



Back to Basics

Part 8: HOTMA Assets FAQ

by Scott Michael Dunn, Costello Compliance

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In this series we have focused on HOTMA changes to the basic concepts we use to determine income for LIHTC families. Here we address some FAQs asked. The previous article addressed four questions about income, and this one addresses four asset questions.

FAQ 5 | Does cash on hand have income imputed.

Answer | We do not believe so. HOTMA guidance at [HUD Notice 2023-10](#), F.6 says “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.” We believe that cash is a “financial asset” in this context and would not have asset income imputed. Checking and savings, for instance, are just cash in an account. Note: Although the author believes this is clear in the guidance, LIHTC Agency opinion on this may vary and the proper authorities should be consulted.

FAQ 6 | I read in the HOTMA regulation at 24 CFR 5.609 (b)(24)(ii) and (iv) that federal and state tax returns are excluded. Yet, after a state tax credit file review, an agent made an observation requiring a change. They instructed us to stop subtracting state tax returns from the net value of assets. How do I explain the state agent's error here?

Answer | The agency is correct. State tax returns are excluded from *income* at the time they are received (as are federal returns), but only federal tax returns are subtracted from net assets. The citation that the asker of the question provided from 24 CFR 5.609 (b)(24)(ii) and (iv) does establish that State and federal tax returns are excluded from *income*. They are among the examples of "nonrecurring" income. Similarly, (18) of this section excludes "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." However, the section of the HOTMA regulation that deals with assets is 24 CFR 5.603 (b) Net family assets. Part (3)(xi) of this section says that excluded from assets are Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family." Careful reading demonstrates that State returns, although excluded from income, are not deducted from assets.

FAQ 7 | We have a couple that contributed over \$25,000 in cash between them over the last two years into Roth IRAs. This has resulted in a significant reduction in net family assets recently,



since IRAs are excluded assets. Are these funds "disposed assets" under affordable housing rules?"

Answer | No. Contributions to retirement accounts are not disposed of under HOTMA guidance. It is easy to understand why this situation could look like it is creating disposed assets. Assets that were counted recently are "disappearing" into assets that are now excluded under HOTMA. However, according to HUD HOTMA [Notice 2023-10](#) (A.3.c and F.4.a), "an asset moved to a retirement account held by a member of the family is not considered an asset disposed of for less than fair market value." This is like when a person uses assets that are counted in net family assets to buy necessary personal property, and the value of net family assets decreases without the removed assets being considered disposed of.

FAQ 8 | Reading the above FAQ, we have a similar situation, but with a trust. An elderly resident created a nonrevocable trust for a son who lives in another state using cash and other assets from net family assets totaling over \$345,000. This has resulted in a significant reduction in net family assets. Are these funds "disposed assets" under affordable housing rules?"

Answer | Yes. Contributions to a nonrevocable trust for a person who is not part of the family that resides in the unit are "disposed of" under HOTMA guidance. According to HUD HOTMA [Notice 2023-10](#) (F.4.a and footnote F3), "in determining the value of net family assets, PHAs/MFH Owners 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)." It further explains that "a disposition in trust is when the family creates a trust for the benefit of someone ***outside of the assisted family.***" [bold emphasis ours] This differentiates this scenario from the situation in FAQ 7, as the retirement accounts in the original question were held by family members in the unit and put into retirement accounts held by the family members, so cash put there was not disposed of. Consistently, the footnote goes on to clarify that "it would not be considered an asset disposed of for less than fair market value if the family establishes a nonrevocable trust ***for the benefit of someone in the assisted family.***" [bold emphasis ours]

Scott Michael Dunn was HCCP of the Year in 2019. He is the CEO of Costello Compliance, a provider of many services to the affordable housing industry, including the Achieving HOTMA Success online on-demand/live hybrid course. He can be contacted at smdunn@costelloco.com.

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