CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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REVISED

DATE: February 6, 2025 (Updated)

TO: Owners of Low-Income Housing Tax Credit (LIHTC) Projects

FROM: California Tax Credit Allocation Committee (CTCAC)

RE: Housing Opportunity Though Modernization Act (HOTMA) Guidance for LIHTC Projects in the State of California

The Housing Opportunity Through Modernization Act (HOTMA) was enacted on July 29, 2016. HOTMA affected the public housing and Section 8 rental assistance programs subsidized by the Department of Housing and Urban Development (HUD). On February 14, 2023, HUD published the final rules and implementation of the HOTMA legislation in the Federal Register and determined an implementation date for multifamily housing projects with HUD subsidy to be January 1, 2024.

The Low-Income Housing Tax Credit Program (LIHTC) is not a HUD Multifamily program. However, Section 42 of the Internal Revenue Code (IRC) from the Internal Revenue Service (IRS) which regulates the LIHTC program, does statutorily rely on the HUD Multifamily definition and methodology for determining the income eligibility of residents occupying units at LIHTC projects, and many LIHTC projects are layered with HUD subsidies such as Section 8. As of the date of this memorandum, the IRS has not released specific guidance for the HOTMA final rule provisions.

In the absence of guidance from the IRS, the California Tax Credit Allocation Committee (CTCAC) has reviewed the HOTMA legislation and determined the following sections are applicable to the LIHTC program.

- Annual Income Definition
- Net Family Assets Definition
- Annual Income Exclusions

CTCAC monitoring guidance for HOTMA policies will be as follows and will be available to projects that opt to implement the new policies beginning January 1, 2024; implementation can be partial or full implementation. Implementation will not be mandatory until January 01, 2026. Income and asset documentation shall be collected within 120 days of this date.

Annual Income Definition

The HOTMA legislation does not significantly change the annual income definition from that previously noted in HUD 4350. The definition of income is all amounts of income, not specifically excluded, received by each member of the household who is 18 years or older, or is the head, co-head, or spouse. The definition also includes unearned income received on behalf of dependents under 18. The unearned income definition is broad, encompassing any annual income that is not "earned". This can include, but is not limited to, Social Security payments, Supplemental Security payments, AFDC/TANF/CalWORKs/GA, VA payments, etc., where the amount received is from a non-wage paying source.

CTCAC will continue to require 3-months of current and consecutive paystubs with a Verification of Employment (VOE) to determine income eligibility at move-in.

Safe Harbor - The final rule provides for a safe harbor for HUD projects on income calculations derived from different programs such as LIHTC, WIC, and SSI. HOTMA allows income calculated on the TIC to be used for HUD program purposes.

Foster Children and Foster Adults – The legislation clarifies that foster children/foster adults are included for purposes of determining appropriate unit size (like a live-in aide), but they are not considered members of the household for the purposes of determining income or assets. Any income (earned or unearned) received by the foster child/adult is excluded from income calculations.

Nonrecurring income – The final HOTMA rules define and provide examples of "nonrecurring income." This definition replaces the prior definition of "sporadic income". Nonrecurring income as defined, that will not be repeated in the next 12 months from the effective date of certification, is excluded from annual income. Examples of nonrecurring income include US Census Bureau payments for work of less than 180 days that does not result in a permanent position, direct Federal or State payments intended for economic stimulus or recovery, amounts received for tax credits or refunds, gifts for holidays, birthdays, significant life events or milestones, in-kind donations from food banks, and lump sum additions such as lottery or other contest winnings.

It <u>does not include</u> income earned as an independent contractor, day laborer, seasonal worker, and unemployment payments (EDD).

Student Financial Aid – The final HOTMA legislation significantly changes the methodology for determining the type and amount of financial aid that needs to be calculated for households with students. Prior to the final rule being published, financial aid was only counted for those households receiving Section 8 assistance and who did not meet one of two exceptions. Those exceptions were over age 23 with a dependent child or living at home with their parents and claimed as a dependent. The legislation removes the Section 8 exception and will apply to **any** household receiving financial aid assistance as of January 1, 2024.

New Methodology, Student Financial Aid Calculation for Section 8 Households meeting special criteria:

- Head of Household, Co-Head, or Spouse and
- 23 or under OR without dependent children

1. Determine the amount of actual covered costs. This *now* includes tuition, books and supplies, room and board, and other fees required and charged to a student by an institution of higher education.

2. If the total amount of financial aid (HEA + Private) is equal to or less than the amount of the actual covered costs, then you do not need to count financial aid to the household.

3. If the total amount of financial aid is more than the actual covered costs, subtract the amount of aid received through the HEA plus private, from the actual covered costs.
    a. Any excess amount of aid received will be included into income calculation

**For these Section 8 students, only student financial assistance needed for actual covered costs can be excluded from income. The amount excluded will be the lower of total student financial assistance or actual covered costs.

Section 8 HH Exception Calculation Example:

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1. Total IV HEA Assistance $ 30,000 2. Other Financial Assistance $ 10,000
Total Amount of Student Aid $ 40,000
Step 1: Determine amount of actual covered costs and subtract financial assistance: $20,000 (actual covered costs) **MINUS** $40,000 (total assistance) **EQUALS** $20,000 Positive Balance once actual covered costs paid
Step 2: Determine amount of student financial assistance to include in income: 1. Actual Covered costs: $20, 000 2. Total amount of student financial assistance: $40, 000 Include in Income: $20, 000

New Methodology for Section 8 Households (not meeting special criteria above) and Non-Section 8 Households:

1. Must separate the type of financial aid received into 2 types:
   a. Financial aid received through section 479B of the Higher Education Act of 1965 (HEA), such as Pell Grants, Federal Work-Study programs, etc., and
   b. Other Financial Aid, such as, Private aid like private club or entity scholarships, university scholarships, and scholarships received through non-profit organizations. Student loans remain excluded from income determination.

2. Determine the amount of actual covered costs. This *now* includes tuition, books and supplies, room and board, and other fees required and charged to a student by an institution of higher education.

3. If the total amount of financial aid (HEA + Private) is equal to or less than the amount of the actual covered costs, then you do not need to count financial aid to the household.

4. If the total amount of financial aid is more than the actual covered costs, first subtract the amount of aid received through the HEA from the actual covered costs.
   a. Any excess amount of aid received through the HEA above the actual covered costs is excluded from the income calculation.

5. If the total amount of financial aid received through the HEA is less than the actual covered costs, and the student is receiving private aid, then subtract the remaining balance of the actual costs (after the HEA deduction) from the amount of private aid.
   a. Any excess amount of aid received through private sources (other financial aid) above the actual covered costs is included in the income calculation.

HUD Example:

Example G10: Treatment of Student Financial Assistance in Non-Section 8 Programs

Juan is a full-time student and he received the following grants and scholarships to cover his 1st year of college:
Federal Pell Grant = $25,000; University Scholarship = $15,000; Rotary Club Scholarship = $3,000

Total assistance received under 479B of HEA = $25,000 (Federal Pell Grant)
Total other student financial assistance received = $18,000 (University and Rotary Club Scholarship)
Juan's actual covered costs = $28,000 (Tuition, books, supplies, room/board, other fees)

Step 1:
Determine amount of actual covered costs exceeding section 479B assistance.
$28,000 (actual covered costs) **MINUS**
$25,000 (total assistance received under 479B of HEA) **EQUALS**
$3,000 Balance

Step 2:
Determine amount of student financial assistance to include in income.

$18,000 (other student financial assistance received) **MINUS** $3,000 (actual covered costs exceeding section 479B assistance) **EQUALS** $15,000 (if a negative amount, use $0)

Step 3: $15,000 Amount of student financial assistance included in Juan's income

Net Family Assets Definition

In the final rules for the HOTMA legislation, HUD clarifies that “net family assets” do not include the value of all non-necessary items of personal property with a combined value of $51,600 or less, as adjusted by an inflationary factor (current passbook rate). Non-necessary in this context refers to most assets previously accounted for by HUD 4350 Chapter 5, including savings accounts, checking accounts, CDs, etc.

The final rule also removes some specific types of assets formerly included in the Net Family Assets definition and either excludes them from calculation as part of household eligibility or modifies the way the asset is to be calculated. These include excluding the balance of retirements accounts such as IRAs, 401Ks, or CalPERS or similar pension, changes to checking account average calculation, changes to revocable trust asset income determination, specifies that undeterminable asset values use the HUD Passbook rate, and clarifies that the calculation of asset income for over 51,600k in assets is dependent on which can be determined, actual or imputed, not the greater of the two.

On January 1, 2026, CTCAC will implement the following changes to the LIHTC program in California, to align with the above provisions of HOTMA regarding Net Family Assets.

1. Households with combined assets under $51,600 will be allowed to self-certify using an Under $51,600k Asset Certification form. This form will be modified from the current Under $5k Asset form.
   a. Households with combined assets over $51,600 will still require 3rd party verification.
   b. Mixed income projects *(LIHTC and conventional market units)* will need to 3rd party verify all assets every year if combined assets are at and over $51,600.
   c. 100% LIHTC projects who continue to complete full income and asset recertifications after Y2 *(move-in and 1st recert)*, may continue to use the Under $51,600 k Asset form at any Y2+ recertification.
   d. CTCAC does not require 3rd party verification for combined assets under $51,600 provided the Under $51,600k Asset Certification is included in the certification packet. However, ownership/management may require 3rd party documentation for combined assets under $51,600.

2. The balance of retirement accounts such as 401Ks, IRAs or CalPERS or similar retirement/pension accounts will be excluded from asset determination.
   a. Any regular distributions from a 401K, IRA, CalPERS or other retirement/pension accounts are still calculated as household income.

3. The current balance of the most recent statement of a checking account will be used to determine the asset value. This is a change from the prior requirement of a 6-month average.

4. All federal tax refunds or refundable tax credits are excluded from Net Family Assets for 12 months after receipt.

5. A revocable trust under the control of a household member, when the grantor is part of the assisted family or household (or trust is otherwise under the control of the family or household), is considered a net family asset.

6. If an applicant/household member is part owner in a real estate property but does not have authority to sell the property, then the real estate asset is excluded from calculation.

7. As of January 1, 2026, CTCAC will follow the HOTMA guidance for combined household assets equaling 51,600K or over and use either the actual asset value (if it can be determined) OR the imputed value using the HUD Passbook rate (if actual income from asset cannot be determined), rather than the higher of the two when calculating the value of an asset. The current passbook rate is .45% (updated annually). In instances where there are some assets that have actual asset value and some are imputed, both types of values will be added together to determine the total household assets.

   Example:

HH Mbr #	Type of Asset	Bank/Source	Last 4 of Account #	C/I	Cash Value of Asset	Actual Income from Asset	If total Assets > $51,599 and no actual impute @ .45%
1	Savings	Bank of America	0001	C - .2%	$10,000	$20.00	N/A
2	Checking	Bank of America	0002	C – 0%	$10,000	$0.00	N/A
3	CD	Wells Fargo	0003	C – 2%	$15,000	$300.00	N/A
4	Stock	Fidelity	0004	I - .45%	$30,000	N/A	$135.00
						Total	**$455.00**

<u>Annual Income Exclusions</u>

The HOTMA final rule legislation has both modified and added to the list of income exclusions noted in HUD 4350. All other previously noted exclusions in HUD 4350 remain in effect. CTCAC will implement these additions and modifications on January 1, 2026, and will not include them in determining a household’s eligibility.

Modifications to Exclusions list

1. Previous exclusion – Earnings in excess of $480 for each full-time student 18 years or older (excluding head of household and spouse)
    a. Modification – the $480 threshold amount may change annually as HUD releases guidance and/or updates calculations using CPI-W

2. Previous exclusion – Adoption Assistance payments in excess of $480 per adopted child
    a. Modification – the $480 threshold amount may change annually as HUD releases guidance and/or updates calculations using CPI-W

3. Previous exclusion – Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home
    a. Modification - removes the developmental disability requirement and changes the exclusion to any amounts paid by a state Medicaid managed care system, other state agency or authorized entity, to enable a family member who has a disability to reside in the family's assisted unit. CTCAC will no longer require a doctor's note to verify disability.

4. Previous exclusions – Temporary, nonrecurring, or sporadic income (including gifts) and lump sum payments
    a. Modification – creates separate exclusion regarding gifts
    b. Modification – consolidates the definition to include income that will not be repeated in the coming year. Provides the following examples:
        i. U.S. Census Bureau for employment income (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not resulting in permanent employment
        ii. Direct federal or state payments for economic stimulus or recovery
        iii. State or federal refundable tax credits or state or federal tax refunds received
        iv. Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization
        v. Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings
    c. Modification – clarifies that income received as an independent contractor, day laborer, seasonal worker, or unemployment payments (EDD) are not excluded and must be calculated as part of the household's income.

5. Previous exclusion – the full amount of student financial assistance paid directly to the student or to the educational institution (income inclusion exception for households receiving Section 8)
    a. Modification – any assistance received under 479B of the Higher Education Act of 1965 is excluded from income (except for those Section 8 Households meeting criteria as noted in this Memo)
    b. Modification – any amounts received by private scholarships, private club or entity scholarships, university scholarships, and scholarships received through 501(c) non-profit organizations in excess of the actual covered costs after any

HEA aid is applied is counted as income toward the household. *(See example in previous section above)*

<u>Additions to Exclusions list</u>

1. Irrevocable trust or revocable trust outside of family or household control, excluded from the definition of net family assets under §5.603(b)
    a. Distributions of the principal, or corpus, of the trust, and
    b. Distributions of interest income from the trust principal used to pay the costs of health and medical care expenses for a minor
2. Revocable trust or a trust under the control of the family or household: any distributions from the trust are excluded from income
    i. 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
    ii. CTCAC will require a copy of the irrevocable trust or revocable trust to determine proper application of trust

3. Gifts - gifts for significant life events or milestones (e.g., holidays, birthdays, wedding gifts, baby showers, anniversaries) are excluded from income

4. Retirement Plans - Income received (such as interest earning, etc.) from any account under an IRS-recognized retirement plan. However, any distribution of periodic or recurring payments from these accounts shall be income at the time they are received by the family. Retirement accounts include:
    b. Individual retirement arrangements (IRAs)
    c. Employer retirement plans, and
    d. Retirement plans for self-employed individuals

5. Settlement Payments – includes the following:
    e. Insurance payments and settlements for personal or property loss – including payments through health insurance, motor vehicle insurance, and worker's compensation
    f. Lawsuit Settlements - 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 having a disability
    g. Tribal Claim Payments - Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States. This includes payments from tribal trust settlements. Payments must be excluded from gross income under the IRC or other federal law
    h. Civil Rights Settlements and Judgments - Civil rights settlements or judgments, including settlements or judgments for back pay

6. Aid and Attendance payments for Veterans - Payments related to aid and attendance for veterans under 38 U.S.C. 1521

7. Coverdell Accounts - Income and distributions from any Coverdell educational savings account of or any qualified tuition program under IRS sections 529 and 530

8. Baby Bonds - Income earned by government contributions to, or distributions from, ‘baby bond’ accounts created, authorized, or funded by federal, state, or local government

9. Loan Proceeds - The net amount disbursed by a lender to a borrower, under the loan terms. Funds may be received by the family or a third party (e.g., educational institution or car dealership).

10. Self-Employment - Gross income received through self-employment or operation of a business; with the exception of the following which shall be considered income:
    i. 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 IRS regulations; and
    j. 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.

<u>Exclusions that remain the same</u>

1. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member
    a. Includes ABLE accounts

2. Income of a live-in aide, as defined in 24 CFR 5.403

3. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire

4. Incremental earnings and benefits from training programs funded by HUD or 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
    a. Excluded amounts must be received under employment training programs with clearly defined goals and objectives and only excluded during participation in the program unless the amounts are excluded as Federal Financial Aid (§5.609(b)(9)(i))

5. 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)

6. Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program

7. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time

8. 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

9. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts

10. 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

11. Amounts specifically excluded by any other federal statute 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 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

All other provisions of the HOTMA Legislation final rule including Annual /Interim Reexaminations, De Minimis Errors, Mandatory Deductions, Forms and Systems Changes, and other key changes do not apply to the LIHTC program and do not fall under the monitoring scope or jurisdiction of CTCAC.

CTCAC thanks you for your patience and understanding as we work toward meeting our LIHTC obligations. Changes to stated policies or procedures on this memo may be revised as the subject matter changes or CTCAC receives notification from IRS or HUD on any regulation changes or updates to the program. CTCAC looks forward to continued success in our working relationships with owners and property management companies.

If you have any question regarding the policies or information noted above, you may contact the following staff:

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