



Stetson Law

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Special Needs Planning and
Special Needs Trusts
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**HOUSING, HOUSING, WHERE
AM I GOING TO BE LIVING?**

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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 or PHA's)
 - Project-Based Rental Assistance Program aka Multifamily Housing

Why it matters Now:

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

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**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 and new applicants.
- 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, PHA's 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 PHA's regarding interpretation of trust distributions and documentation requirements.

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APPENDIX A: SUMMARY OF COMPLIANCE REQUIREMENTS		
Provisions	Relevant Public Housing Agencies (PHAs)	Required Compliance Date
Creating equivalent into Federal Income (changed)	All PHAs	January 1, 2024
Use of HUD-9886-A	All PHAs	No later than February 1, 2025
Income and Expenses, as described in Notice PH 2021-38	All PHAs	No later than July 1, 2025
Definitions specified in Notice PH 2021-38	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 System (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

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Importance of 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 and greater reliance on trust funds.
- Rental increases - increased stress to beneficiaries and disabled clients.

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Principal HOTMA Income and Asset Eligibility Rules

Income Eligibility

Definition: *"all amounts, not specifically excluded by regulations, received from all sources by each member of the family 18 years of older."*

- 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.

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Examples

- Earned income (wages, salary, seasonal and temporary 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

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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
- ABLE account interest
- Nonrecurring or sporadic income (gifts, temp work, one-time lump sum payments)
- State and Federal income tax refunds
- Imputed income from transferred assets if net family assets total more than \$50,000
- VA Aid & Attendance to veterans only
- Lawsuit judgements or settlements based on a claim of malpractice, negligence, or other breach of duty that resulted in disability, whether 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

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Asset Eligibility

Asset Limit

Net Family Assets: *"Net cash value of all assets owned by the family after deducting reasonable costs that would be incurred for disposing of real property, savings, stock, bonds, and other forms of investments".*

- 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.

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Asset Eligibility *continued*

Real Estate Limit

- A family is ineligible for Section 8 if they own real estate suitable for occupancy.
- **Must have a present ownership interest, legal right to occupy property **and** right to sell said property.*
- Trusts not controlled by the housing recipient excluded
- Right to use and occupy does not equal ownership

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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*.

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What changed?

The REAL impact of HOTMA

- **HOTMA changed how PHAs calculate income, deductions, and interim reexams.**
- New rules define 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.

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HOTMA requires PHAs to count income more consistently & 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.

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Key HOTMA Changes Affecting Disabled Household

Medical Expense Deduction Threshold Increased

- The medical/attendant care deduction threshold rose from 3% to 10% of annual income, phased in over the next 3 years:

Year 1 (2027): 5%

Year 2 (2028): 7.5%

Year 3 (2029): 10%

- This means many disabled households lost part or all of their medical deduction, increasing rent.

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Example:

Before HOTMA

- Threshold: 3% x \$15,000 = \$450
- Unreimbursed medical expenses: \$1,200
- Deductible: \$1,200 - \$450 = \$750
- Adjusted income: \$15,000 - 750 = \$14,250
- Rent: \$14,250 x 30% = \$4,275 divided by 12 = **\$356.25 per month**

After HOTMA

- Threshold: 10% x \$15,000 = \$1,500
- Medical expenses: \$1,200
- Deductible: \$0
- Loss of deduction: \$750
- Rent: \$15,000 x 30% = \$4,500 divided by 12 = **\$375.00 per month**

IMPACT: Rental increase = \$18.75 per month / \$225 per year.

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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

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Example:

Before HOTMA

- Gross income: \$15,000
- Minus disability deduction: \$400
- Adjusted income: \$14,600
- Rent: $\$14,600 \times 30\% - \$4,380$ divided by 12 -
\$365 per month

After HOTMA

- Gross income: \$15,000
- Minus disability deduction: \$550
- Adjusted income: \$14,450
- Rent: $\$14,450 \times 30\% - \$4,335$ divided by 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.

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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.

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.
- Most restrictive treatment of trust income for those with an SNT.

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Cross-program Impact

HUD vs. SSI vs. Medicaid:

- All 3 programs define and calculate income differently.
- What works for one program may not work for another.
- Planning must be triangular, not linear.

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 increasing benefits.
- Trustees of SNT's become the "shock absorbers" between rising housing costs and fixed Social Security and Medicaid benefits.

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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.

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Questions:

- Do the bonds count and/or need to be reported to any agency?
- Does the \$50,000 trust distribution need to be taken and reported? Is it reportable even if not taken?
- How would withdrawals from his retirement monies impact benefits? Are the retirement funds countable as an asset as is or once withdrawn (*either RMD or Lump sum*)?
- 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?
- Can any excess funds be used to fund an ABL account?
- 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?

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Alternative housing pathways for disabled adults

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

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Alternative housing pathways for disabled adults *continued*

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

Concept:

- Adult foster care
- Host homes
- Live-in caregiver models

Funding:

- Medicaid HCBS waivers
- 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, support)?

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Alternative housing pathways for disabled adults *continued*

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 live-in supports

Funding strategies:

- Family equity
- SNT financing
- State housing grants
- Sometimes local considerations

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?

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Alternative housing pathways for disabled adults *continued*

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 level of autonomy
- Tailored community
- Flexible design

Cons:

- Complex coordination
- Legal structuring
- Ongoing governance

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

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 and asset 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.

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Q & A

Thank you!

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