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Date:

TO: Property Owners & Management Agencies

FROM: Nevada Housing Division
Doug Smith, Chief Compliance Audit Investigator

RE: Housing Opportunity Through Modernization Act (HOTMA)

Background

The purpose of this memo is to address and provide guidance for program updates set forth by the Housing Opportunity Through Modernization Act (HOTMA). This guidance is only for programs administered by the Nevada Housing Division (NHD). It is drafted to work in conjunction with the NHD Low Income Housing Tax Credit (LIHTC) Compliance Manual. This memo will supersede any contradictions between it and the Compliance Manual (Revised 2023) until such time that the Compliance Manual is updated to reflect the HOTMA changes. Please be advised that the information in this document is subject to change if further guidance is released by HUD or the IRS.

HOTMA was introduced to streamline multiple housing program requirements and reduce the burden on housing providers. HOTMA's program updates are effective January 1, 2024, and are mandated to be fully compliant January 1, 2025. During this transitioning period properties should try to be "as compliant as possible". NHD will notate errors during audits completed in 2024 and corrective action should be taken. The HOTMA errors notated in 2024 will not be reported.

Program Updates

Household Composition / Foster Child and Foster Adult

Foster adult/child, as defined by the Nevada Revised Statutes (NRS), are no longer counted as household members when determining the income limit for that household. They are treated like live-in aides.

Example:

A family of five.

1. Head of House – Counted as a household member.
2. Spouse – Counted as a household member.
3. Child (biological/step) – Counted as a household member.
4. Niece/Nephew (not defined as a foster child in accordance with the NRS) – Counted as a household member.
5. Foster Child (defined as a foster child in accordance with the NRS) – Not counted as a household member.

This example shows a household composition of four when determining the income limit for this unit.

Income Inclusions

HOTMA has simplified the annual income definition. In summary it reads: Annual income includes all amounts received from all sources by each member of the family who is 18 years of age or older, the head of household, or spouse of the head of household, in addition to unearned income received by or on behalf of each dependent who is under 18 years of age. Annual income does not include amounts specifically excluded in paragraph (b) of 24 CFR § 5.609 (see Attachment G Income Exclusions). All amounts received by the head of household, co-head, or spouse including the income of a day laborer, independent contractor, and seasonal worker are included in annual income regardless of age, unless otherwise excluded in paragraph (b) of 24 CFR § 5.609.

Day Laborer: "An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future."

Independent contractor: "An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor, the payer has the right to control or direct only the result of the work and not what will be done and how it will be done."

Income from these sources, although potentially sporadic, does not fit the definition of "nonrecurring" and is therefore counted as income. Even if the source, date, or amount of the income varies.

Earned Income: "Earned income is defined as income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare assistance, Social Security, and other governmental subsidies/benefits), or any cash or in-kind benefits."

Child Support and Alimony income must be based on payments received, not the amounts to which the family is entitled to by court or agency orders. A copy of a court order or other written payment agreements alone may not be sufficient verification of amounts received by a household. Verification with Child Support Services may be necessary to determine the actual income received.

Assets: “Annual income also includes all actual anticipated income from assets even if the asset is excluded from net family assets but the income from the asset is not otherwise excluded. Imputed returns on net family assets are included in annual income only when net family assets exceed \$50,000 (a figure that is annually adjusted for inflation) and actual asset income cannot be calculated for all assets.
See below for more information on assets.

Student Financial Assistance: See below for income inclusions.

Income Exclusions

Live In Aide / Foster adult/child: all income received by foster adult/child, as defined by the NRS, is excluded.

Nonrecurring income: income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income, and is excluded from annual income. However, income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under § 5.609(b)(24), even if the source, date, or amount of the income varies. This replaces the former exclusion for temporary, nonrecurring, and sporadic income (including one time/milestone gifts), but it provides a narrower definition of excluded income.

Income amounts excluded under this category may include, but are not limited to, nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities, eviction prevention, security deposits to secure housing, payments for participation in research studies depending on the duration, and general one-time payments received by or on behalf of the family.

Nonrecurring income exclusions includes:

1. Payments from the U.S. Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment.
2. Direct federal or state economic stimulus payments.
3. Amounts directly received by the family as a result of federal refundable tax credits or federal tax refunds at the time they are received.
4. Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding, baby shower, or anniversary gifts).
5. In-kind donations (e.g., food, clothing, or toiletries).
6. Lump-sum additions to net family assets (e.g., lottery winnings, contest winnings, etc.).
7. Income earned on amounts placed in a family's Family Self Sufficiency Account
8. Insurance payments or settlements for personal or property losses.
9. Civil action recoveries or settlements.
10. Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611.
11. Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

Note: Items 10 and 11 will be \$480 through 2024 but will be indexed for inflation annually starting in 2025.

12. Veterans Regular Aid and Attendance
13. State or tribal kinship or guardianship care payments
14. Loan Proceeds

15. Housing GAP Payments - happen when someone has been displaced from their unit because of a disaster, a rehabilitation, etc., and are excluded from income.
16. Income and distributions from any Coverdell education savings account (under IRC Section 529 or Section 530).

Monetary gifts that are provided to the family on a regular and routine basis (e.g., a relative or friend provides cash gifts on a weekly or monthly basis) would be included in the annual income.

Student Financial Assistance: See below for income exclusions.

Assets: See below for income exclusions.

Student Financial Aid

All assistance received under **479B of the Higher Education Act (HEA)** by students is excluded from income. **Other Student Financial Assistance** received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is included in income.

Actual covered costs include tuition, books, supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and fees required and charged to a student by an institution of higher learning (as defined under section 102 of HEA (20 U.S.C. 1087uu))

The types of financial assistance listed below are considered **479B of the HEA** student financial assistance programs. This list is not exhaustive.

- Federal Pell Grants.
- Teach Grants.
- Federal Work Study Programs.
- Federal Perkins Loans.
- Student financial assistance received under the Bureau of Indian Education.
- Higher Education Tribal Grant.
- Tribally Controlled Colleges or Universities Grant Program.
- Employment training program under section 134 of the Workforce Innovation and Opportunity Act (WIOA).

Other Student Financial Assistance includes grants or scholarships received from the following sources:

- The Federal government.
- A state (including U.S. territories), Tribe, or local government.
- A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3).
- A business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity).
- An institution of higher education.

Other Student Financial assistance does not include:

- 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 under section 479B of the Higher Education Act HEA).
- Gifts, including gifts from family or friends.

Note: Other 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.

Financial assistance does not include loans.

To determine annual income from student financial assistance, if any, follow the steps outlined below:

Step 1: Determine the actual costs:

- Tuition
- Books
- Supplies (including supplies and equipment to support students with disabilities)
- Room and Board
- Required fees charged to the student by the institution of higher learning.

Step 2: Subtract the amount received under section 479B of the HEA from the actual covered costs to arrive at the amount of actual covered costs exceeding section 479B assistance.

- If the amount of assistance received under section 479B of the HEA exceeds the actual covered costs none of the student financial assistance will be included in the income.
- If the student did not receive any other student financial assistance, then step 3 is not necessary.
- If the student did receive other student financial assistance proceed to Step 3.

Step 3: Subtract the actual covered costs that exceed section 479B assistance from the amount of other student financial assistance to arrive at the amount of student financial assistance included in income.

- Step 3 requires the amount of other student financial assistance received by the student to be subtracted from the amount of actual covered costs paid by other means.
- If the resulting number in Step 3 is a positive amount, then that is the amount that should be included in the family's income.
- If the resulting number in Step 3 is zero or a negative amount, then there will be no student financial assistance included in the income.

Example 1:

Step 1: A full-time student's actual cost to attend the college of their choice is \$30,000.

They receive a Federal Pell Grant in the amount of \$25,000.

A University Scholarship in the amount of \$15,000.

A Chess Club Scholarship in the amount of \$3,000.

HEA covered assistance = \$25,000

Other Student Financial Assistance = \$18,000

Step 2: Subtract the amount of HEA Assistance from the Actual Costs to attend.

Actual costs	\$30,000
HEA Assistance	<u>- \$25,000</u>
	\$ 5,000

Step 3: Take the remaining amount from Step 1 and subtract that total from the Other Student Financial Assistance.

Other Assistance	\$18,000
Costs Exceeding HEA	<u>- \$ 5,000</u>
	\$13,000

In this example \$13,000 would be included in Income.

Example 2:

Step 1: A full-time student's actual cost to attend the college of their choice is \$20,000.

They receive a Federal Pell Grant in the amount of \$25,000.

A University Scholarship in the amount of \$5,000.

HEA covered assistance = \$25,000

Other Student Financial Assistance = \$5,000

Step 2: Subtract the amount of HEA Assistance from the Actual Costs to attend.

Actual costs	\$20,000
HEA Assistance	<u>- \$25,000</u>
	(\$ 5,000)

Step 3: In this case HEA exceeds the actual costs for this student to attend college. Assistance from HEA is never counted as income so the (\$5,000) is carried over to Step 3 as a '0'. If the student did not receive funding from an Other Student Financial Assistance source, no income would be recorded for this student.

Other Assistance	\$ 5,000
Costs Exceeding HEA	<u>- \$ 0</u>
	\$ 5,000

In this example \$5,000 would be included in Income.

Example 3:

Step 1: A full-time student's actual cost to attend the college of their choice is \$15,000.

They receive a Federal Pell Grant in the amount of \$10,000.

A University Scholarship in the amount of \$1,000.

HEA covered assistance = \$10,000

Other Student Financial Assistance = \$1,000

Step 2: Subtract the amount of HEA Assistance from the Actual Costs to attend.

Actual costs	\$15,000
HEA Assistance	<u>- \$10,000</u>
	\$ 5,000

Step 3: Take the remaining amount from Step 1 and subtract that total from the Other Student Financial Assistance.

Other Assistance	\$ 1,000
Costs Exceeding HEA	<u>- \$ 5,000</u>
	(\$ 4,000)

In this example no annual income is received as the student will have to pay out of pocket the remaining \$4,000 of actual costs to attend the school.

Section 8 Student

There are distinct differences in the treatment of student financial assistance between the Section 8 program and the Public Housing and non-Section 8 programs administered by MFH due to language in the annual appropriations acts. Section 210(b) of the Consolidated Appropriations Act, 2023, requires that, "for purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition and any other required fees and charges) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children." HUD interprets that "a person over the age of 23" is 24 years old.

In summary Section 8 students will count financial assistance from HEA and other financial assistance sources as income unless that student meets three criteria as follows:

1. They must be the Head of Household, spouse, or co-head of household.
2. Over the age of 23. And
3. Have dependent children.

If the Section 8 student meets all three criteria annual income is determined by the method described in the previous examples. If the Section 8 student does not meet all three criteria, then HEA financial aid is counted towards annual income. Please see the example below using the parameters from Example 2 above.

Example 4:

Step 1: A full-time Section 8 student's actual cost to attend the college of their choice is \$20,000.

They receive a Federal Pell Grant in the amount of \$25,000.

A University Scholarship in the amount of \$5,000.

Section 8 Student ✓

Head of Household ✓

Over the age of 23 ✓

Dependent Children ✗

HEA covered assistance = \$25,000

Other Student Financial Assistance = \$5,000

Step 2: Subtract the amount of HEA Assistance from the Actual Costs to attend.

Actual costs	\$20,000
HEA Assistance	<u>- \$25,000</u>
	(\$ 5,000)

Step 3: Because this Section 8 student does not meet all three criteria, the excess \$5,000 from HEA assistance is counted towards annual income. It will be added to the Other Student Financial Assistance.

Other Assistance	\$ 5,000
Costs Exceeding HEA	<u>+ \$ 5,000</u>
	\$10,000

In this example \$10,000 would be included in Income.

Assets

Actual and Imputed Income:

- Actual Income – Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR § 5.609(b).
Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset when determining total net family assets and imputing income.
- Imputed asset income must be calculated for specific assets when three conditions are met:
 1. The value of all net family assets exceeds \$50,000 (as adjusted for inflation)
 2. The specific asset is included in net family assets; and
 3. Actual asset income cannot be calculated for the specific asset. You are no longer required to use the greater amount of actual asset income or imputed asset income. If actual asset income can be determined, that is the amount used.
- Passbook Rate – Owners will be required to use the HUD-published passbook rate, this rate will be published annually. For 2024, this passbook rate is 0.4%

When the family's total net family assets do not exceed \$50,000 (as adjusted for inflation), imputed income is not calculated. In addition, if an asset's actual income is determined to be \$0, imputed income is not calculated (e.g., checking account that receives 0% interest).

Verification of assets is required if Total Asset Net Value is more than \$50,000. If the total net value of assets is equal to or less than \$50,000, a self-certification form may be completed to document all assets and the total value.

All actual asset income, verified or self-certified, **must** be included in the total income calculation.

Net Family Assets – is 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, bonds, and other forms of investment, except for Exclusions from Net Family Assets, listed below:

1. Assets from foster adult/child.
2. The value of necessary items of personal property.
3. The value of all non-necessary items with a total combined value of \$50,000 or less (adjusted annually for inflation).
4. The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including Individual Retirement Accounts (IRAs), employer retirement plans (e.g., 401(k), 403(b), pensions), and retirement plans for self-employed individuals.
5. 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. Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; inherited property in dispute.
6. 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 being a person with disabilities.
7. 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; and the amounts in, contributions to, and distributions from any Achieving a Better Life Experience (ABLE) account authorized under section 529A of such code.
8. The value of any "baby bond" account created, authorized, or funded by the federal, state, or local government (money held in trust by the government for children until they are adults).
9. Interests in Indian trust land.
10. Equity in a manufactured home where the family receives assistance under 24 CFR Part 982. 46
11. Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR Part 982.
12. Family Self-Sufficiency accounts.
13. Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.
14. The full amount of assets held in an irrevocable trust.
15. The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household.

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.

Trust Type	Is the trust considered a net family asset?	Is the actual interest earned by the trust considered family income?	Are distributions of trust principal considered family income?	Are distributions of interest earned on the trust principal considered family income?
Revocable Grantor is not part of the assisted family or household (and the family or household is not otherwise in control of the trust)	NO	NO	NO	Yes, unless the distributions are used to pay for the health and medical expenses for a minor.
Revocable Grantor is part of the assisted family or household (or the trust is otherwise under the control of the family or household)	YES	YES	NO	NO
Irrevocable (Typically, Special Needs Trusts are irrevocable)	NO	NO	NO	Yes, unless the distributions are used to pay for the health and medical expenses for a minor.

Jointly Owned Assets – For assets owned by the family and one or more individuals outside of the assisted family, Owners must include the total value of the asset in the calculation of net family assets, unless the asset is otherwise excluded, or unless the assisted family can demonstrate that the asset is inaccessible to them, or that they cannot dispose of any portion of the asset without consent of another owner who refuses to comply. If the family demonstrates that they can only access a portion of an asset, then only that portion’s value shall be included in the calculation of net family assets for the family.

Checking Accounts - Checking accounts will use the current balance. This means that a statement dated within 120 days of the effective date can be used to verify the balance.

Verifications

HUD released a table displaying a ranking/ order of acceptability for each verification technique:

Level	Verification Technique	Ranking/Order of Acceptability
6	Upfront Income Verification (UIV), using HUD's Enterprise Income Verification (EIV) system.	Highest This verification type can not be used for LIHTC units in Nevada
5	UIV using non-EIV systems (e.g., The Work Number, web-based state benefit systems, etc.)	Highest
4	Written, third-party verification from the source, also known as "tenant-provided verification" (e.g., paystubs)	High
3	Written, Third-Party Verification Form	Medium
2	Oral Third-Party Verification	Medium
1	Self-Certification	Low Used as a last resort or if specifically permitted, such as net family assets that do not exceed \$50,000

Forms & Manuals Updates

NHD is in the process of updating the following forms and parts of the LIHTC Compliance Manual.

- Exhibit NV-1 Tenant Income Certification (TIC)
- Exhibit NV-1a TIC Addendum
- Exhibit NV-1c Instructions for Completing TIC
- LIHTC Manual