) programs that state LIHTC Agencies may consider. The model is in steps, as listed below.

Note: At the time of publication of this workbook, HUD CPD has not published an implementation plan. Until, and if, a plan is published for HOME and NHTF, grantees are looking to the Joint Notice for practical guidance. HUD CPD has confirmed that they do not intend to diverge from published MFH/PIH guidance unless necessary.

By March 31, 2024

- By March 31, 2024, MFH Owners must update their Tenant Selection Plans and EIV policies and procedures to reflect HOTMA rules and discretionary policies.
- MFH Owners must make the revised Tenant Selection Plan publicly available.
  Note: MFH Owners must continue to follow their existing Tenant Selection Plans and EIV policies & procedures until the MFH Owner's software is compliant with TRACS 203A.

What MFH Owners must do once their software is HOTMA-compliant

Once an MFH Owner's software is HOTMA compliant (i.e., TRACS 203A system requirements have been fully implemented), the following things must happen:

- MFH Owners must provide tenants at least 60 days' notice that their lease will be modified at the end of the lease term after the expiration of the 60 days' notice. Once proper notice is given, MFH Owners must begin using the revised Model Leases at the expiration of a family's lease term.
- MFH Owners must implement their revised Tenant Selection Plans and EIV policies and procedures.
- All tenant data submissions must comply with the HOTMA regulations. Prior to their first reexaminations under HOTMA, MFH Owners must inform families that their income determinations will be conducted in accordance with the HOTMA final rule.
  As a best practice, HUD recommends that MFH Owners describe to families how their income determinations will change with the implementation of the final rule.
- MFH Owners must use the revised Tenant Consent form (form HUD–9887/9887A) and Fact Sheets ("How Your Rent is Determined").

How HUD will monitor MFH Owner compliance prior to January 1, 2025

- Prior to January 1, 2025, MFH Owners will not be penalized for HOTMA-related tenant file errors during Management and Occupancy Reviews (MORs). Instead, the Contract Administrator will issue observations with corrective actions.

By January 1, 2025

- Full compliance with the HOTMA final rule is mandatory effective January 1, 2025.

How HUD will monitor owner compliance on or after January 1, 2025

- Contractor Administrators will issue HOTMA-related findings during MORs.

- MFH Owners must correct all HOTMA-related observations that were issued by Contract Administrators during 2024.
- MFH Owners who fail to implement HOTMA may be found in default of their business agreements with HUD.

Applying the above to the LIHTC [one state agency's model]

Unlike HUD programs, the IRS does not legally obligate state agencies to review owner/agent policies and procedures or Tenant Selection Procedures. They are simply obligated to review the final product to ensure that files are compliant with income determinations. Also, falling out of compliance with their business agreements with HUD may be viewed as equivalent to a state issuing a form IRS-8823.

After considering the above, one state's LIHTC Manual* has been updated to include the following model.

> *"Section 102 of HOTMA redefines income and asset calculations and verification requirements and is applicable to certifications effective on or after 1/1/24. This manual has been updated to include HOTMA provisions, including requirements from the HOTMA final rule and HUD Notice H 2023-10 / PIH 2023-27 "Implementation Guidance: Sections 102 … of the Housing Opportunity Through Modernization Act of 2016."*
>
> *IHCDA will note HOTMA related noncompliance issues identified in calendar year 2024 and will require necessary corrective action. However, IHCDA will not impose penalties for HOTMA specific issues during calendar year 2024- i.e., will not issue 8823s, suspend partners, or impose fines for items specifically linked to HOTMA changes."*

* Thanks to the Indiana Housing and Community Development Authority [IHCDA] for permission to reproduce this provision.

Does This Apply to Me?" | Program Applicability

HOTMA Applicably Chart | CPD & LIHTC

Focus Here

	HOME	NHTF	LIHTC
Net Family Assets Definition (§ 5.603)	**Yes,** unless the participating jurisdiction chooses to calculate income using the IRS income definition.	**Yes,** unless the HTF grantee chooses to calculate income using the IRS income definition.	**Yes**
Annual Income Definition (§ 5.609(a))	**Yes,** unless the participating jurisdiction chooses to calculate income using the IRS income definition.	**Yes,** unless the HTF grantee chooses to calculate income using the IRS income definition.	**Yes**
Annual Income Exclusions (§ 5.609(b))	**Yes,** unless the participating jurisdiction chooses to calculate income using the IRS income definition.	**Yes,** unless the HTF grantee chooses to calculate income using the IRS income definition.	**Yes**
Annual Income Calculation & Reexaminations (§ 5.609(c))	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or the participating jurisdiction accepts income determination under a Federal ***tenant-based*** rental assistance program assisting a household.	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Adjusted Income Mandatory Deductions (§ 5.611(a))	**Yes,** if a household is over-income and rent is based on adjusted income or when adjusted-income-based rents apply to Low HOME units where the household is receiving project-based Federal rental subsidy.	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Adjusted Income Additional Deductions (§ 5.611(b))	**Yes,** if a household is over-income and rent is based on adjusted income at HOME properties without LIHTC funding.	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Adjusted Income Financial Hardship Exemptions (§ 5.611(c))	**Yes,** if the participating jurisdiction elects to do so, if the household in the unit is receiving Federal or State ***project-based*** rental subsidy, or the participating jurisdiction accepts income determination under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**, unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Restrictions on Eligibility of Households with Assets Over $100,000 or who Own a Home (§ 5.618)	**No**	**No**	**No**

Notes | The HOME and NHTF columns are based directly on the HOTMA rule.
Federal Register/Vol.88,No.30/Tuesday, February 14, 2023/Rules and Regulations 9601
The LIHTC column is based on the general applicability of HUD rules to the LIHTC.

Quick Summary | Other HUD-Only HOTMA Issues

HOTMA Asset Limitations

24 CFR §5.618(a) | Joint Implementation Notice Attachment A

HOTMA allows owners/agents to develop a policy that denies eligibility to households with assets exceeding $100,000 (to be adjusted annually or who own real estate that is suitable for occupancy by the household. ***These limitations do not apply to HOME, the NHTF, or the LIHTC.*** If a household loses rental assistance from a PBRA or TBRA program that is subject to these limitations, they will still qualify for HOME or NHTF units if they continue to qualify under HOME/NHTF rules.

Note: for HUD properties, there are exceptions to the homeownership exclusion, listed below.

- Any property for which the family is receiving assistance under HUD's manufactured homes provisions of public housing rules at 24 CFR 982.620, or under the Homeownership Option in the Housing Choice Voucher program (24 CFR part 982; 237).
- Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property.
- Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
- Any family that is offering such property for sale.

The property may not be “suitable for occupancy” if any of the below apply regarding the property.

- It does not meet the disability-related needs for all members of the family
  Examples | Physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.
- It is not sufficient for the size of the family.
- It is geographically located so as to be a hardship for the family
  Examples | The distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner.
- It is not safe to reside in because of the physical condition of the property
  Example | The property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied.
- It is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

Over-Income Public Housing Residents

24 CFR § 960.507

Households that exceed public housing income limits by a factor of 2.4 will be over-income. If they remain over-income for 24 months, they are generally not eligible to reside in public housing. This rule is subject to PHA policy and took effect in 2023, before the enactment of other HOTMA rule provisions.

Health and Medical Care Expenses and Disability Assistance Expenses

24 CFR § 5.611 (c) & § 5.601 | Joint Implementation Notice C.4.

In HOTMA, Congress changed the threshold after which elderly and disabled households can deduct health and medical care expenses and disability assistance (attendant care and auxiliary apparatus) expenses. It will be 10% of household gross annual income. This has more than tripled from the 3% it was before HOTMA.

Recognizing the hardship this may cause households currently benefiting from the lower threshold, HUD has created a phase-in for those receiving the deduction on the effective date of the HOTMA Rule. In 2024, the threshold will rise from 3 to 5% for these households. In 2025, it will go to 7.5%, and in 2026 it will finally get to the full 10% that other households will pay under HOTMA. Households will also be able to apply for a hardship exemption to put this threshold at 5% for 90 days, subject to owners'/agents' written policy and possible extensions allowed by the owner/agent policy.

Childcare Expenses

24 CFR § 5.611 (d) | Joint Implementation Notice C.5.

Childcare expenses will be allowed as a deduction if the expenses allow an adult to be employed, search for employment, or further his or her education. The amount deducted cannot exceed the combined employment income of adults allowed to work. Households will also be able to apply for a hardship exemption to allow a household that will have childcare expenses that do not allow adults to work or further education who would not be able to pay rent because of this. It allows these expenses to be used in adjusted income calculations for 90 days, subject to owners'/agents' written policy and possible extensions allowed by the owner/agent policy.

See the SUPPLEMENT | INCOME-BASED RENTS AND HOTMA for more details.

Interim Recertification Threshold

24 CFR §5.657 (c) | Joint Implementation Notice I

Before HOTMA, the threshold of income increase that had to be reported and that required interim recertification was $200. This has changed, with other provisions of interim certification.

A household may request an interim reexamination of family income because of any changes since the last examination. The owner must conduct any interim reexamination within a reasonable time after the family request or when the owner becomes aware of an increase in family adjusted income. What qualifies as a ''reasonable time'' may vary based on the amount of time it takes to verify information, but such time generally should not exceed 30 days from the date a household reports changes in income to an owner.

Decreases in household annual adjusted income. The owner may decline to conduct an interim reexamination of household income if the owner estimates that the household's adjusted income will decrease by an amount that is less than ten percent of the household's annual adjusted income (or a lower amount established by HUD through notice), or such lower threshold established by the owner.

Increases in household annual adjusted income. The owner must conduct an interim reexamination of household income when the owner becomes aware that the household's adjusted income has changed by an amount that the owner estimates will result in an increase of ten percent or more in annual adjusted income (or such other amount established by HUD through notice), except:

- The owner may not consider any increase in the ***earned income*** of the household when estimating or calculating whether the household's adjusted income has increased unless the family has previously received an interim reduction.
- The owner may choose not to conduct an interim reexamination in the last three months of a certification period.

Reporting/Paperwork Changes

§ 5.233(a)(2)(i) | Joint Implementation Notice J.3.

EIV income reports will not be required to be run at interim recertifications, although an owner/agent may choose to. For annual recertifications, EIV provides third-party verification of the prior year's income.

24 CFR §5.230 | Joint Implementation Notice J.1.

The Authorization for Release of Information form (HUD-9887) must only be signed by each adult once during their tenancy.

De Minimus Errors

24 CFR §5.609(c)(4), §5.657(f), §574.310(h), §882.515(f), §882.808(i)(5), §960.257(f), and §982.516(f) | Joint Implementation Notice B.4.

HUD revises provisions in the HOTMA rule to define a *de minimis error* as an error that results in a difference in the determination of a family's adjusted income of $30 or less per month. HUD believes that a dollar amount instead of a percentage will make de minimis errors easier to calculate when it relates to household income and rent. However, HUD also provides that through the issuance of a Federal Register notice for comment, HUD may redefine de minimis errors. Note: if a de minimum error resulted in tenant overpayment of rent, the tenant still must be reimbursed.

Form Revisions

HUD has informed the industry that it is revising the following forms in response to HOTMA changes.

- **Certification forms |** HUD-50058 forms, 50059, and 50059-A
- **Releases of Information |** HUD-9886 and -9886-A, HUD-9887 and -9887-A
- "Fact Sheets" handouts for the various HUD programs
- HUD-9834 (the form used to conduct Management Occupancy Reviews (MORs))
- HUD Model Leases.

For updates to HUD forms, watch https://www.hud.gov/guidance
or www.costellocompliance.com/hotma

HOME & NHTF Specifics

HOME | Applicability of Adjusted Income & Mandatory Deductions

§ 92.252(i)(2)

HOME may use adjusted income when calculating rental assistance for HOME TBRA or when a household goes "over-income" at a HOME property that is not using LIHTC funding and household rent is based on adjusted income.

LIHTC & NHTF "over-income" rules do not require recalculation of rent, so adjusted income does not apply.

Adjustments to Mandatory Deductions

§ 5.611(a) | Joint Implementation Notice J4

When calculating rent for HUD programs, certain deductions are taken. Among other deductions, this includes an elderly household deduction and a deduction for each dependent in the household. Through 2023 these were $400 and $480, respectively. Starting in 2024, the elderly household allowance will go up to $525. The dependent deduction will remain $480, but both deductions will be evaluated each year and adjusted for income from 2025 on. This is not relevant to LIHTC or NHTF units, which do not use adjusted income. It very rarely applies to HOME, which only uses adjusted income for over-income households in non-LIHTC HOME units.

However, these adjustments will also be reflected in two *income* calculations. These are 1) the amount counted annually for adoption assistance payments received by a household and 2) the earned income counted for adult full-time student dependents of a household. These will be limited to the dependent deduction.

HOME & NHTF | Income Determinations

24 CFR § 92.203(a) | § 93.151(a)

Project-Based Rental Assistance (PBRA). Rental assistance income determinations by a state or federal rental assistance program **MUST** be used for HOME and NHTF purposes if the assistance is project-based.

- *HOME rules limiting subsidy to the HOME rent for high HOME units still apply.*
- *Low HOME and NHTF units may collect the full assistance allowed by the subsidy program.*
- *If the owner uses other means-tested program income determinations, the HOME PJ/NHTF grantee must accept these.*

Tenant-Based Rental Assistance (TBRA). Rental assistance income determinations by a federal rental assistance program that is tenant-based (such as a Housing Choice Voucher) **MAY** be used for HOME purposes if the PJ requires it in their policy. These determinations **MUST** be used for NHTF purposes.

- *HOME rules limiting subsidy to the HOME rent for ALL HOME units still apply.*
- *If the PHA uses means-tested program income determinations, and the PJ's policies accept PHA determinations, the HOME PJ must accept these alternative methods.*
- *If the PHA uses means-tested program income determinations, the NHTF grantee must accept these alternative methods.*
- *NHTF rent subsidy limit rules for TBRA still apply.*

HOME & NHTF | Rental Assistance Payments are Not Income

§ 92.203 (e)(1) | § 93.151(e)

"For families living in HOME [or NHTF]-assisted rental housing units, any rental assistance provided to the family under a Federal tenant-based rental assistance program or any Federal or State project-based

rental subsidy provided to the HOME [or NHTF] rental housing unit shall not be counted as tenant income for purposes of determining annual income."

LIHTC Note | That subsidy payments should not be counted as income is self-evident for subsidy programs. However, this clarifies HUD's stance excluding these types of Federal or State rental assistance for non-subsidy programs (like HOME/NHTF). This provides a rationale for LIHTC owners/agents to continue to exclude government subsidy payments.

Knowledge Check

Rental Assistance as Income

A resident in a HOME unit receives monthly rental assistance from their church welfare system. This is not income because HOTMA establishes that rental assistance is excluded as income. [circle one]

True **False**

HOME & NHTF | Verification

24 CFR §92.252 (h) | CFR §93.303(e)(2)

Verification rules have not changed significantly. HOME and NHTF still required that income be verified using two months of source documents at the initial determination and self-certification for other years, except every sixth year of the affordability period.

If the PJ or grantee is *required* (or in the case of HOME and TBRA, *chooses*) to use income determinations for a rental assistance program, then the sixth-year requirement does not apply.

24 CFR §92.203(b)(iii) | §93.151(d)(3)

If using a PHA or other administrators' determination of income, the owner must secure a statement from the assistance provider. *"The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit."* **Note | *We believe this is misstated in the new NHTF rule. The requirement for the NHTF should be the "extremely low- or very low" limit for units to which the NHTF applies. These are the limits applicable to the NHTF, depending on the funding year.***

HOME | Earned Income Disregard

24 CFR § 5.617(a)(c) & (f) | § 960.255(b)

Public housing and HOME shared a program rule designed to encourage employment that allowed certain households to phase in new employment income over 24 months. This is called the Earned Income Disregard (EID). With HOTMA, Congress removed the EID, so HUD will remove the EID upon the 1/1/2024 effective date of the final rule. However, to minimize disruption to persons already benefiting from a phase-in period, HUD determined that if a family is receiving a disallowance of an increase in annual income per the EID on the effective date, participants should be able to benefit from EID for the full 24 months. Therefore, the final rule retains the regulations for EID for this period. However, the EID will be available only to families that are eligible for and participating in the EID program on the effective date of the final rule. No new families may be added, and all use of the EID will cease no later than 1/1/2026.

Form Suggestions | HOME / NHTF

Application Verification form snippet

Yes No

☐ ☐ Are you receiving or applying to receive a Housing Choice Voucher or other state or federal rental assistance?

"The People" | HOTMA & Household Members

Household Members Included… (before HOTMA)

4350.3 3-6 E, Appendix 3, "Unborn Children" and 8823 Guide Chapter 4

Before HOTMA, household members included all persons who considered the unit their primary residence except live-in aides. This included anyone expected to live in the unit in the next year.

Examples HUD provided included children who are:

- Children of the household who are temporarily placed in a foster home.
- Away at school who live with family during school breaks.
- Children and adults for whom the unit is a foster home **

HOTMA Highlight

**Although counted for occupancy standards (HUD says that they are part of the "household"), foster members are no longer counted as "family" members. This means that they are not counted toward income limits or have any of their income counted. Children of the family who are away in foster care and will be returning are counted to the family, NOT in their foster family.

Childcare expenses for foster children under age 13 are still allowable childcare expenses.

New HOTMA Definition and Treatment of Foster Members

24 CFR § 5.609(b)(8) | HOTMA Final Rule Preamble "Foster Children and Adults" | §5.100 [2024] | Joint Implementation Notice C.5. & E.2.

Foster Adult & Child | "Foster adult. A member of the household who is 18 years of age or older and meets the definition of a foster adult *under State law*. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is *placed with the family by an authorized placement agency* or by judgment, decree, or other order of any court of competent jurisdiction. **Foster child.** A member of the household who meets the definition of a foster child *under State law*. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction."

Why is this important?

24 CFR § 5.609(b)(8) [2024] Federal Register/Vol.88,No.30/Tuesday,February 14,2023/Rules and Regulations 9602

Although "household members" are used for occupancy bedroom size standards and utility allowance purposes (if applicable), foster members are no longer counted as "family members" for income limit purposes, and their income and any assets belonging to fosters are also not counted. They are treated "similar to a live-in aide." This reverses several provisions that had been introduced in multiple Changes to the HUD MFH HUD Handbook 4350.3 REV-1 and align HUD MFH with other HUD programs. This also addresses concerns that foster children living in assisted housing who may be returning home with parents who are also in assisted housing would be counted in two households in violation of dual subsidy prohibitions.

Whose Income Do We Count? Post HOTMA

"Family" Members *	Earned Income Counted?	Unearned & Asset Income Counted?
Head, Spouse, and/or Co-head	Yes	Yes
Other Adult Household Member	Yes	Yes
"Family" Dependents *		
Child Under 18	No	Yes
FT Student over 18 (not the head, co-head, or spouse)	Yes Up to the current dependent deduction ***	Yes
Temporarily Absent Household Member	Yes	Yes
Person permanently living in a care facility	This is a Household decision	
Non-Family "Household" Members *		
Live-In Attendant	No	No
Foster Adults and Children	No **	No **
Guests	No	No

* According to HUD guidance, "family" members are counted for income limit purposes. "Household" members are all authorized occupants of a unit. Post HOTMA, live-in aides and foster children and adults are part of the household, but not the family.

** Changed by HOTMA from "yes"

*** Changed by HOTMA from $480

Form Suggestions | Fosters

Application form snippet

After the section collecting household member information

Yes No

☐ ☐ Are any of the above-listed household members foster children or adults?

"The Paperwork" | HOTMA & Verifications

Verification Overview

Treas. Reg. §1.42-5(b) | 4350.3 (CHG-4) 5-19, 5-13 & Appendix 3 | 8823 Guide chapter 4 | IRS Newsletter 54 | Joint Implementation Notice Attachment J

Treasury regulations require that taxpayers maintain "documentation to support each low-income tenant's income certification. For example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit."

While the above provides a rough standard, the IRS has determined that HUD's methods of verification are an appropriate safe harbor for the LIHTC program that works within the above regulatory framework. The 8823 Guide demonstrates this, using the then-current HUD verification rules.

In HUD guidance, the definition of "third-party verification" has been redefined since 2013 and further with HOTMA. Once, forms completed by third parties and returned directly to the owner were preferred. Now, any form completed by the third party can be used, preferably ones brought in by the tenant.

Verification Hierarchy

Implementation Notice Table J2

HOTMA adjusts the hierarchy of preferred verifications, as listed below.

Level of Acceptability

"Highest"

- ❑ Upfront Income Verification (UIV), from a source database
  - EIV – Only for HUD properties (cannot be used for LIHTC purposes) — **Level 6**
  - Non-EIV systems — **Level 5**
    (The Work Number, web-based state benefits systems, etc.)

"High"

- ❑ Written, third-party verification from the source provided by the tenant. — **Level 4**
  - Also known as "tenant-provided verification"
    Examples | pay stubs, payroll summary reports, employer notices/letters of hire/termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment benefit notices.
  - HUD programs include EIV with self-certification if the tenant agrees that EIV is accurate.

"Medium"

- ❑ Written third-party verification form — **Level 3**
  - Use if Level 5 or Level 4 verification is not available or is rejected by the PHA/MFH Owner.
  - Oral **third-party verification** — **Level 2**

"Low"

- ❑ Self-certification — **Level 1**

Knowledge Check

Verification Hierarchy

Assign the following a priority form 1 (most acceptable) to 3 (least).

________ **Verification of employment completed by the employer.**
________ **A printout from the Work Number.**
________ **Paystubs supplied by the household.**

Special Verification Situations

Joint Implementation Notice J.5.a.

Fixed Income. "For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation."

Pay stubs. Owners "are required to obtain a ***minimum of two current and consecutive pay stubs*** for determining annual income from wages. Owners were previously required to collect the most recent four to six pay stubs to verify employment income."
"For new income sources or when two pay stubs are not available, the Owner should determine income based on the information from a traditional written, third-party verification form or the best available information.

"Income tax returns. Returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (such as the tax preparer's transmittal receipt, a summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification."

HOTMA Highlight

As long as assets do not exceed $50,000, a household can self-certify the total value and income of their assets. For HUD programs, the assets will have to be 3rd-party verified at least once every 3 years. For the LIHTC program, self-certification rules do not require full verification in future years. HOME and NHTF only require full certification every 6th year of the affordability period.

Asset Self-Certification

Rev. Proc. 94-65 | 24 CFR § 5.659 (e) | HOTMA Implementation Notice F.7.

According to long-standing IRS guidance, if a household attests through self-affidavit that the net value of household assets does not exceed $5,000, the owner can use the affidavit as verification of the asset values and incomes. Most states have adopted a form for this self-affidavit. This convenient form can be used to determine the value of household assets when the total cash value of all household assets does not exceed $5,000. Sometimes this is (slightly inaccurately – by one dollar) referred to as an "Under $5,000" form.

The IRS's $5,000 asset guidance cites the HUD regulation. The only $5,000 aspect of the HUD rules is the imputed asset income threshold, which was $5,000 when the IRS issued its guidance. With HOTMA, that rule threshold has been raised to $50,000 (to be adjusted annually for inflation). Additionally, "for a family with net family assets…equal to or less than $50,000, which amount will be adjusted annually by HUD per the Consumer Price Index for Urban Wage Earners and Clerical Workers, an owner may accept, a family's declaration of assets, except that the owner must obtain third-party verification of all family assets every 3 years."

Ongoing results in 2023 indicate that most state LIHTC agencies are raising the self-certification threshold to $50,000 rather than leaving it at $5,000, which number they feel is obsolete with the new HUD rule. However, the HUD provision requiring verification at least every three years does not apply. The IRS has always allowed self-certification for all certifications, even when HUD required full asset certification every year.

Knowledge Check

Asset Verification | State Allows Self-Certification $50,000

Maria is applying for an apartment at Golden Gates Apartments with her roommate, Mario. On their application, Maria declares that she has a savings account with a current balance of $47,500. Mario declares that he has a Certificate of Deposit with a face value of $2,600 which has a penalty for early withdrawal of $450. They have no other non-necessary or real property. Based on this information, the manager decided that he could use the $50,000 Asset statement to verify the households' assets.

Was he correct? **Why?**

Further Analysis Which determines the answer to the above?

Total market value of assets: ______________________

Total cash value of assets: ______________________

Example

100% LIHTC with Section 8 PBRA Property | Where State LIHTC Agency allows $50,000 Self-Cert

Move-in	**HUD & LIHTC**	Self-cert if assets do not exceed $50,000.
Year 2	**HUD**	Self-cert if assets do not exceed $50,000.
	LIHTC	Income cert is not applicable.
Year 3	**HUD**	Full asset verification
	LIHTC	Income cert is not applicable.
Year 4	**HUD**	Self-cert if assets do not exceed $50,000.
	LIHTC	Income cert is not applicable.
Year 5	**HUD**	Self-cert if assets do not exceed $50,000.
	LIHTC	Income cert is not applicable.

Or…HUD accepts the LIHTC certification for move-in, including self-cert of assets if under $5,000.

Form Suggestions | Asset Self-Certification

Verification form suggestion (for self-certification)

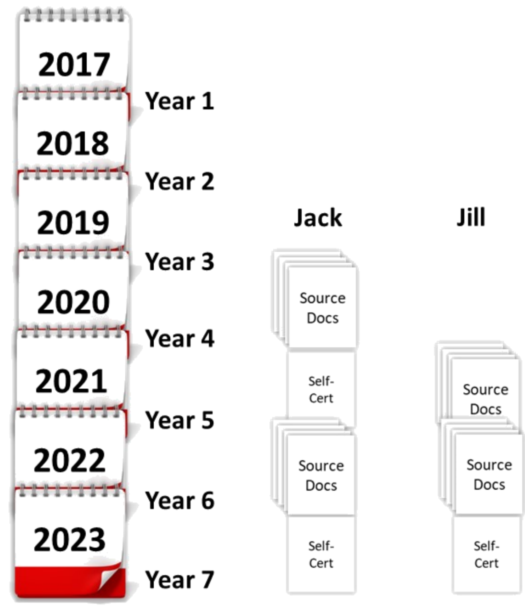
Current $5,000 asset forms used by state agencies for the LIHTC program should be easily adapted by replacing $5,000 with $50,000, and then adjustments made annually after HUD releases the adjustments for the following year.

Example HOME Recert Cycle

Jack moves into a unit in 2020 and Jill moves in a year later. This graphic demonstrates when full source documents will be required and when self-certification will be acceptable.

Note: this requirement relates to project-specific years, and NOT to the length of individual household tenancy.

HUD CPD has not spoken to this issue, but the Joint PIH/MFH guidance would indicate that asset self-certification is allowable at move-in, leaving full asset verification applicable in the sixth years, as has always been required.



PHA Verification

IRS Reg 1.42-5(b)(1)(vii)

With state approval, a letter from Section 8 issuing agencies stating that the household is at or under the applicable income limits can be used to verify a voucher-holding household's income. The PHA is a knowledgeable third party. Most states that allow this provision will consider the HUD certification forms 50059 (for PBRA) or 50058 (for Housing Choice Voucher (HCV) holding household) to be acceptable as a verification produced by the PHA. ***This long-standing LIHTC provision aligns with HOTMA's means-tested programs rule below. This is because PHAs are among "programs administered by the secretary (of HUD)" as mentioned in 24 CFR §5.609(c)(H).***

LIHTC Use of Other Programs' Determination of Income

24 CFR §5.609(c) | Joint *Implementation Notice J4*

Verbally, HUD CPD has indicated that HOME does not allow this provision. The owner may determine the family's income prior to the application of any deductions applied following §5.611 ***based on income determinations made within the previous 12-month period*** for purposes of the following means-tested forms of Federal public assistance:

(A) **TANF |** The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.).
(B) **Medicaid** (42 U.S.C. 1396 et seq.).
(C) **SNAP |** The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 et seq.).
(D) **EITC |** The Earned Income Tax Credit (26 U.S.C. 32).
(E) **LIHTC |** The Low-Income Housing Credit (26 U.S.C. 42).
(F) **WIC |** The Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786).
(G) **SSI |** Supplemental Security Income (42 U.S.C. 1381 et seq.).
(H) Other programs administered by the Secretary.
(I) Other means-tested forms of Federal public assistance for which HUD has established a memorandum of understanding.
(J) Other Federal benefit determinations made in other forms of means-tested Federal public assistance that the Secretary determines to have comparable reliability and announces through the Federal Register.

Verification of Other Program Determinations

24 CFR § 5.609(c)(3)(ii) | Joint Implementation Notice J.4.

If an owner of an LIHTC property intends to use the annual income determination made by an administrator for allowable forms of Federal means-tested public assistance, the PHA or owner must obtain it using the appropriate third-party verification. The verification must indicate the tenant's family size and composition and ***state the amount of the family's annual income***. The annual income ***need not be broken down by family member or income type***. The verification must also meet all HUD requirements related to the length of time that is permitted before the third-party verification is considered out-of-date and is no longer an eligible source of income verification.

If the appropriate third-party verification is unavailable, or if the family disputes the determination made for purposes of the other form of Federal means-tested public assistance, the owner must calculate annual income per HUD's usual anticipated income rules.

If a state LIHTC agency is going to allow the income determination of other means-tested programs, they will likely design a form for this purpose for the administrator of the means-tested program to complete. The Safe Harbor verification ***may be in the form of an award letter*** from the relevant federal program and must show that the family's income determination was made in the previous 12 months. HUD clarifies in this notice that the verification will be considered acceptable if the documentation meets the criteria that the income determination was made within the 12 months before the receipt of the verification by the PHA/MFH Owner. This satisfies all verification date requirements for Safe Harbor income determinations.

The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12 months before the receipt of the documentation by the PHA/MFH Owner:

- Income determination effective date.
- Program administrator's signature date.
- Family's signature date.
- Report effective date.
- Other report-specific dates that verify the income determination date.

The only information that PHA/MFH Owners are permitted to use to determine income under this Safe Harbor is ***the total*** income determination made by the federal means-test program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters. However, these determinations and any other information must not be considered by the PHA/MFH Owner for purposes of the HOTMA Safe Harbor provision. PHAs/MFH Owners are not permitted to mix and match Safe Harbor income determinations and other income verifications.

Knowledge Check

PHA Income Determinations

1. A unit has a tenant with a tenant-based Housing Choice Voucher. The unit is also funded by the LIHTC and NHTF programs.
   Please check the appropriate blank based on programs.

   Use of PHA Income Determination [check one for each program]

	May use	Must use
LIHTC	____________	____________
NHTF	____________	____________

2. The PHA may use the LIHTC/NHTF determination of income. [circle one]

   True   False

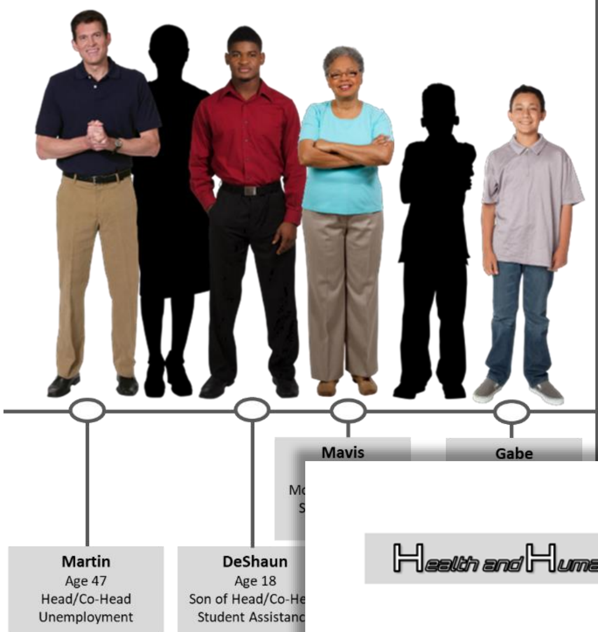
Form Suggestions | Other Program Determinations

Verification forms (for PHAs and Other Program Administrators)

Current PHA verification forms used by LIHTC agencies are adaptable to include other programs and provide what alternative certification forms can be provided.

Cash Flow" | New Definitions of Income

Foster Care and Adoption Assistance Payments



To assist in meeting their foster son Gabe's needs, Martin receives foster assistance subsidy. He supplies the following documentation.

How was the annual income from this source calculated in 2020?

How has this approach changed with HOTMA?

Health and Human Services | Division of Social Services

Re. Gabriel Luna, foster application

Date: November 1, 2020

Dear Martin and Constance O'Rourke,

This is to inform you of the placement in your home of Gabriel Lunas (citizen of the United States), child of Maria and Jorge Lunas (both deceased). The official documentation is attached.

Financial assistance. Foster assistance payments will be $568 monthly. The payments are subject to annual analysis for potential cost of living adjustment, per the Social Security Act.

Medical coverage. As a Minor with an Eligibility Letter for status as a victim of human trafficking, Gabriel is considered by state law to be a special needs person and will continue to be eligible for Medicaid coverage until the age of 18. Extension may be available to age 21. The Eligible Minor may also have access to Substance Abuse and Mental Health Services Administration Programs.

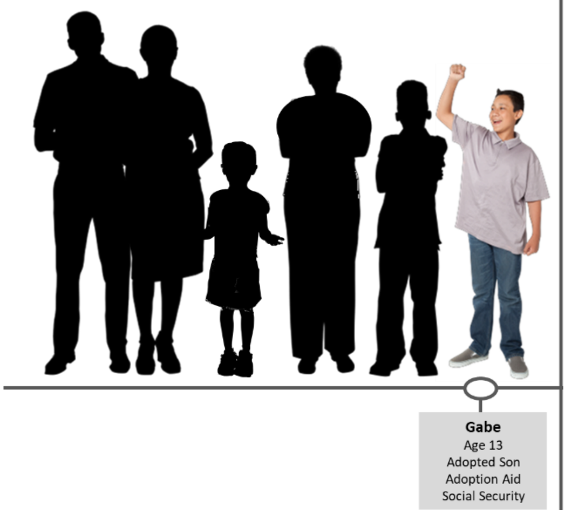
Other services. All members of your family may be eligible for further education and counseling services. You will receive a packet with further information and relevant applications for services.

Appointment. Please contact me within 10 days to set up an appointment to discuss the next steps.

Sincerely,

M.I. MoNick

Monte Monck
Adoption Specialist
Division of Social Services



Gabe's adoption was approved! His same amount of foster assistance subsidy was converted to adoption assistance.

How was the annual income from this source calculated?

How has this approach changed with HOTMA?

HOTMA Highlight

The following $480 amounts will be adjusted every year for inflation starting in 2025:

- The limitation on earned income for adult dependent full-time students.
- Adoption assistance payments

Knowledge Check

Earned and Unearned Income for Dependents

On 7/24/2024, John turns 16. A month later, John and his household moved into affordable housing. John has the following income.

He owns a lawn care service that makes $12,000 a year.

He gets $2,400 a year in Social Security benefits from a deceased parent.

How much of his income will be counted when determining household income?

When the household's annual certification is conducted in 2026, John is still in high school and he is then making $19,000 a year on his lawn care business.

How will this be treated differently than it was at move-in?

New HOTMA Income Terms

24 CFR §5.100 Definitions

Earned Income | "Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits."

Unearned Income | "Unearned income means any annual income, as calculated under § 5.609, that is not earned income."

24 CFR §5.603 [2024]

Day Laborer | "An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future."

Independent contractor | "An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor the payer has the right to control or direct only the result of the work and not what will be done and how it will be done."

Why is this important?

24 CFR § 5.609(b)(24) [2024]

These workers' income from these activities, although often sporadic, does not fit HUD's definition of "nonrecurring" and is therefore counted as income. ***This prominently applies to gig economy jobs.***

Annual Income Includes…

24 CFR §5.609(a)

(1) All amounts, not specifically excluded in paragraph (b) of 24 CFR §5.609, ***received*** from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds $50,000 (which amount HUD will adjust annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

Annual Income Does Not Include… (The 28 (+) Exclusions)

24 CFR §5.609(b)

Note | Income types unchanged by HOTMA are *indicated in this font.*

(1) Any imputed return on an asset when net family assets total $50,000 or less (which amount HUD will adjust annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

- For an ***irrevocable trust or a revocable trust outside the control of the family*** or household excluded from the definition of net family assets in the HUD regulation § 5.603(b)
  (A) Distributions of the principal or corpus of the trust; and
  (B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.
- For a ***revocable trust under the control of the family*** or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §5.403 and §5.603, respectively.

(9) **Student Assistance Type 1 |** Any assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA), as amended, is excluded from income.

Student Assistance Type 2 | Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) **Student financial assistance means** a grant or scholarship received from—
  (1) The Federal government
  (2) A State, Tribe, or local government
  (3) A private foundation registered as a 501(c)(3) nonprofit
  (4) A business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, a public benefit corporation, or nonprofit entity), or
  (5) An institution of higher education.

(B) **Student financial assistance does not include**—
  (1) Any assistance that is excluded pursuant to the HEA Title IV, 479B (see above)
  (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to the HEA Title IV 479B)

(3) Gifts, including gifts from family or friends, or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or the HEA 479B (see above), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(C) Student financial assistance must be expressly:

(1) for tuition, books, room, and board, or other fees required and charged to a student by the educational institution

(2) to assist a student with the costs of higher education, or

(3) to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

(D) Student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance.

(E) When the student is also receiving assistance excluded under HEA Title IV 479B (see above) the amount of student financial assistance that must be counted is determined by adding the HEA 479 B assistance to the other assistance.

(1) If the amount of the HEA 479B assistance excluded above is equal to or exceeds the actual covered costs, all of the other assistance is counted as income.

(2) If the amount of HEA 479B assistance excluded above is less than the actual covered costs, the amount of assistance that is considered student financial assistance is the amount by which the actual covered costs exceed both types of student assistance.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, ''baby bond'' accounts created, authorized, or funded by Federal, State, or local government.

Note | **According to HUD, baby bonds are "money held in trust by the government for children until they are adults" These "are being authorized in various States and localities in an effort to combat the wealth gap and address systemic poverty."**

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12) (i) Amounts received by a person with a disability 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);

Note | **PASS is an SSI provision to help individuals with disabilities return to work.**

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.
(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

(14) Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

Note | **(14) & (15) will be $480 through 2024 but will be indexed for inflation annually starting in 2025.**

(16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in the exclusions in the HUD regulations apply. **HUD will publish a notice in the Federal Register** to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing ‘‘gap’’ payments made in accordance with 49 CFR part 24 that offset increased out-of-pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing ‘‘gap’’ payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing ‘‘gap’’ payments.

Note | **“Gap” payments are payments made to persons who are displaced by a federally funded program under the Uniform Relocation Act.**

(24) ***Nonrecurring income***, which is income ***that will not be repeated in the coming year*** based on information provided by the family. ***Income received as an independent contractor, day laborer, or seasonal worker is not excluded*** from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

- Payments from the U.S. Census Bureau for employment (relating to the decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.
- Direct Federal or State payments intended for economic stimulus or recovery.
- Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.
- Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.
- *Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.*

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family’s Family Self Sufficiency Account.

Note | **FSS is a program that enables HUD-assisted families to increase their earned income and reduce dependency on welfare assistance and rental subsidies. Goals are set that a family must work toward to graduate from the program. An interest-bearing escrow account is established by the PHA for each participating family. Any increases in the family’s rent as a result of increased earned income during the family’s participation in the program result in a credit to the family’s escrow account. Once a family graduates from the program, they may access the escrow and use it for any purpose.**

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

- *Net income from the 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; and*
- *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.*

But Wait! There's More… [See (22) above]

Excluded are "amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary". The list will include, at a minimum, updates made by HUD since the publication of Exhibit 5-1 in the 2013 Change 4 to the HUD Handbook 4350.3. In January of 2024 an updated list was provided. Below is this updated list.

Other Federal Exclusions (2024)

24 CFR 5.609(b) and (c) (updated on 1/31/2024)

(1) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b)). ***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 (42 U.S.C. 5044(f)(1), 42 U.S.C. 5058), 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 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)). ***This exclusion also applies to assets.***

Note | **This corrects an exception to payments, including for supportive services and reimbursement of out-of-pocket expenses, for volunteers under the Domestic Volunteer Service Act of 1973 (which funds AmeriCorps). This income used to be totally excluded. Now it is excluded up to the minimum wage. According to a December 2023 memo from AmeriCorps's CEO, "to date, payments to participants and volunteers have not equaled or exceeded the greater of the Federal or state minimum wage. Therefore, income and asset disregard rules apply.".**

(3) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)). ***This exclusion also applies to assets.***

(4) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 5506). ***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 (42 U.S.C. 8624(f)(1)). ***This exclusion also applies to assets.***

(6) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, section 6). ***This exclusion also applies to assets.***

(7) The first $2000 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 $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands. This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407–1408). ***This exclusion also applies to assets.***

(8) Amounts of student financial assistance 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).

For section 8 programs only (42 U.S.C. 1437f), 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 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the

Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327) (as amended)
(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 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 (Pub. L. 96–420 section 9(c)). ***This exclusion also applies to assets***.
(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) 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 and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l)). ***This exclusion also applies to assets***. Please 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 fund.

Note | **This is a provision that applies only to specific HUD programs.**

(14) The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is ***excluded from income and assets*** for a period of 12 months from receipt (26 U.S.C. 6409).

Note | **This adds 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 from 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 (Pub. L. 95–433 section 2). ***This exclusion also applies to assets***.
(16) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).
(17) Any allowance paid to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802–05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811–16), and children of certain Korean and Thailand service veterans born with spina bifida (38 U.S.C. 1821–22) is ***excluded from income and assets*** (38 U.S.C. 1833(c)).

Note | **This adds allowance paid to children of certain Thailand service veterans born with spina bifida.**

(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 (34 U.S.C. 20102(c)). ***This exclusion also applies to assets***.
(19) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2)).
(20) 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). ***This also applies to assets***.

(21) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (Pub. L. 101–503 section 8(b)). *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 amount or in prospective monthly amounts (42 U.S.C. 1437a(b)(4));
(23) Any amounts (i) not actually 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 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.)

Note | **This corrects the exclusion of income applicable to programs under the Native American Housing Assistance and Self Determination Act (NAHASDA) to more accurately capture the language of 25 U.S.C. 4103(9). This is a provision that applies only to specific HUD programs.**

(24) 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.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291 section 101(f)(2)). *This exclusion also applies to assets*.
(25) 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***, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4)).

Note | **This corrects that any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended.**

(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 (25 U.S.C. 117b(a), 25 U.S.C. 1407).

Note | **This corrects that 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) Federal assistance for a major disaster or emergency received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)). 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 (Pub. L. 113–295.), as described in Notice PIH 2019–09/H 2019–06 or subsequent or superseding notice is *excluded from income and assets*.

Note | This **adds the value of, distributions from, and certain contributions to Achieving Better Life Experience (ABLE) accounts established under the ABLE Act of 2014.**

(29) Assistance received by a household under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, section 501(j)), and the American Rescue Plan Act of 2021.

Note | This **adds assistance received by a household from payments made under the Emergency Rental Assistance Program under the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021.**

End HOTMA and Other Federally Excluded List

Employment Verification | Paycheck Stubs

States differ in their requirements for collecting paycheck stubs. One or two require that three months of pay stubs be gathered at move-in for each household member who is employed. Other states gather paycheck stubs only if third-party verification forms are NOT available, and a growing number allow paystubs instead of third-party forms.

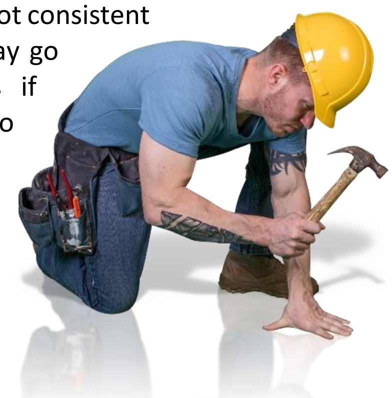
HOTMA Implementation Notice Table J2

HOTMA methodologies prefer Upfront Income Verification (UIV) like The Work Number, then pay stubs. If paystubs are used, the most recent two consecutive stubs must be gathered. This replaces the old HUD standard of 4-6 pay stubs. ***This does not apply to HOME or NHTF, which are subject to the 2-month wage history requirement***. If the job is new and two stubs are not available, a verification form should be sent to the employer. ***See also the section on Verifications.***

Employment Calculations Differing from HUD

IRS Notice 88-80

Although, legally, income for the LIHTC program is calculated in a manner consistent with Section 8, some "best practices" that differ from HUD methods have developed among LIHTC state agencies and owners/agents. The weight that annualized YTD is given and how to deal with a range of hours are common calculation methodologies where states may implement a policy that is not consistent with how Section 8 determines income. Additionally, owner/agent/investors may go beyond HUD instructions if states do not choose to address these.



Range-of-Hours
When verifications give a range of hours or wages, past LIHTC "best practices" generally recommended that the highest amount listed in the range should be used.

Post HOTMA, HUD properties may use LIHTC determinations of income (probably using the LIHTC Tenant Income Certifications (TICs) when calculating annual income and then adjusted rent. LIHTC methodologies will determine the rent that a household pays. In the interest of tenant fairness and considering that income for the LIHTC program should be determined in a manner consistent with Section 8, many states are reconsidering their required "best practices" where these differ from HUD standards.

Year-To-Date
Some states and management companies look at year-to-date income annualized and compare it to other information provided to determine if there is an issue that must be clarified to determine accurate household income.

Besides being legally questionable, the methodologies that are inconsistent with Section 8 may result in households that actually qualify based on congressional

intent and rent overburdening households with HUD assistance. See below for examples.

Example

THIS SECTION TO BE COMPLETED BY EMPLOYER

*Employer, please fill in **all** blanks. Enter N/A if an item is not applicable to the above employee.*

Employee Name: Owen Cash Job Title: Bill Collector

Presently Employed: Yes X Date First Employed 1/1/14 No ___ Last Day of Employment N/A

Current gross wages/salary: $ 12.00 (circle one) hourly weekly bi-weekly semi-monthly monthly yearly other______

Average # of regular hours per week: 30-40

Overtime Rate: $ 18.00 per hour Average # of overtime hours per week (not included in regular hours): 2

Shift Differential Rate: $ N/A per hour Average # of shift differential hours per week (not included in regular hours): ______

Commissions, bonuses, tips, other: $ N/A (circle one) hourly weekly bi-weekly semi-monthly monthly yearly other______

Complete only if above wage data is unavailable: Year-to-date earnings: $ N/A From __/__/__ through __/__/__

List any anticipated change in the employee's rate of pay within the next 12 months: $ 12.25 ; Effective date: 6/1/17

Is the employee's work seasonal or sporadic? Yes ___ No X If yes, indicate the average number of weeks in the layoff period(s): N/A

Does this employee have a 401(k), 403(b), or other retirement account? Yes ___ No X If yes, can the employee withdraw the funds in this account? Yes ___ No ___ What is the appropriate agency/contact information to verify retirement account information? ______

Calculation **Average of Range** **Certification Date: March 1**

Per company policy, March 1 to June 1 is 13 weeks (93 days ÷ 7, rounded). 52 weeks-13 = 39

Current hourly rate	$12.00/hour	13 x 35 x 12 =	$ 5,460.00
OT hourly rate	$18.00/hour	13 x 2 x 18 =	$ 468.00
Rate starting June 1	$12.25/hour	39 x 35 x 12.25 =	$ 16,721.25
OT starting June 1	$18.38/hour	39 x 2 x 18.38 =	$ 1,4233.25
		Total Income	**$ 24,082.50**

Calculation **Highest in Range** **Certification Date: March 1**

Per company policy, March 1 to June 1 is 13 weeks (93 days ÷ 7, rounded). 52 weeks-13 = 39

Current hourly rate	$12.00/hour	13 x 40 x 12 =	$ 6,240.00
OT hourly rate	$18.00/hour	13 x 2 x 18 =	$ 468.00
Rate starting June 1	$12.25/hour	39 x 40 x 12.25 =	$ 19,110.00
OT starting June 1	$18.38/hour	39 x 2 x 18.38 =	$ 1,4233.25
		Total Income	**$ 27,251.25**

The calculation conducted in a manner consistent with Section 8 is $3,168.75 less than the other option. This may end up in the disqualification of a household that would qualify. If the household is also HUD-assisted, it may also be rent overburdened.

Monthly Rent

Where no deductions apply

Section 8 methodology | Up to $602

The non-Section 8 method | Up to $681.

Households may be required to pay up to $79 more a month in rent.

"Sporadic" vs. "Nonrecurring" Income

4350.3 5-5 C Example Sporadic work | HOTMA Implementation Notice G.1.

"Temporary, nonrecurring, and sporadic income" was generally excluded by HUD in the past. This has been replaced with a narrower exclusion for "nonrecurring" income only.

"Nonrecurring" income will not be repeated beyond the coming year (the 12 months following the effective date of the certification) and is excluded from annual income. However, income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under § 5.609(b)(24), even if the source, date, or amount of the income varies."

"Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This does not include ***unemployment*** income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year ***that can be extended***."

"Income amounts excluded under this category may include, but are not limited to, nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities, eviction prevention, security deposits to secure housing, payments for participation in research studies depending on the duration, and general one-time payments received by or on behalf of the family."

Knowledge Check Is It Nonrecurring Income?

HOTMA Implementation Notice | Example G1

Fill in each blank with "included in" or "excluded from"

Scenario A | **Earned income ________________ annual income**

Justin Clark worked for four months over the past year for a company that ***has since gone out of business***. During the Clark family's reexamination interview, the PHA/MFH Owner asks Justin whether he expects to work for the company again in the coming year. Justin provides proof that the company went out of business. The PHA/MFH Owner must exclude Justin's earned income received from the company that went out of business from the family's annual income.

Scenario B | **Earned income ________________ annual income**

Ana Johnson works as an independent information technology (IT) contractor during various times of the year, when her clients require additional IT contract support. Ana reasonably believes that she will be contracted again the following year based on discussions with her clients. The PHA/MFH Owner must include the income that Ana earns as an IT contractor in the family's annual income.

Scenario C | **Guaranteed Basic Income (GBI) ________________ annual income**

Lucretia Jones reports at her upcoming annual reexamination effective on 5/1/24 that her GBI program will be ending on 1/31/25. The PHA/MFH Owner excludes this income because the programs will stop before the next annual reexamination on 5/1/25. This income must be excluded, because there is a set term for the program, and the payments will not be repeated beyond the coming year, which is the final year of a GBI program.

Scenario D | **Research stipend ________________ annual income**

Lillian Gonzalez reports at the annual reexamination that will be effective on 5/1/24 that she receives monthly payments for participation in a research project that is expected to last for 18 months and will end on 9/30/25. The PHA/MFH Owner includes this as income because the amounts will be received through the next annual reexamination on 5/1/25. For the 5/1/25 annual reexamination, the family provides a letter stating that the income will end on 9/30/25, so the PHA/MFH Owner will exclude the income received after the 5/1/25 annual reexamination.

Payments in Lieu of Earning | Unemployment, Disability, and Severance Pay

HUD 4350.3 5-5 / 5-3, Exhibit 5-1, 8823 Guide 4-6 | HOTMA Implementation Notice G.1.

Disability compensation and severance pay are annualized. Unemployment is also annualized unless a future job is verified.

NOTE: It is possible that an applicant may regularly receive unemployment each year during their 'off-season.' This may occur for people in construction, teachers, farm workers, etc.

HOTMA Highlight

Workers' Compensation used to be included, but now is excluded, as long as it is expected to end during the certification year year. This is considered "nonrecurring" income. If it extends past an annual effective date at a less than 100% LIHTC property, it is counted until the year it ends, when it is excluded if an end date is anticipated at the time of recertification.

Form Suggestions | Workers' Compensation

Benefits Verification form snippet

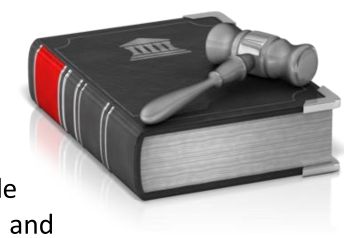
Yes No

☐ ☐ Are any benefits paid for Workers' Compensation?

☐ ☐ If yes, will this benefits be paid for more than a year?

If yes, what is the amount of benefits? __________________ How often paid? _______________

Alimony and Child Support



4350.3 5-6 F, Exhibit 5-1

Before HOTMA, alimony and child support ordered by the court were income unless:

1. No payments were being made; and 2. The applicant was taking reasonable actions to collect the amounts due, including filing with the appropriate courts and agencies responsible for enforcing payment. NOTE: If the steps above were verified, only the amounts actually received by the household, if any, were counted.

HOTMA Highlight

Only amounts actually ***received*** for alimony or child support are counted. The court-ordered amount is no longer a determining factor.

HOTMA Implementation Notice F.1.

"Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family."

Form Suggestions | Alimony and Child Support

Application form snippet

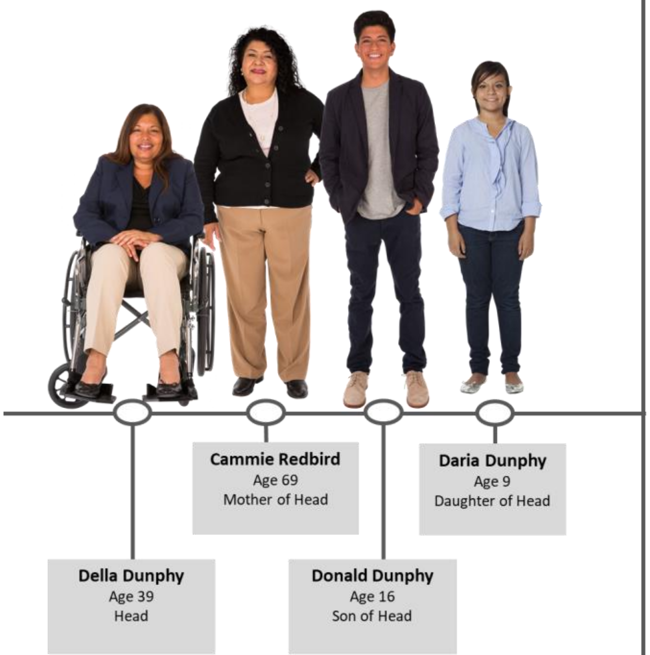
In the section that collects income information – delete questions, as below

Yes No

☐ ☐ Are you receiving child support or alimony?

~~☐ ☐ Have you ever been court-ordered to receive child support or alimony that you are not receiving?~~

~~☐ ☐ - If "yes" are you pursuing the amounts you are not receiving?~~



Prior to HOTMA, what income was counted?

Child support: ______________
Alimony: ______________

Cross off the items that are no longer necessary with HOTMA.

Application for Occupancy Questionnaire

Income (cont)

Alimony/Child Support

Have you ever been court ordered to receive alimony? YES ✓ NO ☐
If "yes", court ordered amount: $ 400
Have you ever been court ordered to receive child support? YES ✓ NO ☐
If "yes", court ordered amount: $ 800

Are your receiving the full ordered amount? YES ☐ NO ✓
Describe any efforts are you making to collect the ordered amounts? YES ☐ NO ✓

I am getting only child support for Dalia. My ex-husband refuses to pay for Donald after he refused to see his father more than the custody agreement requires. I am pursuing this amount through child support enforcement.

I am also not getting the alimony, but I do not want our difficulties to affect the kids, so I am letting that go for now.

Please list court or agency used to pursue ordered amounts:

Alimony
No efforts to collect.

Child Support
State child support enforcement. 432112 Government Way, Sample City. (800) 345-6789.

PETITIONER / PLAINTIFF:	Della Dunphy	CASE NUMBER:	
RESPONDENT / DEFENDANT:	Marco Dunphy	120002012081u37	5/15/2020

DIVORCE AGREEMENT

12th District Court

Comes Before the court on this 15th day of May 2020, the PETITIONER, Della Dunphy, and the RESPONDENT, Marco Dunphy. Citing irreconcilable differences, the parties seek the dissolution of their marriage and to enter the following agreement.

1. **FINANCIAL SUPPORT**
   Beginning June 1, 2020, The RESPONDENT will pay the PETITIONER $400.00 per month for each of the minor children until later of the date they reach the age of 18 or graduate from high school. Additional alimony of $400 a month will also be paid.

   The RESPONDENT will pay for health insurance for both children until they attain the age of 26.

RECIPIENT:	Della Dunphy	CASE NUMBER:	
PAYOR:	Marco Dunphy	120002012081u37	5/15/2020

7-09-2020

Case Ordered amount(s)	$ 400	120002012081u37-A	Dunphy, Donald
	$ 400	120002012081u37-B	Dunphy, Daria

Payment disbursement history

Received			Paid	Unpaid*
6-01-20	400	6-02-20	400	400
7-01-20	400	7-02-20	400	400

*Subject to collection efforts

Verifying Military Pay

4350.3 Exhibit 5-1

Obtain *Leave and Earnings Statements* (LES) to verify military pay. Hostile Fire Pay (HFP) is excluded. HFP is not Imminent Danger Pay (IDP) and is also not Hazardous Duty Pay (HDP). The latter two are not necessarily related to war zones and are included. HFP in 2023 has been $225 a month for several years.

Military Pay | Leave and Earnings Statements

HOTMA Highlight

HOTMA guidance requires a minimum of 2 paystubs. This would include Leave and Earnings Statements.

Form Suggestions | Veteran's Benefits

Verification form snippet

_______________ Amount of total veteran's benefits the above-named person receives.
_______________ Any amount of the above that is for delayed veteran's benefits.
_______________ Any amount of the above that is for regular aid and attendance for the above-named person.

Student Financial Assistance | Section 8 Recipients

4350.3 5-6 E, Exhibit 5-1 Inclusions (9) and Exclusions (7)

Both before and after HOTMA, financial assistance never included loans.
For Section 8 assistance recipients, financial assistance includes:

- Assistance from Pell Grants & other funds from the Higher Education Act of 1965.
- Assistance from an institute of higher learning like a scholarship.
- Assistance from parents, grandparents, and other private sources.

HOTMA Implementation Notice G.16.d, footnote G6

"Tuition" for Section 8 recipients now is identical to the "actual covered costs" used in the rules for non-Section 8 student households. It used to just be for tuition and other fixed fees.

We count student financial aid (amounts in excess of tuition) for those:

- That receive Section 8 assistance.
- That are adult full-time or part-time students.
- That attend an institute of higher learning.

Persons excluded from the Section 8 student assistance rule:

- Adult students over 23 years that have a dependent child in the unit.
  - Are treated as non-Section 8 recipients.
- Adults that are dependents of the household.

Student Financial Assistance | Non-Section 8 Recipients

HOTMA Highlight

Student financial income will be counted the same for Section 8 recipients as it was before HOTMA. This is how HUD has reconciled the fact that HUD appropriations and HOTMA laws have conflicting provisions. Until HUD appropriations language changes, we will handle Section 8 recipients differently than other households). All other households will have student income counted, as below.

NOTE | Word of warning! The HOTMA student assistance income rule probably represents the biggest risk for noncompliant households as we adjust to HOTMA. This rule is so much broader than pre-HOTMA in that it applies to all households, rather than just households that receive Section 8 assistance. It also will tend to include more income than the former student assistance rule.

Student Assistance Type 1 | Any ***assistance under Title IV, 479B of the Higher Education Act of 1965*** (HEA), as amended, is ***excluded from income***.

Note | Below is a list of HEA Title IV programs. There may be sub-programs:

Grants to Students in Attendance at Institutions of Higher Education

- Federal Pell Grants
- Federal early outreach and student services programs
  - Federal TRIO Programs
  - Gaining Early Awareness and Readiness for Undergraduate Programs
  - Model Program Community Partnership and Counseling Grants
  - National Student Savings Demonstration Program
- Federal supplemental educational opportunity grants
- Leveraging Educational Assistance Partnership program
- Special programs for students whose families are engaged in migrant and seasonal farmwork
- Robert C. Byrd Honors Scholarship Program
- Childcare access means parents in school
- Teach grants
- Scholarships for veteran's dependents

Federal Family Education Loan Programs

Federal Work-Study Programs

William D. Ford Federal Direct Loan Program

Federal Perkins Loans

Higher Education Relief Opportunities for Students

Note that on July 1, 2024, the following will be added when an HEA amendment takes effect.

Section 134 of the Workforce Innovation and Opportunity Act (WIOA). This includes income earned in employment and training programs including: workforce investment activities for adults and workers dislocated as a result of permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster that results in mass job dislocation, to assist such adults or workers in obtaining reemployment as soon as possible.

Student Assistance Type 2 | Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance means a grant or scholarship received from—

(1) The Federal government

(2) A State, Tribe, or local government

(3) A private foundation registered as a 501(c)(3) nonprofit

(4) A business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, a public benefit corporation, or nonprofit entity), or

(5) An institution of higher education.

(B) Student financial assistance does not include—

(1) Any assistance that is excluded pursuant to the HEA Title IV, 479B (see above)

(2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to the HEA Title IV 479B)

(3) Gifts, including gifts from family or friends, or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or the HEA 479B (see above), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(C) Student financial assistance must be expressly:

(1) for tuition, books, room, and board, or other fees required and charged to a student by the educational institution

(2) to assist a student with the costs of higher education, or

(3) to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

(D) Student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance.

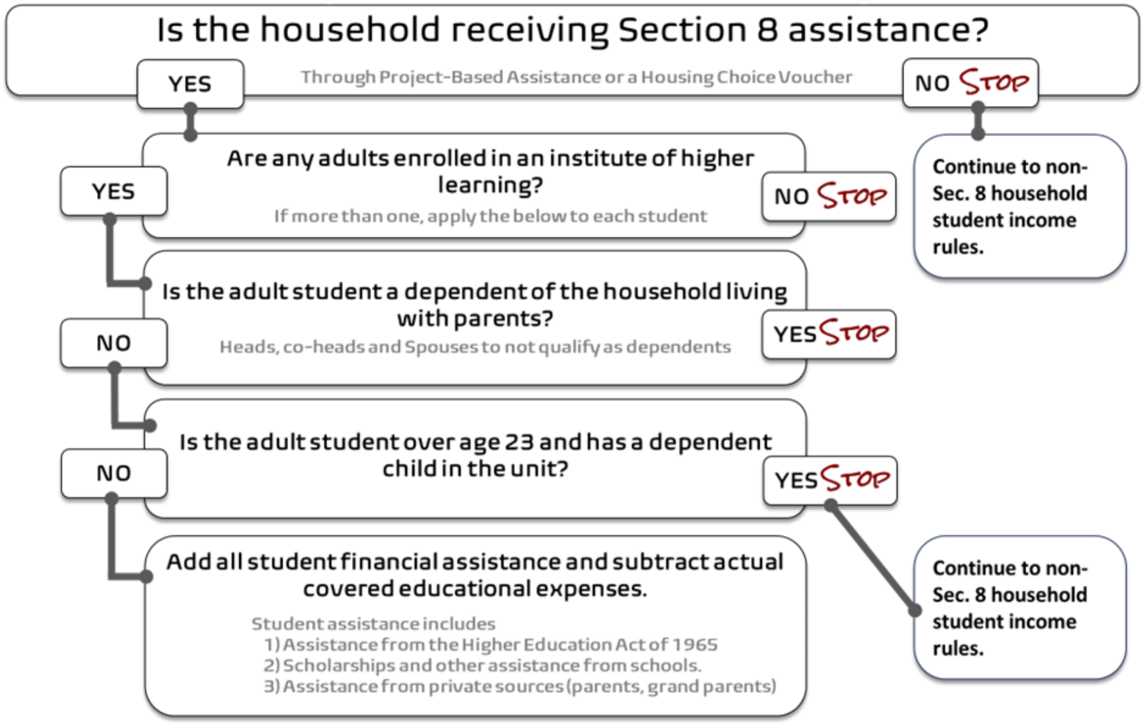
(E) When the student is also receiving assistance excluded under HEA Title IV 479B (see above) the amount of student financial assistance that must be counted is determined by adding the HEA 479 B assistance to the other assistance.

(1) If the amount of the HEA 479B assistance excluded above is equal to or exceeds the actual covered costs, all of the other assistance is counted as income.

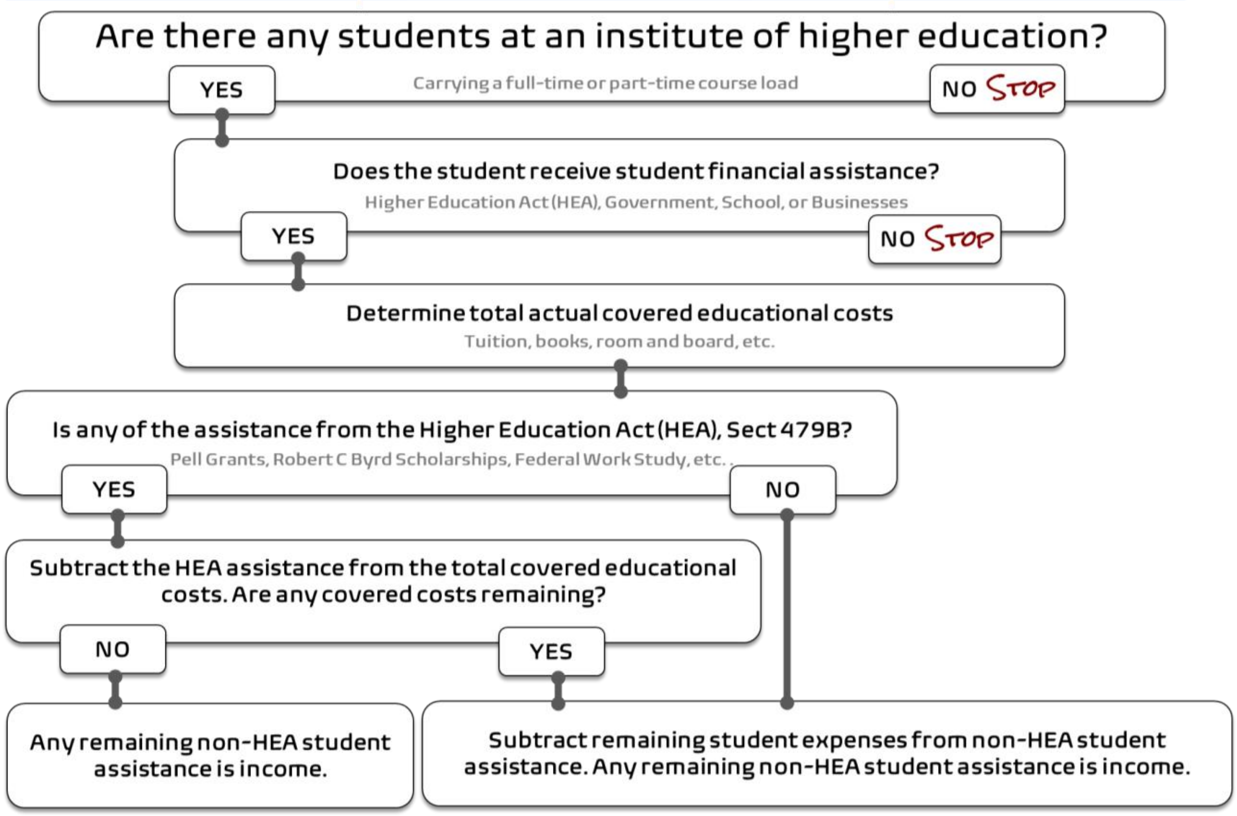
(2) If the amount of HEA 479B assistance excluded above is less than the actual covered costs, the amount of assistance that is considered student financial assistance is the amount by which the actual covered costs exceed both types of student assistance.

Note | Work Study programs provide earned income – not student financial assistance – unless the program is HEA-funded.

Flow Chart | Student Income | Sec. 8

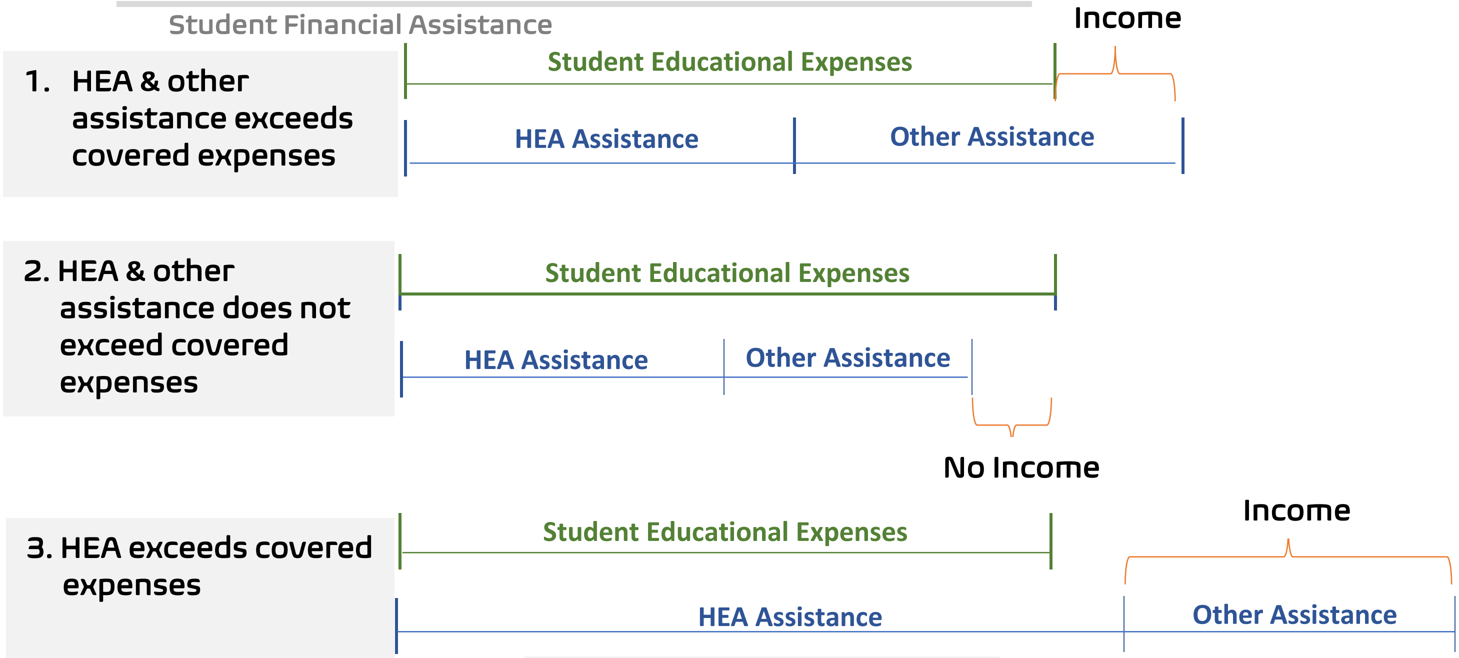


Flow Chart | Student Income | Non-Sec. 8



Examples

Student Financial Assistance



NOTE | HEA assistance is never income

Knowledge Check

Student Financial Assistance | Section 8 vs. Non-Section 8 Households

A household pays for school in the following ways.

A Pell Grant	**$ 10,000**
A scholarship from a local business:	**$ 6,000**
Parents outside the household	**$ 20,000**

Total covered education expenses are $29,000.

Income of Section 8-assisted Household

Income Non-Section 8-assisted Household

Knowledge Check

Student Financial Assistance | HEA Assistance Exceeds Expenses

A household with no Section 8 assistance has these forms of student financial assistance.

A Pell Grant	**$12,000**
A scholarship from a local business:	**$ 6,000**

Covered education expenses are $10,500.

of the scholarship is counted as income.

Why?

Knowledge Check

Student Financial Assistance | Expenses Exceed HEA Assistance

A non-Section 8-assisted household has these forms of student financial assistance.

A Pell Grant	**$12,000**
A scholarship from a local business:	**$ 6,000**

Covered education expenses are $15,000.

______________ of the scholarship is counted as income.

Why?

Form Suggestions | Student Assistance

Verification form snippet (for school administrators)

Please provide how much student assistance the above-named student receives In each of the below categories.

Annual amount received

__________________ Pell Grants and other assistance under the Higher Education Act of 1965

__________________ Other scholarships and grants from government, school, business, and non-profit organizations.

__________________ Private sources (such as parents or grandparents)
If this applies, is the private assistance paid once a year, or periodically?

__________________ Total covered educational costs.
Note: This includes tuition, books, supplies (including supplies and equipment to support students with learning or other disabilities), room and board, and other fees required for students at institutes of higher education.

From HUD Implementation Guidance

Income Exclusions Table

Category	Exclusion	CFR	Description
Other	Federally Mandated Income Exclusions	24 CFR 5.609(b)(22)	Amounts that must be excluded by federal statute. HUD will publish a Federal Register notice that includes the qualifying benefits.
Assets	Imputed Income from Assets	24 CFR 5.609(b)(1)	Any imputed return on an asset when net family assets total $50,000 (adjusted annually) or less and no actual income from the net family assets can be determined.
Non-recurring income	Non-recurring income	24 CFR 5.609(b)(24)	Income that will not be repeated in the coming year based on information provided by the family.
Self-employment	Gross Self-employment Income	24 CFR 5.609(b)(28)	Gross income received through self-employment or operation of a business
Dependents	Minors (children under the age of 18 years)	24 CFR 5.609(b)(3)	All earned income of all children under the age of 18, including foster children.
Dependents	Adoption assistance payments	24 CFR 5.609(b)(15)	Adoption assistance payments for a child in excess of the amount of the dependent deduction.
Students	Earned Income of Dependent Students	24 CFR 5.609(b)(14)	Earned income of dependent full-time students in excess of the amount of the dependent deduction.
Students	Title IV HEA Assistance	24 CFR 5.609(b)(9)(i)	Any assistance that Section 479B of the Higher Education Act (HEA) of 1965, as amended, requires to be excluded from a family's income.
Students	Other Student Financial Assistance	24 CFR 5.609(b)(9)(ii)	Student financial assistance, not excluded under the HEA, for actual covered costs of higher education.
Students	Educational Savings Account	24 CFR 5.609(b)(10)	Income and distributions from any Coverdell educational savings account of or any qualified tuition program under IRS section 530 or any qualified tuition program under section 529.
Baby bonds	Baby bonds	24 CFR 5.609(b)(10)	Income earned by government contributions to, or distributions from, 'baby bond' accounts created, authorized or funded by federal, state or local government.
Foster children / adults	Payments for Foster Children / Adults	24 CFR 5.609(b)(4)	Payments received for the care of foster children or adults, including State kinship, guardianship care payments, or tribal kinship payments.
Foster children / adults	Income of foster children / adults	24 CFR 5.609(b)(8)	Income of a live-in aide, foster child, or foster adult as defined in 24 CFR 5.403 and 5.603.
Live-in Aide	Income of a Live-in Aide	24 CFR 5.609(b)(8)	Income of a live-in aide, foster child, or foster adult.
People with Disabilities	ABLE accounts	24 CFR 5.609(b)(22)	Will be included in federally mandated excluded amounts. Notice PIH 2019-09/H-2019-06 details when ABLE account income is excluded.
People with Disabilities	State Payments to Allow Individuals with Disabilities to Live at Home	24 CFR 5.609(b)(19)	Payment made by an authorized by a state Medicaid managed care system or other state agency to a family to enable a family member to live in the family's assisted unit.
People with Disabilities	Plan to Attain Self-Sufficiency (PASS)	24 CFR 5.609(b)(12)(i)	Amounts set aside for use under a Plan to Attain Self-Sufficiency (PASS).
People with Disabilities	Reimbursements for Health and Medical Care Expenses	24 CFR 5.609(b)(6)	Amounts for, or in reimbursement of, health and medical care expenses for any family member.

(continued)

Category	Exclusion	CFR	Description
Trusts	Trust distributions	24 CFR 5.609(b)(2)	Any distributions of a trust's principal are excluded. PHAs and owners must count any distributions of income from an irrevocable trust or a trust not under the control of the family (e.g., distributions of earned interest) as income to the family with the expectation of distributions used to pay the health and medical care expenses of a minor.
Insurance	Insurance payments and settlements for personal or property loss	24 CFR 5.609(b)(5)	Insurance payments and settlements for personal or property loss including, but not limited to: payments through health insurance, motor vehicle insurance, and workers' compensation.
Retirement	Retirement plan	24 CFR 5.609(b)(26)	Income received from any account under an IRS-recognized retirement plan. However, periodic payments are income at the time of receipt.
Military	Hostile fire special payment	24 CFR 5.609(b)(11)	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
Veterans	Veterans aid and attendance payments	24 CFR 5.609(b)(17)	Payments related to aid and attendance for veterans under 38 U.S.C. 1521.
Lawsuits	Lawsuit Settlements	24 CFR 5.609(b)(7)	Amounts recovered in a civil action or settlement based on malpractice, negligence and other breach of duty claim resulting in a family member becoming disabled.
Lawsuits	Reparations for Persecution	24 CFR 5.609(b)(13)	Reparation payments paid by a foreign government for claims by people persecuted during the Nazi era.
Lawsuits	Tribal Claims Payments	24 CFR 5.609(b)(21)	Payments received by tribal members from claims relating to the mismanagement of assets held in trust by the United States.
Lawsuits	Lawsuits related to civil rights	24 CFR 5.609(b)(25)	Civil rights settlements or judgments, including settlements or judgments for back pay.
Reimbursements	Reimbursements from publicly assisted programs	24 CFR 5.609(b)(12)(ii)	Amounts received by a participant in other publicly assisted programs for or in reimbursement of expenses to allow program participation (e.g., special equipment, clothing, transportation, child care, etc.).
Resident Services Stipend	Resident Services Stipend	24 CFR 5.609(b)(12)(iii)	Resident service stipends of $200 or less per month for performing a part-time service for the PHA that enhances the quality of life in the development.
Employment training programs	Employment training programs	24 CFR 5.609(b)(12)(iv)	Incremental earnings and benefits from training programs HUD and qualifying employment training programs and training of a family member as resident management staff.
FSS	Family Self Sufficiency Account	24 CFR 5.609(b)(27)	Income earned on amounts placed in a family's FSS account.
Housing gap payments	Housing "gap" payments	24 CFR 5.609(b)(23)	Replacement housing "gap" payments to offset increased rent and utility costs to families displaced from one federally subsidized housing unit and another.
Benefits	Deferred Supplemental Security Income, SS income and benefits, or VA disability benefits	24 CFR 5.609(b)(16)	Deferred periodic amounts from: SSI, Supplemental Security Income and benefits or VA disability benefits that are received in a lump sum or prospective monthly amounts.
Property tax rebates	Property Tax Rebates	24 CFR 5.609(b)(18)	Refunds or rebates under state or local law for property taxes paid on the dwelling unit.
Loans	Loan Proceeds	24 CFR 5.609(b)(20)	The net amount disbursed by a lender to a borrower or a third party (e.g., educational institution or car dealership).

"Things & Stuff" | New Definition of Net Family Assets

Calculating Asset Income

HUD HOTMA Implementation Notice F.4.c.

Under HOTMA, assets are broken down into three types.

Type of asset	How treated	
1 | Necessary personal property		**Value excluded**
2 | Non-necessary personal property	If totals $50,00 or less |	**Value excluded, actual income included**
	If totals exceed $50,00 |	**Value and actual income included**
3 | Real Property		**Value and income included**

New HOTMA Asset Terms

24 CFR §5.100

Real Property | "Real property as used in this part has the same meaning as that provided under the law of the State in which the property is located."

Why is this important?

Manufactured Homes are treated as real property in some states if affixed to land that the owner of the home also owns. In other states, the land can be rented. Other states simply do not address this issue or treat this as personal property, similar to vehicles. These and similar matters subject to state real property laws will need to be understood by HFAs and owners/agents.

Net Family Assets Include…

24 CFR § 5.609 (b) Net Family Assets

Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment.

Assets Disposed of…

24 CFR § 5.609 (b)(2) Net Family Assets

In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but ***not in a foreclosure or bankruptcy sale***) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets."

Imputed Asset Income

§ 5.609(a)(2)

When net family assets are valued over $50,000 (as adjusted by inflation) and actual returns on specific assets cannot be calculated, imputed returns are included in income. All actual returns that can be calculated continue to be included in income.

Asset Exclusions… (The 11 Exclusions)

24 CFR § 5.603 definition "Net Family Assets" [2024]

Excluded from the calculation of net family assets are:

(1) The value of ***necessary items of personal property.***

(2) The combined value of all ***non-necessary items of personal property*** if the combined total value does not exceed $50,000 (adjusted for inflation based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)).

Note | **In the *HOTMA Implementation Notice*, Table F1, HUD has provided examples of the difference between *"necessary"* and *"non-necessary"* items of personal property from [1] &[2]. [2] above.**

(3) The value of any account under a ***retirement plan recognized as such by the Internal Revenue Service***, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals.

(4) The value of ***real property that the family does not have the effective legal authority to sell*** in the jurisdiction in which the property is located.

(5) Any ***amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty*** owed to a family member arising out of law, ***that resulted in a family member being a person with a disability***.

(6) The value of any ***Coverdell education savings account*** under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under ***section 529*** of such Code, the value of any ***Achieving a Better Life Experience (ABLE) account*** authorized under Section 529A of such Code, and the ***value of any ''baby bond'' account*** created, authorized, or funded by Federal, State, or local government.

Note | **According to HUD, baby bonds are "money held in trust by the government for children until they are adults." These "are being authorized in various States and localities in an effort to combat the wealth gap and address systemic poverty."**

(7) Interests in Indian trust land.

(8) Equity in a manufactured home where the family receives assistance under 24 CFR part 982.

(9) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982.

Note | **The above two provisions relate to Housing Choice Vouchers that assist manufactured and other homeowners.**

(10) Family Self-Sufficiency Accounts.

Note | **FSS is a program that enables HUD-assisted families to increase their earned income and reduce dependency on welfare assistance and rental subsidies. Goals are set that a family must work toward to graduate from the program. An interest-bearing escrow account is established by the PHA for each participating family. Any increases in the family's rent as a result of increased earned income during the family's participation in the program result in a credit to the family's escrow account. Once a family graduates from the program, they may access the escrow and use it for any purpose.**

(11) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

Note | **The HOTMA Implementation Notice F.4.e instructs us to subtract the value of any tax return that a household has received in the last 12 months from the account the proceeds of the return were deposited into. This applies if the account will have a value assigned because the total non-necessary personal property exceeds $50,000, as adjusted.**

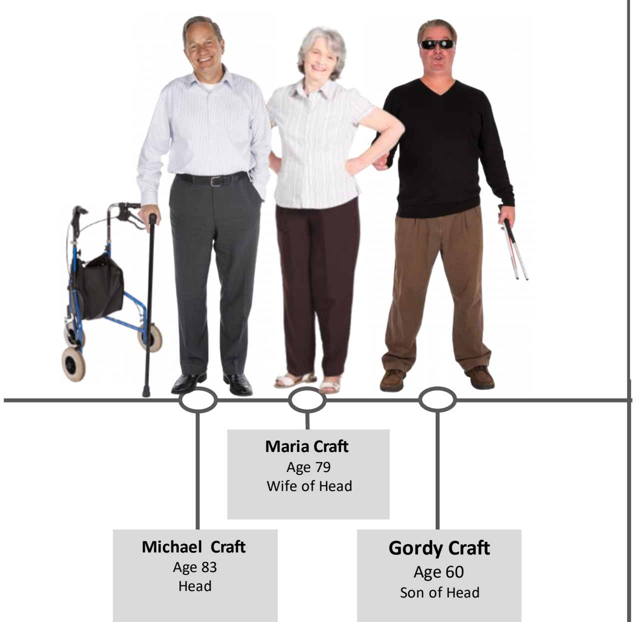
Checking Accounts

4350.3 Exhibit 5-2 A1 | 24 CFR § 5.603 | Joint Implementation Notice F.4.c. & J.5.a

Traditionally, assets were valued based on the asset's current balance. There was an exception for checking accounts, which used a 6-month balance.

HOTMA Highlight

Checking account values are the current balance under HOTMA. This means that a statement dated within 120 days of the effective date can be used to verify the balance. If a tax refund went into the account in the last 12 months, that amount can be subtracted.



Maria has a checking account and a savings account. An additional item of non-necessary personal property the household holds, a mutual fund, has a cash value of $73,456. Since total net family assets exceed $50,000, the owner/agent verifies all values. The bank provides completed verification of deposit for the accounts.
The household also provides tax returns from 10 month ago with receipts of transmission for $3,340.

What values will be listed on the TIC for the checking and savings accounts?

Checking Accounts

Account #	Current Balance	Interest Rate	Avg 6 month balance
122456240	$4,340	.75%	$240

Savings Accounts

Account #	Current Balance	Interest Rate
122456241	$1,204	.75%

ABLE Accounts

24 CFR § 5.609(b)(22) & 24 CFR § 5.603 definition "Net Family Assets" (b)(6) 2024 | Notice H 2019–06/PIH 2019–09 | Implementation Notice G.7.

The Achieving Better Life Experience (ABLE) Act was signed into law on December 19, 2014. ABLE allows States to establish and maintain a program under which contributions may be made to a tax-advantaged ABLE savings account to provide for the qualified disability expenses of the designated beneficiary of the account. The designated beneficiary must be a person with disabilities, whose disability began before their 26th birthday, and who meets the statutory eligibility requirements. Since the HUD Handbook 4350.3 was last revised with Change-4 in 2013, it does not address ABLE accounts. However, HOTMA lists ABLE accounts among excluded assets. Additionally, one of the exclusions (24 CFR 5.609(a)(22)) excludes from income all amounts that are specifically excluded by other federal laws applicable to HUD programs.

In Notice HUD-H-2019-06, HUD instructed that, given that the ABLE Act creates a federally mandated exclusion for ABLE accounts in determining a household's income, HUD will also exclude the interest on the ABLE account, whether actual income or imputed asset income. Ultimately, this means that both the value and income from ABLE accounts are excluded from HUD income determinations.

Knowledge Check

ABLE Accounts – Income and Assets?

Gordy has wages deposited into an ABLE account. He chooses to put some additional wage money into the account. His employer contributes additional funds. Relatives provide a recurring gift of $100/month to Gordy and also deposit $100/month in the ABLE Account.

- The wage income is _____________.
- The employer contributions to the ABLE account are _____________.
- The ABLE account _________ an asset.
- Withdrawals _________ income.
- The direct gift income is _____________.
- The deposits to the ABLE account are _____________.

Trusts

24 CFR § 5.609(b)(2) 2024 | HOTMA Implementation Notice F.4.d

A trust is an **account** in which a bank or a custodian holds funds for a specific purpose. Whether the value of a trust count is a net family asset and whether distributions from the trust count as annual income to the family depends on the following three factors:

1. Whether the trust is under the control of the family
2. Whether distributions are made from the trust's principal; and
3. The purpose of any distributions made from income earned by the trust.

HOTMA Highlight

How trusts are handled will change with HOTMA.
Note: this will be true of all trusts, ***including special needs trusts***.
Trust distributions are handled as listed below.

- For an ***irrevocable trust or a revocable trust outside the control of the family or household*** excluded from the definition of net family assets in the HUD regulation § 5.603(b)
  - (A) Distributions of the principal or corpus of the trust; and
  - (B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.
- For a ***revocable trust under the control of the family or household***, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

Knowledge Check

Income from Trust Outside Control of Household

A household receives monthly payments from a trust to which they do not have access. A verification is sent to the administrator of the trust, and the following components of the payments are established.

Total Monthly Payments	**$680**
Distribution of principle	**$300**
Trust income	**$380**

Note: $80 of the distributions cover the health and medical care of the head of the household.

How much of the monthly distributions are counted as income? **[circle one]**

a) $0 b) $80 c) $300 d) $380 e) $600 f) $680

Form Suggestions | Trust Accounts

Verification form snippet (for Trust Administrators)

Is this trust in the control of the household (can they cash it in, or adjust it?) NO ☐ [go to 1 below] YES ☐ [go to 2 below]

1. If above is "YES," is the household receiving any distributions from the trust? NO ☐ [sign form and return] ☐ YES [complete A-D below, sign and return].

__________________ Amount of distributions [A]

__________________ Amount of distributions that is from the principal or corpus of the trust [B]

__________________ Amount of distributions that are distributions of income from the trust [C]
[B + C should = A]

__________________ Amount of distributions that are used to pay the costs of health & medical care expenses for a minor child.

2. If the above is "No"

__________________ Market value of the trust

__________________ Cash value of the trust

__________________ Amount of income earned annually by the trust (whether distributed or not)

IRS-Recognized Retirement Accounts | IRA, 401(k), etc

4350.3 5-6 P, 5-6 L 2, 5-7 G 2 & Exhibit 5-2 A 5 to A 6

In the past, "these are included when the holder has access to the funds, even though a penalty may be assessed." "This would include any accounts the applicant can withdraw without retiring or terminating employment."

Pre- and Post-HOTMA (only the right side will still apply post-HOTMA)

2023 only

These types of accounts are ASSETS…

- if the applicant has access to the account AND
- if there is a cash value AND
- if NO periodic payments are being taken

Pre and Post HOTMA

These types of accounts are only INCOME…

- if periodic payments are being taken, even if the applicant has access to the account

Asset:

1. The applicant has access to the asset
2. There is a lump sum that can be cashed in
3. No periodic withdrawals are taken

Verify:

1. The applicant has access
2. The cash value
3. Interest rate/yield or the increase in value over the previous 12 months

Income:

1. Periodic withdrawals are being taken
2. The applicant may or may not have access to the asset

Verify:

Periodic withdrawal amount = income

HOTMA Highlight

Many retirement accounts will not be assets after HOTMA takes effect. The value of any account under a ***retirement plan recognized as such by the Internal Revenue Service***, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals (including accounts previously referred to as KEOGH accounts). Periodic withdrawals will be counted as income, as was true prior to HOTMA.

Additional Research | Types of retirement accounts recognized by the IRS

IRS.gov

- Individual Retirement Arrangements (IRAs)
- Roth IRAs
- 401(k) Plans
- SIMPLE 401(k) Plans
- 403(b) Plans
- SIMPLE IRA Plans (Savings Incentive Match Plans for Employees)
- SEP Plans (Simplified Employee Pension)
- SARSEP Plans (Salary Reduction Simplified Employee Pension)
- Payroll Deduction IRAs
- Profit-Sharing Plans
- Defined Benefit Plans
- Money Purchase Plans
- Employee Stock Ownership Plans (ESOPs)
- Governmental Plans
- 457 Plans
- Multiple Employer Plans

Notes

- Some accounts previously treated as "retirement accounts" under HUD's rules may not be treated as above. This includes annuities and other similar financial vehicles.
- Some assets that are usually counted may be part of IRS-recognized retirement accounts, such as stocks, mutual funds, and certificates of deposits.

HOTMA Implementation Notice F.4.a

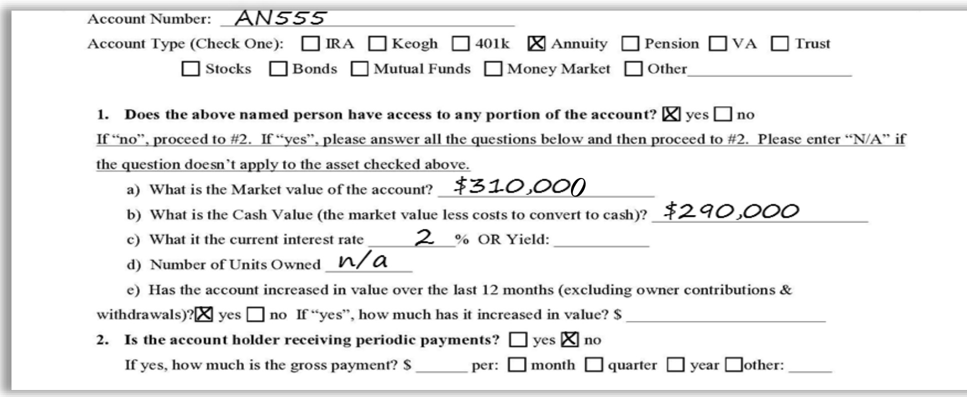
Assets deposited into retirement accounts are not treated as assets disposed of.

Knowledge Check

Retirement Accounts

Based on the verification below, determine what would be included on the TIC for this IRA.

	Pre-HOTMA	HOTMA
Periodic Income	____________________	____________________
Asset Value/Asset Income	____________________	



Account Number: AN555

Account Type (Check One): ☐ IRA ☐ Keogh ☐ 401k ☒ Annuity ☐ Pension ☐ VA ☐ Trust ☐ Stocks ☐ Bonds ☐ Mutual Funds ☐ Money Market ☐ Other__________

1. **Does the above named person have access to any portion of the account?** ☒ yes ☐ no

If "no", proceed to #2. If "yes", please answer all the questions below and then proceed to #2. Please enter "N/A" if the question doesn't apply to the asset checked above.

a) What is the Market value of the account? $310,000

b) What is the Cash Value (the market value less costs to convert to cash)? $290,000

c) What it the current interest rate 2 % OR Yield: ______

d) Number of Units Owned n/a

e) Has the account increased in value over the last 12 months (excluding owner contributions & withdrawals)? ☒ yes ☐ no If "yes", how much has it increased in value? $ ______

2. **Is the account holder receiving periodic payments?** ☐ yes ☒ no

If yes, how much is the gross payment? $ ______ per: ☐ month ☐ quarter ☐ year ☐ other: ______

Mary Pritchett Dunphy
Age 19
Head of Household

Alex & Mason Pritchett

Donald Dunphy Pri
Age 19
Co-Head of Househ

Donald owns a 401(k) provided by his last employer. He provides the following statement.

How will this be handled in 2024?

Boston Mutuality

Quarterly Summary Statement | Q4 2021

Name: Donald Dunphy

Account type: 401(k)

1234 Sample City
ST, ZIP

What is my account value?
$4,505.10
as of 12/31/21

Account Details	**This Period** 10/1/21-12/31/21	**Year-To-Date** 1/1/21-12/31/21
Beginning Balance	$4,914.25	$2,202.95
Contributions	0.00	0.00
Withdrawals	0.00	0.00
Fees	0.00	0.00
Exchange/Other	0.00	0.00
Dividends/Other Earnings	380.00	380.00
Change in Value	-499.15	1,942.15
Ending Balance	4,505.10	4,505.10
Total Vested Balance as of 12/51/21	**$4,505.10**	

Where can I go for help?
Your financial professional
Josh Overstreet

www.bostonmutuality.com/accounts
Online account access and transactions are available anytime through Retirement Access.

Information on early withdrawal

Three consequences of a 401(k) early withdrawal or cashing out a 401(k)

1. **Tax withholding.** The IRS generally requires automatic withholding of 20% of a 401(k) early withdrawal for taxes. So, if you withdraw $10,000 from your 401(k) early, you may get only about $8,000.
2. **IRS penalties.** If you withdraw money from your 401(k) before you are 59½, the IRS generally assesses a 10% penalty when you file your tax return. That could mean giving the government $1,000 of that $10,000 withdrawal.

   Between the taxes and penalty from 1 and 2 above, your immediate take-home total could be as low as $7,000 from your original $10,000.
3. **Less money for your future.** That may be especially true if the market is down when you make the early withdrawal. Pulling funds out can severely impact your ability to participate in a market rebound.

Page 1 of 1

Form Suggestions | Retirement Accounts

Application form snippet

After the section that asks about certificates of deposits and other similar assets.

Yes No

☐ ☐ Are any of the above assets part of an IRS-structured retirement account?

Verification form snippet (for bank account verification)

After the section that asks about certificates of deposits and other similar assets.

Yes No

☐ ☐ Are any of the above assets part of an IRS-structured retirement account?

Verification form snippet (for retirement account administrator)

Type of retirement account the above-named person holds: _________________________

Yes No

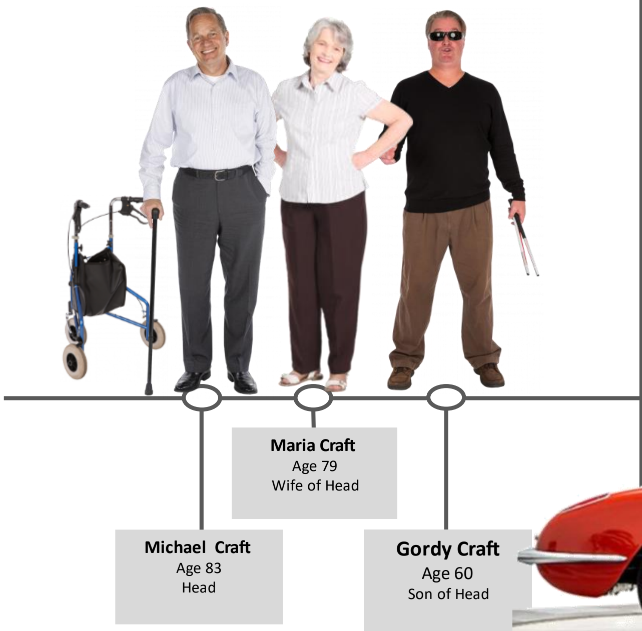
☐ ☐ Does the above-named person receive periodic distributions or make periodic withdrawals from their IRS-recognized retirement account?

If "yes", amount ___________________ and how often ___________________.

Personal Property Held as an Investment (before HOTMA)

4350.3 Exhibit 5-2 A 8 and B 1

"Include gems, jewelry, coin collections, or antique cars held as an investment.
Do not count personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities)."



Michael owned a sports car worth $125,000 that he gave to Maria when he could no longer drive 15 years ago. Rather than have him wait to inherit it, she gives Gordy the vehicle. It has great sentimental value to Gordy, and he hopes to pass it on to one of his nephews some day.

How is the asset value and income calculated?

From HUD Implementation Guidance

Category	Excluded Asset	Example(s)	Notes
Personal property	Necessary items of personal property	Medical devices, vehicle for commute	Determining what is a "necessary item" for personal property is a highly fact-specific determination. Additional guidance is forthcoming from HUD.
Personal property	Non-necessary items of personal property if the combined total value does not exceed $50,000*	Vintage baseball cards, recreational boat, coin collection, art so long as the *total* value is under the limit	This matches the value of assets that can be self-certified by the family.
Savings account	Retirement account recognized by IRS	IRA, 401(k), 401(b) and retirement plans for self-employed individuals	
Real property	Real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located	Property subject to a lawsuit may be legally restricted from sale.	Such property does not count against the dollar amount limit or the real property limitation
Cash	Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member, for an incident resulting in a disability	A drunk driver injures a family member, who then has a disability. The family sues, and the driver's insurance pays the family.	
Savings account	The value of certain education or disability support savings accounts	Under Internal Revenue Code sections 529, 529A, 530, "baby bond" accounts	Coverdell accounts, tuition programs, any "baby bond" account created, authorized, or funded by Federal, state, or local government
Real property	Interest in Indian trust land	Family has interest in land held in trust by Bureau of Indian Affairs	Existing exclusion
Real property	Equity in a manufactured home where the family receives assistance under 24 CFR 982	HCV Manufactured Home Space Rental participants	
Real property	Equity in property where the family receives assistance under 24 CFR 982	HCV homeownership participant	For real property other than manufactured homes
Savings account	Family Self-Sufficiency (FSS) accounts		The family does not have access to FSS funds during their participation in the program. Also excluded from income.
Cash	Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family	Earned Income Tax Credits (EITC)	
Trust Funds	Trust that is not revocable by, or under the control of, any member of the family or household	Non-revocable trust fund; trust fund revocable once minor child reaches age 21	As long as a trust meets this definition, it is not an asset of the family

HOTMA Highlight

All assets are either *real property* or *personal property*. Personal property is then split into two categories: ***necessary*** and ***non-necessary*** personal property. ***Necessary*** personal property is excluded, while ***non-necessary*** personal property is counted if all non-necessary personal property a household holds exceeds $50,000, as adjusted by inflation. Either way, actual income received from all assets is counted. If assets exceed $50,000 (as adjusted), income is imputed on individual assets for which income cannot be determined. See Imputed asset income below to pull asset calculation rules together.

There are Three Asset Rules with $50,000 Thresholds

Many people assume that the $50,000 limit (adjusted for inflation) is just one rule. It is three. It is important not to confuse

1. When self-certification is allowed (all household assets)
2. When non-necessary personal property is excluded (only non-necessary personal property)
3. When asset income must be imputed (all household assets)

Imputing Income from Assets

24 CFR § 5.609(a)(2) | HOTMA Implementation Notice F.5.

2023 | Total assets cash value X____% (X .______)

- For assets totaling over $5,000, use the greater of the actual income received or the “imputed” income.
- For assets totaling less than $5,000, use the actual income from assets only.

2024 | Individual asset cash values X____% (X .______)

- For assets totaling over $50,000, use the “imputed” income rate for assets that cannot have income determined.
- For assets totaling less than $50,000, use the actual income from assets only.

HOTMA Highlight

Imputed asset income is completely changed with HOTMA.
When net family assets (real property and non-necessary personal property) are valued over $50,000 (as adjusted by inflation annually) and actual returns on specific assets cannot be calculated, imputed returns are included in income. All actual returns that can be calculated continue to be included in income.

All ***personal property*** is categorized as ***necessary*** and ***non-necessary*** personal property.

- ❑ ***Necessary personal property*** is not counted or listed on the TIC.
- ❑ **Non-necessary personal property** (see list below).
  - ***if totaling under* $50,000** will not be counted toward household assets. All individual assets in this case will show a $0 value on the TIC.
  - ***if totaling over* $50,000** all personal property assets are counted toward household assets.
  - Any ***actual income is counted*** from **ALL** non-necessary personal property.
- ❑ ***If real property and non-necessary personal property exceeds $50,000*** *asset* income is imputed on individual assets that cannot otherwise have income determined.

Joint Implementation Notice F.6.b.

“PHAs/MFH Owners should not conflate an asset with an actual return of $0 (as in the example above), with an asset for which an actual return cannot be computed, such as could be the case for some nonfinancial assets that are items of non-necessary personal property. If the asset is a financial asset and there is no income generated (for example, a bank account with a 0 percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is $0. When the stock never issues dividends, the actual return is consistently $0."

Necessary Personal Property	Non-Necessary Personal Property
Not counted as asset(s)	**If totaling $50,000 or less** • Each asset is counted as an $0 asset on the TIC. • Actual income is counted on assets where it can be determined • If total net assets (real property and non-necessary personal property) exceed $50,000, income is imputed on individual assets for which income is not determinable. **If totaling over $50,000** • Counted as asset(s) with cash value(s) listed on the TIC • Actual income is counted • Total household assets exceed $50,000 (as non-necessary personal alone is over $50,000), and income is imputed on individual assets for which income is not determinable.

Table F1: Examples of Necessary and Non-Necessary Personal Property

Necessary Personal Property	Non-Necessary Personal Property
• Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) • Furniture, carpets, linens, kitchenware • Common appliances • Common electronics (e.g., radio, television, DVD player, gaming system) • Clothing • Personal effects that are not luxury items (e.g., toys, books) • Wedding and engagement rings • Jewelry used in religious/cultural celebrations and ceremonies • Religious and cultural items • Medical equipment and supplies • Health care–related supplies • Musical instruments used by the family • Personal computers, phones, tablets, and related equipment • Professional tools of trade of the family, for example professional books • Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities • Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)	• Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs)) • Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) • Recreational boat/watercraft • Expensive jewelry without religious or cultural value, or which does not hold family significance • Collectibles (e.g., coins/stamps) • Equipment/machinery that is not used to generate income for a business • Items such as gems/precious metals, antique cars, artwork, etc.

Steps | Calculating Asset Value and Income

Examine household self-certification of asset values and income collected during the application process. Identify the three asset types listed:

1] Necessary personal property 2] Non-necessary personal property 3] Real property.

Step 1 Identify and ***exclude any necessary personal property*** listed by the household.

Step 2 Based on self-certification, determine ***if the value of all non-necessary personal property exceeds $50,000***.

Note: If a tax refund was deposited in an account in the last 12 months, subtract this amount from the value of the account it was deposited into before determining the above [this may be skipped if total non-necessary personal property is below $50,000 (as adjusted) because all non-necessary personal property will be assigned $0 values].

If yes | Since non-necessary personal property alone totals over $50,000, all household net assets also exceed $50,000. Verify all non-necessary and real property asset values and income with 3rd-party documentation. List each asset's value and actual income on the TIC.

If no | List each non-necessary personal property asset as $0 on the TIC but include actual income for each.

Step 3 Add the value of any real property to the non-necessary personal property (as counted in step 2) and determine if total net household assets exceed $50,000.

If yes | Verify all asset values and income with 3rd-party documentation (to the extent not already done per Step 2). Impute income on assets that have income that cannot otherwise be determined and add it to other income.

If no | Use self-certification to verify asset values and income if allowed by company policy (for HUD-funded properties only – except every 3 years when full verification is allowed). Do not impute asset income on any assets.

Knowledge Check

Imputed Asset Income |

- Non-Necessary Personal Property Does Not Exceed $50,000
- Net Assets Exceed $50,000

A household reports the following assets. The passbook savings rate that year was 0.40%. The household did not have a tax return in the last 12 months. Complete the asset section of the TIC.

Asset	Value	Type of asset
Wedding ring:	**$ 2,300 | no income, worn daily**	______________
Checking account	**$ 2,400 | with 0% interest**	______________
Savings account:	**$30,090 | with 1.5% interest**	______________
Real Estate:	**$62,000 | no income**	______________

PART IV. INCOME FROM ASSETS					
HH Mbr #	(F) Type of Asset	(G) C/D	(H) Cash Value of Asset	(I) A/I	(J) Annual Income from Asset
		TOTALS:	$		$

Knowledge Check

Imputed Asset Income | Non-Necessary Personal Property Does Not Exceed $50,000 and Net Assets Do Not Exceed $50,000

A household reports the following assets. The passbook savings rate that year was 0.60%. The household had a tax return in the last 12 months of $960 that went into their checking accounts.

Complete the asset section of the TIC.

Asset	Value	Type of asset
Checking account	**$ 2,400 | 0% interest**	______________
Boat	**$12,901 | no income**	______________
A new game console	**$ 670 | no income**	______________
Stocks	**$ 8,798 | paying no dividends**	______________

PART IV. INCOME FROM ASSETS					
HH Mbr #	(F) Type of Asset	(G) C/D	(H) Cash Value of Asset	(I) A/I	(J) Annual Income from Asset
		TOTALS:	$		$

Knowledge Check

Imputed Asset Income | Non-Necessary Personal Property Exceeds $50,000 and Net Assets Exceed $50,000

A household reports the following assets. The passbook savings rate that year was 0.10%. The household had a tax return in the last 12 months of $1,202 that went into their checking accounts.

Complete the asset section of the TIC.

Asset	Value	Type of asset
Ski Equipment	**$ 16,009 | no income**	______________
Checking account	**$ 940 | 0% interest**	______________
Savings account	**$ 22,000 | 1.1% interest**	______________
Savings bonds	**$ 45,896 | 2% interest**	______________
IRA account	**$125,000 | no withdrawals**	______________
Real estate	**$ 33,814 | no rental income**	______________

PART IV. INCOME FROM ASSETS					
HH Mbr #	(F) Type of Asset	(G) C/D	(H) Cash Value of Asset	(I) A/I	(J) Annual Income from Asset
		TOTALS:	$		$

Why Housing Matters! …and You Do, too!

Affordable housing programs can't work without YOU! Even though times of change can be stressful, the result is to protect vitally needed housing. Keep up the good work that you are doing. These programs that make housing affordable affect the lives and futures of millions of children and adults and the communities that they live in.

Supplement | State Agency Policy Considerations

Information used to support the Costello HOTMA LIHTC/HOME/NHTF Checklist | State Agency Edition

Where Policy Documentation May Need Adjustment

Software. These needs may be minimal depending on the extent the software tracks household income specifics. However, if the HFA is also a Contract Administrator, then a much more extensive overhaul involving TRACS 203.A will be needed.

Internal monitoring checklists used by state agents may need to be revised as they relate to income and asset issues. These are more often detailed than software used by the Agency, although they may be electronic and tied to the software.

LIHTC and HOME Manuals, websites, and other places where policies are addressed will need to be adjusted. How much state policy draws on federal guidance by reference (for example defining income calculations "per 24 CFR 5.609") as opposed to translating federal guidance (which the 8823 Guide did and is now partially obsolete) will determine the extent of the needed revisions. The latter approach will require more revision.

Land Use Restriction Agreements for LIHTC, HOME, & NHTF funding. Legal documents, such as LURAs, tend to use legal references and may not require extensive revision than Agency policies (see above for more details on legal references.

Minimum HOTMA policy adjustments needed include:

- Removal of the Earned Income Disregard (for HOME PJs)
- Handling of PBRA and TBRA income determinations for HOME and NHTF.
- Revised definitions of income
  - Removal of income inclusions
    - Suggestion: keep and adjust any specific scenario examples of inclusions from past guidance. Although inclusions are no longer enumerated in the regulation, they continue to apply.
  - New income exclusions
- Revised definitions of assets
  - New asset exclusions
  - Imputed asset rules

Communicating Changes

Most state agencies will see the need to communicate annual adjustments that involve income calculations to owner/agents. This will involve being plugged into information sources to be aware of these changes and disseminate the information to owner/agents. Even if the agency does not provide these, the owner/agents will still need to be aware of these and implement them when they are effective.

HOTMA has increased the number of needed adjustments and HUD has promised to communicate these regularly. These include the following: 1) The imputed asset passbook savings rate, 2) The cash value of assets that will be counted for whether individual assets for which income cannot be determined will need to have imputed income counted 3) the amount of non-necessary personal property that results in the property being assigned a $0 value. 4) The dependent deduction that will determine the amount of income counted for adult dependent full-time students and the annual amount of adoption assistance income counted for each adopted child.

"Most Restrictive" Methods

Owners and PHAs will likely be using LIHTC certifications to calculate annual income and rent for PBRA and TBRA households in LIHTC units. Some states have policies that require overestimating income when compared to HUD standards. These include using year-to-date calculations as a final determiner in calculating annual income, using the highest in a range of hours provided by an employer, and counting estimated income that is not secured and determinable. An Agency must establish if the traditional "most restrictive" methods they use are fair to all households, including those using the calculations to calculate rent.

HUD-assisted households in LIHTC units who are rent burdened when compared to others who are HUD-assisted and not in LIHTC units may seek legal redress and this may represent a direct liability to the state HFA to the extent that they differ from 'determining income in a manner consistent with section 8' as is legally required by LIHTC statute and regulation. This could also apply to households denied LIHTC housing that they would qualify for if HUD standards were truly applied. Tenant advocacy groups are aware of this issue which is now made more obvious in light of HOTMA and will likely seek ways to assist residents in this matter.

Recertification Issues

100% LIHTC properties

Federally, nothing has changed for 100% LIHTC properties, which are only required to gather student status documentation annually. Although not subject to IRS scrutiny, ***if a state requires a first-year annual income recertification***, the state will need to determine which definition of income they will require (see below for a more detailed discussion of when income recertifications are federally required).

Less than 100% LIHTC Properties

Recertification income may be based either on:

- Estimated upcoming 12 months "anticipated" income (as was true in the past and still applies to move-in income).
- The past 12 months (per HOTMA 24 CFR §5.609(c))

States may apply a policy relating to this matter or may leave it up to the owner/agent's discretion. LIHTC properties with PBRA will have no choice but work within HUD's framework.

When contemplating this matter, if a state decides to establish a policy, the HFA may consider that 'determining income in a manner consistent with Section 8' would indicate that the HOTMA definition of past income at annual recertification should be used. However, they may also reason that HOTMA takes into consideration changes made through interim certifications in the past year and that tenant challenges may require anticipating income. Since interims are not required for LIHTC properties, the state may conclude that anticipating income for all certifications will best meet the goal of the LIHTC program. It should be noted, however, that using the past 12 months' income would address households with variable or sporadic income.

Fast Act "Streamlining". Several states have already implemented 2016's Fast Act "streamlined" process for LIHTC purposes, reasoning that it is part of how income is 'determined in a manner consistent with Section 8' and also reflects common sense provisions. Others will allow it, but do not explicitly address it in written policy. Streamlining allows an owner/agent to apply an applicable annual COLA to past-verified fixed-income sources at most recertifications. Full verification is only required every 3 years. Additionally, if fixed income reflects 90% of household income, the non-fixed income can be verified through self-affidavit for the streamlined years. HOTMA includes and expanded some streamlined provisions, such as expanding the $5,000 asset certification rule to $50,000 and more states may consider allowing this option for projects that are less than 100% LIHTC projects.

Aligning LIHTC with HOME and NHTF Determinations of Income

HOME and NHTF units must use income determinations of PBRA. TBRA PHA determinations MUST be used for NHTF units and MAY be required for HOME purposes if the PJ requires this. Aligning the LIHTC with these programs consistently for all will require accepting PHA verification (long accepted by IRS regulation, but not universally accepted by state PHAs, especially at move-in) and abandoning any state-required "conservative methods" not aligned with PBRA and TBRA HUD Section 8 methods.

State Law Matters

Fosters

A state HFA will need to be aware of what is the state legal definition of fosters now used for program purposes in excluding some household members for income limit and income calculations, but not occupancy standards,

Real Property

The definition of "real property" under state law must be used. For example, whether manufactured homes are treated as real property is determined differently by state (see the *Example* in the Asset section above).

Helpful Hint!

Once a state HFA has done the research and determined how fosters and real property are defined by state law, including this information in the state LIHTC compliance manual or another policy document will be very helpful to owner/agents in the state and encourage consistent compliance. This is also true for HOME PJs and NHTF grantees.

Verification Issues

Assets

States will need to determine if the asset self-certification rule will be tied to $5,000 as spelled out in past Treasury Regulations, or $50,000, as now applicable in HOTMA.

Income Determinations

If the Agency wants to reconcile HOME and NHTF to LIHTC, they will have to evaluate the extent to which the same income determination and verification of this can be allowed to be used across the board. This means that:

- PBRA income determination will be used for all units.
- PHA-assisted units will use:
  - PHA determinations (as already allowed by LIHTC guidance). OR
  - The LIHTC determination, if the PHA policy allows it as an alternative "means-tested" program determination.

Technically, HOTMA requires using the last year's income for a household at annual examinations. This is how income is 'determined in a manner consistent with section 8.' However, HOTMA also requires that any interim adjustments be taken into consideration to adjust annual income and tenants are also allowed to challenge the determinations, requiring full traditional anticipated income calculations. Because the LIHTC program does not employ interim adjustments, states will likely continue to require that income be determined annually using anticipated income.

Fast Act "Streamlining" and verifications. See the *"Fast Act "Streamlining"* section in the *"Recertification Issues"* section above for streamlining procedures that will affect verifications used for fixed and other income.

Forms

Tenant Income Certification (TIC)

Most of the changes needed are interpretive (before the TIC is completed), and the TICS will be mostly unchanged. However, the asset section will need an overhaul.

Current asset section on the NCSHA best practices TIC. The circled section will be obsolete in 2024.

PART IV. INCOME FROM ASSETS				
HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$	$
Enter Column (H) Total If over $5000	$ ______	Passbook Rate X 0.06% =	(J) Imputed Income	$
Enter the greater of the total of Column (I) or (J): imputed income			TOTAL INCOME FROM ASSETS (K)	$
(L) Total Annual Household Income from All Sources [Add (E) + (K)]				$

OBSOLETE

Possible TIC adjustment.

Below is a draft new asset section suggested by Costello. In addition to the removal of the above-circled sections, the section circled below is added.

See examples in the section on imputing asset income for this model in practice.

PART IV. INCOME FROM ASSETS					
HH Mbr #	(F) Type of Asset	(G) C/D	(H) Cash Value of Asset	(I) A/I	(J) Annual Income from Asset
		TOTALS:	$		$

Other Forms (and why amendment is needed)

- Application/questionnaires.
- Calculation worksheets [to the extent that they provide instructions affected by HOTMA].
- Trusts [for new HOTMA approach to ALL trusts].
- Worker's compensation [to determine if worker's compensation will continue beyond the coming year and be included or end during year and be excluded]
- Student financial assistance [to ask questions relevant to Section 8 and non-Section 8 Assisted households].
- Veteran's benefits [to determine if any parts of the benefits are being paid for delayed benefits or aid and attendance]
- Retirement accounts [only information about periodic withdrawals needs to be gathered]
- Bank asset verification form [gather current balance for checking, find out if any assets are part of structured retirement accounts]
- $50,000 asset self-certification form [depending on state agency policy]
- Forms for PHA and other program verification of income [required for NHTF and HOME, an option for LIHTC]
- Forms for LIHTC verification of income (to use for HUD programs)

- Child Support/Alimony/Spousal Support Affidavits [eliminate – court orders are now irrelevant, or will be part of the usual verification process and not a major determiner for these support types].

Combining LIHTC with Other Programs

Please see the "*Combining LIHTC with other programs*" section in the owner/agent section below to understand the significant impact of LIHTC/HOME/NHTF policy on owner/agents.

Important Note

In an era of existentially difficult staffing issues, these policies have very real financial implications for owners and directly support or impede the success of affordable housing in an Agency's jurisdiction.

Supplement | Owner/Agent Policy Considerations

Information used to support the Costello HOTMA LIHTC/HOME/NHTF Checklist | Owner Edition

Software

Property management company software will need to be ready to go by September, as this is when owner/agents are gearing up for certifications and recertifications that will be due on the 1/1/2024 HOTMA effective date. Assurance should be gathered from the software provider. If not, contingencies and specific site training may be necessary to apply HOTMA provisions without software assistance.

Understand Agency Policies

It will be vital to understand state LIHTC/NHTF and PJ HOME HOTMA policies. To do this, an owner/agent will need to know how Agencies will communicate these. Specific employee positions whose job description includes monitoring Agency channels will need to add HOTMA-related provisions to the list of monitored items. Channels often used by Agencies include written compliance manuals, notices, email listservs, websites, blogs, Qualified Allocation Plans (each year's proposed and then final), and Land Use Restriction Agreements (LURAs).

Especially important to ascertain will be specific matters where state policy may differ from true HUD income determinations. These may include 1) the use of year-to-date calculations as a final determiner of income eligibility, 2) the use of averages when provided a range (such as a range of hours worked per pay period), and 3) counting unsecured income that is not imminent known and verifiable.

Once state policies are understood, then owner/agents must build their policies around federal and state direction.

Build Owner/Agent Policies

Minimum HOTMA policy adjustments needed include:

- Removal of the Earned Income Disregard
- Treatment of PBRA and TBRA income determinations for HOME and NHTF
- Revised definitions of income
  - Removal of income inclusions
    - Suggestion: keep any specific scenario examples of inclusions from past guidance. Although inclusions are no longer enumerated in the regulation, they continue to apply.
  - New income exclusions
- Revised definitions of assets
  - New asset exclusions
  - Imputed asset rules

Recertification Issues

100% LIHTC properties

Federally, nothing has changed for 100% LIHTC properties. Owner/agents are required to gather student status documentation annually. Although not subject to IRS scrutiny, ***if a state requires a first-year annual income recertification***, the state will need to indicate which definition of income they will require (see below for a more detailed discussion of when income recertifications are federally required).

Less than 100% LIHTC Properties

Recertification income may be based either on:

- Estimated upcoming 12 months "anticipated" income (as was true in the past and still applies to move-in income).
- The past 12 months (per HOTMA 24 CFR §5.609(c))

If state policy does not dictate an approach or leaves it up to owner/agents, the owner/agent will need to determine the approach they are going to apply.

When contemplating this matter, an owner/agent may consider that 'determining income in a manner consistent with Section 8' would indicate that the HOTMA definition of past income at annual recertification should be used. However, they may also reason that HOTMA takes into consideration changes made through interim certifications in the past year and that tenant challenges may require anticipating income. Since interims are not required for LIHTC properties, the owner/agent may conclude that anticipating income for all certifications will best meet the goal of the LIHTC program. It should be noted, however, that using the past 12 months' income would address households with variable or sporadic income and may be held in reserve for these households.

Fast Act "Streamlining". Several states have already implemented 2016's Fast Act "streamlined" process for LIHTC purposes, reasoning that it is part of how income is 'determined in a manner consistent with Section 8' and reflects common sense provisions. Other states may allow this without further instructions. Streamlining allows an owner/agent to apply an applicable annual COLA to past-verified fixed-income sources at most recertifications. Full verification is only required every 3 years. Additionally, if fixed income reflects 90% of household income, the non-fixed income can be verified through self-affidavit for the streamlined years. HOTMA includes and expanded some streamlined provisions, such as expanding the $5,000 asset certification rule to $50,000, and more states and owner/agents may now consider this option for less than 100% projects as they explore HOTMA provisions.

Aligning LIHTC with HOME and NHTF Determinations of Income

HOME and NHTF owner/agents must use income determinations of PBRA for HOME purposes. TBRA PHA determinations must be used for NHTF units and may be required for HOME purposes if the PJ requires this. Aligning the LIHTC with these programs consistently for all will only be possible if state Agency and owner/agency policies accept PHA verification. This has long been accepted by IRS regulation, but not universally accepted by state HFAs or owner/agents, especially at move-in, and receiving permission to abandon any state-required "conservative methods" not aligned with PBRA and TBRA HUD Section 8 methods. The alternative is to run two income determinations for many HOME and NHTF units at LIHTC properties.

State Law Matters

Fosters

An owner/agent will need to be aware of the state legal definition of "fosters" now used for program purposes in excluding some household members for income limit and income calculations, but not occupancy standards.

Real Property

The definition of "real property" under state law must be used for program asset purposes. For instance, whether manufactured homes are treated as real property is determined differently in many states (see the *Example* in the *Asset* section above).

Helpful Hint!

Once a state HFA has done the research and determined how fosters and real estate is defined by state law for the Agency's monitoring purposes, they are likely to include this information in the state LIHTC compliance manual or other policy documents. An owner/agent should watch for this guidance. This is also true for HOME PJs and NHTF grantees.

Verification Issues

Assets

States will need to determine if the asset self-certification rule will be tied to $5,000 as spelled out in past Treasury Regulations, or $50,000, as now applicable in HOTMA. If a state does not explicitly allow the $50,000, an owner/agent will need to stick with the $5,000 limit, as this is in federal IRS guidance, and only the state has the authority to adjust this.

Income Determinations

If an owner/agent wants to reconcile HOME and NHTF to LIHTC, they will have to evaluate the extent to which the same income determination and verification of this are allowed to be used across the board in light of Agency policy. This means that:

- PBRA income determination will be used for all units.
- PHA-assisted units will use:
    - PHA determinations (as already allowed by LIHTC guidance). OR
    - The LIHTC determination, if the PHA policy allows it as an alternative “means-tested” program determination.

Technically, HOTMA requires using the last year’s income for a household at annual examinations. This is how income is ‘determined in a manner consistent with section 8.’ However, HOTMA also requires that any interim adjustments be taken into consideration to adjust annual income and tenants are also allowed to challenge the determinations, requiring full traditional anticipated income calculations. Because the LIHTC program does not employ interim adjustments, states will likely continue to require that income be determined annually using anticipated income. If a state does not mandate a specific methodology, owner/agents are likely to also choose to continue the use of anticipated income.

Fast Act “Streamlining” and verifications. See the *“Fast Act “Streamlining”* section in the *“Recertification Issues”* section above for streamlining procedures that will affect verifications used for fixed and other income.

Annual Adjustments

An owner/agent will have to determine how to gather and disseminate annual inflation and other adjustment information. These include 1) the imputed asset passbook savings rate, 2) the cash value of assets that will be counted for whether individual assets for which income cannot be determined will need to have imputed income counted, and if non-essential personal property will have to be counted, and 3) the dependent deduction that will determine the amount of income counted for adult dependent full-time students and the annual amount of adoption assistance income counted for each adopted child.

Forms

Tenant Income Certification (TIC)

Most of the changes needed are interpretive (before the TIC is completed), and the TICS will be mostly unchanged. However, the asset section will need an overhaul. Generally, the TIC to be used is a matter dictated by the state HFA/HOME PJ/NHTF grantee matter.

If the format of the TIC is left to the owner/agent, see the section on the TIC in the *State Agency Policy* section above and accompanying illustrations for suggestions on TIC modifications that will be needed.

Combining LIHTC with other programs

HUD PBRA and TBRA

- **PBRA.** The owner/agent may use LIHTC income determinations for determining annual income. This will need to be implemented in a policy that promotes fair treatment of all residents – LIHTC-only and LIHTC/HUD-assisted.
- **TBRA.** The PHA may use LIHTC income determinations for establishing annual income. This will need to be implemented in a policy and promote fair and consistent treatment of TBRA and non-TBRA residents. If the PHA will use LIHTC income determinations, a communication channel will have to be established with the PHA to allow for timely move-ins.

HOME

Owner/agents may choose to use the "$5,000" asset certification for LIHTC purposes when HOME also requires full asset verification, or only use full asset verification, subject to state policy. Note: this applies at move-in and every 6th year of the HOME affordability period. For other years, the HOME PJ may allow self-certification for years other than each 6th year of the HOME affordability period, including asset verification. If so, it will need to be determined if the state LIHTC Agency will allow the HOTMA HOME $50,000 asset affidavit or limit it to $5,000. If a state does not explicitly allow the $50,000, an owner/agent will need to stick with the $5,000 limit, as this is in federal IRS guidance, and only the state has the authority to adjust this.

For HOME units, the owner/agent must use PBRA income determinations. If the methodologies required differ from state Agency LIHTC policies, conducting two income determinations may be required.

For HOME units, the owner/agent may be required to use TBRA income determinations, per PJ policy, so an owner/agent must be aware of this PJ policy. If state Agency LIHTC policies do not allow using PHA verification, it will require two income determinations.

Alternatively, the HOME PJ may allow the use of LIHTC calculations for HOME purposes as a "means-tested" program. If so, the owner/agent will need to secure any specific required forms or procedures.

NHTF

Owner/agents may choose to use the "$5,000" asset certification for LIHTC purposes when the NHTF also requires full asset verification, or only use full asset verification, subject to state policy. Note: this applies at move-in and every 6th year of the NHTF affordability period. For other years, the NHTF grantee may allow self-certification for years other than each 6th year of the NHTF affordability period, including asset verification. If so, it will need to be determined if the state LIHTC Agency will allow the HOTMA NHTF $50,000 asset affidavit or limit it to $5,000. If a state does not explicitly allow the $50,000, an owner/agent will need to stick with the $5,000 limit, as this is in federal IRS guidance, and only the state has the authority to adjust this.

For NHTF units, the owner/agent must use PBRA and TBRA income determinations. If the methodologies required differ from state Agency LIHTC policies, conducting two income determinations may be required.

Alternatively, the NHTF grantee may allow the use of LIHTC calculations for NHTF purposes as a "means-tested" program. If so, the owner/agent will need to secure any specific required forms or procedures.

Supplement | Simple List of Discretionary Policies

List of Discretionary Policies to Implement HOTMA (MFH & PIH)

Most HOTMA provisions are not optional. Some, however, allow a degree of discretion. Below is a list of discretionary policies. Except for self-certification of assets (#4 below), these all apply exclusively to HUD MFH or PIH programs, or to HOME or NHTF tenants for whom the PHA definition of income is being used in cases where a HOME/NHTF unit receives PBRA or TBRA.

24 CFR § 5.618

1. Asset Limitation for New Admissions.
   24 CFR § 5.618
2. Asset Limitation for Interim and Annual Reexaminations.
   24 CFR § 5.618(b)(2)
3. Self-Certification – Real Property Ownership.
   24 CFR §§ 5.603; 5.609; 5.618; 882.515(a); 882.808(i)(1)
4. Self-Certification of Net Family Assets Equal to or Less Than $50,000 (adjusted annually for inflation).
   24 CFR § 5.611(c)(2)
5. Hardship Exemptions for Health/Medical Care Expenses & Reasonable Attendant Care & Auxiliary Apparatus Expenses – General Relief.
   (24 CFR 5.611(c)(1))
6. Hardship Exemptions for Health/Medical Care Expenses & Reasonable Attendant Care & Auxiliary Apparatus Expenses – Phased-In Relief.
   24 CFR § 5.611(d)
7. Hardship Exemption to Continue Child Care Expense Deduction.
   24 CFR § 5.611(b)(1)
8. Additional (Permissive) Deductions – Public Housing, Housing Choice Voucher, and Moderate Rehabilitation/SRO Only.
   24 CFR §§ 5.609(c)(4); 960.257(f); 982.516(f); 882.515(f); 882.808(i)(5)
9. De Minimis Errors in Income Determinations.
   24 CFR §§ 960.257(b)(2); 982.516(c)(2); 882.515(b)(2); 891.410
10. Interim Reexaminations - Decreases in Adjusted Income.
    24 CFR §§ 960.257(b)(3); 982.516(c)(3); 882.515(b)(3)
11. Interim Reexaminations - Increases in Adjusted Income.
    24 CFR §§ 960.257(b)(4); 982.516(d); 882.515(b)(1) - (4); 882.808(i)(4); 891.410
12. Interim Reexaminations - Reporting Changes & Effective Date.
    24 CFR §§ 5.230(c)(5)(iii) and 24 CFR 5.232(c)
13. Revocation of Consent Form.
    24 CFR §§ 5.609(c)(3) and 891.105
14. Determination of Family Income Using Other Means-Tested Public Assistance, i.e., "Safe Harbor."
    24 CFR § 5.233
15. Enterprise Income Verification (EIV) Usage.

Supplement | Income-Based Rents and HOTMA

For HOME OI Households

HUD 4350.3 5-9

Income eligibility for HOME is based on gross income, without any deductions. When a household's income exceeds the low-income limits (80% AMI) for ***a non-LIHTC unit***, adjustments are made to income, and then rent equals 30% of the adjusted income. Five possible deductions may be subtracted from annual income based on allowable household expenses and household characteristics. The remainder, after these deductions are subtracted, is called adjusted income. Adjusted income is generally the amount upon which rent is based. Before rent is calculated, annual adjusted income is converted to monthly adjusted income.

Of the five possible deductions, three are available to any household, and two are permitted only for elderly or disabled households. The three types of deductions available to any household are:

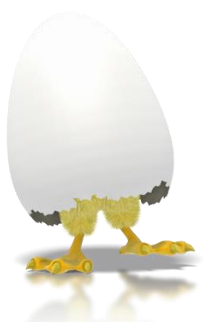
1. A deduction for dependents
2. A childcare deduction
3. A disability assistance deduction

   The two types of deductions permitted only for households in which the head, spouse, or co-head is elderly or disabled are:

4. A deduction for unreimbursed medical expenses.
5. An elderly/disabled household deduction

Each of the deductions is described below in detail.

1. Dependent Deduction



A household receives a deduction of $480 for each household member (except foster children and adults) who is under 18 years of age, a person with disabilities, or a full-time student of any age. A full-time load is defined by the institution where the student is enrolled.

A member of the household doesn't need to have legal custody of a dependent to receive the dependent deduction.

Some household members may never qualify as dependents regardless of age, disability, or student status. The head of the household, the spouse, and the co-head may never qualify as dependents. A foster child, foster adult, an unborn child, a child who has not yet joined the household, or a live-in aide may never be counted as a dependent.

When more than one household shares custody of a child and both live in assisted housing, only one household at a time can claim the dependent deduction for that child. The household with primary custody or with custody at the time of the annual recertification receives the deduction. If there is a dispute about which household should claim the dependent deduction, the owner should refer to available documents such as copies of court orders or an IRS return showing which household has claimed the child for income tax purposes.

HOTMA | Dependent Deduction

When calculating rent for HUD programs, certain deductions are taken. Among other deductions, this includes a deduction for each dependent in the household. Through 2024 this was $480. The dependent deduction will remain $480 in 2024 but will be evaluated each year and adjusted for income from 2025 on. This is not relevant to LIHTC or NHTF units, which do not use adjusted income, and very rarely for

HOME, which only uses adjusted income for over-income households in non-LIHTC HOME units. However, these adjustments will also be reflected in two *income* calculations. These are 1) the amount counted annually for adoption assistance payments received by a household and 2) the earned income counted for adult full-time student dependents of a household. These will be limited to the dependent deduction.

2. Childcare Expense Deduction

Anticipated expenses for the care of children under age 13 (including foster children) may be deducted from annual income if all the following are true:

- The care is necessary to enable a household member to work, seek employment, or further his/her education.
- The household has determined there is no adult household member capable of providing care during the hours that care is needed.
- The expenses are not paid to a household member living in the unit.
- The amount deducted reflects reasonable charges for childcare.
- The expense is not reimbursed.
- Childcare expenses incurred to permit a household member to work must not exceed the amount earned by the household member made available to work during the hours for which childcare is paid.
- While a household member is at school or looking for work, the expense for childcare is not limited.
- Childcare attributable to the work of a dependent full-time student (who cannot be the head, spouse, or co-head) is limited to not more than $480.
- Childcare payments made on behalf of a minor who is not living in the unit cannot be deducted.

Note about the below two deductions: If a household is entitled to both disability assistance expenses and unreimbursed medical expenses, the required 3% of household income expenditure is deducted from the total of both allowed expenses, not to each. Also, it is important to carefully review the collected expenses to be sure no expense has been inadvertently included in both categories.

HOTMA | Childcare Expenses

24 CFR § 5.611 (d) [2024]

Childcare expenses will be allowed as a deduction if the expenses allow an adult **to be employed or further his or her education.** This also **applies to people seeking work** as it has in the past. The amount deducted cannot exceed the combined employment income of adults allowed to work. Households will also be able to apply for a hardship exemption to allow a household that will have childcare expenses that do not allow adults to work or further education who would not be able to pay rent because of this. It allows these expenses to be used in adjusted income calculations for 90 days, subject to owner/agent's written policy and possible extensions allowed by the owner/agent policy.

3. Deduction for Disability Assistance Expense

Households are entitled to a deduction for unreimbursed, anticipated costs for "attendant care" and "auxiliary apparatus" for each household member who is a person with disabilities, to the extent these expenses are reasonable and necessary to enable any household member 18 years of age or older who may or may not be the member who is a person with disabilities to be employed.

This deduction is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds 3% of the household's annual income. However, the deduction may not exceed the earned income received by the household member or members who are enabled to work. If the disability assistance enables more than one person to be employed, the owner must consider the combined incomes of those persons. For example, if an auxiliary apparatus enables a person with a disability to be employed and frees another person to be employed, the allowance cannot exceed the combined incomes of those two people.

Auxiliary apparatus includes items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a sight-impaired person to read or type, but only if these items are directly related to permitting the disabled person or another household member to work.

- The cost of maintenance and upkeep of an auxiliary apparatus is considered a disability assistance expense (e.g., the veterinarian costs and food costs of a service animal; the cost of maintaining the equipment that is added to a car, but not the cost of maintaining the car).
- In addition to anticipated, ongoing expenses, one-time nonrecurring expenses of a current resident for auxiliary apparatus may be included in the calculation of the disability assistance expense deduction after the expense is incurred. These expenses may be added to the household's total disability assistance expense during the following annual recertification.

Attendant care includes but is not limited to reasonable expenses for home medical care, nursing services, housekeeping, and errand services, interpreters for hearing-impaired, and readers for persons with visual disabilities.

When the same provider takes care of children and a disabled person over age 12, the owner must prorate the total cost and allocate a specific cost to attendant care. The sum of both childcare and disability assistance expenses cannot exceed the employment income of the household member enabled to work.

4.Medical Expense Deduction

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 years old or is a person with disabilities (elderly/disabled households).

If the household is eligible for a medical expense deduction, owners must include the unreimbursed medical expenses of all household members, including the expenses of nonelderly adults or children living in the household.

- Medical expenses include all expenses the household anticipates incurring during the 12 months following certification/recertification that are not reimbursed by an outside source, such as insurance.
- The owner may use the ongoing expenses the household paid in the 12 months preceding the certification/recertification to estimate anticipated medical expenses.
- The medical expense deduction is that portion of total medical expenses that exceed 3% of annual income.
- In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction for current tenants at an initial, interim or annual recertification. Past one-time nonrecurring medical

expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in. If the tenant is under a payment plan, the expense would be counted as anticipated.

These expenses may be added to the household's total medical expenses at the upcoming annual recertification

When a household is making regular payments overtime on a bill for a past one-time medical expense, those payments are included in anticipated medical expenses. However, if a household has received a deduction for the full amount of a medical bill it is paying overtime, the household cannot continue to count that bill even if the bill has not yet been paid.

Not all elderly or disabled applicants or participants are aware that their unreimbursed expenses for medical care are included in the calculation of adjusted income for elderly or disabled households. For that reason, owners need to ask enough questions to obtain complete information about allowable medical expenses.

HOTMA | Health and Medical Care Expenses and Disability Assistance Expenses

24 CFR § 5.611 (c) [2024] & § 5.601 [2024]

In HOTMA, Congress changed the threshold after which elderly and disabled households can deduct health and medical care expenses and disability assistance (attendant care and auxiliary apparatus) expenses. It will be 10% of household gross annual income. This has more than tripled from the 3% it was before HOTMA.

Recognizing the hardship this may cause households currently benefiting from the lower threshold, HUD has created a phase-in for those receiving the deduction on the effective date of the HOTMA Rule. In 2024, the threshold will rise from 3 to 5% for these households. In 2025, it will go to 7.5%, and in 2026 it will finally get to the full 10% that other households will pay under HOTMA. Households will also be able to apply for a hardship exemption to put this threshold at 5% for 90 days, subject to the owner/agent's written policy and possible extensions allowed by the owner/agent policy. If they are granted this relief, the 10% will apply thereafter.

5. Elderly Household Deduction

An elderly/disabled in which the head, spouse, or co-head (or the sole member) is at least 62 years of age or a person with disabilities receives a $400 household deduction. Because this is a "household deduction" each household receives only one deduction, even if both the head and spouse are elderly or disabled.

Deductible and Nondeductible Medical Expenses

HUD Handbook HUD 4350.3 Exhibit 5-3

MEDICAL EXPENSE	MAY INCLUDE*
Services of recognized health care professionals.	Services of physicians, nurses, dentists, opticians, mental health practitioners, osteopaths, chiropractors, Christian Science practitioners, and acupuncture practitioners.
Services of health care facilities; laboratory fees, X-rays and diagnostic tests, blood, oxygen.	Hospitals, health maintenance organizations (HMOs), laser eye surgery, out-patient medical facilities, and clinics.
Alcoholism and drug addiction treatment.	
Medical insurance premiums.	Expenses paid to an HMO; Medicaid insurance payments that have not been reimbursed; long-term care premiums (not prorated).
Prescription and nonprescription medicines.	Aspirin, antihistamine only if prescribed by a physician for a particular medical condition,
Transportation to/from treatment and lodging.	Actual cost (e.g., bus fare) or, if driving in a car, a mileage rate based on IRS rules or other accepted standard.
Medical care of a permanently institutionalized family member IF his/her income is included in Annual Income.	
Dental treatment.	Fees paid to the dentist; x-rays; fillings, braces, extractions, dentures.
Eyeglasses, contact lenses.	
Hearing aid and batteries, wheelchair, walker, artificial limbs, Braille books and magazines, oxygen and oxygen. equipment	Purchase and upkeep (e.g., additional utility costs to a resident because of oxygen machine [in properties with resident paid utilities only]).
Attendant care or periodic medical care.	Nursing services, assistance animal and its upkeep.
Payments on accumulated medical bills.	Scheduled payments.

* Or any other medically necessary service, apparatus, or medication, as documented by third-party verification.

NOTE: verify medical, and disability expenses with copies of the bill or printouts from the pharmacy.

MEDICAL EXPENSE	MAY NOT INCLUDE
Cosmetic surgery	Do not include in medical expenses amounts paid for unnecessary cosmetic surgery. This applies to any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease. Procedures such as face-lifts, hair transplants, hair removal (electrolysis), and liposuction generally are not deductible. However, if medical complications, e.g., infections, etc., occur as a result of the procedure that requires medical treatment, the medical treatment expenses would be treated as a medical expense deduction. Amounts paid for cosmetic surgery may be deducted if necessary, to improve a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.
Health club dues	Do not include in medical expenses the cost of membership in any club organized for business, pleasure, recreation, or other social purpose, such as health club dues, YMCA dues, or amounts paid for steam baths for general health or to relieve physical or mental discomfort not related to a particular medical condition.
Household help	Do not include in medical expenses the cost of household help, even if such help is recommended by a doctor. However, certain expenses paid to a person providing nursing-type services may be deductible as medical costs. Also, certain maintenance or personal care services provided for qualified long-term care can be included in medical costs.
Medical savings account (MSA)	Do not deduct as a qualified medical expense amounts contributed to an Archer MSA.
Nutritional supplements, vitamins, herbal supplements, "natural medicines"	Do not include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, "natural medicines," etc., **unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing. Otherwise, these items are taken to maintain ordinary good health and are excluded.
Personal use items	Do not include in medical expenses an item ordinarily used for personal, living, or family purposes unless it is used primarily to prevent or alleviate a physical or mental defect or illness. For example, the cost of a wig purchased upon the advice of a physician for the mental health of a patient who has lost all of his or her hair from disease or incontinence supplies can be included with medical expenses.
Nonprescription medicines	Do not include in medical expenses nonprescription medicines unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing.

Exhibit 4.3 – Sample Format for Calculating Part 5 Adjusted Income

1.	Enter Annual Income.		1.
2.	Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2.	
3.	Multiply line 2 by $480. **HOTMA: replace $480 with the current dependent deduction.**		3.
4.	If a family member is enabled to work or further their education as a result of child care expenses, enter the unreimbursed annual child care expenses (reasonable child care expenses for children age 12 and under).	4.	
5.	If the family member was enabled to work as a result of the child care expenses, enter that family member's annual employment income.	5.	
6.	If an amount is reported in Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.		6.
7.	If the household qualifies as an elderly and/or disabled household, enter $400. **HOTMA: replace $400 with the current elderly deduction.**		7.
8.	Add Lines 3, 6, and 7.	8.	
9.	*If this household has no unreimbursed disability assistance or medical expenses*, subtract Line 8 from Line 1. This is **Adjusted Income** for this household *without* these expenses.		9.

************ FILL IN LINES 10 THROUGH 20 IF THE FAMILY HAS UNREIMBURSED DISABILITY ASSISTANCE OR MEDICAL EXPENSES ************

10.	Enter unreimbursed annual disability assistance expenses.	10.	
11.	Enter the annual earned income of the family member enabled to work as a result of unreimbursed disability assistance expenses.	11.	
12.	Enter the lesser of Lines 10 or 11.	12.	
13.	Enter unreimbursed annual medical expenses.	13.	
14.	Add Lines 12 and 13.	14.	
15.	Multiply Line 1 by 0.03. **HOTMA: replace .03 with .10.**	15.	
16.	Subtract Line 15 from Line 12. If negative, enter 0.		16.
17.	Subtract Line 15 from Line 13. If negative, enter 0.		17.
18.	Subtract Line 15 from Line 14. If negative, enter 0.		18.
19a.	If the household reported only unreimbursed disability expenses but no unreimbursed medical expenses, add Lines 8 and 16.	19a.	
19b.	If the household reported only unreimbursed medical expenses but no unreimbursed disability expenses, add Lines 8 and 17.	19b.	
19c.	If the household reported both unreimbursed disability expenses and unreimbursed medical expenses, add Lines 8 and 18.	19c.	
20.	Subtract either Line 19a, 19b, or 19c from Line 1. This is **Adjusted Income** for this household *with* these expenses.		20.

HOTMA Prep Checklist | Management Edition

Programs funding the owner/agents properties:

- ❑ LIHTC:
- ❑ HOME:
- ❑ NHTF:
- ❑ HUD Sec 8:
- ❑ Other:

Where Policy Documentation May Need Adjustment

- ❑ **Software.** All major software vendors state that they are working on HOTMA-related issues. If these are not ready by September 2023, when certifications that are due in January 2024 may begin, a backup plan may be required. HUD properties will have the most heavy need for adjustments. These will relate to recertification cycles, gross, and adjusted income The workarounds for LIHTC/HOME/NHTF will be less, revolving around gross income issues.
- ❑ **Internal monitoring checklists** used by compliance staff may need to be revised as they relate to income and asset issues. These are more often detailed than software used by the Owner/Agent, although they may be electronic and tied to the software.
- ❑ **LIHTC and HOME Company Policy Manuals, websites,** and other places where policies are addressed will need to be adjusted. How much owner/agent policy draws on federal guidance by reference (for example defining income calculations "per 24 CFR 5.609") as opposed to translating federal guidance (which the 8823 Guide did and is now partially obsolete) will determine the extent of the needed revisions. The latter approach will require more revision.

Minimum HOTMA policy adjustments needed include:

- ❑ **What will the state HOTMA implementation schedule be in 2024?**
- ❑ **What is the state agency's decision relating to the $5,000 OR $50,000 asset rule and self-certification?**
- ❑ Removal of the Earned Income Disregard (HOME only)
- ❑ Agency policy re. requirement to use PBRA income determinations for HOME and NHTF
- ❑ Agency policy re. requirement to use TBRA income determinations for NHTF.
- ❑ Agency policy re. whether the PJ will require TBRA income determinations for HOME.
- ❑ Revised definitions of income
  - Removal of income inclusions
    - Suggestion: keep any specific scenario examples of inclusions from past guidance. Although inclusions are no longer enumerated in the regulation, they continue to apply.
  - **Use new list of 28** income exclusions
- ❑ Revised definitions of assets **[24 CFR 5.603 definition "Net family assets"]**
  - Removal of asset inclusions
    - Suggestion: keep any specific scenario examples of inclusions from past guidance. Although inclusions are no longer enumerated in the regulation, they continue to apply.

- **Use new list of 11** asset exclusions **[24 CFR 5.609(b)]**
- Imputed asset rules
- **Removal of child support/alimony court ordered requirement: count only what is received.**
- **Removal of 6-month average on checking: use current balance.**

Communicating Changes

- ❑ Will the Agency communicate updated information to owner/agents?
  - What personnel role is responsible for disseminating updates from the Agency to company employees?
- ❑ If Agency will not communicate changes:
  - What staff role is responsible for monitoring federal and state sources for updates?
  - What staff role is responsible for disseminating updates to company employees?

At a minimum, periodic changes will include:

- ❑ The imputed asset passbook savings rate (example: .06% up through 2023).
- ❑ The threshold cash value of assets to determine whether individual assets for which income cannot be determined will have income imputed and if non-essential personal property will have to be counted ($50,000 in 2024, adjusted annually thereafter).
- ❑ The asset limitations for Section 8 ($100,000 in 2024, adjusted annually thereafter).
- ❑ The elderly household deduction for adjusted income rents for subsidy programs only ($400 through 2023 and $525 in 2024, adjusted annually thereafter).
- ❑ The dependent deduction ($480 through 2024, adjusted annually thereafter) that will determine the amount of income counted for:
  - adult dependent full-time students.
  - the annual amount of adoption assistance income counted for each adopted child.
- ❑ Federally excluded income types.

Note: HUD has indicated an intention to publish these through notice(s) for each year **by September** of the prior year.

Determining State Calculation Policies | "Restrictive" Methods

Considering the potential for program alignment and consistent treatment of tenants, the following non-Section 8 calculation methodologies may be reevaluated by your state Agency, if applicable to your state in the past.

- ❑ ***Year-to-date*** as an eligibility determiner
  State policy:
- ❑ Using the highest in a ***range*** (such as hours worked for employment)
  State policy:
- ❑ Estimating possible ***income that is unsecured and unverifiable.***

State policy: ______ __________ ________

- ❑ If any of the above will be required by the Agency, prepare justification, if challenged, citing Agency policy and contact information.

Note: this is likely to be challenged because HOME and the NHTF must use the income determination of PBRA and the NHTF (and possibly HOME, depending on PJ policy) will use the determination of the PHA for TBRA. More importantly, HUD programs may use LIHTC income determinations for establishing gross income as a basis for HUD rental calculations.

Determining Owner Calculation Policies | "Restrictive" Methods

One state policies are addressed, he owner/agent will evaluate their policies, which are often more restrictive. Considering the potential for program alignment and consistent treatment of tenants, the following non-Section 8 calculation methodologies may be evaluated, if applicable in the past. Investor/syndicator input may be needed. If an owner implements any of these policies at odds with state policy, determine if these will be treated as state or federal noncompliance.

- ❑ ***Year-to-date*** as an eligibility determiner
- ❑ Using the highest in a ***range*** (such as hours worked for employment)
- ❑ Estimating possible ***income that is unsecured and unverifiable***.
- ❑ If the above will be required, prepare justification if challenged (especially if stricter than state policy).

State Law Matters

To determine some income situations accurately, an owner/agency must:

- ❑ Secure the state law definition of foster adults. Reference to state law: ____________
- ❑ Secure the state law definition of foster children. Reference to state law: ____________
- ❑ Secure the state law definition of real property. Reference to state law: _ ___________
  - o Including manufactured homes
- ❑ Will the above definitions be communicated from the state HFA?
  - o If yes, how? ____________
  - o If yes, who will disseminate to the company?

Recertification Issues

100% LIHTC properties

Secure from the state the following policies. If the state Agency requires *first-year annual income recertification at 100% projects, what definition of income is required?*

- ❑ Agency does not require income recertification at 100% properties [move to next main header]
- ❑ Anticipated income
- ❑ Prior year's income
- ❑ It is up to the owner/agent

Less than 100% LIHTC Properties

For federally required recertifications, *what definition of income is required?*

- ❑ Anticipated income

- ❑ Past year's income
- ❑ It is up to the owner/agent

Fast Act "Streamlining"

- ❑ State policy allows Fast Act Streamlining
- ❑ State policy disallows Fast Act Streamlining
- ❑ State policy leaves the decision to the owner/agent

Verification Issues

Assets

Secure from your state Agency:

- ❑ Will the asset self-certification threshold be tied to $5,000 or $50,000 **(adjusted for inflation annually?**

Income Determinations

If the owner/agent wants to reconcile HOME and NHTF to LIHTC, it must evaluate the extent to which the same income determination and verification of this can be allowed to be used across the board. This means that:

- ❑ PBRA income determination will be used for all units, using HUD rules.
- ❑ PHA-assisted units will use:
  - PHA determinations (as already allowed by LIHTC guidance) OR
  - The LIHTC determination, if the PHA policy allows it as an alternative "means-tested" program determination.

Policy on the above: ______________________________

____

____

Forms

Tenant Income Certification (TIC)

The Asset section of the TIC may need to be adjusted for HOTMA imputed asset income rules

- ❑ The Agency provides a required TIC
- ❑ The Agency provides a suggested TIC
- ❑ The Agency leaves the TIC used up to the owner/agent

Income/Asset Verification Forms

Does the Agency have forms relating income/assets that are changed by HOTMA? If not, does the owner/agent? These may include (in the order they appear in the new HOTMA regulation, and then Implementation Notice):

- ❑ Application/questionnaires.
- ❑ Calculation worksheets [to the extent that they provide instructions affected by HOTMA].
- ❑ Trusts [for new HOTMA approach to ALL trusts].
- ❑ Worker's compensation [to determine if worker's compensation will continue beyond the coming year and be included or end during year and be excluded]

- ❑ Student financial assistance [to ask questions relevant to Section 8 and non-Secton 8 Assisted households].
- ❑ Veteran's benefits [to determine if any parts of the benefits are being paid for delayed benefits or aid and attendance]
- ❑ Retirement accounts [only information about periodic withdrawals needs to be gathered]
- ❑ **Bank asset verification form (gather current balance for checking)**
- ❑ **$5,000 asset self-certification form [or $50,000, depending on state agency policy]**
- ❑ Forms for PHA verification of income (required for NHTF and HOME)
- ❑ Forms for LIHTC verification of income (to use for HUD programs)
- ❑ **Child Support/Alimony/Spousal Support Affidavits** [eliminate – court orders are now irrelevant, or will be part of the usual verification process and not a major determiner for these support types].

Combining LIHTC with Other Programs

Note for compliance decision-makers | In an era of existentially difficult staffing issues, owner/agent policies without solid rationale, or just because "we've always done it that way" may have very real financial implications for owners and directly support or impede the success of affordable housing. This may negatively impact the number of low-income households served.

Determine Involved Additional Program Requirements

- ❑ What other funding sources will be used?
  - Tax-exempt bond
  - HOME (fixed or floating)
  - Section 8
  - Section 811 PBRA
  - National HTF
  - Other: ____________

HUD PBRA and TBRA

PBRA

- ❑ The owner/agent may use LIHTC income determinations for determining annual income for PBRA. This will need to be implemented in a policy that promotes fair treatment of all residents – LIHTC-only and LIHTC/HUD-assisted.
  - This is problematic if state or owner/agent LIHTC policies differ from HUD Section 8 rules.

TBRA

- ❑ The PHA may use LIHTC income determinations generated by theowner/agent for establishing annual income. This will need to be implemented in a policy and promote fair and consistent treatment of TBRA and non-TBRA residents.
- ❑ If the PHA will use LIHTC income determinations, a communication channel will have to be established with the PHA to allow for timely move-ins.

HOME

- ❑ Will the owner/agents use the "$5,000" asset certification for LIHTC purposes when HOME also requires full asset verification, or
- ❑ Only use full asset verification, subject to Agency policy.

Note: this applies at move-in and every 6th year of the HOME affordability period. For other years, the HOME PJ may allow self-certification for years other than each 6th year of the HOME affordability period. This self-cert includes assets verification.

- ❑ If HOME self-certs are allowed, will the state LIHTC Agency
  - ❑ Allow the HOTMA HOME $50,000 asset affidavit or
  - ❑ Limit it to $5,000.

    Note: If a state LIHTC Agency does not explicitly allow the $50,000, an owner/agent will need to stick with the $5,000 limit, as this is in federal IRS guidance, and only the state has the authority to adjust this.
- ❑ **PBRA Income Determinations.** For HOME units, the owner/agent must use PBRA income determinations. If the methodologies required differ from state Agency LIHTC policies, conducting two income determinations will be required.
- ❑ **TBRA Income Determinations.** For HOME units, the owner/agent may be required to use TBRA income determinations.
  - ❑ PJ policy does not require the use of PHA income determinations for PBRA.
  - ❑ PJ policy requires the use of PHA income determinations for PBRA.
    - ❑ If state Agency LIHTC policies do not allow using PHA verification, it will require two income determinations for each HOME certification.
- ❑ The HOME PJ and the local PHA do not allow the use of LIHTC calculations for NHTF purposes as a "means-tested" program.
- ❑ The HOME PJ and the local PHA allow the use of LIHTC calculations for NHTF purposes as a "means-tested" program.
  - ❑ The owner/agent will need to secure any specific required forms or procedures.

NHTF

- ❑ Will the owner/agents use the "$5,000" asset certification for LIHTC purposes when NHTF also requires full asset verification, or
- ❑ Only use full asset verification, subject to state policy.

  Note: this applies at move-in and every 6th year of the NHTF affordability period. For other years, the NHTF grantee may allow self-certification for years other than each 6th year of the NHTF affordability period. Thus self-cert includes asset verification.
- ❑ If NHTF self-certs are allowed, will the state LIHTC Agency
  - ❑ Allow the HOTMA NHTF $50,000 asset affidavit or
  - ❑ Limit it to $5,000.

    Note: If a state LIHTC Agency does not explicitly allow the $50,000, an owner/agent will need to stick with the $5,000 limit, as this is in federal IRS guidance, and only the state has the authority to adjust this.
- ❑ **PBRA and TBRA Income Determinations.** For NHTF units, the owner/agent must use PBRA and TBRA income determinations for NHTF purposes.

    - ❑ If the methodologies required for the PB/TBRA differ from state Agency LIHTC policies, conducting two income determinations will be required for every NHTF certification.
- ❑ The NHTF grantee and the local PHA do not allow the use of LIHTC calculations for NHTF purposes as a "means-tested" program.
- ❑ The NHTF grantee and the local PHA allow the use of LIHTC calculations for NHTF purposes as a "means-tested" program.
    - ❑ The owner/agent will need to secure any specific required forms or procedures.

Notes |