


HOTMA: Income and Assets



May 18, 2023

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Home
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This Treatise ▾

Library
Contents
Index

HUD Housing Programs: Tenants' Rights (The Green Book)

📝 My Annotations/Highlighting
🔖 My Bookmarks
✉ Send Comments to the Editors

Treatise Overview
Summary
▶ Front Matter

Contents
▶ Chapters

☐ Highlight Updates
 A A A
📝
🔖
📄
✉

Summary

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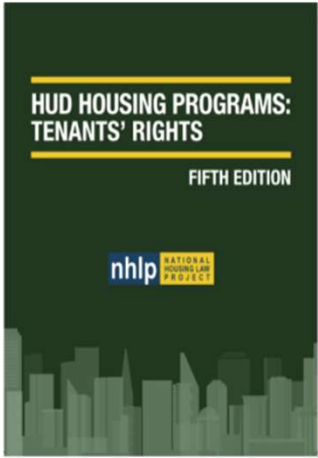
What is the Green Book?

HUD Housing Programs: Tenants' Rights (the "Green Book") is National Housing Law Project's signature publication. The Green Book is the quintessential guide to understanding HUD's housing programs. The Green Book's treasury of information is the product of over 50 years of legal experience specifically focused on HUD housing law, decades of successful high-impact litigation, and a deep understanding of intricate federal housing policy.

The manual includes new policies, emergent case law, and regulatory changes that shape the legal framework for cases that impact HUD tenants. The Green Book also contains unpublished court decisions, hard-to-find memos, and legal theories and strategies, providing a comprehensive treatise on evictions, subsidy terminations, affordable housing preservation and much more.

The 5th edition includes substantive updates on:

- Housing Opportunity Through Modernization Act (HOTMA), which revised federal statutory



Today's Agenda

- I. HOTMA Overview
- II. Income Adjustments/Deductions
- III. Income Exclusions
- IV. Assets
- V. Other select regulations
- VI. Questions



HOTMA

NATIONAL
HOUSING LAW
PROJECT

- 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.
- This final rule is pursuant to Sections 102, 103, and 104 of HOTMA and focuses on income and assets.

- NHLP's Memo to HJN Advocates re HOTMA Sections 102, 103, and 104 (May 18, 2023) and accompanying outline.
- 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:
 - [Part I HUD HOTMA income and asset training and Slides](#)
 - [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* = 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

Hardship Exemption- elderly or disabled family

2 new hardship exemptions:

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



Income Exclusions

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.
- Excludes 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 can be 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

How to calculate student financial assistance:

- Calculate cost of the “actual covered costs”
- If the “actual covered costs” are less than the assistance per 479B HEA -> only amts under 479B HEA are excluded
- If the “actual covered costs” are more than the assistance per 479B HEA -> then all amts under 479B HEA are excluded, plus the lower of:
 - The total amount of assistance under category 2 (other assistance)
 - The amount under category 2 (other assistance) which covers the actual costs

Example

- Assistance per section 479B of the HEA exceeds the “actual covered costs”

Example 1		
actual covered costs	\$20,000	
479B HEA assistance	\$26,000	Excluded
Other assistance	\$5,000	Included
Total Student Financial Assistance	\$31,000	

Examples

“actual covered costs”
exceeds assistance per
section 479B of the HEA

Example 2

actual covered costs	\$22,000	
479B HEA assistance	\$15,000	Excluded
Other assistance	\$5,000	Excluded
Total Student Financial Assistance	\$20,000	

The total financial assistance is less than the actual covered costs, therefore all the financial assistance will be excluded

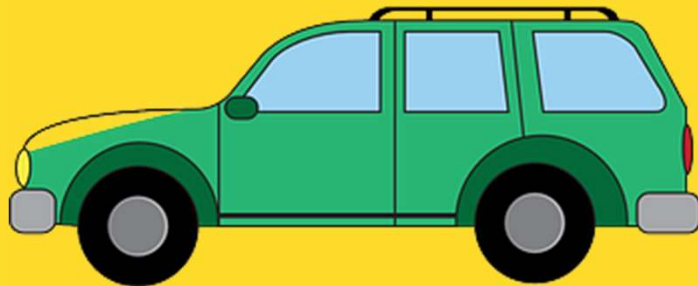
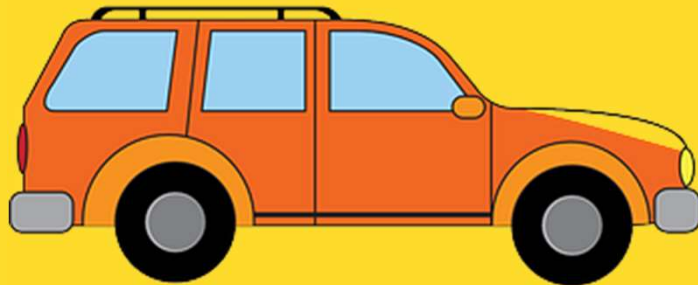
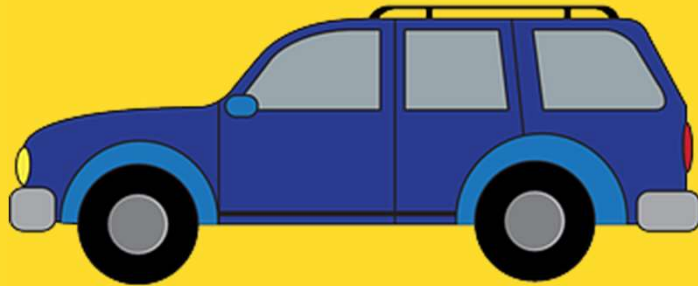
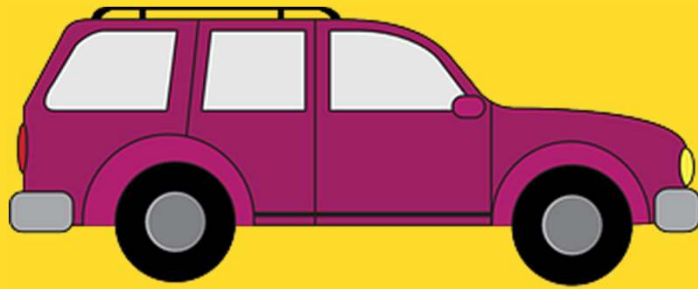
Example 3

actual covered costs	\$18,000	
479B HEA assistance	\$15,000	Excluded
Other assistance	\$5,000	Excluded: \$3,000 Included: \$2,000
Total Student Financial Assistance	\$20,000	

The total financial assistance is more than the actual covered costs, therefore all the financial assistance per 479B HEA will be excluded, but only a partial amount of the other financial assistance will be excluded

Student financial assistance and Section 8 tenants

- Section 479B of the HEA requires all assistance under Title IV of HEA to be excluded from HUD income calculations but ...
- HUD appropriations, for over 10 years through FY 2022, have included a provision that has created an exception to Section 479B for Section 8 tenants
 - Enacted on a year by year basis
- Exception: Section 8 students who are age 23 and under or without dependent children any amounts received in excess of tuition and any other required fees and charges shall be considered income
 - Includes assistance per 479B of the HEA



Assets

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 Calculation

- 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
- A trust fund that is not revocable by or under the control of the family or household as long as the fund continues to not be revocable or under the control of the family.

Exclusions from Net Family Assets Calculation

- 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

New Asset Limitations

- 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. *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.
- 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. *24 CFR 5.618(c)*.
- Housing providers "...have discretion to enforce the restrictions ...or establish exceptions to such restrictions." (*providing housing providers discretion to enforce asset requirements or to establish exceptions to the restriction in 24 CFR § 5.618(c)*).



Other Regulations

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

- 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 adjusted income decreases by 10% or more
 - Tenant's adjusted 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

Over-income Families in Public Housing (960.507).

- HUD has published several notices addressing the new rules for over-income tenants in public housing.
- This rule slightly revises the regulations and for this reason, PHAs must comply by June 14, 2023.
- Substantively remains the same: after 24 consecutive months and proper notice from the PHA, family becomes a “non-public housing over-income family” and pays alternative rent or PHAs have the discretion to terminate, based on their policy.

Thank you!



Questions?

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