theCredential

This Year's "HOT" Topic: HOTMA

Part 2: Adjusted Income and Asset Rules

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NOTE: The Department of Housing and Urban Development (HUD) has issued implementation guidance since the first article in this series was written. This guidance affected several of the answers in this article. Access the guidance.

The Housing Opportunities Through Modernization Act (HOTMA) of 2016 required the largest revision of HUD regulations in many decades. In this article series, we address FAQs that we have received relating to HOTMA. The first article addressed FAQs 1–8.

Other than the asset restrictions for Section 8 properties discussed in the last article, have rules relating to household assets changed?

Yes, the asset rules have been reformed by HOTMA in 24 CFR § 5.603. These will affect all programs that determine income in a manner consistent with HUD, such as the LIHTC, HOME, NHTF and Rural Development programs.

According to HOTMA, "net family assets" are defined as "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."

This is very similar to the former rules, but HUD has removed all of the asset "inclusions" in favor of a thorough exclusion list. If it is not specifically excluded, it is counted as an asset. HOTMA's definition of assets diverges significantly from the old rules when we examine the exclusions.

Disposed of assets. In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

What assets are excluded?

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 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers).
3. The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals.
4. The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located.
5. Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability.
6. The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, or local government.
7. Interests in Indian trust land.
8. Equity in a manufactured home where the family receives assistance under 24 CFR part 982. This relates to a public housing program.
9. Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982. This relates to a public housing program.
10. Family Self-Sufficiency Accounts. This relates to a public housing program.
11. Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

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.

NOTE: No. 7 is the only one that has been retained exactly as before. Another important adjustment is that retirement accounts will be excluded. Continual revisions of HUD guidance on how to handle retirement accounts has taken place with each subsequent revision of the HUD Handbook.

I see that "necessary" items of personal property are excluded and "non-necessary" items are excluded up to $50,000 in the first two exceptions. What is the difference?

HUD has clarified, per the below chart.

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

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

Have the imputed asset rules changed?

Yes. Under HOTMA, when the value of net family non-necessary assets exceeds $50,000 (in other words, the assets must then be counted, per Asset Exclusion No. 2 above) and ***the actual returns from a given asset cannot be calculated***, imputed returns are calculated on the asset based on the current passbook savings rate.

Notice that imputed income is not calculated on the cash value of all household assets (as was true formerly), just ***individual assets*** for which income is not calculable. According to recent HUD implementation guidance, if the total of non-necessary personal property does not exceed $50,000, these non-necessary personal property asset are assigned a $0 value on the TIC.

If I do not need to impute asset income when assets exceed $50,000, do I have to count actual income?

Yes. The actual income from ALL assets that can have actual income calculated must still be counted, even if assets do not exceed $50,000 and are not counted in net family assets. Although the assets are assigned a $0 value, the income is included for the asset on the TIC.

Do these rules apply to LIHTC, HOME, the National HTF, and other programs that use HUD's income definition?

Yes. See article one in this series for an applicability chart.

I have heard that assets can be self-certified if they exceed $50,000. Is this true?

For a family with net family assets equal to or less than $50,000, an owner may accept a household's self-declaration. This is true except that the owner must obtain third-party verification of all family assets every three years for HUD programs.

Does this verification allowance apply to LIHTC and other programs?

Not unless a state LIHTC agency specifically applies it. However, many states are moving to the $50,000 standard for good reasons. The LIHTC program has its own asset verification standards under Treas. Reg. 1.42-5 and Rev. Proc. 94-65 that allow for self-certification of assets if total household assets do not exceed $5,000.

However, the original Rev. Proc. cites HUD asset regulations that include the $5,000 impute rule. This is the only $5,000 mentioned in the HUD rule and formed the basis for the LIHTC self-certification rule. The $5,000 asset standard is probably obsolete in favor of the new HUD standard. Many states have indicated they will apply the $50,000 standard as part of ‘determining income in a manner consistent with Section 8’ as required by LIHTC law and regulation.

What is the new definition of income?

Annual household income includes ***all amounts, not specifically excluded in the HOTMA rule***, 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. This has remained essentially the same as in the past, although the focus of the regulation is on exclusions to income. This is the same shift of emphasis that applied to assets.

Where is the list of income inclusions?

As the focus is on what is excluded (see the bolded statement in the FAQ above) and all other income is counted, the new regulation does not list inclusions but rather focuses on the exclusions.

What has changed?

The changes mostly surround the exceptions (income that is not counted). Annual income does not include the following:

1. Any ***imputed*** income on an asset when net family assets total $50,000 or less and no actual income from the net family assets can be determined. [See FAQ on asset rule changes above for more on this issue.]
2. The following types of ***trust distributions***:
    a. For an ***irrevocable trust*** or a revocable trust outside the control of the family or household excluded from the definition of net family assets, as defined by HOTMA:
        - Distributions of the principal or corpus of the trust; and
        - Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

    b. For a ***revocable trust*** under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.
3. ***Earned income of children*** under 18 years of age.
4. Payments received for the ***care of foster children or foster adults, or State or Tribal kinship or guardianship care payments***.

5. *Insurance payments and settlements for personal or property losses*, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.
6. Amounts received by the family that are ***specifically for, or in reimbursement of, the cost of health and medical care expenses*** for any family member.
7. Any ***amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breaches 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 HUD regulations.
9. Student Financial Assistance
    - Any assistance that section 479B of the Higher Education Act of 1965 requires to be excluded from a family's income; and
    - 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.
        - Student financial assistance, for purposes of the above, 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) nonprofit.
            4. A business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity).
            5. An institution of higher education.
        - Student financial assistance ***does not*** include
            1. Any assistance that section 479B of the Higher Education Act of 1965 requires be excluded from a family's income.
            2. Financial support is provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that 479B of the Higher Education Act of 1965 does not require to be excluded from a family's income).
            3. Gifts, including gifts from family or friends.

    4. Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under these rules, exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii)(E) of this section.
  - Student financial assistance must be:
    1. Expressly for tuition, books, room, and board, or other fees required and charged to a student by the education institution.
    2. Expressly to assist a student with the costs of higher education, or
    3. Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.
  - 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 consistent with these rules.
- When the student is also receiving assistance that 479B of the Higher Education Act of 1965 requires to be excluded from a family's income, the amount of student financial assistance is determined as follows:
  - If the amount of assistance excluded under 479B of the Higher Education Act of 1965 is equal to or exceeds the actual covered costs listed above, none of the assistance is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:
    1. the total amount of student financial assistance received, or

2. the amount by which the actual covered costs exceeds the assistance excluded under the Higher Education Act fo 1965.

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.
11. The special pay to a family member serving in the Armed Forces who is exposed to ***hostile fire***.
12.
    - 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)***.
    - 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, child care, etc.) and which are made solely to allow participation in a specific program;
    - 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.
    - Incremental earnings and benefits resulting to any family member from fparticipation 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 section 479B of the Higher Education Act of 1965.
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 dependent deduction.*
15. ***Adoption assistance payments*** for a child ***in excess of the amount of the deduction for a dependent***.
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 VA benefit rules 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 in 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. As this list is not included in the regulation, feel free to check out HUD's most recent list. NOTE: Some of the provisions have changed with HOTMA — most notably, student financial assistance.
23. Replacement housing "gap" payments made in accordance with the Uniform Relocation Act 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.
24. ***Nonrecurring income***, which is *income that will not be repeated in the coming year* based on information provided by the family. Income received as an ***independent***

contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date or amount of the income varies. Nonrecurring income includes:

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

25. ***Civil rights settlements or judgments***, including settlements or judgments for back pay.
26. ***Income received from any account under a retirement plan*** recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any ***distribution of periodic payments from such accounts shall be income at the time they are received by the family***.
27. Income earned on amounts placed in a family's ***Family Self Sufficiency Account***.
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.

What has stayed the same?

NOTE: This list may not be all-inclusive. Whether some were formerly covered in the regulation may be debatable. For instance, older provisions may be rearranged and embedded in new sections.

- ***Earned income of children*** under 18 years of age (No. 2 above) continues to be an exemption.
- ***Payments for the care of fosters*** (No. 3) are excluded, as before, but clarifications that this includes kinship arrangements has been added.
- Also, HOTMA continues to exclude ***amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses*** for any household member (No. 6).
- The ***income of a live-in assistant*** (No. 8) continues to be excluded, but notice that the way we treat income from foster children and adults has changed in that same provision.
- The exclusion of military ***hostile fire pay*** (No. 11) has not changed, and neither has the ***resident service stipend*** (No. 12, bullet 3).
- Both the ***earned income of adult dependent full-time students*** (No. 14) and ***adoption assistance payments*** (No. 15) that are in excess of the dependent deduction continue to be excluded, although the old $480 amount of the dependent deduction will change after HOTMA's first year.
- ***Deferred social security and VA benefits*** (No. 16) also continue to be excluded.
- Details have been added, but the underlying provision excludes ***amounts received to enable a family member who has a disability to reside in the family's assisted unit*** (No. 19).
- ***Amounts excluded by federal law*** is a list that is not provided in the HOTMA regulation, but the actual exclusions will be the same as is currently true and will change with changes of law (No. 22).
- Under the new category "Nonrecurring income" (No. 24), ***gifts*** (No. 5) and ***lump-sum additions to assets*** (No. 7) also are still excluded.

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