



Student Eligibility—Does the Student Really Qualify?

By Cela Toon, CPO, Affordable Business Analyst

HUD published a final notice regarding the new student eligibility rule in the Federal Register on April 10, 2006. In this article, we will attempt to dissect the new rule and how it affects you as a site manager and the student as a tenant, as well as provide a list of questions you can ask the student to determine qualification. We will also provide various web sites to assist you with gathering any further clarification that is needed.

Overview of the New Rule

Section 327 of the United States Housing Act of 1937 introduced new restrictions to students of higher education. The final ruling was issued to the industry on December 30, 2005, and became effective for the industry on January 30, 2006. It applies to both full-time and part-time students enrolled at institutions of higher education. Please note that an institution of higher education is not limited to college or junior college.

The new eligibility rules only apply to the following HUD Section 8 programs administered by the Office of Housing and the Office of Public and Indian Housing. If your contract does not fall under one of these, you will not follow the new student eligibility rule.

While the new rule takes the students' and parents' income as factors, the focus of the rule is *not* for students who reside with their parents in assisted units or for those who reside with parents who are applying to receive assistance. Nor do the new eligibility requirements apply to students who are 24 years of age or older. The rule *does* apply to students seeking assistance on their own or students that currently reside in Section 8-assisted units without their parents.

Office of Housing Programs

- The Section 8 New Construction, Substantial Rehabilitation, State Agency, Rural Housing Services Section 515, Loan Management Set-Aside, and Property Disposition Set-Aside Programs
- The Section 202/8 Direct Loan Program for the Elderly and Persons with Disabilities

Office of Public and Indian Housing Programs

- The Housing Choice Voucher Program
- The Project-Based Certification Program
- The Project-Based Voucher Program
- The Section 8 Moderate Rehabilitation Program

Section 5036-N-02 of the Federal Register states, *“In brief, the new law and HUD’s rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, unmarried and does not have a dependent child, is individually ineligible for section 8 assistance, or the student’s parents are, individually or jointly, ineligible for assistance, no section 8 assistance can be provided to the student. Unless the student is determined independent*



from his or her parents, the eligibility of a student seeking section 8 assistance will be based on both the student and the parents being determined income eligible for section 8 assistance.”

Also new under the law, a student’s income and that of his or her parents are separately assessed for income eligibility once the student is deemed eligible.

It is not enough for the student to meet the new standard eligibility guidelines; he or she must also meet all other eligibility and screening requirements.

If a student does not meet the eligibility criteria, the student may still be eligible if the parents, individually or jointly, are income eligible. The new law clarifies the income eligibility requirements even further by stating that to determine the income eligibility of the parents; the owner must utilize the applicable low-income limit for the parents’ family size for the area where they live. If the parents do not live in the United States, then the owner is to use the applicable low-income limit for the area used to determine the student’s eligibility. HUD states that you may accept a signed declaration and certification of income from the parents to verify their income information; however, should the owner/agent deem the declaration suspicious, he or she may require second party verification (i.e., paycheck stubs, IRS tax returns, bank statements, etc.). The parents are not required to meet any other program/project eligibility requirements for the student to receive assistance.

Section 327(a) and 327(b) of the United States Housing Act of 1937

The restrictions are broken down into two parts in the act, Section 327(a) and Section 327(b). Section 327(a) is implemented and coded in HUD’s regulation at 24 CFR 5.612 and issues the following guidance:

No assistance shall be provided under Section 8 of the 1937 act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C 1002);
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Does not have a dependent child; and
- Is otherwise individually eligible, or has parents who, individually or jointly are not eligible on the basis of income to receive assistance under Section 8 of the 1937 act.

Section 327(a) goes on to discuss the qualification of a student that can claim independence from his or her parents and what is required to accomplish this.

Section 327(b) discusses the financial requirements of the new restrictions. It begins with a new requirement that any financial assistance that the student receives in excess of tuition must be included in the annual income when determining the eligibility of the student, unless the student is of the age of 24 with dependent children. It further clarifies that if the financial assistance in excess of tuition makes the student income ineligible for Section 8 assistance, then the student is unable to receive Section 8 assistance.

Recertification Requirements

Section 5036-N-02 of the Federal Register also states that, “HUD strongly encourages PHAs, Owners, and Managers to recertify those section 8 participants who may be affected by this new law as soon as it is practicable. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual recertification.”

It further mentions that it is the responsibility of the PHAs, owners, and managers to ensure that the student qualifies for Section 8 assistance under the new law at the time of each annual recertification.

Termination of Assistance

Due to the new student eligibility requirements, a student will have his or her assistance terminated if he or she is currently receiving Section 8 assistance but is determined ineligible at the time of certification. There are no provisions to provide prorated assistance to those eligible household members who are part of a mixed household (a mixed household is a household including multiple students or students and non-students). This means that if you terminate assistance for a household because an ineligible student is residing in a household comprised of household members who are not the student’s parent(s), the assistance will be terminated for the entire household. If the ineligible student vacates the unit, the remaining members may be eligible for assistance. As an owner and/or manager, you may not evict the ineligible student or any household member strictly because a household includes an ineligible student.

Bottom Line

So what does all of this really mean? In short, we believe you should follow a simple list of questions to determine if your student is eligible under the new law.

If your resident/applicant is a student, you should ask the following:

1. Are you living with your parents? If the answer is yes, the student is eligible and no portion of financial aid provided for education is counted.
2. Are you over 23 years of age?
3. Are you a veteran?
4. Are you married?
5. Do you have dependent children?

If the answers to questions 2 through 5 are **yes**, then the student is eligible as long as the student meets all other program eligibility and screening criteria. Non-tuition financial aid provided for education is counted unless the student is over the age of 23 with a dependent child.

If the answers to these questions are **no**, the owner/agent would need to determine if the parents are income eligible. Remember, the parents must meet the low-income limits where they live. If the parents are income eligible, then the student would be eligible as long as the student meets all other program eligibility and screening criteria. Non-tuition financial aid provided for education is counted unless the student is over the age of 23 with a dependent child.

If the student does not meet the above criteria, you should ask one additional question: “Do you consider yourself independent of your parents?” HUD specifically instructs owners and managers to take into consideration all of the following when determining whether the student’s household is “independent”:

- Previous address information, sufficient to determine that the student has maintained a separate household for at least a year, OR, the student must meet the U.S. Department of Education’s definition, which includes (a) being an orphan or a ward of the court through the age of 18; (b) having a dependent parent; or (c) being a graduate or professional student; and,
- Parents’ prior-year income tax returns to determine whether a parent or guardian has claimed the student as a dependent; and,
- Written confirmation of the level of support being provided by the parents to the student. This financial support is considered in determining the income eligibility of the student household.

If the student is independent of the parents, then the student would be eligible as long as the student meets all other program eligibility and screening criteria. Non-tuition financial aid provided for education is counted unless the student is over the age of 23 with a dependent child.

Further Guidance

To review the final notice posted in the Federal Register, please go to <http://www.hudclips.org/cgi/index.cgi> and browse the 2006 Federal Register. Locate form FR-5036-N-02, Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937, Supplementary Guidance.

There are several places to obtain additional guidance on the new student eligibility rule. You can go to the RHIIP web site at <http://www.hud.gov/offices/hsg/mfh/rhiip/mfhrhiip.cfm> to review a question and answer session that occurred on April 12, 2006, between HUD staff and RHIIP helpdesk representatives.

You can also review the April 17, 2006, and April 27, 2006, HUDBlast available on the Ross Business Development web site at <http://www.rbdnow.com>.

There are also multiple posts created by several of the leading industry experts on the HUD-administered discussion forum at <http://ptp.hud.gov/forumswww/main.cfm?CFApp=34&>. Accessing this site will require that you register for a free user name and password.

Please be sure to contact your HUD field office or contract administrator if you have further student eligibility questions. If you are not sure who your local HUD field office representative is, go to <http://www.hud.gov/localoffices.cfm>.