

STETSON LAW

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HOUSING, HOUSING, WHERE AM I GOING TO HUD'ING LIVE?

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I. Overview of HOTMA

A. What is HOTMA

- Housing Opportunity Through Modernization Act of 2016.
- Modernizes HUD income, asset, and rent rules across HUD housing programs:
 - Public Housing (administered by state Public Housing Agencies (PHA's)).
 - Housing Choice Voucher Program (f/k/a Section 8 and governed by HUD but administered by the PHA's)
 - Project-Based Rental Assistance Program a/k/a Multifamily Housing

B. Why HOTMA matters now

- First major overhaul of income/asset rules in decades.
- Direct impact on SNT beneficiaries in subsidized housing.

C. Practical Status Today

- July 1, 2025 - Income exclusions applied to all PHA's, section 8 and multifamily housing programs (with very few exceptions) – existing tenants & new applicants.¹
- January 1, 2027 - remaining income and asset rules apply to existing and new applicants for all PHA's, section 8 and multifamily housing, **except that** for existing tenants, PHAs and Multifamily Housing owners have discretion to **not enforce** the new statutory asset limitation at recertification. However, that discretion does not apply to new applicants.
- Inconsistent application of HOTMA rules across housing authorities.
- Some variation remains among local PHAs regarding interpretation of trust distributions and documentation requirements.

¹ PIH 2026-19

APPENDIX A: SUMMARY OF COMPLIANCE REQUIREMENTS

Provisions	Relevant Public Housing Agencies (PHAs)	Required Compliance Date
Ceasing enrollment into Earned Income Disregard	All PHAs	January 1, 2024
Use of HUD-9886-A	All PHAs	No later than February 1, 2025
Income exclusions, as described in Notice PIH 2024-38	All PHAs	No later than July 1, 2025
Definitions specified in Notice PIH 2024-38	All PHAs	No later than July 1, 2025
De minimis errors	All PHAs	No later than July 1, 2025
All other provisions of sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA)	PHAs that are neither Moving to Work (MTW) PHAs nor PHAs using the HUD Family Reporting Software (FRS)	January 1, 2027
	Initial MTW PHAs	To be communicated by HUD
	MTW Expansion PHAs	To be communicated by HUD
	FRS PHAs	To be communicated by HUD

HUD Notice PIH 2026-15 – chart pg A-1

D. Importance for Special Needs Planning

- HOTMA significantly changed how trust distributions, including distributions from special needs trusts (SNTs), are treated when determining a recipient's income for HUD housing eligibility and rent calculations.
- Expanded definition of income = increased rents & greater reliance on trust funds.
- Rental increases = increased stress to beneficiaries and disabled clients.

II. Principal HOTMA Income and Asset Eligibility Rules

A. Income Eligibility

- Definition:

“all amounts, not specifically excluded by regulations, received from all sources by each member of the family 18 years or older.”²

- Family = persons residing together
- unearned income by dependents under 18 years of age.
- imputed income on net family assets in excess of \$50,000 (adjusted annually). Based on current passbook savings rate.

- Examples³:

² 24 C.F.R. § 5.609(a)

³ Income and Income Exclusions Resource Sheet

- Earned income (wages, salary, seasonal & temp work, etc.)
 - All Social Security benefits (SSI, SSDI, Retirement)
 - Pensions
 - Interest and dividends
 - Trust income distributed to a beneficiary (except payments of medical expenses for a minor)
 - Regular payments from insurance or settlements
 - Regular gifts of money
- Generally, rent is computed as 30% of income.
- Income Exclusions: (Not an exhaustive list)
 - Distributions of trust principal from revocable or irrevocable trusts so long as the trust is not considered part of net family assets (see HOTMA's new treatment of trusts below);
 - ABLE account interest
 - Nonrecurring or sporadic income (gifts, temp work, one-time lump sum payments)
 - State & federal income tax refunds
 - Imputed income from transferred assets if net family assets total more than \$50,000.
 - VA Aid and Attendance to the veterans only
 - Lawsuit judgments or settlements based on a claim of malpractice, negligence or other breach of duty that *resulted in disability* whether received as a lump sum or periodically
 - Retroactive SSI, Social Security or VA disability benefits
 - Certain educational assistance
 - Lump sum additions to net family assets such as lottery winnings
 - Reimbursements for health or medical expenses
 - Lump sum insurance payments and settlements for personal or property losses
 - Payments for care of foster children/adults and income of foster children and adults and live in aide

B. Asset Eligibility

- Asset Limit⁴
 - Net Family Assets:

“Net cash value of all assets owned by the family after deducting reasonable costs that would be incur for disposing of real property, savings, stock, bonds and other forms of investments.”⁵
 - Families are generally ineligible for public housing or vouchers if net family assets exceed \$100,000 (adjusted for inflation).
 - 2 year lookback applies to family assets disposed of for less than fair market value prior to application or recertification.
 - New rules apply to new applicants.
 - Housing authorities can determine how to apply the new rules to existing residents.
- Real Estate Limit
 - A family is ineligible for Section 8 if they own real estate suitable for occupancy.⁶
 - Must have a present ownership interest
 - Legal right to occupy property **AND**
 - Right to sell property
 - Trusts not controlled by the housing recipient excluded.
 - Right to use and occupy ≠ ownership.

⁴ HOTMA Resident Fact Sheet: Asset and Real Property Limitations

⁵ 24 CFR 5.603(b)

⁶ 24 CFR 5.618(a)

- Relevant Asset Exclusions: (not an exhaustive list)
 - Necessary personal property;
 - Non-necessary personal property ≤\$50,000 total;
 - Any retirement account recognized by the IRS;
 - ABLE accounts and education accounts (529 plans and Coverdell);
 - Trust principal if not under control of the beneficiary, any family member or household (applies to SNT's, irrevocable and some revocable trusts);
 - Tax refunds or refundable tax credits for 12 months after receipt;
 - Civil action or settlement proceeds based on malpractice, negligence or other breach of duty for an incident resulting in *disability*.

III. What Changed? - The REAL Impact of HOTMA

A. HOTMA changed how PHAs calculate income, deductions, and interim reexams

- New rules redefine what counts as income and when PHAs must recalculate it.
- Medical and disability-related deductions now apply only after a higher threshold.
- Income increases trigger mandatory interim reexams.

B. HOTMA requires PHAs to count income more consistently and reduce certain deductions — which directly increases “adjusted income,” and therefore rent

- HOTMA tightened income definitions and eliminated several flexible exclusions.
- Reduced deductions mean higher adjusted income.
- Higher adjusted income automatically increases the tenant's rent share.
- Changes apply across Public Housing, Housing Choice Vouchers (section 8) and Multifamily programs.

C. Key HOTMA Changes Affecting Disabled Households

- Medical Expense Deduction Threshold Increased:
 - The medical/attendant care deduction threshold rose from 3% → 10% of annual income, phased-in over next 3 years:
 - Year 1 (2027): 5%
 - Year 2 (2028): 7.5%
 - Year 3 (2029): 10%
 - This means many disabled households lose part or all of their medical deduction, increasing rent.
- Example (simple math):
 - Before HOTMA:
 - Threshold: $3\% \times \$15,000 = \$450$
 - Unreimbursed medical expenses: \$1,200
 - Deductible: $\$1,200 - \$450 = \$750$
 - Adjusted Income: $\$15,000 - 750 = \$14,250$
 - Rent: $\$14,250 \times 30\% = \$4,275/12 = \$356.25$ per month
 - After HOTMA:
 - Threshold: $10\% \times \$15,000 = \$1,500$
 - Medical expenses: \$1,200
 - Deductible: \$0
 - Loss of deduction: \$750
 - Rent: $\$15,000 \times 30\% = \$4,500/12 = \$375.00$ per month
 - **Impact:** rental increase = \$18.75 per month/\$225 per year.
- Standard disabled/elderly deduction changed:
 - A flat deduction HUD subtracts from household income before calculating rent.
 - Increased under HOTMA and adjusted for inflation.
 - Only one disabled/elderly deduction per household (head or co-head of household, spouse, person 62+ or disabled).
 - Pre-HOTMA: \$400

- HOTMA launch (2024): \$525
- 2026 inflation adjustment: \$550
- 2027 inflation adjustment: ~\$575
- Example (simple math):
 - Before HOTMA:
 - Gross income: \$15,000
 - Minus disability deduction: \$400
 - Adjusted income: \$14,600
 - Rent: $14,600 \times 30\% = \$4,380/12 = \$365$ per month
 - After HOTMA:
 - Gross income: \$15,000
 - Minus disability deduction: \$550
 - Adjusted income: \$14,450
 - Rent: $14,450 \times 30\% = \$4,335/12 = \$361$ per month
 - **Impact:** Rent goes down by \$4 per month.
 - The disability deduction increases annually, but this is small compared to the loss of medical deductions.

D. Mandatory interim reexams for income increases:

- PHAs interim reexams when adjusted income increases by 10% or more.
- Unearned income increases (SSI, SSDI, trust distributions, annuities) trigger rent increases.
- This means rent can rise mid-year, not just at annual recertification.

E. Disabled households are disproportionately affected because:

- They rely heavily on medical deductions, reduced by HOTMA.
- They may have small increases in unearned income, which now trigger interim reexams.
- More restrictive treatment of trust income for those with an SNT.

F. Cross-program impact

- HUD vs. SSI vs. Medicaid:
 - All three programs define and calculate income differently.
 - What works for one program may not work for another.
 - Planning must be triangular, not linear.

G. HOTMA as a stress multiplier

- Rising rents in subsidized housing causing disabled and elderly individuals increased stress which leads to increased health issues which leads to greater need for ever decreasing benefits.
- Trustees of SNT's become the "shock absorbers" between rising housing costs and fixed Social Security/Medicaid benefits.

IV. Case Study:

Brendan is 67. He lives in subsidized multi-family housing. Receives SSDI of approximately \$2,100, Medicaid (paying a premium) and SNAP benefits.

He has a ROTH IRA of \$140,000 and a traditional IRA of \$20,000. He also has about \$40,000 in the bank.

In addition, he is the joint owner, with mom, of Series EE bonds totaling \$350,000 (mom's SSN is listed on the bonds). Until recently the bonds were held in mom's safe deposit box. She has now given them to Brendan to hold but advised she is not planning to sell now.

Lastly, he is the trustee and beneficiary of an irrevocable trust his mother created that states that he and his brother can each receive \$50,000 annually from the trust (discretionary distribution). The trust was never reported on any applications for housing, SNAP or Medicaid.

Based on annual expenses, he has a shortfall (for which he needs to use his assets) of about \$50,000.

QUESTIONS

1. Do the bonds count and/or need to be reported to any agency?

- As of January 1, 2027 the full \$350,000 in bonds will count as an asset and will need to be reported unless further action is taken. Jointly owned assets are presumed fully accessible unless Brendan can prove he has no legal access to the bonds (can't liquidate them). Because mom indicated she is not willing to sell right now and her consent would be needed to liquidate, Brendan can argue that the bonds are an inaccessible asset. **Query whether the fact that they are under mom's SSN precludes access for Brendan?**
- Series EE bonds are liquid assets and co-owners generally have full redemption rights. **Query - Does it make a difference if the bond ownership is AND rather than OR? If the bonds are registered under mom's SSN and reportable on her income tax return, how much, if any, of the income could be attributable to Brendan for housing purposes?**
- Brendan now physically holds the bonds = strong evidence that he can access them to liquidate? **Can he simply give them back to his mother?**
- Brendan will lose his subsidized housing if he still owns the bonds as of January 1, 2027.
- Medicaid imposes a \$2,000 asset limit on recipients over age 65 (with some exceptions). Although Medicaid only counts ½ of the value of the bonds (\$175,000) because they are jointly owned with mom, Brendan is still over the asset limit and must report the bonds. Brendan would lose his Medicaid coverage but for the fact that he is on CommonHealth which does not have an asset limit in Massachusetts. But if he were on standard Medicaid or a waiver program, he would lose coverage.
- The bonds do not impact SNAP eligibility. There is no asset limit for SNAP.

2. Does the \$50,000 trust distribution need to be taken and reported? Is it reportable even if not taken?

- Because Brendan is the trustee and beneficiary, he has control over the trust assets under 24 CFR 5.603(4) and therefore, his share of the trust may be considered a "family asset". But, depends on how much, if any, of the \$50,000 distribution is considered trust "income". If it is all principal, then it is not.
- It needs to be reported if taken.
- Puts him over assets for Medicaid (unless in a program with no asset limits like CommonHealth in Massachusetts).

- No impact on SNAP eligibility if he doesn't take the distribution. But could be treated as income if taken.
- 3. How would withdrawals from his retirement monies impact benefits? Are the retirement funds countable as an asset as is or once withdrawn (either MRD or lump sum)?**
- For housing:
 - the principal can remain excluded until the MRDs are required to be taken.
 - The MRD's will be countable income and will increase his rent.
 - Are the Roth and Traditional IRA's treated differently under HOTMA?
 - However, if the distribution is large enough, and increases assets, will this be a problem?
 - For Medicaid: For people 65+:
 - Retirement accounts are countable assets unless in payout status.
 - Withdrawals count as income.
 - Brendan is over the \$2,000 limit regardless.
 - For Snap: Distributions could count as income.
- 4. Should the \$50,000 trust amount be taken instead of dipping into the IRA's where the principal is non-countable for housing and for the most part non-taxable?**
- From a housing/Medicaid perspective:
 - If he takes the \$50,000:
 - Housing: periodic withdrawals counts as income, raising rent and increase assets. Query – what if the distribution is from principal or non-recurring from the trust? But may still have the “family asset” hurdle.
 - Medicaid: counts as income, loss of eligibility.
 - SNAP: counts as income, reducing benefits.

- If he does NOT take it:
 - Housing: generally, the trust funds would not be a countable asset but query the “family asset” hurdle? Can he appoint an independent co-trustee to make his distribution?
 - Medicaid: trust is still countable because he is trustee + beneficiary.
 - SNAP: not counted
- IRA Withdrawals: Query – does it make a difference if the withdrawal is from the Roth or the Traditional IRA?
 - Housing: periodic withdrawals (including RMDs) count as income, raising rent. Non-recurring lump sums do not count as income but increase assets. Query - should Brendan take the traditional IRA as a lump sum so that it counts as principal and not income? Should he retain both IRAs or just the Roth given that they are excludable assets?
 - Medicaid: withdrawals count as income. IRA itself is a countable asset. Will lose Medicaid eligibility.
 - SNAP: withdrawals count as income

5. Can any excess funds be used to fund an ABLÉ account?

- Yes, but only up to \$20,000 for 2026 and assuming Brendan was disabled prior to age 46.
- Query – with regard to income distributions from the trust and/or IRA’s to an ABLÉ account (income from an ABLÉ account not counted), will housing/Medicaid still deem the income to Brendan because the source of the income was the trust and/or the IRA’s.
- Query – if an ABLÉ account is not an option, can he establish a pooled trust?

6. As an aside, when mom dies (she is stable now), he will inherit at least \$2 million outright. Assuming asset limits are not imposed and, even if they are, that he is grandfathered under the old rules, how will the inheritance impact continued eligibility for housing/Medicaid?

- Brendan may be able to retain housing benefits.
- He may be able to retain his Medicaid benefits if on a program like CommonHealth in Massachusetts that does not impose an asset limit. Otherwise, he will lose his Medicaid benefits.
- If the new HOTMA asset limit of \$100,000 applies to him, then he will need to disenroll and find alternative housing and other medical insurance.
 - Further queries - what about decanting the trust?
 - Should he resign as trustee?

V. Alternative housing pathways for disabled adults

A. Group Homes

- Models:
 - I/DD group homes
 - Mental health residences
 - Medically fragile homes
- Funding:
 - Medicaid HCBS waivers
 - State I/DD agencies
 - Sometimes HUD-funded properties
- Pros:
 - Structured support
 - Regulatory oversight
 - Predictable staffing
- Cons:
 - Limited choice of roommates
 - Institutional feel
 - Long waitlists
 - Variable quality

B. Shared Living Arrangements (See Abigail's story by SNA member Victoria Sulerzyski attached)

- Concept:
 - Adult foster care
 - Host homes
 - Live-in caregiver models
- Funding:
 - Medicaid HCBS waiver
 - State programs
 - Sometimes private pay
- Pros:
 - Relationship-based support, community integration, often more personalized.
- Cons:
 - Fragility of arrangements if caregiver moves, burns out, or dies; oversight varies widely.
- Other Considerations:
 - Contracting and boundaries:
 - Who is the tenant?
 - Who holds the lease?
 - How does the SNT interact with the arrangement (paying stipends, rent, supports)?

C. Accessory dwelling units (ADUs)

- Policy trend:
 - Many states and municipalities are liberalizing ADU zoning to address housing shortages.

- Use for disabled adults:
 - Semi-independent living near family and potential for live-in supports.
- Funding strategies:
 - Family equity
 - SNT financing
 - State housing grants
 - Sometimes local incentives
- Other Considerations:
 - Ownership and succession:
 - Who owns the property (family, SNT, LLC)?
 - What happens when parents die or move?
 - How do you protect the disabled adult's tenancy long-term?

D. Creative tenancy models

- Examples:
 - Co-housing communities with support overlays.
 - Roommate arrangements with shared supports.
 - SNT-owned property leased to beneficiary with voucher support.
- Pros:
 - High autonomy
 - Tailored community
 - Flexible design
- Cons:
 - Complex coordination
 - Legal structuring
 - Ongoing governance

VI. Pulling It All Together: What Trustees, Families & Practitioners Need To Know

A. Trustees as “housing strategists,” not just money managers

- Core responsibilities under HOTMA:
 - Understand how distributions affect housing, SSI, Medicaid and other public benefits simultaneously.
 - Understand the nuances in the income/assets rules under HOTMA.
 - Consider having a housing plan for each beneficiary, not just a financial plan.
 - Use ABLE accounts, first party SNT's, pooled trusts, and other tools strategically.

Q&A

THANK YOU!

ABIGAIL'S STORY AS RELAYED BY HER MOM AND FELLOW SNA MEMBER VICTORIA SULERZYSKI

When she was 14 years of age, I asked my Developmental Disabilities Administration ("DDA") case manager to go out and see what was available for Abby given her medical fragility and multiple disabilities. When she came back with a list of group homes, we went out to investigate. I did not care for any and the only one that really came close was on the eastern shore of Maryland. I knew trying to get private duty nurses to the eastern shore is a huge battle so that really was not an option for us. That is when the "think out of the box" idea was birthed. My mother-in-law had passed away and we decided to take her home and bump out the back and put a new addition on it that resembles the outline of her cottage at the Maryland School for Blind.

I gathered together a couple of years prior to transition at 21 years of age, a DDA provider agency, case manager for her Medicaid nursing (through the Rare and Expensive Case Management program ("REM")), case manager of her DDA and a supervising nurse for DDA. We met several times over the course of the last couple of years to make sure that transition would be seamless and she was covered in the new home 24/7. The state of Maryland was in all of these meetings and agreed on the plan then as we went to implement it, they only approved 137 hours of private duty nursing ("PDN") a week instead of 168 (which is 24/7). That is where the appeal and the lawsuit began. We did transition Abby into the home and Dave and I did the 31 hours until the case wound its way through the appellate system and we came out victorious.

At the beginning, we were under DDA's "supported living" program. That means that the DDA provider provides all of the caregivers but not the nurses because the nurses are REM nurses. Abigail's DDA budget would be paid to the DDA provider. We created an LLC and Abigail pays rent to the LLC each month out of her SSI. We own the house and we are responsible for all the maintenance on the house, the cleaning, the yard work, etc. Abigail had a roommate for 2.5 years until she died. We have identified a new roommate but DDA has not approved her request for an AON so that family has appealed. So, Abigail lives by herself with her nursing and her DDA caregivers. She is about 1 mile from our home.

Abigail's DDA caregiver takes Abigail out into the community using a car that we have provided to the house. We have also made sure that we have enough liability insurance to cover the house. Since Abigail is the "employer" under self-direction under the waiver program, she pays out of her budget workers' compensation, unemployment and taxes, etc. of the DDA caregivers that work with Abigail. Abigail also currently has a day-to-day administrator that coordinates all the care at the house, a support broker who is really the HR of Abigail's budget and a financial DDA operator that handles all the paperwork and payment of the required taxes, insurance, employee payments. They also ensure that they do not go over Abigail's DDA budget.

When Abigail did have a roommate, we worked as a family unit to do what was best for the girls. It was really lovely. The two families would have events at the house, would

throw parties for Halloween, birthdays, Christmas, etc. They would go out into the community together, do arts and crafts together, listen to music, play indoor bowling, go to bowling, have music therapy, etc. It was quite collaborative and the girls were close.

Since the house only had two people in it and it is a shared living type of space, there is no need to be a licensed DDA provider. Each state is different so families should make sure they know the rules surrounding that. It was easy to create the space, partner with the right DDA partners to make this happen. Without the REM nurses we would be at a lost so it was also crucial, and continues to be crucial, that the DDA caregivers and the REM nurses work as a team.

We chose this because we are active parents and want to oversee Abigail's care but give her interdependence. She is less than 1 mile away and if we need to we can walk there. She is very happy and enjoys what she does every day.

Here is a link to Abigail's case: <https://case-law.vlex.com/vid/in-re-sulerzyski-302-935269038>.

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