Back to Basics…Again!

Part 9: HOTMA Is the Starting Point, Not the Last Word

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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.

HOTMA changed many of those concepts. However, it cannot answer every income question by itself.

Other federal laws may require HUD to exclude income. Congress may create a new benefit after HUD publishes a rule. People may also begin using an existing benefit in a way the rule did not address. HUD and the IRS may then need to explain how the benefit should be treated.

No final rule can account for every law, benefit, or program change that will come later.

HOTMA recognizes this. In addition to the exclusions listed in 24 CFR §5.609(b), paragraph (b)(22) excludes amounts that another federal law requires HUD to disregard. HUD identifies these exclusions in the *Federal Register* and updates the list when needed.

A Quick Illustration

ABLE accounts show why the regulation cannot be the last word.

HUD issued Handbook 4350.3, Change 4, in 2013. Congress created ABLE accounts in 2014.

The 2013 Handbook could not explain an account that did not yet exist.

HUD later issued Notice PIH 2019-09/H 2019-06 to explain the rules. HOTMA now excludes ABLE accounts from assets, but the 2019 notice still provides important details. It explains how to treat contributions, earnings, wage deposits, distributions, and rollovers.

That is not a flaw in HOTMA. It is what must happen as laws and benefit programs change.

Start With the Basic Framework

For LIHTC purposes, we determine tenant income using rules consistent with Section 8. IRC §42(g)(4) points us to the income rules in IRC §142(d)(2)(B)(i).

The review begins with three parts of the HUD regulations:

24 CFR §5.609(a) tells us what annual income includes. This includes actual or imputed income from net family assets.

24 CFR §5.609(b) contains 28 direct income exclusions.

24 CFR §5.603(b), under "Net family assets," tells us whether an account, property, or other resource counts as an asset.

These rules are the starting point. They are not always the ending point.

The accompanying flow chart provides a process that works for any income or asset question.

UNIVERSAL INCOME AND ASSET REVIEW PROCESS

Follow these steps for every income or resource question.

START
Identify the amount or resource.
What is the family receiving, expecting to receive, or holding?

1 APPLY THE GENERAL ANNUAL-INCOME RULE
24 CFR §5.609(a)
Is the amount included in annual income, or is it actual or imputed income from net family assets?

ARE ASSETS INVOLVED?
NO → Step 4
YES → Step 3

3 APPLY §5.603(b) "NET FAMILY ASSETS"
Determine whether the item is:
- a net family asset,
- excluded from net family assets, or
- may produce actual or imputed income under §5.609(a).

4 CHECK DIRECT REGULATORY EXCLUSIONS
24 CFR §5.609(b)
Review the 28 income exclusions in §5.609(b).

5 CHECK EXCLUSIONS REQUIRED BY OTHER FEDERAL LAW
HUD's list of 29 federally mandated income exclusions
All 29 affect income. Some also exclude all or part of the related amount from net family assets. Check the federal exclusion for both income treatment and any asset treatment.

6 CHECK DETAILED, LATER, OR PROGRAM-SPECIFIC GUIDANCE
Determine whether HUD, the IRS, or another controlling authority has issued additional guidance affecting this benefit or resource.

EXAMPLES OF DETAILED OR PROGRAM-SPECIFIC GUIDANCE

ABLE ACCOUNTS
Detailed treatment in
- Notice PIH 2019-09 / H 2019-06
- Account earnings
- Distributions
- Contributions
- Deposits of countable income
- Rollover rules

HUD-VASH
Special income exclusion for qualifying LIHTC tenants
VA service-connected disability benefits are excluded only if the tenant is approved for or receiving HUD-VASH assistance.

MEDICARE ADVANTAGE SUPPLEMENTAL BENEFITS
Exclude unless used for rent or utilities.
- If used for rent or utilities: include that amount.
- If not used for rent or utilities: exclude.
- Unused amounts that expire: do not include.

DOCUMENT THE DETERMINATION
Record the rule(s) applied and the basis for the decision.

60 INCOME EXCLUSIONS QUICK REFERENCE
This number is a quick reference for income exclusions only.
It does not include asset exclusions.

28 Direct regulatory income exclusions in 24 CFR §5.609(b)
+
29 Federally mandated income exclusions (HUD's list)
+
1 Detailed ABLE income-exclusion analysis (2019 HUD Notice)
+
1 HUD-VASH special income exclusion for qualifying tenants
+
1 Medicare Advantage supplemental-benefit income exclusion

= 60
Income-Exclusion Rules in the Current Framework

IMPORTANT POINTS
- ✓ The 29 federally mandated income exclusions: all apply to income; 22 also exclude some or all of the amount from net family assets.
- ✓ Assets are analyzed under 24 CFR §5.603(b) "Net family assets." Assets that are excluded never produce income.
- ✓ The rules above interact. Always work through the steps in order.
- ✓ Always document the rule(s) applied and the basis for your determination.

Here are four places where the rules extend beyond the basic HOTMA framework.

1. April 2019: ABLE Accounts

Summary | ABLE accounts are excluded from assets by HOTMA, but several other details are missing. Earnings, distributions, and certain direct contributions are excluded from income. Countable income does not become excluded simply because it is deposited into the account.

A 2019 HUD notice provides the detailed rules that HOTMA does not.

The following are excluded:

the ABLE account balance;

actual or imputed earnings on the account;

distributions from the account;

pretax employer contributions that are not deducted from wages;

contributions made directly into the account by another person; and

qualifying rollovers from another ABLE account.

However, wages remain income even when they are deposited directly into the employee's ABLE account.

The same distinction applies to recurring gifts.

Example

A relative gives an individual $100 each month. The recurring gift is income.

If the relative instead puts the $100 directly into the individual's ABLE account, the contribution is excluded.

Wages deposited into an ABLE account also remain wage income when earned. Once the wages are in the account, however, the same money is not counted again as an asset or as income when later withdrawn.

The account receives special treatment. The original source of the money still matters.

2. January 2024: Other Federally Mandated Exclusions

Summary | HUD's January 31, 2024, *Federal Register* notice identifies 29 income exclusions required by federal law. Some also exclude all or part of the related amount from assets.

The list includes benefits and payments such as:

SNAP allotments;

Low-Income Home Energy Assistance Program payments;

certain volunteer payments;

payments under Title V of the Older Americans Act;

qualifying child-care assistance;

school lunch and WIC benefits;

certain Workforce Innovation and Opportunity Act payments;

qualifying crime-victim assistance;

federal tax refunds;

Individual Development Accounts;

federal disaster assistance;

Emergency Rental Assistance Program assistance;

ABLE accounts; and

several Tribal, trust, settlement, and judgment-fund payments named in the notice.

All 29 affect income. Twenty-two also include some type of asset exclusion. The amount and length of the asset exclusion vary. Some protect only part of a payment. Others protect the payment for only a limited time.

When one of the 29 exclusions applies, do not stop after excluding the income. Check whether the same rule also affects net family assets.

Do not assume that every government benefit is excluded. The payment must meet the requirements of a specific exclusion.

“It is a federal benefit” starts the research. It does not finish it.

3. August and October 2024: VA Service-Connected Disability Benefits

Summary | These benefits are excluded for qualifying HUD-VASH tenants. They are not excluded for every veteran who receives them.

Under the regular income rules, VA service-connected disability benefits are included unless another exclusion applies.

In August 2024, HUD created a special income rule for HUD-VASH applicants. A public housing agency must exclude all VA service-connected disability benefits received by an applicant covered by the HUD-VASH waiver.

HUD created this as a special HUD-VASH rule. It did not add a general exclusion to §5.609(b).

The IRS then issued Revenue Procedure 2024-38 so LIHTC and tax-exempt bond properties could use the same treatment.

For LIHTC purposes, VA service-connected disability benefits are excluded when the tenant:

is approved to receive or currently receives HUD-VASH assistance; and

is covered by the HUD-VASH income-eligibility waiver.

This rule applies to LIHTC income determinations made on or after October 24, 2024.

The Important Limitation

This exclusion does not apply to every veteran who receives VA service-connected disability benefits.

The tenant must be approved for or receiving qualifying HUD-VASH assistance.

This is unusual. The treatment of the income depends not only on the source of the benefit, but also on the rental assistance the tenant receives.

For this exclusion, HUD-VASH status is essential.

4. January 2025: Medicare Advantage Supplemental Benefits

Summary | Medicare Advantage supplemental benefits used to pay rent or utilities are included. Benefits used for other approved purposes are excluded.

Some Medicare Advantage plans provide supplemental benefits through prepaid debit cards, often called Flex Cards. Depending on the plan, the card may pay for groceries, transportation, over-the-counter medication, rent, utilities, or other approved expenses.

HUD determined that the income treatment depends on how the family uses the benefit.

Include amounts used for rent or utilities.

Exclude amounts used for other approved purposes.

Do not count unused amounts that expire.

Example

A family receives a $200 monthly Flex Card.

The family uses $150 for groceries and other approved expenses. It uses none of the benefit for rent or utilities. The remaining $50 expires at the end of the month.

Exclude the entire $200.

Now assume the family uses $75 of the card to pay a utility bill. Include the $75 used for the utility. Exclude the rest.

What Must Be Verified?

Ask the question.

An application or recertification form should ask whether the family receives Medicare Advantage supplemental benefits and uses—or expects to use—them for rent or utilities.

Unless the family answers yes or other information suggests otherwise, the housing provider may assume that the benefit was not used for rent or utilities.

Families do not need to keep receipts for every grocery, medication, or other ordinary Flex Card purchase. More verification is generally needed only when the family reports using the benefit for rent or utilities.

Use 60 as a Memory Aid

These developments give us a useful memory aid for income exclusions:

28 direct regulatory income exclusions

+ 29 federally mandated income exclusions

+ detailed ABLE guidance

+ the HUD-VASH income exclusion

+ Medicare Advantage supplemental-benefit guidance

= 60 income exclusions to check

Some of these rules overlap.

For example, ABLE accounts also appear on HUD’s list of 29 federally mandated exclusions. However, the brief entry in the *Federal Register* does not provide all the instructions found in HUD’s 2019 ABLE notice.

The number 60 does not mean that compliance professionals must memorize 60 separate rules.

It is a reminder that the income review does not end after checking the 28 exclusions printed in §5.609(b).

Back to the New Basics

HOTMA changed the income landscape, but it does not operate alone.

ABLE accounts show that another federal law may create an exclusion and require more detailed instructions.

The January 2024 *Federal Register* notice shows that laws outside HOTMA may affect both income and assets.

HUD-VASH shows that the treatment of income may depend on the rental assistance a tenant receives.

Medicare Advantage guidance shows that the way a family uses a benefit may determine whether it is included.

The practical process is:

1. Apply the income rules in §5.609(a).
2. Apply the definition of “Net family assets” in §5.603(b) when assets are involved.
3. Check the 28 direct exclusions in §5.609(b).
4. Check the 29 federally mandated exclusions.
5. Check whether the exclusion also affects assets.
6. Check later and program-specific guidance.
7. Document the answer.

HOTMA gives us the basic framework.

Other federal laws and later guidance keep that framework current.

That is why we occasionally have to go back to basics.

Again.

Authorities

IRC §§42(g)(4) and 142(d)(2)(B)(i)

theCredential

24 CFR §§5.603 and 5.609

Notice PIH 2019-09/H 2019-06, Treatment of ABLE Accounts in HUD-Assisted Programs

89 FR 6126, Federally Mandated Exclusions From Income—Updated Listing

89 FR 65769, Section 8 Housing Choice Vouchers: Revised Implementation of the HUD-Veterans Affairs Supportive Housing Program

IRS Revenue Procedure 2024-38

HUD, HUD-Assisted Housing and Medicare Advantage Supplemental Benefits FAQ, January 2025

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