

A Deep Dive into HUD's New Income and Asset Rules

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NHLP

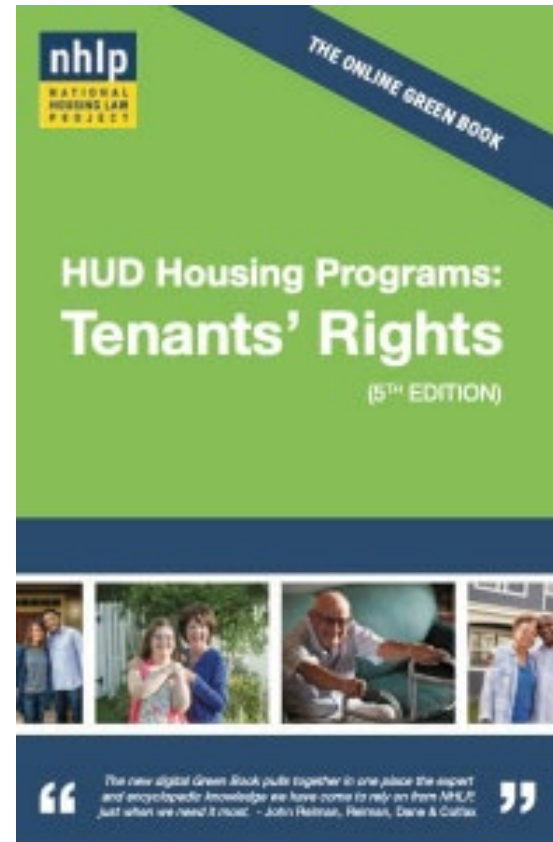
National Housing Law Project (NHLP) is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide.

Key Lessons

1. Participants will learn about a new law that changed key aspects of the HUD housing programs.
2. Participants will understand how income and assets are calculated for families living in HUD housing and with vouchers.
3. Participants will analyze what changes were made to the law so they can best inform their clients.
4. Participants will understand new guidance on recertifying tenant income.

The Green Book

- NHLP’s HUD’s Housing Programs: Tenants’ Rights, widely known as “[The Green Book](#),” is the definitive treatise on the laws governing HUD’s housing programs.
- The Green Book provides a clear description and detailed analysis of nearly all aspects of HUD housing programs.



Agenda

1. HOTMA Overview
2. Income Adjustments/Deductions
3. Income Exclusions
4. Assets
5. Questions

HOTMA

HOTMA Statute

- Housing Opportunity Through Modernization Act of 2016, Pub. L. No. 114-201, 130 Stat. 782 (2016).
- Revises regulations for most HUD housing programs.
- Some provisions were self-implementing. Other sections required action by HUD.
 - See NHLP's Quick Reference Guide to Implementation of Title I of HOTMA (available at www.nhlp.org).
- Today we will focus on Sections 102, 103, and 104 of HOTMA and its implementing regulations (income and asset rules).

HOTMA Resources

- NHLP's Memo to HJN Advocates re HOTMA Sections 102, 103, and 104 (May 18, 2023).
- NHLP, Quick Reference Guide to Implementation of Title I of the Housing Opportunity Through Modernization Act (HOTMA) (Updated May 2023).
- HUD's [HOTMA webpage](#)
- HUD's HOTMA training and resources:
 - [HOTMA Income and Assets Webinar Training Series](#)
 - [Income and Assets Fact Sheet](#)
 - [Income and Income Exclusions Resource Sheet](#)
 - [Student Aid and Financial Assistance Resource Sheet](#)
 - [Hardship Exemptions Resource Sheet](#)
 - [Income Estimation Tool Directions](#)
 - [Income Estimation Tool](#)

Income Adjustments/Deductions

Adjusted Income

- *Adjusted income* = annual income (per § 5.609) minus deductions
- Mandatory deductions:
 - \$480 for each dependent (annually adjusted for inflation)
 - \$525 for any elderly family or disabled family (annually adjusted for inflation)
 - Sum that exceeds 10% of annual income:
 - Unreimbursed health and medical care expenses for elderly or disabled family
 - Unreimbursed reasonable attendant care and auxiliary apparatus for each family member with disability to enable any family member to be employed
 - Reasonable child care expenses necessary to enable a family member to be employed or further their education
- Permissive deductions:
 - PHA can adopt additional deductions- must be in writing

Health and Medical Expense Deduction

- Certain health and medical expenses over 10% of a family's annual income can be deducted from annual income.
 - This is an income deduction for certain medical expenses and is changing from 3% to 10%
 - Qualifying Expenses:
- Health and medical care expenses of elderly or disabled families
 - Reasonable attendant care and equipment expense for family members with a disability. These expenses must allow the family member to work and cannot exceed their earnings.

Hardship Exemption: Elderly or Disabled Family

- Phased-in relief for families already receiving a deduction for health and medical expense.
 - 1st year: deduction for expenses exceeding **5%** of annual income
 - 2nd year: deduction for expenses exceeding **7.5%** of annual income
 - 3rd year: deduction for expenses exceeding **10%** of annual income
- General- hardship due to increase in qualified expenses or change that wouldn't otherwise trigger an interim reexamination
 - Deduction for expenses exceeding 5% of annual income
 - Relief ends when circumstances change or after 90 days, whichever is earlier
 - PHA can extend relief for additional 90 day period while hardship continues

Income Exclusions

(With a focus on what's new)

But First! What is Income?

- Consider all money received income unless otherwise excluded. 5.609(a)(1).
- Income includes imputed returns on assets over \$50,000 as well as actual returns on assets that can be calculated 5.609(a)(2).
- PHAs use income from the previous year to determine income for the upcoming year. 5.609(c)(2)
- New safe harbor: PHAs and owners may use income determination from other programs. 5.609(c)(3).

Exclusion: Trust Distributions (5.609(b)(2))

- Distributions of **principal** from any kind of trust (revocable or non-revocable) are excluded from income.
- Distributions of **income** used to pay the costs of health and medical care expenses for a minor are also excluded
- Distributions of trust *income* otherwise considered income.
- Rule no longer puts people with a Special Needs Trust at a disadvantage.

Exclusion: Payments Made to Keep Family Members at Home (5.609(b)(19))

- Excludes from income payments made to keep a family member with disabilities living at home.
- Covers a broad range of payments by state Medicaid-managed care system and other state agencies for caregiving services.
- Includes payments made to another household member caring for the individual who experiences a disability.
- Goal is to avoid institutionalization.

Exclusion: Nonrecurring Income (5.609(b)(24))

- Continues to be excluded from definition of income
- Defined as income that will not be repeated in the coming year based on information that the family provides.
- Examples of nonrecurring income: census work, stimulus payments, and gifts for holidays.
- What is ***not*** nonrecurring income? Income earned as an independent contractor, day laborer, or seasonal worker.

Exclusion: Civil Rights Settlements or Judgments (5.609(b)(25))

- HUD excludes from income all settlements or judgments from any type of civil rights litigation, no matter how it is paid out (lump sum or installment payments).
- Back pay received as a result of a settlement or judgment is excluded from income because it is not fair to treat this differently than other settlement or judgment money.
- *Compare* back pay from any raise or promotion that is counted in the upcoming year as income.
- But remember that settlements and judgments are generally counted as assets.

Student Financial Assistance (5.609(b)(9))

Two categories of student financial assistance are excluded from income:

1. Assistance excluded per section 479B of the Higher Education Act. Examples: Pell grants, Teach grants, Federal work-study programs, Perkins loans
2. Assistance for tuition, books, and supplies, room and board, and other fees required and charged to a student by the institution, and, for a student who is not HH or spouse, the reasonable and actual costs of housing while attending and not residing in the unit

Assets

New Asset Limitations for HUD Programs (1 of 2)

- Families who have a **present ownership interest, have a right to inhabit, and have the authority to sell real property** or **the net family assets exceed \$100,000** are not eligible for assistance. (88 Fed. Reg. at 9611-12, 9641, 9643, 9660-61 (codifying changes to 24 CFR § 5.618(a)(i)-(ii)).
- Exceptions to the rule (88 Fed. Reg. 9643, 6961.)
 - Real property is not suitable for occupancy by the family as a residence,
 - Real property is jointly owned and inhabited by the co-owner who is not part of the family,
 - Receiving HCV homeownership assistance for the real property,
 - The family is selling the property, or
 - One of the family members is a victim of domestic violence.

New Asset Limitations for HUD Programs (2 of 2)

- Families can certify they do not have any present ownership in any real property and they have less than \$50,000 in net family assets.
 - 88 Fed. Reg. at 9643, 9661 (codifying changes to 24 CFR 5.618(c)).
- Housing providers "...have discretion to enforce the restrictions ...or establish exceptions to such restrictions."
 - 88 Fed. Reg. at 9641, 9643 (1), 9661 (providing housing providers discretion to enforce asset requirements or to establish exceptions to the restriction in 24 CFR § 5.618(c)).

Changes to Net Family Assets Definition

- The final rules amends and reorganizes 24 CFR § 5.603(b) definition of net family assets
- “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.”
 - PHAs and owners must include the value of any business, family assets disposed of for less than fair market value in the prior two years, and negative equity in real property.
 - “Irrespective of whether an asset generates income, if the asset is not excluded, then the asset must be included in net family asset calculations.”
 - 88 Fed. Reg. 9641.

Exclusions from Net Family Assets (1 of 2)

- Value of necessary items of personal property
 - HUD does not plan to create a list of items it would consider a "necessary item" for personal property.
 - HUD will release additional guidance.
- \$50,000 or less in combined value of all non-necessary items of personal value
 - Non-necessary items must total \$50K or less to be excluded from the family's assets.
 - Families can self certify that their property falls under the \$50k.
- Value of any account under a retirement plan

Exclusions from Net Family Assets (2 of 2)

- Value of real property for which the family does not have the effective legal authority to sell in the jurisdiction in which the property is located
- Amounts received in any civil action or settlement based on claim of malpractice, negligence, or breach of duty that results in a disability
- Value of Coverdell education savings account
- Interest in Indian land trust
- Equity in manufactured home where the family receives assistance under 24 CFR pt. 982
- Equity in property under homeownership option for family in HCV program
- Family self sufficiency accounts
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family

Other Regulations

HOME, HTF, HOPWA, 202/811

- Generally, HOTMA conforms these programs' income and asset rules with other HUD programs
- See chart on page 9601 of the federal register

Interim Reexaminations

- Families can request an interim reexamination
- Reasonable processing time for a reexamination is no more than 30 days after family reports changes to PHA
- Interim reexamination is required
 - Tenant's income decreases by 10% or more
 - 0% threshold where there is a decrease in adjusted income due to a decrease in family size (death or permanent move-out)
 - Tenant's income increases by 10% or more, except
 - PHA may not consider any increase in the earned income, unless the family has previously received an interim reduction during the certification period
 - PHA may choose not to conduct an interim reexamination in the last three months of a certification period

Effective Date of Rent Changes

- If family timely reported the changes
 - Rent increases:
 - PHA must provide 30 days advance notice
 - Increase would be effective the 1st of the month beginning after the end of the 30 day period
 - Rent decreases: Effective the 1st day of the month after the date of the reported change
- If family did not timely report the changes
 - Rent increase: effective retroactive to the 1st of the month following the date of the change.
 - Rent decreases: effective the 1st rent period following reexamination

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