



Kentucky Housing Corporation

HOTMA Guidance for Low Income Housing Tax Credits

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Disclaimer

This guidance is designed to briefly answer questions regarding procedures, rules, and regulations that govern housing properties in Kentucky. While setting out KHC’s requirements under LIHTC, information provided herein should not be construed as legal or accounting advice. This guidance is only to be used as a supplemental source for compliance with the laws, regulations, and other guidance from the U.S. Housing and Urban Development (HUD) and Internal Revenue Service (IRS).

The owner is responsible for compliance with the IRS code. Any and all financial consequences to the owner as a result of noncompliance, whether identified by KHC or by the IRS, will be the responsibility of the owner. KHC will not make any representation other than to the IRS that a development is in compliance. The owner is responsible for ensuring that the development is in compliance with Section 42 and all pertinent rules and regulations that apply to rental housing. The owner must make certain that the on-site management team complies with all appropriate rules, regulations, and policies that govern the development. KHC suggests all management and owners attend Low Income Housing Tax Credit training when available.

What is HOTMA?

The [Housing Opportunity Through Modernization Act of 2016 \(HOTMA\)](#) (Public Law 114–201) was enacted on July 29, 2016. Title I of HOTMA contains 14 sections that affect the public housing and Section 8 rental assistance programs. The rule was officially published in the Federal Register on February 14, 2023, and revises HUD regulations to put sections 102, 103, and 104 of HOTMA into effect. An update providing additional guidance for sections 102 and 104 was issued September 29, 2023. Please see [HUD Notice H 2023-10](#) for more detailed guidance.

Because Treasury Regulation SS 1.42-5(b)(1)(vii) states, “Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 (‘Section 8’) ...,” HOTMA implementation affects the Low Income Housing Tax Credit (LIHTC) program as it pertains to income calculation, reviews, and program eligibility when monitoring compliance with low-income housing credit requirements.

When will this occur?

Changes should be implemented for all households moving in or recertifying after January 1, 2024. As part of the 2024 annual review process, KHC will issue observations for LIHTC projects found in noncompliance with HOTMA implementation. Effective January 1, 2025, findings will be issued, and projects within their initial fifteen year compliance period may be issued IRS Form 8823 and projects within their extended use period may be subject to Suspension or Debarment. Please refer to KHC’s [Suspension and Debarment Policy](#).

What has changed?

Policies

Foster Adults/Children

Foster adults/children are not considered family members and must not be included in calculations of income for eligibility and rent determination purposes. However, foster adults/children are considered household members and must be included when determining unit size or subsidy standards based on established policies.

Consistent with the determination that foster adults/children are not family members, income earned by foster adults/children, payments received for the care of foster adults/children, and expenses incurred related to foster adults/children are not considered to be family income or family expenses used in the determination of annual income (HUD Housing Notice 2023-10, p. 40).

Annual Income

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. 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 SS 5.609 (HUD Housing Notice 2023-10, p. 42).

Nonrecurring Income

The nonrecurring income exclusion replaces the former exclusion for temporary, nonrecurring, and sporadic income (including gifts), but it provides a narrower definition of excluded income in contrast to the former broad exclusion of temporary, nonrecurring, or sporadic income. Income that will not be repeated beyond 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 even if the source, date, or amount of the income varies. Refer to SS 5.609(b)(24) for further guidance (HUD Housing Notice 2023-10, p. 61).

Student Financial Assistance

For households receiving Section 8 assistance and households not receiving Section 8 assistance, all assistance received under 479B of the Higher Education Act is *excluded* from income (i.e.: Federal Pell Grants, Federal Work Study Programs, Federal Perkins Loans, et al.). Other student financial assistance, not defined under 479B of the Higher Education Act (HEA), received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is *not excluded* from 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 education.

For households receiving Section 8 assistance, if the student is the head of household, spouse, or co-head of household AND is over the age of 23 WITH dependent children, financial aid will be treated in a manner identical to households not receiving Section 8 assistance (HUD Housing Notice 2023-10, pp. 71-72).

Jointly Owned Assets

The total value of a jointly owned asset must be included in the calculation of net family assets unless the asset is otherwise excluded, if the family can demonstrate that the asset is inaccessible, or if they cannot dispose of any portion of the asset without the consent of another owner who refuses to comply (HUD Housing Notice 2023-10, p. 45).

Net Family Assets

1. Individual retirement, 401(k), and Keough accounts are now excluded from net family assets. If the applicant/resident is receiving periodic payments, the payments are considered income.
2. Retirement and pension funds are now excluded from net family assets. If the applicant/resident is receiving periodic payments, the payments are considered income.
3. When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

See HUD Housing Notice 2023-10, pp. 46-48 for additional guidance.

Actual and Imputed Income from Assets

Imputed income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, imputed asset income must be calculated for specific assets when three conditions are met:

1. The value of 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.

If the actual income from assets can be computed for some assets but not all assets, owners/agents must add up the actual income from the assets, where actual income can be calculated, then calculate the imputed income for the assets where actual income could not be calculated. After the owner/agent has calculated both the actual and imputed income, owner/agent must combine both amounts to account for income on net family asset with a combined value of over \$50,000 (HUD Housing Notice 2023-10, p. 56).

If total assets equal \$50,000 or less, a self-affidavit is sufficient verification, and the owner/agent is not required to impute income on any assets. If total assets exceed \$50,000, owner/agent must verify using source documents and must calculate imputed income for included assets in which actual income cannot be calculated.

KHC LIHTC Compliance Manual Changes

Employment Verification

Owners/agents are required to obtain a minimum of two current and consecutive paystubs for determining annual income from wages. Owners/agents were previously required to collect the most recent four to six weeks of paystubs to verify employment income.

Should syndicators and owners/agents choose to use the previously required four to six weeks of paystubs when determining income eligibility, no penalty will be issued during annual compliance reviews as it relates to methodology. However, the updated guidance could make more applicants income-eligible than previous guidance.

Educational Scholarships and Grants

All forms of student financial assistance received under Section 479B of the Higher Education Act (HEA), no matter how it is used, are excluded from annual income. Other financial assistance received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is not excluded from 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 education.

Alimony or Child Support

Only Alimony or Child Support that is received by the applicant or tenant should be included as household income. Documentation would include a verification form completed by the Department of Social Services or the person paying the support stating the amount and type of support and payment schedule.

Forms

Under \$50,000 Asset Certification

Formerly known as the Under \$5,000 Asset Certification, KHC has elected to align with the recent HOTMA guidance and increased the self-certified asset limit to \$50,000. If the combined values of applicant- or tenant-reported assets exceeds \$50,000, all assets must be third-party verified for move-in and annual recertification purposes. Owner/agent must calculate imputed income for included assets in which actual income cannot be calculated.

If the combined values of applicant- or tenant-reported assets are \$50,000 or less, the Under \$50,000 Asset Certification may be used to self-certify assets for move-in and annual recertification purposes. Imputed income is not calculated if assets total \$50,000 or less.

Per HUD Housing Notice 2023-10 page 60, “Accepting a family’s self-certification at admission may reduce the initial burden on applicants and speed up the lease-up process. In deciding whether to accept a self-certification of assets at admission, PHAs/MFH Owners are encouraged to consider the local needs and priorities in their communities along with the potential risks of accepting self-certification of net family assets.”

The updated Under \$50,000 Asset Certification can be located under Sample Forms on KHC’s Compliance website.

Employment Verification

KHC no longer requires owners/agents to use the highest calculated income when determining eligibility. Instead, in a manner consistent with PHA calculations, employment income should be calculated based on actual income as verified by third-party verification. KHC’s sample employment verification has been updated to remove year-to-date calculations and encourage the use of actual wages reported by the employer.

Should syndicators and owners/agents choose to use the highest calculation when determining income eligibility, no penalty will be issued during annual compliance reviews as it relates to methodology. However, the updated guidance could make more applicants income-eligible than previous guidance.

Bank Verification

Owners/agents were previously required to obtain a six-month average to determine the cash value for checking accounts. The new HOTMA guidance now allows the current balance of a checking account to be obtained. KHC’s sample bank verification reflects the current balance for both checking and savings accounts. In lieu of the sample banking verification, the most recent statement from a financial institution is also an acceptable verification.

Child Support

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family’s child-support must be based on payments received, not the amounts to which the family is entitled by court or agency orders. KHC’s sample child support affidavit has been updated to reflect actual amounts received, not awarded. A printout from the child support agency reflecting received amounts is required with the child support affidavit.

Tenant Income Certification

KHC has updated its Tenant Income Certification with changes to Part IV: Income from Assets. Changes include a column to determine if an asset is Current (C) or Disposed of (D) and if income is Actual (A) or Imputed (I). These changes are to reflect the HOTMA guidance increasing the self-reported assets from \$5,000 to \$50,000.

Self-Employment Verification

KHC has updated its Self-Employment Verification to include a note stating the transmission of the completed IRS Form 1040 is required to verify self-employment.

References

HOTMA Guidance

- [HUD's HOTMA Resources](#)
- [Costello Blog](#)
- [HUD Notice H 2023-10](#)

KHC Links

- [Asset Management Compliance](#)
- [Verification Forms](#)