



## **Have You Heard About HOTMA?**

### **Eligibility Rules Are Changing for Subsidized Housing**

*This issue of the Voice was written by SNA member [Emily Starr, CELA](#), of [Starr Traiger LLP](#) in Worcester, Massachusetts. Serving central Massachusetts, her firm specializes in special needs planning, estate and trust administration, guardianship and conservatorship, estate planning, and elder law.*

The federal government has helped low-income people to afford housing since the Great Depression. Since 1974, Section 8, one of the largest housing subsidy programs, has assisted families, seniors, and people with disabilities to pay rent. Section 8 is administered by local housing authorities through the issuance of portable housing vouchers and by private multifamily building owners working with the federal government in project-based Section 8.

In 2016, Congress passed a law called the Housing Opportunity Through Modernization Act, commonly referred to as HOTMA, to modernize the Section 8 program. Though passed more than ten years ago, HOTMA has yet to be fully implemented. There are different implementation deadlines for housing authorities and private building owners, and different implementation deadlines for the new asset rules vs. the new income rules. When fully implemented, HOTMA will affect how income and assets are counted in determining eligibility and rent for Section 8 programs. While regulations implementing the law have been issued, there are some confusing provisions that will have to be further developed either at the local or national level.

Before HOTMA, housing programs mainly looked at a tenant's income to determine eligibility and the calculation of rent. Assets, such as bank accounts, mattered only because the interest they earned was counted as income. Further, income that would have been realized from assets that had been given away within the past two years was also included in Section 8 income calculations. Under HOTMA, assets matter much more. HOTMA precludes eligibility if a household owns more than \$100,000 in assets (this amount changes slightly each year and is currently \$105,574 for 2026). A household may also be denied eligibility if it owns a home that it could live in.

However, before reading any further, it is important to know that housing authorities and private building owners who have Section 8 units are given options under HOTMA, the most important of which is on whom to impose the new asset eligibility limits. They can choose to impose those limits on all applicants and existing tenants or only when making eligibility determinations for new tenants. In other words, existing tenants are not necessarily affected.

The options chosen by each housing authority must be incorporated in its ACOP (Admissions and Continued Occupancy Policy): the options chosen by private building owners must be included in their Tenant Selection Plans. These documents must be available to the public. Because of the discretion

given to local housing authorities and private building owners, families, trustees, and advisors need to examine the rules used in their local area or specific private multifamily buildings that have Section 8 units.

When assets are counted, they include items such as bank and investment accounts, as well as assets disposed of for less than fair market value during the preceding two years. However, many items are excluded from the definition of assets. Retirement accounts, ABLE accounts for people with disabilities, education savings accounts, and normal personal property like furniture and cars are among the assets usually excluded.

Trust treatment by HOTMA is especially important to understand. Assets held in a properly drafted trust over which the household has no control – whether revocable or irrevocable – are not countable. Most special needs trusts, used to protect public benefits eligibility for people with disabilities, fall within this category of excluded assets.

Income rules are also modified by HOTMA. Income usually includes wages, Social Security, pensions, and regular payments as well as income imputed on net family assets in excess of \$50,000 (inflated now to \$52,787 in 2026). It continues to include income generated by assets that have been given away within the past two years. HOTMA clearly excludes one-time or non-recurring income. This is why trustees must be careful about making regular payments directly to a beneficiary. Excluded also are gifts, inheritances, tax refunds, income earned on ABLE accounts, VA Aid & Attendance, and money from lawsuit judgments and settlements. In-kind donations such as food, clothing, or personal items are not counted as income even if they occur regularly. However, bill payments by an outsider are considered income.

Distributions of principal from a trust are excluded if the trust itself is excluded. Distributions of income from a trust may or may not be counted, as the regulations are confusing. A conservative reading of HOTMA limits noncountable distributions of trust income to distributions for medical care of a minor. For more information about trust distributions, please see this [Voice](#) article from November 2024 on [Supplemental Needs Trust Distribution and Special Needs Housing Subsidies](#).

HOTMA also changed deductions. Medical expenses now count only if they are more than 10% of income. This can increase rent for some families. There are hardship exceptions, but they are limited.

The most important lesson to learn from a review of HOTMA is the importance of careful planning based on knowledge of the policies of the local housing authorities and private multifamily building owners. Trusts must be written carefully. Trustees must keep good records. Advocacy is critical as the implementation of this complex new law, particularly in the interpretation of the implications of trust distributions, is likely to be inconsistent and imperfect.

***About this Article:*** We hope you find this article informative, but it is not legal advice. You should consult your own attorney, who can review your specific situation and account for variations in state law and local practices. Laws and regulations are constantly changing, so the longer it has been since an article was written, the greater the likelihood that the article might be out of date. SNA members focus on this complex, evolving area of law. To locate a member in your state, visit [Find an Attorney](#).

**Sharing Guidelines:** This article may be reproduced only with prior permission and must remain unaltered and include the author's byline and the "About this Article" section immediately following the main content. Any redistribution must include the following credit: *"Reprinted with permission of the Special Needs Alliance – [www.specialneedsalliance.org](http://www.specialneedsalliance.org)."*

**Online republication of the full article is not permitted.** To share or reference this content digitally, please do so by linking directly to the original post on the Special Needs Alliance website.