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Part 2: Income

by Scott Michael Dunn, Costello Compliance

Depending on which state you are in, the Housing Opportunity Through Modernization Act (HOTMA) is either here or coming very soon. Legally it applied Jan. 1, 2024, although all federal Department of Housing and Urban Development (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. This article series will discuss what you need to know.

Prior to HOTMA, HUD regulations listed income inclusions and exclusions. However, HUD realized that it cannot keep up with all the possible inclusions that may exist or may be created in the future and that it would likely miss some. With HOTMA, HUD will no longer focus on a list of exclusions, 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.

In article 3, we covered the first 11 exclusions. Here we will list the remaining items on the list of 28.

Income Excludes – Part 2 | Exclusions 12-28

HOTMA Regulation Reference: 24 CFR §5.609(b)(12) through (28)

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.

(12) (i) 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);

Note: PASS is an Supplemental Security Income (SSI) provision to help individuals with disabilities return to work.

(ii) 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, childcare, etc.) and which are made solely to allow participation in a specific program;

(iii) 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.

(iv) Incremental earnings and benefits resulting to any family member from participation 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 paragraph (b)(9)(i) of this section.

(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 amount of the deduction for a dependent in § 5.611.

*(15) Adoption assistance payments for a child in excess * of the amount of the deduction for a dependent in § 5.611.

Note: (14) & (15) will be \$480 through 2025 but may change as indexed for inflation annually starting in 2026.

(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 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

Note: This applies to veterans only, not spouses or survivors of veterans who may also receive aid and attendance assistance. For persons who are not veterans, aid and attendance are counted as income.

(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.

Note: With HOTMA, this provision is significantly expanded. It now includes all disabilities, not just developmental disabilities, and includes more than just Medicaid assistance.

(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 set forth in the exclusions in the HUD regulations apply.

Note: On Jan. 31, 2024, HUD published a complementary notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 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.

Note: "Gap" payments are payments made to persons who are displaced by a federally funded program under the Uniform Relocation Act.

(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.***

Note: HUD guidance also indicates that any income that will end during the upcoming year and not be repeated in the future is excluded the entire year that the income ends.

(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.

Note: FSS is a program that enables HUD-assisted families to increase their earned income and reduce dependency on welfare assistance and rental subsidies. Goals are set that a family must work toward to graduate from the program. An interest-bearing escrow account is established by the PHA for each participating family. Any increases in the family's rent as a result of increased earned income during the family's participation in the program result in a credit to the family's escrow account. Once a family graduates from the program, they may access the escrow and use it for any purpose.



*(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.*
- Next article, we will tackle how assets and asset income is handled. This represents one of the most significant changes in HOTMA.

Scott Michael Dunn is the CEO of Costello Compliance, a provider of many services to the affordable housing industry, including the Achieving HOTMA Success online on-demand/live hybrid course. He can be contacted at smdunn@costelloco.com.

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