



## Back to Basics

### *Part 3: Sporadic and Periodic Income (Part 1)*

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#### Back to Basics...Again! | Part Three | Sporadic and Periodic Income (Part 1)

Depending on which state you are in, HOTMA is either here or coming very soon. Legally it applied 1/1/2024, although all federal HUD offices affected by HOTMA have given grace periods into or through 2024, and some state LIHTC agencies have followed that model. Regardless, there is no time to waste! HCCPs, the foremost compliance professionals in the industry, are taking the lead and learning what they need to know to succeed at implementing HOTMA. Fortunately, we at the Credential are here to help! This article series will discuss what we need to know.

Prior to HOTMA, HUD regulations listed income inclusions and exclusions. However, HUD realized that HUD cannot keep up with all of the possible inclusions that may exist or may be created in the future, and that they would likely miss some. With HOTMA, HUD will no longer focus on a list of inclusions, but will focus on a comprehensive list of exclusions. If an item of sporadic or periodic income does not appear on the list of explicit exclusions, it is counted as income. You may have noted that “sporadic” income, which used to be excluded, is now included. With this in mind, HOTMA limits the definition of income to two items:

#### Income Includes

##### **HOTMA Regulation Reference: 24 CFR §5.609(a)**

- (1) All amounts, not specifically excluded in paragraph (b) of 24 CFR §5.609, **received** from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and
- (2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

So with the new focus on income, we look at HUD’s HOTMA income exclusion list. There are 28 items on the list. In this article, we will list the first 11. Part 2 will list 12-28. Much of the below is directly quoted from the HOTMA regulation, further analysis is marked “Note.”

#### Income Excludes – Part 1 | Exclusions 1-11

##### **HOTMA Regulation Reference: 24 CFR §5.609(b)(1) through (11)**

**Note | Income types unchanged by HOTMA are indicated with asterisks before and after the unchanged provision. This helps readers focus on the changes as they adjust their knowledge for HOTMA implementation.**



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

**Note | The above is just the mirror of income inclusion 2, above. This is when income is not imputed on assets, where the above explains when asset income is imputed.**

(2) The following types of trust distributions:

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

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

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

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

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

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

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

**Note | this provision added foster household members in keeping with the new treatment of fosters as excluded from the family.**

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

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

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

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



**(B) Student financial assistance does not include—**

- (1) Any assistance that is excluded pursuant to the HEA Title IV, 479B (see above)
- (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to the HEA Title IV 479B)
- (3) Gifts, including gifts from family or friends, or
- (4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or the HEA 479B (see above), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

**(C) Student financial assistance must be expressly:**

- (1) for tuition, books, room, and board, or other fees required and charged to a student by the educational institution
- (2) to assist a student with the costs of higher education, or
- (3) to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

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

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

- (1) If the amount of the HEA 479B assistance excluded above is equal to or exceeds the actual covered costs, all of the other assistance is counted as income.
- (2) If the amount of HEA 479B assistance excluded above is less than the actual covered costs, the amount of assistance that is considered student financial assistance is the amount by which the actual covered costs exceed both types of student assistance.

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

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

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





### Income Exclusions Table

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

(continued)

To be continued... the next article in this series will pick up with items 12-28 from the HOTMA exclusion list.



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

Chart from the Course "Achieve HOTMA Success" by Costello Compliance based on HUD guidance.



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