

MEMORANDUM

HOME, HOME-ARP, and HTF Policy Guidance

MEMO: 24-01

Issue Date: May 7, 2024

Effective Date: January 1, 2025

This Policy remains effective until it is amended, superseded, or rescinded.

Nebraska Department of Economic Development, 245 Fallbrook Blvd, Suite 002, Lincoln, NE 68521 opportunity.nebraska.gov

**SUBJECT: Housing Opportunity Through Modernization Act of 2016 (HOTMA):
Implementation of Sections 102, 103, and 104**

**PROGRAMS IMPACTED: HOME Investment Partnerships Program (HOME), HOME-American
Rescue Plan (HOME-ARP), Housing Trust Fund (HTF)**

This policy memorandum is to notify owners of HOME, HOME-ARP, and HTF funded properties and other stakeholders of the effective date for implementation of the Housing Opportunity Through Modernization Act of 2016 (HOTMA) pursuant to HUD's final rule entitled Housing Opportunity Through Modernization Act of 2016: Implementation of Section 102, 103, and 104 (HOTMA final rule), published on February 14, 2023 (88 FR 9600). This policy memorandum also highlights some of the most significant changes the HOTMA final rule made to these programs. These changes are intended to benefit the families we serve as well as reduce administrative burden. HOME, HOME-ARP, and HTF are affected by changes laid out in Section 102 of HOTMA, which addresses income reviews.

The compliance date for implementing these changes is January 1, 2025. HUD also states that it intends to issue supplemental guidance to HOME PJs and HTF grantees.

Applicable Regulation and Guidance

In the HOTMA final rule, HUD has revised 24 CFR Part 5, impacting HOME and HTF program regulations for income determinations and for qualification as affordable rental housing found at 24 CFR § 92.203 and § 92.252 for HOME and 24 CFR § 93.151 and § 93.302 for HTF. These changes align with HOTMA's income and net family assets provisions.

HUD also released Notice H 2023-10/Notice PIH 2023-27, Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (Implementation Guidance), which provides in-depth guidance on the many changes created by HOTMA. Note that only Section 102 impacts the programs at issue in this policy memorandum.

Policy and Procedure

Based on the regulatory requirements indicated above, the State of Nebraska along with HOME, HOME-ARP, and HTF stakeholders, including property owners, are required to implement HOTMA requirements by January 1, 2025. Recipients and owners are responsible for reviewing the changes to these housing program regulations and should refer to the HOTMA final rule and the Implementation Guidance to successfully implement HOTMA requirements.

The revisions include added definitions for the following terms in § 92.2 and § 93.2 that apply to the HOME and HTF programs, respectively: Live-in aide, Foster adult, Foster child, Full-time student, and Net family assets. A new definition for Public Housing Agency (PHA) has also been added to § 93.2, which applies to the HTF program. These

new definitions have a significant impact on the programs in determining household size or household income and assets.

The final rule also impacts HOME in the following areas:

- Use of annual income
- Use of adjusted income
- Annual income determinations
- Determining family composition and projecting income
- Determining adjusted income
- Qualifications as affordable housing: rental housing

The final rule also impacts HTF in the following areas:

- Use of annual income
- Annual income determinations
- Determining family composition and projecting income
- Use of adjusted income
- Qualifications as affordable housing: rental housing

Income

HOTMA provides a list of excluded income sources instead of a list of included income sources. If a source is not specifically excluded, it must be included.

Annual income is defined as “all amounts received by the head of household, co-head, or spouse, including the income of a day laborer, independent contractor, and seasonal worker.” Note that “all amounts received” does not include an amount a family is entitled to receive, such as child support or alimony.

Other important income features:

- HOTMA prioritizes paystubs over third-party verification forms from employers. Until further HUD guidance, the programs addressed in this memo require two months of paystubs (as opposed to two current and consecutive paystubs per HOTMA).
- Nonrecurring income--defined as income that will not be repeated beyond the forthcoming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family-- is excluded from annual income.
- Income earned by day laborers, independent contractors, and seasonal workers is considered recurring. “Gig” workers, such as rideshare drivers, are considered independent contractors.
- Student financial assistance – Significant changes have been made to how student financial assistance is recognized in the total household income for program eligibility.
- Adoption assistance payments in excess of \$480 per adopted child are excluded from income, and that amount will be adjusted annually for inflation.

Assets

The HOTMA final rule resulted in many asset exclusions, but the most important ones are listed below.

Assets do not include the value of necessary items of personal property defined as “items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment,

education, or health and wellness.” This includes items that assist a household member with a disability. Note that this definition does not limit personal property to items needed to survive. Non-necessary personal property with a total combined value of \$50,000 or less is also excluded as an asset. A non-exhaustive list of necessary and non-necessary personal property can be found in the Implementation Guidance mentioned above.

The value of any account under a retirement plan as recognized by the IRS, assets held in an irrevocable trust, and assets held in a revocable trust where a member of the family is the beneficiary, but the owner of the trust is not a household member, are also excluded.

Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family are excluded.

If an asset generates income, the income is included “regardless of the net family assets or 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).”

Imputed income from assets can only be calculated when the value of family assets exceeds \$50,000. This is adjusted for inflation annually. The specific asset is included in net family assets, and actual income cannot be calculated for that asset.

Verification

If net family assets do not exceed \$50,000, adjusted annually for inflation, the property owner may accept self-certification without taking additional verification steps at admission or reexamination.

Currently, HOME and HTF require two months of paystubs to verify income. HOTMA changed this for other programs.

If asset verification is required, the household must produce “a minimum of one statement that reflects the current balance of banking/financial accounts.” Previously, the requirement was to average the balance of six checking account statements.

Project-based rental assistance income determinations by a state or federal rental assistance program must be used for all programs addressed in this policy memorandum. Tenant based rental assistance income determinations by a state or federal rental assistance program may be used for HOME purposes if the PJ requires it, though they must be used in the case of HTF.

HOTMA provides a “safe harbor” for income determination using other means-tested public assistance. The Implementation Guidance provides a list of such public assistance programs and states, “The Safe Harbor verification may be in the form of an award letter from the relevant federal program and must show that the family’s income determination was made in the previous 12 months.”

Next Steps

Property owners should review and revise verification form templates and verification processes.