

FASTFacts – Section 8 Asset Restrictions – New with HOTMA



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Ross Business Development, Inc.
3134 Shumard Way, Marietta, GA 30064
770-424-1806
www.rbdnow.com
info@rbdnow.com

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This FASTFact was created using information available as of 8/2024.

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INTRODUCTION

Section 8 Asset Restrictions (Disqualifiers) Apply Only to HUD’s Section 8 programs (including 202/8 & PBRA RAD). These changes **do not** apply to the following HUD Multifamily Housing programs: 202 PRAC, 202 PAC, 202 without Section 8, 202 SPRAC, 811 PRAC or 811 PRA.

HOTMA introduces new eligibility rules applied when determining a family’s eligibility to live on a HUD Section 8 property and/or receive housing assistance through HUD’s Section 8 programs.

For Section 8 applicants and existing residents new eligibility rules include:

- ✧ Limits to the value of assets owned by residents receiving HUD housing assistance; and
- ✧ Exclusion of applicants and residents who own real property suitable for occupancy that a member has a right to sell. Certain exceptions apply.

Owner/agents managing Section 8 properties will need to update the Tenant Selection Plans to include these new eligibility requirements.

[See RBD FASTForm TSP Language – HOTMA. This form is part of the HOTMA FASTForms Package or can be purchased individually.](#)

Applicants on the waiting list should be advised of any new eligibility requirements based on the implementation of HOTMA.

ASSET CAP/LIMIT SECTION 8 ONLY (INCLUDING 202/8 & PBRA RAD)

A dwelling unit may not be rented, and assistance may not be provided, either initially or upon reexamination of family income, to any family if the cash value of family assets exceeds the current threshold (2024=\$100,000/2025=\$103,200), (certain assets are excluded). This Asset Cap may be adjusted for inflation annually in accordance with a commonly recognized inflationary index, as determined by HUD.

Please note the assets excluded from this eligibility criteria.

Assets excluded from Section 8 eligibility determination based on total value of all assets. The cash value of:

- ✧ Retirement Accounts;
- ✧ Real property when the family does not have legal authority to sell such property;
- ✧ Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family;
- ✧ ABLE Account;
- ✧ Irrevocable (Irrevocable) Trust;
- ✧ Revocable Trusts not in owned or controlled by a member of the family living in the assisted unit;
- ✧ Any funds held in escrow as a result of a family’s participation in the FSS program, as the family does not have access to those funds during their participation in the program;
- ✧ Amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty that resulted in a member of the family being disabled;
- ✧ Value of any Coverdell education savings account (ESA) or any qualified tuition program under Section 529 of the IRS;
- ✧ Interest in Indian trust land;
- ✧ Amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty that resulted in a member of the family being disabled;
- ✧ Equity in property for which a family receives HCV homeownership assistance from a PHA;
- ✧ Equity in a manufactured home where the family receives Section 8 tenant-based assistance;
- ✧ Necessary Personal Property;
- ✧ The value of all Non-Necessary Items Of Personal Property (NNPP) with a total combined value equal to or less than the current threshold (2024=\$50,000/2025=\$51,600) as adjusted annually by an inflationary factor.

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OWNERSHIP OF REAL PROPERTY SECTION 8 ONLY (INCLUDING 202/8 & PBRA RAD)

HOTMA provides that families may not receive assistance if they have a present ownership interest in, legal right to reside in, and the effective legal authority to sell real property suitable for occupancy in the jurisdiction in which the assisted property is located that is suitable for occupancy by the family as a residence.

Applicants: Owner/agents must ask applicants, at the time of the eligibility determination, if the family does or does not have any present ownership interest in any real property suitable for occupancy. Owner/agents may accept self-certification.

Existing Residents: If the owner/agent has implemented an Enforcement Policy or Limited Enforcement Policy related to the Section 8 Asset Restriction, the only requirement for owner/agents is to ask residents, at each recertification, if the family does or does not have any present ownership interest in a residence suitable for occupancy located in the jurisdiction where the assisted property is located that a family has the right to sell. Owner/agents may accept self-certification.

[*See RBD FASTForms Self-certification Assets*](#)

A dwelling unit may not be rented and assistance may not be provided to any family if any member has a present ownership interest in, legal right to reside in, and the effective legal authority to sell real property, in the jurisdiction in which the property is located, that is suitable for occupancy by the family as a residence. This includes, but is not limited to a home, condominium, townhome, duplex, mobile home, etc. A dwelling will be considered “suitable for occupancy” unless the family demonstrates that it:

1. 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.);
2. Is not sufficient for the size of the family;
3. 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 owner);
4. 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 & safety and the condition of the property cannot be easily remedied); or
5. Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

The Real Property Rule applies only when the family has the legal right to reside in the dwelling.

The applicant or resident is exempt from the Real Property Rule if:

1. Any property is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the person resides in the jointly owned property;
2. The member is a survivor of a VAWA crime (domestic violence, dating violence, sexual assault, or stalking); or
3. The family is offering such property for sale;
4. The family is receiving assistance under 24 CFR 982.620; or under the Homeownership Option in 24 CFR part 982.

[*See RBD FASTForm Self-Certification Real Property Exemption*](#)

When new site software is implemented, owner/agents will “flag” any asset that meets HUD’s definition of Real Property Suitable for Occupancy. Industry stakeholders have proposed HUD add an “exempt indicator” to be used for Section 8 properties when the owner/agent is enforcing the S8 Asset Restrictions.

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Keep in mind that negative equity in Real Property Suitable for Occupancy does not preclude a family from selling the property; negative equity alone does not justify excluding such a property from consideration in relation to the Real Property Rule. When the cash value of Real Property Suitable for Occupancy is negative, the property will be included on the 50059 with a cash value of \$0.

APPLYING SECTION 8 ASSET RESTRICTIONS AT ADMISSION

Owner/agents must enforce the S8 Asset Restrictions at Move-in and when creating Initial Certification for families whose assistance has been terminated because they failed to recertify or began to pay market rent.

Note: This rule does not apply to PBRA RAD Conversion ICs created to convert residents from their existing housing program to PBRA RAD.

APPLYING SECTION 8 ASSET RESTRICTIONS AT ANNUAL AND INTERIM RECERTIFICATION

Owner/agents have discretion with respect to the application of the Section 8 Asset Restriction at AR and IR.

Owner/agents may adopt a policy of:

- ✧ Total Non-enforcement;
- ✧ Enforcement; or
- ✧ Limited Enforcement.

When implementing Enforcement or Limited Enforcement at AR or IR, owner/agents may also adopt Exception Policies.

For example, an owner/agent may enforce the Asset Cap except for those assisted families that include a member with a disability requiring the features of an accessible unit. Since accessible units are not readily available, enforcing the Asset Cap for these families may impose undue burden.

Note: Owner/agents may not adopt exception policies to be applied when determining eligibility at move-in. The only exception policy allowed at IC is for those assisted residents converting to the PBRA RAD program.

TOTAL NON-ENFORCEMENT - EXISTING RESIDENTS AT ANNUAL AND INTERIM RECERTIFICATION

Owner/agents **may choose not to enforce the S8 Asset Restrictions** if the owner/agent establishes a non-enforcement policy. This means that the owner/agent will not initiate termination for a family who currently receives Section 8 assistance but who would be deemed ineligible, at the next recertification, based on the new S8 Asset Restrictions.

ENFORCEMENT - EXISTING RESIDENTS AT ANNUAL AND INTERIM RECERTIFICATION

Owner/agents **may choose to enforce the Section 8 Asset Restrictions** at AR and/or IR.

When enforcing the S8 Asset Restrictions, owner/agents must initiate termination within six months of discovering that a family is no longer eligible (*during an AR or IR interview*). Owner/agents may delay the initiation of Termination of Assistance for up to, but no longer than, six months.

LIMITED ENFORCEMENT: OPTION TO CURE - EXISTING RESIDENTS AT ANNUAL AND INTERIM RECERTIFICATION

Alternatively, owner/agents **may adopt a policy of limited enforcement**, which would differ from total enforcement at AR and/or IR in only one regard: all families who are found to be ineligible at AR/IR would be provided an opportunity to regain eligibility in regards to the S8 Asset Restrictions (“cure”).

Families would have no longer than six months to demonstrate that they are once again eligible. The owner/agent will define the amount of time a family will be given to “cure” but may not allow more than six months.

Please note that, in compliance with Section 504, and in the case of a reasonable accommodation, a disabled family may be afforded more than six months to comply.

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If the family demonstrates that they are once again eligible based on the S8 Asset Restrictions (“cure”), the owner/agent will not initiate termination.

When owner/agents implement a limited enforcement policy and the family demonstrates they have “cured”, owner/agents will note the tenant file and continue to provide assistance.

The related updates to the family’s income and assets are updated when creating the next AR or IR.

EXCEPTION POLICIES - EXISTING RESIDENTS AT ANNUAL AND INTERIM RECERTIFICATION

Owner/agents may also establish exceptions to their policies related to the S8 Asset Restrictions (not at MI or IC where the family is being re-screened for assistance).

Owner/agents may choose to combine non-enforcement policies, enforcement policies or limited enforcement policies with an exception policy.

Families in the specified exception categories would either:

1. Not be subject to termination due to ineligibility base on the S8 Asset Restrictions (total non-enforcement), or
2. Be provided an opportunity, up to but no longer than six months, to restore eligibility, after which point the S8 Asset Restrictions would be enforced (limited enforcement).

Exception policies may be based on family type and may take into consideration such factors as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided.

Owner/agents are permitted to include more than one exception as part of any exception policy.

Sample Section 8 Asset Restrictions Exception Policy

- ✧ At AR and/or IR, for all families found to be ineligible based on the S8 Asset Restrictions, the owner/agent will provide a limited exception to enforcement of the S8 Asset Restrictions when the family includes an elderly member or includes a member with a disability.
- ✧ Families with an elderly family member or a member with a disability will be given six months to “cure”.
- ✧ All other families will be subject to the enforcement policy and the owner/agent will initiate termination of assistance in accordance with HUD requirements.

TERMINATION OF ASSISTANCE

When an owner/agent adopts a Section 8 Asset Restriction Enforcement Policy or a Section 8 Asset Restriction Limited Enforcement Policy, determination of eligibility, based on S8 Asset Restrictions, is required once site software is updated AND once the resident has executed the new lease.

The S8 Asset Restriction Rules may not be implemented before HUD issues new leases.

Once that happens, when creating the first AR or IR (Or IC in some cases), the owner/agent must determine if the resident is still eligible for assistance. Owner/agents enforcing the S8 Asset Restrictions must terminate assistance for any resident who is no longer eligible based on their own policies.

If a resident is no longer qualified for Section 8 assistance, based on the S8 Asset Restrictions and the owner/agent’s enforcement policy, the owner/agent will create a Termination 50059A, using the new Termination Code AR – Asset Restriction.

If the resident will be moving out, owner/agent will use a new Move-out Code to note that the family moved out due to the new Section 8 Asset Restrictions.

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SECTION 8 ASSET RESTRICTIONS AND THE TENANT SELECTION PLAN

The S8 Asset Restrictions and any enforcement policy, including any exceptions, must be described in the owner/agent's Tenant Selection Plan no later than 5/31/2024.

We recommend development of several forms to accommodate these changes. See the [RBD HOTMA FASTForms Package](#).