



Rural Development

Christine Mechtly
Acting Administrator

Rural Housing Service
1400 Independence Ave., SW
Room 5011-S
Washington, D.C. 20250

TO: All SFH Direct National Office Staff
Field Office Staff
Rural Housing Service

ATTN: Leadership Designees
State Directors
Rural Development

FROM: Christine Mechtly
Acting Administrator
Rural Housing Service

SUBJECT: Notification of Administrator's Exception related to 7 CFR § 3550.54(d)(1)(3), 7 CFR § 3550.54(b)(6), and 7 CFR § 3550.54(d)

PURPOSE

The purpose of this Unnumbered Letter (UL) is to provide notice to Single Family Housing Direct (SFHD) staff of the attached Administrators Exception related to an upcoming regulation change resulting from the [Housing Opportunity Through Modernization Act \(HOTMA\)](#).

BACKGROUND

According to section 501(b)(5)(A) the Housing Act of 1949, as amended (42 U.S.C. 1471(b)(5)(A)), which provides authority for the guaranteed and direct single family housing programs, the terms “**income**” and “**adjusted income**” have the meanings given by sections 3(b)(4) and 3(b)(5), respectively, of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). Public Law 114-201 (**HOTMA**), dated July 29, 2016, and the subsequent implementation of its sections 102, 103, and 104 through a [final rule published February 14, 2023](#) (correction published [February 28, 2023](#)) **amended certain definitions of “annual income” (24 CFR [§ 5.609](#)) and “adjusted income” (24 CFR [§ 5.611](#))**. The final rule was effective January 1, 2024.

EXPIRATION DATE:
June 30, 2026

FILING INSTRUCTIONS:
Housing Programs

IMPLEMENTATION

The Administrator's Exception will implement the following requirements of HOTMA until the regulations at 7 CFR 3550 are updated:

1. Certain types of **Trust distributions** will be excluded from annual income per 24 CFR [§ 5.609\(b\)\(2\)](#).
2. Certain types of **Settlements or judgements** as defined at 24 CFR [§§ 5.609\(b\)\(5\), \(7\), \(25\)](#) will be excluded from annual income.
3. **Income from net family assets** will more specifically address the exclusion of imputed income as defined at 24 CFR [§§ 5.609\(a\)\(2\), \(b\)\(1\)](#):

Further guidance is underway to incorporate the changes made in 24 CFR § 5.609 and 24 CFR § 5.611.

Please refer to the attached copy of the Administrator's Exception and corresponding updates to Handbook-1-3550 for additional information.

If you have any questions regarding the guidance in this UL, please contact Shannon Chase, Branch Chief, Single Family Housing Direct Loan Origination Branch, (Shannon.Chase@usda.gov) or telephone 515-305-0399.

Attachment



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Acting Administrator

Rural Housing Service
1400 Independence Ave., SW
Room 5011-S
Washington, D.C. 20250

TO: Christine Mechtly
Acting Administrator
Rural Housing Service

FROM: Chasity Gatson
For Ingrid Ripley, Acting Deputy Administrator
Single Family Housing (SFH)

SUBJECT: Regulatory Waiver: 7 CFR 3550
Implementation of Housing Opportunity Through Modernization
Act (HOTMA) for Single Family Housing Direct programs

I. Regulation:

According to section 501(b)(5)(A) the Housing Act of 1949 (42 U.S.C. 1471(b)(5)(A)), which provides authority for the guaranteed and direct single family housing programs, the terms “**income**” and “**adjusted income**” have the meanings given by sections 3(b)(4) and 3(b)(5), respectively, of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). Public Law 114-201(**HOTMA**), dated July 29, 2016, and the subsequent implementation of its sections 102, 103, and 104 through a [final rule published February 14, 2023](#) (correction published [February 28, 2023](#)) **amended certain definitions of “annual income”** (24 CFR [§ 5.609](#)) **and “adjusted income”** (24 CFR [§ 5.611](#)). The final rule was effective January 1, 2024.

This exception request is made in order to implement the requirements of HOTMA where it is inconsistent with Agency regulation, until such time that Agency rulemaking is completed.

II. Request:

This exception request is made in accordance with 7 CFR [§ 3550.8, exception authority](#). Rural Development will be submitting a regulation update to 7 CFR part 3550 to bring part 3550 into compliance with HOTMA and its associated changes, but until such time the regulation update is published, Rural Development are requesting an Administrator’s waiver to address the following:

1. **7 CFR § 3550.54(d)(1)(iii)** conflicts with 24 CFR [§ 5.609\(b\)\(2\)](#), which excludes the following types of **trust distributions** from annual income while RD does not exclude such trust distributions, instead considering them as net family assets that must be included in the calculation of annual income:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household 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 income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; 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.

This exception will permit the Agency to specify the exclusion of trust distributions from annual income as described above.

2. **7 CFR § 3550.54(b)(6)** conflicts with the HUD definitions at 24 CFR [§§ 5.609\(b\)\(5\), \(7\), \(25\)](#) regarding **insurance settlements**, and **civil actions or settlements**.

- 24 CFR § 5.609(b)(5) excludes “Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.”
- 24 CFR § 5.609(b)(7) excludes “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 becoming disabled.”
- 24 CFR § 5.609(b)(25) excludes “Civil rights settlements or judgments, including settlements or judgments for back pay.”
- Explanatory language in the final rule notes “While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family’s net family assets (e.g., if the funds are deposited into the family’s savings account or a revocable trust under the control of the family).”

The definitions provided by HUD are more specific than Agency’s which more generally excludes “settlements for personal or property losses.” This exception will permit the Agency to specify the exclusion of settlements or judgements as described above.

3. **7 CFR § 3550.54(d)** currently states in part that “**Income from net family assets** must be included in the calculation of annual income,” which could be read to conflict with the HUD definitions at 24 CFR [§§ 5.609\(a\)\(2\), \(b\)\(1\)](#), as HUD employs a more specific analysis:

- 24 CFR § 5.609(a)(2), *includes* the following in annual income: “When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually...) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.”
- 24 CFR § 5.609(b)(1) *excludes* the following from annual income: “Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually...) and no actual income from the net family assets can be determined.”

Furthermore, explanatory language in the February 14, 2023, rule states “Actual returns from net family assets continue to be included income.”

In summary, while the Agency’s current definition requires income earned on net family assets to be included in annual income, the HUD definition addresses imputed income more specifically.

This exception will permit the Agency to specify that:

- a) *Imputed* income on net family assets \$51,600 ([*2025 adjusted limit*](#)) or less must be *excluded* from annual income. However, since the Agency currently has an asset limit of \$15,000 (elderly) and \$20,000 (non-elderly), the Handbook clarification will only note that any imputed income on net family assets is not to be considered, since the Agency’s existing asset limits are already less than the HUD limit for this item, and listing the HUD limit of \$51,600 for imputed income will cause confusion.
- b) *Imputed* income on net family assets over \$51,600 ([*2025 adjusted limit*](#)) must be *included* in annual income (when actual income can’t be determined). However, since the Agency requires that assets more than \$15,000 (elderly) and \$20,000 (non-elderly) be used toward the purchase of the property or for other eligible purposes, this exclusion is not expected to have any impact on the SFHD programs (as assets must be reduced to applicable levels through down payment or other eligible purposes). Given the potential for confusion by addressing an exclusion which is not expected to impact our applicants, while based on an asset limit that exceeds the Agency asset requirements, this will not be specifically addressed in the Agency Handbook.

Actual income from net family assets continues to be included in annual income.

III. Supplemental information regarding other HOTMA-related actions:

- A. 7 CFR § 3550.54(b)(11) conflicts with 24 CFR § 5.609(b)(9) regarding the exclusion of **student financial assistance**, which is much narrower than the exclusions provided by part 3550. The Agency consulted with HUD during a meeting on April 29, 2024, at which representatives from the Agency’s Office of General Counsel (OGC) as well as a Senior Housing Program Specialist (HOTMA subject matter expert) and several attorneys from HUD were in attendance, to determine whether the Agency may depart from HUD as is necessary to properly implement SFH’s mission. Following the briefing, and upon advice from OGC, the Agency submitted a written summary of our proposed departure from HUD on this topic and requested written confirmation of their concurrence by a stated deadline. Despite Agency follow ups with HUD, no written response was received and on July 22, 2024, OGC advised that the Agency could consider their lack of response to be acquiescence.
- B. While 7 CFR § 3550.54(b)(12) is a general exclusion of “other revenue exempted by a Federal statute,” 24 CFR § 5.609(b)(17) excludes “**Payments** related to aid and attendance **under 38 U.S.C. § 1521 to veterans** in need of regular aid and attendance.” Such payments are excluded from income by 42 USC 1437a(b)(4)(B)(iv). OGC concurs that 7 CFR § 3550.54(b)(12) is sufficient from a

regulation standpoint, but that exclusion of these of payments should be further specified in Agency Handbooks.

- C. **7 CFR § 3550.54(c)(1)** allows for a **dependent deduction** in “...the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.”. 24 CFR [§ 5.611\(a\)\(1\)](#) also requires a \$480 dependent deduction, which the Agency currently applies, but this will now be indexed to inflation and will be [adjusted annually](#) (rounded to the next lowest multiple of \$25).

HUD has indicated this will be published no later than September 1st of each year, so the Agency will need to adjust its dependent deduction accordingly upon HUD’s annual publication (to remain \$480 for calendar year 2025)

- D. **7 CFR §§ 3550.54(c)(3) and (c)(5)** allow for **deductions of health and medical expenses** (elderly & disabled households) that are in excess of three percent of the household's annual income. However, 24 CFR § 5.611(a)(3) changed from unreimbursed medical care expenses in excess of 3 percent of annual income, to unreimbursed medical and health care expenses in excess of 10 percent of annual income.

Given the negative impact on applicants, as well as existing borrowers who have these same deductions applied for subsidy renewal, the Agency would prefer to delay this implementation until rule making is completed. OGC has recommended this be done through a Federal Register Notice, which is currently being developed for clearance.

- E. **7 CFR § 3550.54(c)(4)** allows for an **elderly or disabled deduction** in “...the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.”, The Agency currently deducts \$400, however, this conflicts with **24 CFR § 5.611(a)(2)** which updated the \$400 deduction to \$525, and will now be indexed to inflation and [adjusted annually](#) (rounded to the next lowest multiple of \$25).

HUD has indicated this will be published no later than September 1st of each year, so the Agency will need to adjust its elderly or disabled deduction to \$525 as soon as possible via Handbook and system updates (target date is January 2025) and continue to adjust this deduction upon HUD’s annual publication.

- F. **7 CFR § 3550.54(d)(2)** discusses what is excluded from net family assets, but the definition of net family assets in **24 CFR § 5.603(b)** was revised to clarify:
1. That net family assets do not include the value of all [non-necessary items of personal property](#) with a total combined value of \$51,600 or less (calendar year 2025), as [adjusted annually](#) by an inflationary factor.
 2. That because negative equity in real property does not preclude a family from selling the property, negative equity alone does not justify excluding such a property from net family assets.
 3. Exclude Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

4. Excludes from the calculation of “net family assets” the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government.

OGC has indicated that while 7 CFR § 3550.54(d)(2) does not provide the same level of specificity as HUD, a regulatory change would not be necessary if the Agency applies these provisions of the regulation similarly as HUD and that noting this interpretation in the Handbook(s) would be sufficient.

IV. Recommendation:

Under the authority granted in [§ 3550.8 Exception authority](#), we recommend approval of this request. This request is consistent with the applicable statutes and does not adversely affect the interest of the Federal Government. Upon approval, updates will be made to pertinent resources, as applicable (e.g., HB-1-3550, HB-2-3550, UniFi/LoanServ, forms, [SFH Self-Assessment](#) tool).

Approved _____

Not Approved _____

Christine Mechtly
Acting RHS Administrator
Rural Development

Date _____