



## **HOTMA Manual**

**April 2, 2024**

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## PREFACE

MHDC and its monitoring staff are committed to working closely with owners, management agents, and onsite personnel to assist them in meeting their compliance responsibilities. Please note, however, that this manual is to be used only as a supplement to compliance with Housing Opportunities Through Modernization Act of 2016 (HOTMA) and all other applicable laws and rules. This manual should not be considered a complete guide to HOTMA compliance. The responsibility for compliance with federal program regulations lies with the owner. This manual is produced for use by MHDC Program participants in Missouri, and to be used in conjunction with applicable program rules and Regulatory/Restriction Agreements. Because of the complexity of regulations and the necessity to consider their applicability to specific circumstances, owners are strongly encouraged to seek competent, professional legal and accounting advice regarding compliance issues. MHDC's obligation to monitor for compliance with the requirements of applicable Programs does not make MHDC or its subcontractors liable for the owner's noncompliance.

The publication of this manual is for convenience only. Asset Management Manuals and Reference Guides may be updated from time to time due to regulation or improvements. Your use or reliance upon any of the provisions or forms contained herein does not, expressly, or impliedly, directly, or indirectly, suggest, represent, or warrant that your property will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended. The Missouri Housing Development Commission and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants as MHDC will not make authoritative interpretations of the federal law. Employees and officers of MHDC are not liable for any adverse consequences to taxpayers and/or investors as a result of programmatic noncompliance with federal laws.

## INTRODUCTION

HOTMA extensively changes how HUD calculates income for a property. This involves both periodic income and income calculated from assets. HUD published the Final rule officially in the Federal Register in February 2023. HOTMA covers Sec. 102 ["Income reviews"], Sec.103 ["Limitation on public housing tenancy for over-income families," effective March 16, 2023], and Sec. 104 ["Limitation on eligibility for assistance based on assets," effective January 1, 2024]. Title I of HOTMA contains 14 sections that affect the public housing and Section 8 rental assistance programs (*Section 8 PBRA (including RAD), Section 202/811 Project Rental Assistance Contract (PRAC), 202/8, 202/162 PAC, Senior Rental Preservation Assistance Contract (SPRAC), and Section 811 Project Rental Assistance (PRA)*). **LIHTC, HOME, and NHTF are affected by HOTMA Section 102 provisions, effective January 1, 2024.** MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF. *HUD HOTMA reference and updates can be found at: [https://www.hud.gov/program\\_offices/housing/mfh/hotma](https://www.hud.gov/program_offices/housing/mfh/hotma).*

## COMPLIANCE TRAINING REQUIREMENTS

Compliance monitoring is administered by the MHDC Asset Management Department. Questions regarding compliance issues should be directed to compliance staff at (314) 877-1350 or (816) 759-6600. For additional information on the responsibilities of MHDC and the responsibilities of the property owner/agent, refer to the MHDC LIHTC and HOME manuals, Regulatory Agreement(s), and applicable MHDC Developer's Guide.

All property owners and management agents are required to attend ongoing Compliance Training, and training is to be updated at least every two years from the last training. The owner must ensure that the onsite management knows, understands, and complies with all applicable federal and state rules, regulations, and policies governing the property. MHDC encourages the owner to make certain that the property's management and compliance personnel are familiar with all MHDC program compliance manuals and forms and information on the MHDC website.

MHDC strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. It is suggested that staff attend a

Fair Housing and Equal Opportunity training at least once every calendar year. All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws.

The effectiveness of the training will be measured during site inspections and in looking at the success of the property and or management portfolio overall. Participation in training is mandatory and MHDC compliance staff may, at their

discretion, mandate additional trainings for those management personnel/companies that Exhibit trends in noncompliance, are issued non-corrected 8823s, and/or otherwise demonstrate a need for basic or advanced compliance training.

## MHDC HOTMA APPLICABILITY CHART

	HOME	NHTF	LIHTC
Net Family Assets Definition (§ 5.603)	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.
Annual Income Definition (§ 5.609(a))	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.
Annual Income Exclusions (§ 5.609(b))	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	<b>Yes</b> , MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.
Annual Income Calculation & Reexaminations (§ 5.609(c))	<b>No</b> , 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. <i>*See MHDC Program Compliance Manuals regarding Qualifying and Certifying Residents &amp; Section 8 Assistance.</i>	<b>No</b> , 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.	<b>No</b>
Adjusted Income Mandatory Deductions (§ 5.611(a))	<b>Yes</b> , 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.	<b>No</b> , 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.	<b>No</b>
Adjusted Income Additional Deductions (§ 5.611(b))	<b>Yes</b> , if a household is over-income and rent is based on adjusted income at HOME properties without LIHTC funding.	<b>No</b> , 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.	<b>No</b>
Adjusted Income Financial Hardship Exemptions (§ 5.611(c))	<b>Yes</b> , 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. <i>*See MHDC Program Compliance Manuals regarding Qualifying and Certifying Residents &amp; Section 8 Assistance.</i>	<b>No</b> , 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.	<b>No</b>
Restrictions on No Eligibility of Households with Assets Over \$100,000 or who Own a Home (§ 5.618)	<b>No</b>	<b>No</b>	<b>No</b>

\*Table format courtesy of Costello Consulting.

**Note:** MHDC implements the HOTMA provisions, effective January 1, 2024, with the exception that MHDC will continue to use anticipated income to be received during the 12 months from the effective date of the certification, to determine a household's eligibility. Reference: Treas. Reg. 1.42-5 (B) (vii); 8823 Guide 1-2; [https://www.hud.gov/program\\_offices/housing/mfh/hotm](https://www.hud.gov/program_offices/housing/mfh/hotm); Federal Register/Vol.88, No.30/Tuesday, February 14, 2023/Rules and Regulations 9601.

## CHAPTER 1: INCOME ELIGIBILITY

Annual Income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income. Some circumstances present more than the usual challenges to estimating anticipated income. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. (HUD Handbook 4350.3)

Recertifications: MHDC implements the HOTMA provisions, effective January 1, 2024, with the exception that MHDC will continue to use anticipated income to be received during the 12 months from the effective date of the recertification. For further reference on MHDC LIHTC and HOME recertification requirements, see the MHDC LIHTC Manual and MHDC HOME Manual at [www.mhdc.com](http://www.mhdc.com).

*\*Owner/Agents are urged to consult with their own attorneys, accountants, and tax consultants as MHDC will not make authoritative interpretations of the federal law. Employees and officers of MHDC are not liable for any adverse consequences to taxpayers and/or investors as a result of programmatic non-compliance with federal laws.*

See HUD Notice H 2023-10 for additional reference, charts, and examples as it relates to HOTMA; Income and Assets.

### 1.1 HOTMA Income Terms

#### **24 CFR §5.100 [2024]**

**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.”

#### **24 CFR § 5.609(b)(24) [2024]**

These workers’ income from these activities, although potentially sporadic, does not fit HUD’s definition of “non-recurring” and is therefore counted as income.

**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.”

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

Although used for occupancy bedroom size standards and utility allowance purposes (if applicable), **fosters members are no longer counted as household 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 Handbook 4350.3 REV-1. 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.

Foster adults and foster children are members of the household. They will be considered when determining appropriate unit size and utility allowance. Under HOTMA, HUD clarifies that foster adults and foster children are no longer considered members of the assisted family and as such, their income and assets are excluded.

<b>Whose Income is Counted?</b> (HUD 4350.3 5-6/5-7; HUD 4350.3 Figure 5-2/5-8)		
<b>Household Member</b>	<b>Earned Income</b>	<b>Unearned Income</b>
Head, Spouse, Co-head	Yes	Yes
Other Adult Household Member	Yes	Yes
Children (under the age of 18)	No	Yes
Foster Adults and Children	No	No
Full-Time Student (18 & older - not the head, co-head, or spouse)	Yes, up to current dependent deduction	Yes
Temporarily Absent Household Member (HUD 4350.35-6 B./5-9)	Yes	Yes
Permanently Confined Family Members (i.e. living in a hospital or nursing home; HUD 4350.3 5-6 D./5-11)	Household Decision	
Live in Attendant/Guests (non-household member)	No	No

## 1.2 Annual Income Inclusions and Exclusions

**Annual Income Includes** (24 CFR §§ 5.609(a)(1)-(a)(2); and 891.105)

- (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 (HUD will adjust the amount annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)) 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.

**Income Exclusions** (24 CFR § 5.609(b))

- Irrevocable Trusts or Revocable Trust outside the control of the household:
  - Distributions from the principal or corpus
  - Distributions of income IF distributions are used to pay for the cost of health and medical expenses for a minor.
- Revocable Trust under the control of the 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.
- Income of foster children or foster adults
- Income and distributions from any Coverdell education savings account (under IRC Section 529 or Section 530) and distributions from, “baby bond” accounts.
- 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;
- Loan proceeds
- Replacement “Gap” Payments under the Uniform Relocation Act
- 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 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.
- 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.
- Income earned on amounts placed in a family's Family Self Sufficiency Account.
- Earned Income of Dependent Students
  - Amount to be adjusted annually by HUD In accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers.
- Adoption Assistance Payments
  - Amount to be adjusted annually by HUD In accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers.
- Student Financial Assistance
  - Student Financial Assistance has been redefined and exceptions modified. Please section on student financial assistance.
- Trust Accounts
  - Irrevocable Trusts or Revocable Trust outside the control of the household:
    - Distributions from the principal or corpus
    - Distributions of income IF distributions are used to pay for the cost of health and medical expenses for a Minor.
  - Revocable trust under the control of the 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.

*Example of Payments from a Trust:* Louise receives periodic income distributions from a non-revocable trust established by their parents. Last year they received \$25,000 from the trust. The attorney managing the trust reported that \$5,000 of the funds distributed was interest income and \$15,000 was principal.

Only include the \$5,500 in interest income when determining annual income. The amount of the distribution that is principal is excluded.
- Fosters
 

Change in Treatment of Fosters:

  - All income received by foster children and foster adults is excluded from income.
  - Fosters are not eligible for any expenses or deductions when determining adjusted income.
  - Any assets held by fosters must be excluded from the asset limitation.
  - Foster children and adults must not be included when making the determination of household size for income limit purposes but are included for unit size determinations.
- Non-Cash Contributions (See HUD Notice H 2023-10 Attachment G, G.1 Nonrecurring Income)



- In-Kind Donations: HOTMA excludes as income any non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization. HUD HOTMA Notice update February 2, 2024: “Attachment G, subtopic G.I.f, HUD clarified that non-recurring, non-monetary in-kind donations from friends and family may be excluded as non-recurring income.”
- Nonrecurring Income, from HUD Notice H 2023-10 (*See 24 CFR §§ 5.609(b)(24); CFR 891.105; and the list of exclusions codified at 24 CFR § 5.609(b)(24) as nonrecurring income (please note that the list is not exhaustive.)*):

Summary: The nonrecurring income exclusion replaces the former exclusion for temporary, nonrecurring, and sporadic income (including gifts), but it provides a narrower definition of excluded income in contrast to the former broad exclusion of temporary, nonrecurring, or sporadic income.

- Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income, 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. For example, an increasing number of cities and states are piloting guaranteed income programs that have discrete beginning and end dates. This income can be excluded as nonrecurring in the final year of the pilot program. *For example*, for an annual reexamination effective 2/1/2024, guaranteed income that will be repeated in the coming year but will end before the next reexamination on 2/1/2025 will be fully excluded from annual income.
- 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.
- Workers’ compensation payments, regardless of the length or frequency of the payments, are always excluded from annual income.
- Uniform Relocation Act (URA) Gap Payments (see HUD Notice H 2023-10, G.15 and 24 CFR § 5.609(b)(23))
  - Replacement housing “gap” payments made in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”), as implemented by 49 CFR Part 24, are excluded from annual income. However, replacement housing “gap” payments are not excluded from annual income if the increased cost of rent and utilities is reduced or eliminated, and the displaced person retains or continues to receive the replacement housing “gap” payments. Replacement housing “gap” payments should cover a minimum of 42 months of tenancy at the new unit.

#### **24 CFR §5.609(b) [2024]: Annual Income Does Not Include:**

*Note: Income types unchanged by HOTMA are indicated in italics.*

- (1) Any imputed return on an asset when net family assets total **\$50,000 or less** 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.

#### **Example, Payments from a Trust**

John receives periodic income distributions from an irrevocable trust established by their parents. Last year they received \$20,000 from the trust. The attorney managing the trust reported that \$6,500 of the funds distributed was interest income and \$13,500 was principal.

In this example, only include the \$6,500 in interest income when determining annual income. The amount of the distribution that is principal is excluded.

- (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) **HOTMA made significant changes to the treatment of Student Financial Assistance.** Two significant changes were made:
  1. Removed Student Financial Assistance Income Exclusion for Non-Section 8 Households
    - i. Under the new regulation, the Section 8 component has been removed from 24 § CFR 5.609;
    - ii. meaning, any household receiving student financial assistance, regardless of whether or not subsidy is being received, may need to have student financial assistance included in the household's annual income determination. Further, the new regulation does not include an exception for students who are over the age of 23 with a dependent child or students who are living with their parents.
  2. Changed the Definition of "Excess" Student Financial Assistance

**Note:** For Section 8 Students, in the event that the student is over the age of 23 with a dependent child or the student is living with the parents, financial assistance is excluded.

#### **Student Assistance Type 1: Assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA) or the Bureau of Indian Affairs Student assistance program (BIA)**

Any assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA), as amended, is excluded from income. All assistance under the Higher Education Act (HEA) or the Bureau of Indian Affairs Student assistance program (BIA), even amounts in excess of actual covered costs of the student, are excluded from income.

**Note:** Below is a list of HEA Title IV programs, 24 CFR 5.609(b)(9)(i). Title IV HEA Assistance refers to any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires to be excluded from a family's income. 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 farm work
- 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*

Example:

#### **HEA Assistance Only**

- Actual covered costs: \$15,000
- Title IV HEA assistance (i.e., Pell Grant): \$20,000
- Other student financial assistance: \$0
- Included income: \$0

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, exclude the full amount of the assistance received.

#### **Student Assistance Type 2: Other Student Financial Assistance**

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. Other student financial assistance, such as scholarships or grants not covered under HEA or BIA; the amount of assistance that is in excess of "actual covered costs" of the student are included in annual income.

(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

- (5) 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. The educational institution must meet the definition of an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)).
- (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.

#### **Other Student Financial Assistance Only**

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source:

- 1) Calculate actual covered costs
- 2) Subtract the total amount of the student's financial assistance from the student's actual covered costs
- 3) Include any amount of financial assistance in excess of the student's actual covered costs

*Example:*

- Actual covered costs: \$20,000
- Title IV HEA assistance: \$0
- Other student financial assistance: \$25,000
- Calculation: \$25,000 in financial assistance - \$20,000 in actual covered costs

Included income: \$5,000

#### **BOTH: Title IV HEA assistance AND Other Student Financial Assistance**

Combined Assistance: In the event a student has student financial assistance that includes assistance that is covered under the HEA, as well as assistance that is not covered under the HEA, HUD states the following formula must be used in order to determine how much may be excluded when determining income.

When a student receives assistance from both Title IV of the HEA and from other sources:

- 1) Calculate the actual covered costs
- 2) Assistance received under Title IV of the HEA is applied to the student's actual covered costs first
- 3) Then apply the other student financial assistance to any remaining actual covered costs

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the student financial assistance is excluded from income.

To determine the amount to include in annual income (Step 2), the amount permitted to be excluded must be determined first (Step 1).

Step 1: Determine which amount is lower:

- The total amount of scholarships or grants not excluded under the HEA, or
- The amount by which the student's actual covered costs exceeds the HEA assistance.

Step 2: Subtract the amount determined in Step 1 from the amount of the scholarship or Grant not covered under the HEA. This is the amount that must be included in income.

HOTMA New Regulation Examples #1-#3; Student **DOES NOT** receive Section 8 Assistance (Based on examples found in HOTMA Final Regulation):

**Example 1:** A student, who does not receive Section 8 assistance, receives the following in student financial assistance:

- \$15,000 Scholarship under the HEA
- \$5,000 Private Scholarship not covered under HEA

Student's actual covered costs: **\$22,000**

Step 1: To determine the amount that may be excluded, **use the lower of:**

- The total amount of scholarships or grants not excluded under the HEA (\$5,000)
- The amount by which the student's actual covered costs exceeds the HEA assistance.  
( $\$22,000 - \$15,000 = \$7,000$ )

Step 2: Subtract the excludable amount from the total financial assistance not covered under the HEA.  
( $\$5,000 - \$5,000 = \$0$ )

As the amount of the scholarship combined with the assistance excluded under HEA (\$20,000) is less than the student's actual covered costs (\$22,000), **no financial assistance will be included in income.**

**Example 2:** A student, who does not receive Section 8 assistance, receives the following in student financial assistance:

- \$15,000 Scholarship under the HEA
- \$5,000 Private Scholarship not covered under HEA

Student's actual covered costs: **\$18,000**

Step 1: To determine the amount that may be excluded, use the lower of:

- The total amount of scholarships or grants not excluded under the HEA (\$5,000)
- The amount by which the student's actual covered costs exceeds the HEA assistance ( $\$18,000 - \$15,000 = \$3,000$ )

Step 2: Subtract the excludable amount from the total financial assistance not covered under the HEA. ( $\$5,000 - \$3,000 = \$2,000$ )

As the student's assistance is more than actual covered costs, **the excess of \$2,000 must be included when determining income.**

**Example 3:** A student, who does not receive Section 8 assistance, receives the following in student financial assistance:

- \$25,000 Scholarship under the HEA
- Student's actual covered costs: **\$18,000**

Since the only form of student financial assistance received is covered under the HEA, the entire amount of the above scholarship is excluded from income, even though the assistance exceeds actual covered costs.

### **Additional Student Financial Assistance Examples:**

Actual covered costs: \$24,000

Title IV HEA assistance: \$25,000

No remaining actual covered costs

Other student financial assistance: \$4,000

Included income: \$4,000 in other financial assistance

Actual covered costs: \$22,000

Title IV HEA assistance: \$15,000

Calculation: \$22,000 actual covered costs - \$15,000 Title IV HEA assistance=\$7,000 remaining

Other student financial assistance: \$5,000

Calculation: \$5,000 other financial assistance - \$7,000 remaining actual covered costs=

Included income: \$0

Actual covered costs: \$18,000

Title IV HEA assistance: \$15,000

Calculation: \$18,000 actual covered costs - \$15,000 Title IV HEA assistance=\$3,000 remaining

Other student financial assistance: \$5,000

Calculation: \$5,000 other financial assistance - \$3,000 remaining=

Included income: \$2,000

A household has these forms of student financial assistance.

A Pell Grant (Title IV HEA assistance): \$11,000

A scholarship from a local business: \$5,000

Covered education expenses are \$10,500

ALL of the scholarship is counted as income, as the Title IV HEA 479B assistance covers all of the allowed educational expenses.

A household has these forms of student financial assistance.

A Pell Grant (Title IV HEA assistance): \$12,000

A scholarship from a local business: \$6,000

Covered education expenses are \$15,000

\$3000 of the scholarship is counted as income, as the Title IV HEA 479B assistance does not cover all of the allowed educational expenses.

A household pays for its schooling in the following ways.

A scholarship from a local business: \$5000

Parents outside the household: \$19,000

Covered education expenses are \$14,000

All of the scholarship money is EXCLUDED as income because it does not cover the education expenses. However, the contributions by the parent do not qualify as student financial assistance and are COUNTED AS INCOME.

**Note:** This applies to full-time and part-time.

**Note:** NHTF does not currently have student rules.

**HUD HOTMA notice update February 2, 2024: “Chart G2: Formula for Calculating Excess Amounts of Financial Assistance Subtract total tuition plus required fees and charges from the total student financial assistance from all sources to arrive at excess amount of student financial assistance.**

If the excess amount of student financial assistance is a positive number, then include that amount in annual income. If the excess amount of student financial assistance is zero or negative, then do not include that amount in annual income. If the total tuition plus required fees and charges is zero or exceeds the amount of total financial assistance from all sources, then no excess amounts of student financial assistance will be included in annual income. Any amount of student financial assistance that exceeds the total tuition plus required fees and charges must be included in annual income.”

Example from HUD Notice update:

**Example G13: Treatment of Student Financial Assistance in Section 8 Programs**

Roberto is a 22-year-old full-time student without dependent children. Since Roberto is a Section 8 participant head of household who is not over 23 with dependent children, the PHA/MFH Owner follows the Appropriations Act policy to determine if Roberto receives student financial assistance in excess of tuition from both HEA and other sources. Roberto received the following amounts to cover his first year of college: Federal Pell Grant: \$12,000; University Scholarship: \$22,000; City Scholarship: \$3,000.

Total assistance received under 479B of HEA: \$12,000 (Federal Pell Grant)

Total other student financial assistance received: \$25,000

Total student financial assistance from all sources: \$37,000

Total tuition + required fees and charges: \$27,000

Subtract the total cost of tuition + required fees and charges from the total amount of student financial assistance:  
 $\$37,000 - \$27,000 = \$10,000$

The total amount of student financial assistance from all sources received by Roberto exceeds the total amount of tuition and required fees and charges.

Excess student financial assistance: \$10,000

Amount of student financial assistance included in Roberto’s income: \$10,000

- (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) *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, *a 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. (Note: this previously said “in excess of \$480”) (For Section 8)*

Earned Income of Dependent Full-Time students, Regulation: 24 CFR § 5.609(b)(14)

Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611 is excluded from annual income. Full-time students must be dependent family members for this exclusion to apply. This exclusion does not apply to the head of household, spouse, or co-head. This means that the first \$480 of the income earned by dependent full-time students will be included in the family's calculation of annual income.

The dependent deduction will be adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). See Attachment H in HUD Notice H 2023-10, issued 9/29/2023 (*Notice remains in effect until amended, superseded, or rescinded*). Full-time dependent students are eligible to receive both the \$480 (as adjusted for inflation) dependent deduction and the exclusion described in this paragraph.

(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 part of the Uniform Relocation Act.*



(24) **Non-recurring income** (24 CFR 5.609(b)(24), 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.

Non-recurring 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.
  - *The exclusion is “non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.” See 24 CFR § 5.609(b)(24). According to HUD, the exclusion specifies that gifts for holidays, birthdays, or other significant life events or milestones are excluded from income. However, other gifts that are simply provided to the family on a regular and routine basis (e.g., a relative or friend provides a member of the family with cash gifts on a weekly or monthly basis) would be included in income.*
  - ***See comments on the HOTMA Final Rule at Federal Register/Vol. 88, No. 30/Tuesday, February 14, 2023/Rules and Regulations, page 9630.***
- 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. 24 CFR 5.609(b)(26)*

(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.*

## Annualizing Partial Year Business Income

(Net Income year to date) x 12 months

Number of months in business during the current year

**[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. Below is this updated list.

### *Federal Register Notice 2024-01873*

*The following updated list of federally mandated income exclusions supersedes the notice published in the Federal Register on May 20, 2014. The exclusions listed below apply to income only, except where HUD states that the exclusion also applies to assets. Actual income earned from an excluded asset may be included in income if it is not deposited into an account that is disregarded and excluded under one of the below authorities. If an amount is in an excluded account, like an Independent Development Account or an ABLE account, then the statute or the regulations associated with that income/asset exclusion will dictate what portion of the income earned off the amount, if any, is to be included in the family’s income. Please note that exclusions (13) and (23) have provisions that apply only to specific HUD programs.*

- (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.***
- (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 childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (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(1)). ***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.

- (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).
- (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)).
- (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 exclusion 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 etseq.)

- (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)).
- (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).
- (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.***
- (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.

## CHAPTER 2: ASSETS

### 2.1 HOTMA Asset Terms

#### 24 CFR § 5.659 (e)

HOTMA allows for self-certification of assets under \$50,000 (adjusted annually for inflation). Imputed asset threshold raised from \$5,000 to \$50,000 (adjusted annually for inflation). MHDC will allow this for LIHTC, HOME, and NHTF as allowed under HOTMA regulations. Third-party verification of assets is required when net family assets exceed \$50,000, adjusted annually by HUD. MHDC will apply this to the LIHTC and HOME/NHTF program, however, please note that this is subject to change if the IRS or HUD CPD issues different guidance in the future. Note: For HUD MFH programs, net family assets must be verified every three years.

Asset values and income can be self-certified at recertification if net family assets do not exceed \$50,000. If they do exceed \$50,000, the assets values and income are to be verified. If income cannot be verified for a specific asset, it will be imputed (because assets exceed \$50,000).

Examples:

**100% LIHTC with HOME (or NHTF)**

Move-in (year 3 of affordability period)	HOME full asset verification LIHTC self-certification if household combined net assets do not exceed \$50,000
Year 4 of the affordability period	HOME self-cert of all income LIHTC income cert is not applicable
Year 5 of the affordability period	HOME self-cert of all income LIHTC income cert is not applicable
Year 6 of the affordability period	HOME full asset verification LIHTC income cert is not applicable
Year 7 of the affordability period	HOME self-cert of all income LIHTC income cert is not applicable
<b>Note:</b> HUD accepts the LIHTC certification for all years and both HOME and LIHTC may use the PHA certification for TBRA households. Additionally, refer to Section 3.3 Recertifications as it relates to the Exhibit U usage.	

**Less Than 100% LIHTC (mixed-use) with HOME (or NHTF)**

Move-in (year 3 of affordability period)	HOME full asset verification LIHTC self-certification if household combined net assets do not exceed \$50,000
Year 4 of the affordability period	HOME self-certification of all income LIHTC self-certification if household combined net assets do not exceed \$50,000
Year 5 of the affordability period	HOME self-certification of all income LIHTC self-certification if household combined net assets do not exceed \$50,000
Year 6 of the affordability period	HOME full asset verification LIHTC self-certification if household combined net assets do not exceed \$50,000
Year 7 of the affordability period	HOME self-certification of all income LIHTC self-certification if household combined net assets do not exceed \$50,000
<b>Note:</b> HUD accepts the LIHTC certification for all years and both HOME and LIHTC may use the PHA certification for TBRA households.	

**Note,** the owner/agent may not rely on the low-income household's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the household's annual income from assets is higher than the amount represented on the self-certification.

**Checking Accounts**

HOTMA Implementation Notice H 2023-10, J.5.a: When verification of assets is required, PHAs/MFH Owners are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts including checking accounts. 6-month average is no longer required (*prior to HOTMA implementation, O/As were required to average the balance of six checking account statements to determine the cash value of a checking account*).

**24 CFR §92.252(i)(2) [2024] & §92.252(i)(2)**

HOTMA denies eligibility to households with assets exceeding \$100,000 or who own a home that is suitable for occupancy by the household. Asset Limitation is applicable to the Section 202/8 program. See HUD Guidance in revision of the Joint Notice dated February 2, 2024. **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 as long as they continue to qualify under HOME/NHTF rules.



## 24 CFR §5.100 [2024]

**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.”

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 these as personal property, similar to vehicles. These and similar matters subject to state real property laws will need to be understood by HFAs and owner/agents.

## 2.2 Asset Inclusions

### 24 CFR § 5.609 (b) Net Family Assets [2024]

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.

Examples from HUD Notice H 2023–10 (Necessary vs. Non-Necessary, see HUD Notice H 2023-10; Notice PIH 2023-27, F.4.c; Regulation: 24 CFR § 5.603):

#### Actual Asset Income from an Asset Excluded from Net Family Assets

Eugene Park owns a checking account with \$3,500 that earns 0 percent interest. He also has a savings account with a balance of \$10,000 for which he expects to earn \$300 in annual interest. Mr. Park has no other assets. Because those assets are classified as non-necessary personal property, and their combined value of \$13,500 does not exceed \$50,000, the combined value of all non-necessary personal property is excluded from the calculation of net family assets (see paragraph 56 F.4.c of HOTMA Implementation Notice 2023-10). The total value of Eugene Park’s net family assets is \$0, and \$300 is included in annual income.

- Total value of assets:  $\$3,500 + \$10,000 = \$13,500$
- Net family assets: \$0.00 (total value of assets is less than \$50,000, therefore the value is excluded from net family assets)
- Result: Actual income from assets (must be included in the calculation of annual income for Eugene Park): \$300 (\$0 from checking account + \$300 from savings account).

#### Calculating Net Family Assets and Actual Asset Income when Net Family Assets Exceed \$50,000 (As Adjusted)

Background: Sherry McNeil received a federal tax refund of \$1,200 and deposited the refund into her checking account. At the time of her annual reexamination six months later, the account had a balance of \$10,000 and earns 0-percent interest. Sherry also owns a stock portfolio with a verified value of \$45,000. The stocks earned \$405 in cash dividends last year, which Sherry expects to earn again in the coming year.

In determining the total value of net family assets, the Owner/Agent subtracts \$1,200 from the total of \$55,000 of net family assets, for a total countable asset of \$53,800. The full value of actual income is included as income, because actual income is always included even on excluded assets.

- Total value of assets: \$55,000 (\$10,000 + \$45,000)
- Net family assets: \$53,800 (\$55,000 – \$1200) (tax refund received in the last 12 months is excluded from net family assets under § 5.603(b)(3)(xi).) Because the total value of Sherry’s non-excluded assets exceeds \$50,000, this value (\$53,800) is included as net family assets and must be confirmed via third-party verification.
- Actual Income from Checking Account: \$0 earned ( $\$10,000 \times 0$  percent)
- Actual Income from Stock Portfolio: \$405 earned in dividends last year on \$45,000

**Result:** Total actual income from assets (must be included in the calculation of annual income for Sherry McNeil): \$405 (\$0 + \$405)

## 2.3 Disposed Assets

### 24 CFR § 5.609 (b)(2) Net Family Assets [2024]

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.

## 2.4 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. Under the new rule, imputing asset income on an asset is only required when the net family assets exceed **\$50,000, and only if actual income from all the assets cannot be calculated.**

HUD HOTMA Implementation Notice, F.6.b., HUD says that "imputed income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, imputed asset income must be calculated for specific assets when three conditions are met:

1. The value of net family assets exceeds \$50,000 (as adjusted for inflation);
2. The specific asset is included in net family assets; and
3. Actual asset income cannot be calculated for the specific asset.

"If the actual income from assets can be computed for some assets but not all assets, then PHAs/MFH Owners must add up the actual income from the assets, where actual income can be calculated, then calculate the imputed income for the assets where actual income could not be calculated. After the PHA/MFH owner has calculated both the actual income and imputed income, the housing provider must **combine both amounts to account for income on net family assets with a combined value of over \$50,000.**"

"When the family's net family assets **do not exceed \$50,000** (as adjusted for inflation), imputed income is not calculated. Imputed asset income is never calculated on assets that are excluded from net family assets. When actual income for an asset — which can equal \$0 — can be calculated, imputed income is not calculated for that asset."

### **HUD HOTMA Implementation Notice, Example F8: Combining Actual and Imputed Asset Income**

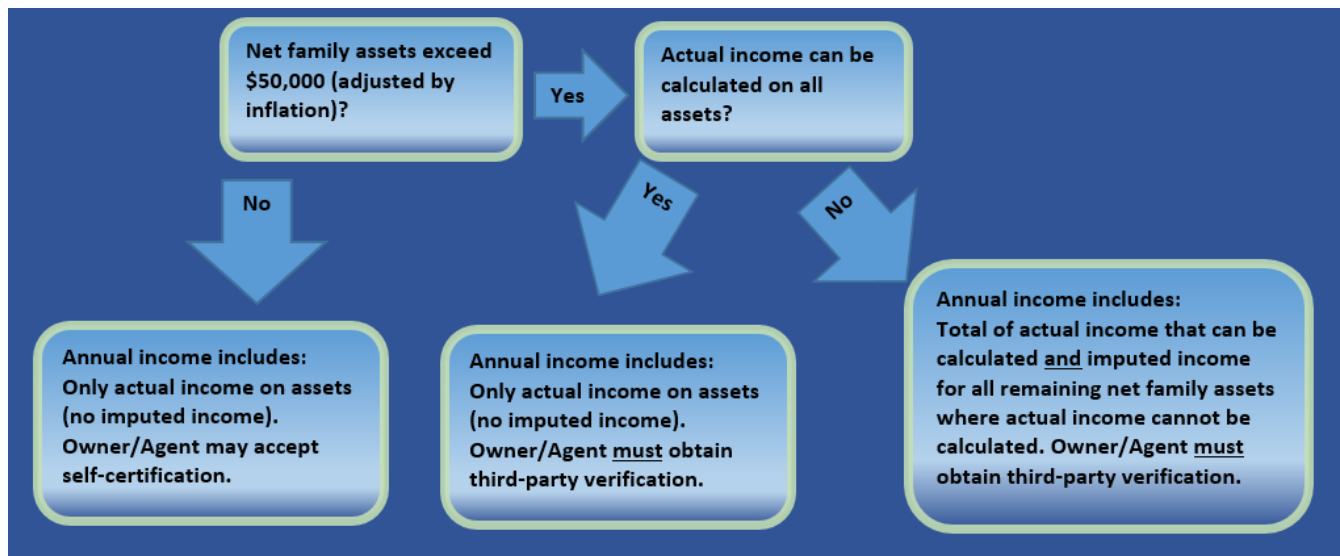
Background: The Jorgensen family owns a small piece of vacant land with a cash value of \$25,000. The family also owns a savings account with a verified balance of \$55,000, with an interest rate of 0 percent. The family's total net assets are \$80,000. The PHA/MFH Owner can calculate the actual income of the savings account as \$0, as seen below. The PHA/MFH Owner is unable to calculate the actual income earned for the property owned by the family, because the property neither generates any income for them nor could an income amount be computed as a matter of interest or dividend earnings. Therefore, imputed asset income for the real property must be calculated. The passbook savings rate in effect is 0.10 percent.

Scenario: Actual Income from savings account:  $\$55,000 \times 0 \text{ percent} = \$0$  actual income of savings account Imputed income from family's property:  $\$25,000 \times 0.001 = \$25$  imputed income.

Result: Total asset income (must be included in the calculation of annual income for the Jorgensen family): \$25 (\$0 + \$25)

"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 non-financial 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."





Putting it on the Tenant Income Certification, Example #1 (under \$50k):

Checking account with no interest: \$0      Income: \$0.00      (actual)  
 Savings account with 2% interest rate: \$0      Income: \$150.00 (actual)  
 Land with no determined rate of return: \$25,000      Income: \$0 (under \$50,000)  
**Total of Household Assets: \$25,000**

Part IV – Income from Assets					
Household Member #	(F) Type of Asset	(G) Current/Disposed	(H) Cash Value of Asset	(I) Actual/Imputed	(J) Annual Income from Asset
1	Checking	C	\$0	A	\$0
1	Savings	C	\$0	A	\$150
1	Land (Real Property)	C	\$25,000	n/a	\$0
<b>TOTALS:</b>			<b>\$25,000</b>		<b>\$150</b>
<b>Total Income from Assets (K)</b>				<b>\$150</b>	

Putting it on the Tenant Income Certification, Example #2 (over \$50k):

Checking account with no interest: \$18,000      Income: \$0.00      (actual)  
 Savings account with 2% interest rate: \$35,000      Income: \$700.00 (actual)  
 Land with no determined rate of return: \$25,000      Income: \$100.00 (imputed)  
**Total of Household Assets: \$78,000**

Part IV – Income from Assets					
Household Member #	(F) Type of Asset	(G) Current/Disposed	(H) Cash Value of Asset	(I) Actual/Imputed	(J) Annual Income from Asset
1	Checking	C	\$18,000	A	\$0
1	Savings	C	\$35,000	A	\$700
1	Land (Real Property)	C	\$25,000	I	\$100
<b>TOTALS:</b>			<b>\$78,000</b>		<b>\$800</b>
<b>Total Income from Assets (K)</b>				<b>\$800</b>	

## 2.5 Asset Exclusions

### 24 CFR § 5.609 (b)(3) 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)).
- (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.

#### Additional Research | Types of retirement accounts recognized by the IRS [IRS.gov](https://www.irs.gov)

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

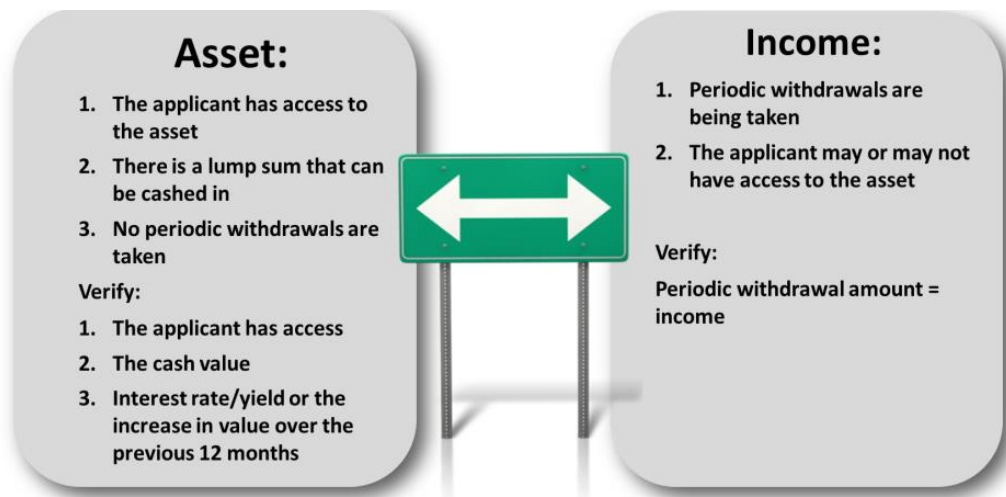
Under HOTMA, accounts that the IRS recognizes as retirement accounts will not be counted as assets. As they are not assets, we will not count any income from them either. However, once the holder of the account starts taking out payments, the withdrawals will be counted as income. At that point, it will be the same as we currently handle these accounts, with periodic withdrawals being income and the balance not representing an asset.

#### Retirement Accounts 2023 vs. 2024

#### **IRA, 401(k), Keogh Accounts, Retirement Accounts, Pension Funds, and Annuities**

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

Since REV-1 of the HUD handbook was released, each of the four changes has adjusted how retirement accounts are handled. In general, “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.” Change 4 introduced an exception, however. “If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset.”



*\*Image Courtesy of Costello Compliance*

- (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.

**For HUD Section 8 purposes**, this can be addressed if a household is close to the \$100,000 asset limitation (**this does not apply to LIHTC, HOME, or NHTF**).

**Note:** HUD HOTMA Notice update February 2, 2024: “In Attachment F, subtopic F.4.e, HUD updated the method for subtracting federal tax refunds and refundable tax credits from assets to accurately reflect the statutory and regulatory requirements of HOTMA. Previously, the notice stated that the tax refund was to be subtracted from the asset account into which the tax refund amount was deposited. To align with HOTMA, the tax refund must instead be subtracted from the total value of net family assets. HUD deleted the reference to a tax refund or refundable tax credit that is deposited into an excluded asset, as this is incorrect. The tax refund/credit amount must be subtracted from total net family assets, regardless of where the amount is deposited. In example F2, HUD clarified that the Rodriguez family owns a total of \$10,000 of net family assets.”

## **Trusts**

### **24 CFR § 5.609 (b)(4) Net Family Assets [2024]**

In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset, and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

## CHAPTER 3: ADDITIONAL REQUIREMENTS AND REFERENCE

### 3.1 Use of Other Program Determination of Income

#### 24 CFR §5.609(c)

The PHA or 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.

### 3.2 Verification of Other Program Determinations

#### 24 CFR §(c)(3)(ii) [2024]

If a PHA or owner 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 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 PHA or owner must calculate annual income per HUD's usual anticipated income rules.

### 3.3 Recertifications

#### ***Projects that are 100% LIHTC***

Effective July 31, 2008, with the passing of the Housing and Economic Recovery Act (a.k.a. HERA or H.R.3221), 100% tax credit properties are no longer required to certify after year 3. MHDC will exempt the third-year annual income recertification requirement for 100% tax credit properties **with prior approval only**. MHDC reserves the right to require full certification at 100% tax credit properties. See MHDC LIHTC Manual for additional reference. Refer to Chapter 4 of the MHDC LIHTC Manual. The Program Compliance Administrator will determine whether or not the property is 100% LIHTC and able to use the Exhibit U. Properties approved to use the Exhibit U must still obtain verifications of household income and assets at move-in, and the following year. However, the household must still continue to annually complete a TIC to verify household composition and each household must continue to complete a student status certification if there is a change in student status. This must be done on the annual recertification date for the household.

#### ***Projects that are less than 100% LIHTC***

If a property is not 100% LIHTC, then the annual income recertification and third-party verification is required when applicable. If there is one market unit in the property, or if a staff unit is treated as a market unit, then all units in the property must be recertified/income verified annually.

See *MHDC HOME Manual* and *MHDC LIHTC Manual* for additional reference on recertification requirements ([www.mhdc.com](http://www.mhdc.com)).

### ***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. See **MHDC LIHTC Manual, Chapter 4, Part 4.2 B, 8. Residents receiving Section 8 assistance**. Once the owner receives the HUD Form 50058 or 50059, no other verifications of income are required. However, verifications for other Section 42 eligibility requirements such as student status, and the tax credit Tenant Income Certification (TIC) form, etc., must still be completed and placed in the household's file.

In the case of a resident receiving housing assistance payments under the Section 8 Program, the third-party income verification requirement is satisfied if the Public Housing Authority (PHA) provides a statement to the building owner certifying that the household's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code. *Treas. Reg. (b)(1)(vii)*. The only documents that will be acceptable from the Public Housing Authority are HUD Form 50058 and HUD Form 50059.

**Note:** The "every-sixth-year" verification cycle in HOME will not apply to these households, as the PHA or other subsidy program will be verifying income annually, reducing the burden on the owner/agent. Once income is determined by the PHA, the owner/agent will simply apply the over-income HOME rules when applicable.

## **3.4 HOME & NHTF**

### **Definitions, 24 CFR §93.2 [2024], §5.603, 5.403, and 5.100**

HOTMA makes the definitions of the following terms the same as for other HUD Multifamily programs:

- Foster Adult
- Full-Time Student
- Net Family Assets
- Foster Child
- Live-in Aide

### ***HOME Specifics***

#### **Income Determinations**

#### **24 CFR § 92.203(a) [2024]**

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

- *HOME rules limiting subsidy to the HOME rent for high HOME units still apply.*
- *If the owner uses other means-tested program income determinations, the MHDC will accept these.*

**Tenant-Based Rental Assistance (TBRA).** Rental assistance income determinations by a federal rental assistance program (such as a Housing Choice Voucher) **MAY** be used for HOME purposes if the assistance is tenant-based (TBRA) and the PJ has this in their policies.

- *HOME rules limiting subsidy to the HOME rent for high HOME units still apply.*
- *If the PHA uses means-tested program income determinations (MHDC allows PHA determinations), MHDC will accept these alternative methods.*

### **Rental Assistance Payments are not Income.**

#### **§ 92.203 (e)(1) [2024]**

*"For families living in HOME-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 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). This provides a rationale for LIHTC owner/agents to continue to exclude government subsidy payments.

### ***NHTF Specifics***

#### **Income Determinations**

#### **§ 93.151(a) [2024]**

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

- *If the owner uses other means-tested program income determinations, the NHTF grantee must accept these.*
- *The NHTF continues to be allowed to use the rent calculation (and full subsidy) as per PBRA programs.*

**Tenant-Based Rental Assistance (TBRA).** Rental assistance income determinations by a federal rental assistance program (such as a Housing Choice Voucher) **MUST** be used for NHTF purposes.

- *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.*

### **Verification for HOME & NHTF**

HOME and NHTF still require that income is verified using two months of source documents (i.e., Paystubs) at the initial determination and self-certification for other years, except every sixth year of the affordability period.

HOTMA still generally requires that the owner gather two months of wage history if the owner is certifying the household for HOME eligibility. However, there are times when HOTMA would allow the owner to use other income determinations (and the methods of verification used for the other programs). In the case of PBRA-assisted households, the owner will use the income determination relevant to the PBRA program. For TBRA income determinations, the owner will use the PHA certification to verify the income. Finally, if the owner/agent uses the LIHTC determination for project-based income purposes, LIHTC processes and verification may be used.

### **See 24 CFR § 92.203(a)(1) & (2) and § 5.609(c)(3)**

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) [2024]**

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:** *Although not stated in the new NHTF rule, we assume that 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.*

### **Applicability of Adjusted Income**

#### **§ 92.252(i)(2) [2024]**

**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.

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

### **Earned income Disregard**

#### **24 CFR § 5.617(a)(c) & (f) [2024] and § 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.



### **Adjustments to Mandatory Deductions**

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, 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.

### **Verifications**

*Treas. Reg. §1.42-5 (b) (1)(vii); 8823 Guide 4-7; IRS Newsletter 54; Implementation Notice J.5.a.; Implementation Notice Table J2*

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.

Note: If MHDC has a required form, that must be the first method of verification, as directed. Upfront Income Verification (UIV) (e.g., The Work Number, web-based state benefits systems, etc.) is acceptable in place of the MHDC Employment Verification form (Exhibit C), for employment verification. EIV cannot be used for LIHTC purposes. Owners must document in the tenant file the reason why third-party verification was not available, when applicable.

With HOTMA, HUD has implemented a new order of preference for verifications, as listed below, in their Verification Hierarchy Table J2. The Verification Hierarchy table describes verification documentation from most acceptable to least acceptable. A description of each verification technique and additional guidance follows Table J2 below.



**Verification Hierarchy Table J2** (HUD HOTMA Joint Implementation Notice H 2023–10 & PIH 2023–27)

Table J2: Verification Hierarchy		
Level	Verification Technique	Ranking/Order of Acceptability
6	Upfront Income Verification (UIV), using HUD’s Enterprise Income Verification (EIV) system.  <b>Note:</b> EIV cannot be used for LIHTC purposes.	<b>Highest</b> <ul style="list-style-type: none"><li>• PHAs/MFH Owners must pull the EIV Income Report for each family at every Annual Reexamination.</li><li>• EIV may be used as the sole verification of Social Security income.</li><li>• EIV income information may be used to calculate other types of annual income when family agrees. See Level 4 for more information.</li></ul>
5	Upfront Income Verification (UIV) using non-EIV system (e.g., The Work Number, web-based state benefits systems, etc.).  <b>Note:</b> EIV cannot be used for LIHTC purposes.	<b>Highest</b> <ul style="list-style-type: none"><li>• <i>Examples:</i> The Work Number (an automated verification system), state government databases, web-based state benefits systems, etc.</li></ul>
4	Written, third-party verification from the source, also known as “tenant-provided verification” (provided by the tenant) <b>OR</b> EIV + Self-Certification  PHAs/MFH Owners can choose either option when both are available to verify income. PHAs/MFH Owners must use written, third-party verification when the income type is not available in EIV (e.g., self-employment, Go Fund Me accounts, general public assistance, Veterans Administration benefits, welfare benefit letters and/or printouts, and unemployment benefit notices, pay stubs, payroll summary reports, employer notices/letters of hire/termination, SSA benefit verification letters, bank statements, child support payment stubs, etc.).  <b>Note:</b> EIV cannot be used for LIHTC purposes.	<b>High</b> <ul style="list-style-type: none"><li>• Written, third-party verification is used when tenant disputes EIV-reported employment and income information.</li><li>• The EIV Income Report may be used to verify and calculate income if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information from EIV.</li><li>• An original or authentic document generated by a third-party source dated within 120 days of the date received by the PHA/MFH Owner. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.</li><li>• When necessary, the Owner should follow up directly with the third-party source to obtain necessary verification of information.</li></ul>
3	Written, Third-Party Verification Form (provided directly by the third-party). Use if Level 5 or Level 4 verification is not available.	<b>Medium</b> <ul style="list-style-type: none"><li>• Use if Level 5 or Level 4 verification is not available or is rejected by the PHA/MFH Owner and when the applicant or tenant is unable to provide acceptable documentation.</li><li>• May substitute Level 2 for written, third-party verification form, only completing one of the two forms of verification before moving to self-certification.</li></ul>
2	Oral Third-Party Verification	<b>Medium</b> <ul style="list-style-type: none"><li>• This verification method is commonly used when the independent source does not respond to the Owner’s faxed, mailed, or e-mailed request for information in a reasonable time frame (e.g., 10 business days).</li></ul>
1	Self-Certification (not third-party verification)	<b>Low</b> <ul style="list-style-type: none"><li>• Use as a last resort when unable to obtain any type of third-party verification or if specifically permitted, such as to determine actual income from assets when the family certifies that net family assets do not exceed \$50,000.</li><li>• May be used as highest form of verification when the family reports zero income.</li></ul>

**Please note:** The management agent should give the applicant or resident the opportunity to explain any significant differences between the amounts reported on the application or other file documents and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the resident file on a clarification form or self-affidavit. Clarification is required whenever there is information in a file that is unclear. MHDC does not outline all of the specific instances or reasons of why clarification may be needed. By definition, clarification means to make a situation more comprehensible and is the responsibility of the owner/agent.

### **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 when they are relying on pay stubs for Level 4 documentation. 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.

### **Checking Accounts**

When verification of assets is required, Owners are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts. HOTMA Implementation Notice J.5.a.

### **Worker's Compensation**

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. HOTMA Implementation Notice G.6.

HUD HOTMA Notice update February 2, 2024: "In Attachment G, subtopic G.6, HUD clarified that workers' compensation payments, regardless of the length or frequency of the payments, are always excluded from annual income. HUD updated example G6 to reflect this clarification."

### **Example G6 from HOTMA Notice:**

#### **Workers' Compensation Received In Lieu of Wages**

Tobias Reynolds was injured in a work accident. He is receiving bi-weekly workers' compensation payments. These amounts are excluded from annual income.

### **Alimony and Child Support**

Those who are entitled to child support or alimony are no longer required to pursue the full court-ordered amount. Only amounts actually received for alimony or child support are counted. HOTMA Implementation Notice F.1

Work Number and other upfront income verification (UIV) databases.

Verification through the Work Number and other upfront income verification databases are now the most preferred verification option (Level 5). HOTMA Implementation Notice J2.

### **PHA Verifications**

The allowance to verify income for a tenant who also has subsidy from the PHA (through public housing or a Housing Voucher) is also referred to as 'using the income determination' of the PHA. PHAs are included with other "means-tested" programs, under the category "other programs administered by the Secretary" IRS Reg 1.42-5 (b) (1) (vii). The provision to use PHA verification is also applicable under LIHTC regulations and will be required for HOME and NHTF units with PBRA and NHTF units with TBRA (vouchers). Allowing PHA verification for HOME and NHTF, allows alignment with all HUD programs and the LIHTC.

## RESOURCES

MHDC Website  
[www.mhdc.com](http://www.mhdc.com)

HOTMA Resources (hud.gov)  
<https://www.hud.gov/hud-partners/multifamily-hotma>

**Note:** Asset Management Manuals, Forms, and Policies may be updated from time to time due to regulation or improvements. Please check the mhdc.com website frequently.