



HOTMA: Section 8 Asset Restrictions

HOUSING OPPORTUNITY THROUGH
MODERNIZATION ACT


GWEN VOLK

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Disclaimer



- This course is based on our reading, analysis, and interpretation of the HOTMA Final Rule and Supplemental Guidance issued to date relative to the HUD Office of Multifamily Housing in consultation with HUD and other knowledgeable individuals.
- HUD says MFH Owners must continue to follow their existing Tenant Selection Plans and EIV policies & procedures until the MFH Owner’s software is compliant with TRACS 203A.
- Gwen Volk INFOCUS, Inc. does not provide legal advice and is not a regulatory agency. While we have exercised due diligence to provide accurate information, we will not be responsible for any errors or inaccuracies
- Attendees seeking guidance on programs not covered in this course should refer to the HOTMA Final Rule and contact PIH, CPD, RD, and/or the agency that allocates and monitors the tax credits or tax-exempt bonds, as applicable.

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Agenda

- Asset Definition and New Exclusions
- Section 8 Asset Restrictions:
 - The Asset Cap
 - The Real Property Restriction
- Applying the Restrictions
 - On Admissions
 - Existing Residents
- Preparing for the Asset Cap

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Definition & New Exclusions

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Definition of Net Family Assets

Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment. In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. *(continued on next slide)*

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Definition of Assets (continued)

Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

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New Exclusions from Assets

- Any account under an IRS-recognized retirement plan including IRAs, employer retirement plans, and retirement plans for self-employed individuals

Information on IRS-Recognized Retirement Plans is found at:
<https://www.irs.gov/retirement-plans/plan-sponsor/types-of-retirement-plans>

Asset Exclusions Summary Table see handout

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Section 8 Asset Restrictions

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Asset Restriction Applicability

- Applies to Section 8
 - includes 202/8 per Supplementary Guidance
- The following MFH programs are **not** subject to the asset limitation:
 - Section 202/162 PAC;
 - Section 202/811 PRAC;
 - Section 236 IRP;
 - Section 811 PRA;
 - SPRAC

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Two Asset Restrictions for Section 8

1. On admission families cannot receive Section 8 if they have:
 - a) Over \$100,000 in total net family assets (the “asset cap”), or
 - b) Ownership in real property where the family could live.
2. On recertification, Owner has choices (see Slide 14)
3. The asset limitation will be adjusted by CPI-W starting in 2025
4. Asset Restrictions do not apply until Owner software is HOTMA compliant

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Real Property Owned Restriction

- A family cannot receive Section 8 if they own real property that is suitable for occupancy by the family as a residence and for which they have:
 - A present ownership interest in
 - A legal right to reside in, and
 - The effective legal authority to sell, based on local laws where the property is located.
- The Owner may accept self-certification that the “family does not have any present ownership interest in any real property”

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Defining “Not Suitable for Occupancy”

A property will be considered suitable for occupancy unless the family demonstrates that it:

- (i) Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- (ii) Is not sufficient for the size of the family;
- (iii) Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);

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“Not Suitable for Occupancy”(Continued)

A property will be considered suitable for occupancy unless the family demonstrates that it:

- (iv) Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- (v) Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

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Owner Options for Existing Residents Owner Policy Required (Announced 2/2/2024)

1. Total Non-Enforcement (grandfathering)
2. Enforcement - at next certification (interim or annual)
 - May enforce with 30 days notice or delay enforcement for up to 6 months for all or create delay time frames based on exceptions (disability, age, etc.)
3. Limited Enforcement: Option to Cure
 - Same as Enforcement except residents are given the option to cure the non-compliance within the delay time-frame.

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Preparing for the Asset Cap

- Review Section 8 and 202/8 waiting lists for applicants who may not qualify for the admission asset restrictions
- Notify them of this if they still may not have moved in when your software is HOTMA compliant (Some owners are concerned about fair housing issues and are notifying them about this now)
- Establish a policy for existing residents- Total Non-Enforcement, Enforcement, or Limited Enforcement: Option to Cure
- Except for Total Non-Enforcement, develop policies for delaying enforcement up to 6 months, option to cure, and exception policies for certain populations if desired (exceptions do not equal Total Non-Enforcement)

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When the time comes . . . Curing the Asset Cap Violation

- Put the property up for sale
- Put the assets into a non-revocable trust for the benefit of someone in the family
 - Setting up a trust for someone who is not a member of the family would be considered an asset disposed of for less than fair market value and counted as a family asset for two years following its disposal.
- Be careful! Property managers are not financial advisors, and we do not recommend that you council applicants on how to resolve their asset issues.

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Asset Cap 2: Scenario

Misty Rogers and her 3 children have applied to Oak Village Apartments, a Section 8 family project. Her annual recertification is due on July 1, 2024. She has listed that she owns a home for occupancy in another state. She is currently renting it out to her mother for a nominal amount. The market value of the home is \$70,000.

Does Misty still qualify for Section 8?

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Policies and Forms That Must Be Updated for Section 8 Asset Restrictions

- Tenant Selection Plan (by 5/31/2024)
- Application/Pre-Application Forms
- Rejection letters to include additional reasons to reject:
 - exceeds Section 8 asset cap and
 - owns real property that is suitable for occupancy
- Applicant notices for those on the waiting list when HOTMA software is compliant

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Test Your Knowledge

1. \$100,000 CAP on Assets & restriction on owning habitable real estate applies to

Section 8 only

Section 8 including 202/8

202 & 811 PRACs only

All HUD Multifamily Properties

2. HUD has advised Owners to begin enforcing the Asset Cap on new move-ins on 1/1/2024

True

False

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Test Your Knowledge

3. The Owner has the following option(s) for existing residents whose are not in compliance with the asset restrictions:

Total Non-Enforcement

Enforcement

Limited Enforcement

All of the Above

4. An Owner who opts for Limited Enforcement can grant existing residents up to six months before issuing a termination of assistance and an additional six-month extension for the resident to cure the non-compliance.

True

False

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Test Your Knowledge

5. HOTMA says that any applicant that owns a home cannot receive Section 8.

- True
- False

6. Cindy and her ex-husband co-own a vacant home that is suitable for occupancy. She has applied to a 202/8. Could Cindy be subject to Asset Restrictions?

- Yes
- No

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Thank
you!

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Asset Exclusions Summary Table (in alphabetical order)
 [May be Subject to Change When HUD Supplemental Guidance is Released]

Category	Excluded Asset	Example(s)
Cash	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, for an incident resulting in a disability	A drunk driver injures a family member, who then has a disability. The family sues, and the driver's insurance pays the family.
Cash	Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family	Earned Income Tax Credits (EITC)
Personal property	Necessary items of personal property	Medical devices, vehicle for commute, wedding ring, personal computers, exercise equip. (See Supplemental Guidance Table F1 for more examples)
Personal property	Non-necessary items of personal property if the combined total value does not exceed \$50,000*	Checking, Savings, Stocks, Bonds, Vintage baseball cards, recreational boat, coin collection, art so long as the <i>total</i> value is under the limit (See Supp Guidance Table F1 for more examples)
Real property	Real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located (Such property does not count against the dollar amount limit or the real property limitation)	Property subject to a lawsuit may be legally restricted from sale.
Real property	Interest in Indian trust land (existing exclusion – not new with HOTMA)	Family has interest in land held in trust by Bureau of Indian Affairs
Real property	Equity in a manufactured home where the family receives assistance under 24 CFR 982	HCV Manufactured Home Space Rental participants
Real property	Equity in property where the family receives assistance under 24 CFR 982	HCV homeownership participant
Savings account	Retirement account recognized by IRS	IRA, 401(k), 401(b) and retirement plans for self-employed individuals
Savings account	The value of certain education or disability support savings accounts	Under Internal Revenue Code sections 529, 529A, 530, "baby bond" accounts [Coverdell accounts, tuition programs, any "baby bond" account created, authorized, or funded by Federal, state, or local government]
Savings account	Family Self-Sufficiency (FSS) accounts	The family does not have access to FSS funds during their participation in the program. Also excluded from income
Trust Funds	Trust that is not revocable by, or under the control of, any member of the family or household	Non-revocable trust fund; trust fund revocable once minor child reaches age 21

Refer to HOTMA Final Rule for detailed descriptions