

Key Housing Credit Compliance Issues

April 23, 2013



**Vacant Unit Rule:
Frequently Asked Questions**

Presented by Grace Robertson, IRS
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Where is the rule in the Code?

- ▶ Not referenced in IRC §42
- ▶ Referenced in legislative history; i.e., vacant units, formerly occupied by low-income individuals, may continue to be treated as occupied by qualified low-income individuals for purposes of the minimum set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit.



Treas. Reg. §1.42-5(c)(1)(ix):

If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.



What is a “reasonable attempt?”

Facts and circumstances test:

- ▶ Size and location of the project,
- ▶ Tenant turn-over rates,
- ▶ Market conditions, and
- ▶ Accessible advertising methods.
- ▶ Examples: displaying banners and “For Rent” signs, classified ads in newspapers, and contacting prospective low-income tenants on a waiting list.

Reference: Rev. Rul. 2004-82, Q&A #9

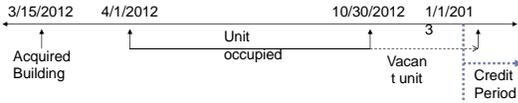


What if the tenant trashed the unit?

- ▶ Low-income units must be suitable for occupancy. Reference: IRC §42(i)(3)(b)
- ▶ Reasonable period to clean unit and repair damages.
- ▶ State agencies inspect vacant units and have established timeframes for fixing problems.



What if a qualified tenant moves in and then out of a unit before the beginning of the credit period?



The unit is **NOT** a low-income unit at the beginning of the credit period.



Which has precedence, the Available Unit Rule or the Vacant Unit Rule?

- ▶ Available Unit Rule: if a qualified household’s income increases above 140% of the income limit, any available comparable unit must be rented to a qualified tenant. IRC §42(g)(2)(D)(ii).
- ▶ Vacant Unit Rule: If a low-income unit in the project becomes vacant, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.
- ▶ The available unit rule is **NOT** violated by rental of the market-rate unit before the low-income units because there are no over-income units in the building. Reference: Rev. Rul. 2004-82, Q&A #9



Is there an exception to the rule?

Yes, if a tenant moves from one unit to another unit within a project, the units “swap” status.

- ▶ When a household moves **within the building**, the newly occupied unit adopts the status of the vacated unit. Reference: Treas. Reg. §1.42-15(d)
- ▶ When a household moves from one building to another building **in the same project**, only the unit that the tenant actually occupies at the end of a month in the first year of the credit period, and at the end of each year in subsequent years, qualifies as a low-income unit. Reference: Rev. Rul. 2004-82, Q&A #9



The Vacant Unit Rule is violated only when an owner rents a unit to a nonqualified household before making reasonable attempts to rent the low-income unit. What happens if the project is 100% low-income and the owner ceases to market vacant units?

Vacant Unit Rule: If a low-income unit in the project becomes vacant, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income **before** any units in the project were or will be rented to tenants not having a qualifying income.



If an owner ceases making reasonable attempts to market vacant low-income units, then the units are no longer considered placed in service and the units are no longer subject to depreciation. If the unit is not subject to depreciation, then it does not qualify for the credit.

- ▶ Vacant units are not suitable for occupancy
- ▶ High vacancy rate
- ▶ Approaching the end of the 15-year compliance period & owner anticipates selling the project out of the program (maybe through a qualified contract)



Questions?



Thank You

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Fair Housing and LIHC Non-Compliance

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- ▶ **8823 Guide, Chapter 13**
- ▶ **Category 1 I h-Project not Available to the General Public**
- ▶ **(Notifications of Fair Housing Act [FHA]**
- ▶ **Administrative and Legal Actions)**

- ▶ LIHC properties are subject to Title VIII of the Civil Rights Act of 1968, which makes it unlawful to discriminate in any aspect relating to the sale or rental of dwellings, in the availability of transactions related to residential real estate, or in the provision of services and facilities in connection therewith because of race, color, religion, sex, disability, familial status or national origin.

- ▶ *In this segment, we are going to review this issue as presented in the 8823 Guide* and provide "Best Practice" suggestions.*

Reasonable Modification and Accommodation

- ▶ The FHA specifically makes it unlawful to refuse to permit, at the expense of the person with a disability, reasonable modifications to existing premises if the modifications are necessary to accommodate a person with a disability to occupy the premises.
- ▶ A landlord may, *where reasonable*, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification.
- ▶ The FHA also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy a dwelling.



Best Practices for Owners and Agents

1. Experienced management companies develop a clear policy statement that commits the company to provide Equal Opportunity Housing.
2. All staff should receive annual Fair Housing training to ensure that a proper atmosphere of inclusion and understanding prevails at the property.
3. Policies and procedures must be in place to allow for reasonable modification/accommodation requests to be made with a minimum of inconvenience to the applicant/resident and a maximum of consistency of review and timely implementation by management staff.



Accessibility

- ▶ The FHA makes it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to persons with disabilities.
- ▶ The FHA defines multifamily dwelling as buildings consisting of four or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of four or more units.
- ▶ All premises within such dwellings are also specifically required to contain features of adaptive design so that the dwelling is readily accessible to an useable by persons with disabilities.



Accessibility

The FHA provides a list of the accessibility features necessary for compliance with the design and construction requirements:

1. The public and common use portions of such dwellings are readily accessible to and usable by disabled persons;
2. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs;



Accessibility

3. All premises within such dwelling contain the following features of adaptive design:

- (a) An accessible route into and through the dwelling;
- (b) Light switches, electrical outlet, thermostats, and other environmental controls in accessible locations
- (c) Reinforcements in bathroom walls to allow later installation of grab bars;
- (d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.



Best Practices for Owners and Agents

1. Confirm the date your property was constructed to ensure compliance with applicable regulations.
2. Check with your state or local Fair Housing agency to confirm what additional regulations may be in place.
3. Conduct an accessibility review and a self-evaluation (see HUD Handbook 4350.3 for complete information) and prepare an appropriate transition plan for any changes that may/should be made.
4. Meet with a local disability-oriented organization with accessibility expertise to gain insight.



Citizenship Status

- ▶ The Fair Housing Act does not prohibit discrimination based solely on a person's citizenship status.
- ▶ Therefore, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the FHA.
- ▶ Owners implementing citizenship or immigration status screen measures must make sure they are carried out in a uniform, nondiscriminatory fashion.



Best Practices for Owners and Agents

The LIHC program does not require proof of citizenship status as it required under HUD programs. The owner/management agent may adopt this requirement for their portfolio.

1. Proof of citizenship status must be part of the tenant selection plan.
2. Uniform, nondiscriminatory screening measures should also be detailed in the tenant selection plan.



Role of the U.S. Department of Housing and Urban Development (HUD)

- ▶ HUD is responsible for enforcing the Fair Housing Act.
- ▶ In so doing, HUD investigates allegations of housing discrimination, attempts to resolve the complaint, and determines whether there is reasonable cause to pursue civil action.
- ▶ If reasonable cause is present, HUD must bring the case before an administrative law judge.
- ▶ In the alternative, if either party elects to have claims or complaints decided in a civil action, HUD must refer the complaint to the U.S. Department of Justice for prosecution in the United States District Court.



Role of the U.S. Department of Justice

- ▶ The Department of Justice (DOJ) may file a lawsuit whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a patter or practice of discrimination or denial of rights to a group of persons where such denial raises an issue of general public importance.
- ▶ DOJ may also file a lawsuit based upon HUD referrals involving the legality of any state or local zoning, or other land use law or ordinance if the parties agree to a civil action.
- ▶ DOJ may also enter into settlement/consent agreements with property owners to obtain compliance with the Fair Housing Act.
- ▶ DOJ may also seek a court judgment to enforce the terms of a settlement/consent agreement.



Role of Substantially Equivalent State or Local Fair Housing Agency

- ▶ Where HUD has determined that state or local laws are substantially equivalent to the federal Fair Housing Act, a state or local fair housing agency investigates fair housing allegations, attempts conciliation, and determines whether reasonable cause exists to believe a discriminatory housing practice has occurred.
- ▶ If the fair housing agency makes a determination of reasonable cause, then a charge is filed with representation of the complainant provided by a state or local representative.



Memorandum of Understanding (MOU) Among Treasury, HUD and DOJ

- ▶ Treasury, HUD and DOJ entered into an MOU in a cooperative effort to promote enhanced compliance with the Fair Housing Act for the benefit of residents of LIHC properties and the general public.
- ▶ Key points of the MOU include coordinated procedures for notifying the state agencies and IRS of charges, lawsuits, or other actions under the Fair Housing Act involving and LIHC property.



Ramifications of a Fair Housing Violation

HUD or DOJ will notify a state agency of:

1. A charge by the Secretary of HUD for a violation of the Fair Housing Act,
2. A probably cause finding under a substantially equivalent fair housing state law or local ordinance by a substantially equivalent state or local agency,
3. A lawsuit under the Fair Housing Act filed by the DOJ, or
4. A settlement agreement or consent decree entered into between HUD or DOJ and the owners of an LIHC property.



IRS Form 8823 Letter

“Enclosed are Forms 8823, Low-Income Housing Credit Agencies Report of Noncompliance or building disposition, concerning certain Fair Housing Act [administrative/legal actions] reported by [the U.S. Department of Housing and urban Development (HUD)/U.S. Department of Justice] to this agency. Our agency has submitted these Forms 8823 to the Internal Revenue Service.”

“Your ability to enter into a settlement agreement concerning the particular Fair Housing Act problem with HUD, the Department of Justice, or the state or local fair housing agency may preclude the necessity of loss of low-income housing tax credits. It is incumbent upon you to work with the appropriate agency to resolve the problem”.



Best Practices for Owners and Agents

Avoid ever having a Fair Housing violation by ensuring that your management company is a Fair Housing informed company, with Fair Housing informed employees, running Fair Housing informed communities.

- ▶ Have a published Fair Housing Policy, signed and/or endorsed by senior management
- ▶ Require all staff to attend annual Fair Housing training courses
- ▶ Convey to the public that you place importance on your equal opportunity awareness.



Best Practices for Owners and Agents

Examine your personal attitudes toward various physical and mental impairments, and strengthen your own awareness of people with disabilities:

- ▶ Be respectful, avoid being overly intrusive or patronizing when assisting people with disabilities.
- ▶ Set aside your person opinions about disability conditions. You are a housing provider, not a medical expert.
- ▶ Your applicants are residents with disabilities are individuals, each with different needs. Treat them as individuals without making hasty judgments about they can and cannot do.



Best Practices for Owners and Agents

- ▶ When creating policies and/or procedures, be aware of its potential disparate impact.
- ▶ Disparate impact discrimination occurs when a housing provider implements an apparently neutral policy or procedure (i.e. one that on its face applies to all persons equally and is not overtly discriminatory) yet can be shown to have a disproportionately negative effect upon members of a protected class.



Best Practices for Owners and Agents

- ▶ Pay special attention to unit availability questions. Many fair housing complaints arise when staff give different households different answers to the same question, especially the most frequently asked question: "Do you have any apartments available?"
- ▶ For properties with several staff members who deal with applicants, ensure that each is briefed on exact availability or an explanation of how the waiting list works.
- ▶ Consistent answers to all applicants can help ensure that no one believes they are being treated in a discriminatory manner.



Best Practices for Owners and Agents

However, there are times that no matter what you do, a complaint will be received:

- ▶ Establish a relationship (in advance) with an attorney who has specific knowledge of Fair Housing regulations.
- ▶ Immediately refer any complaint to the attorney for review and response
- ▶ Provide only factual answers to specific questions asked
- ▶ If an inadvertent violation has occurred, authorize your attorney to immediately provide appropriate conciliation to avoid loss of credits.



Don't Forget the Posters and Notices Available on HUD.gov

Form HUD 928.1
Equal Housing Opportunity Poster in English

Form HUD 928.1a
Equal Housing Opportunity Poster in Spanish

Logos available in various sizes



Thank you for your attention

We hope that has added to or reinforced your knowledge of basic Fair Housing requirements and the potential impact of illegal/bad/uninformed Fair Housing decisions on the Low Income Housing Credit.



Windsor Wire Webinar Series

Student Rules



Greg Proctor

Windsor Compliance








Student Rules

- The rules for Section 42 and for Section 8 are completely different and are each applied separately at properties that have both tax credits and Section 8.










Section 42 Student Rule

- A unit is not considered to be occupied by low-income individuals if all the occupants of such unit are full-time students, no one of whom is entitled to file a joint return.








Section 42 Student Rule

- ▶ The Internal Revenue Code defines a “student” as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization.
- ▶ The five calendar months need not be consecutive.



Section 42 Student Rule

- The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.



Section 42 Student Rule

- ▶ An educational organization is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.



Section 42 Student Rule

- ▶ The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses.



Section 42 Student Rule

- Units comprised of full-time students (no one of whom is entitled to file a joint return) do not qualify as low-income units. However, there are exceptions as outlined in IRC §42(i)(3)(D).



Section 42 Student Rule

- ▶ The law provides that a unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is:



Section 42 Student Rule

- A student receiving assistance under Title IV of the Social Security Act. (TANF)



Section 42 Student Rule

- A student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act. (Foster Care)



Section 42 Student Rule

- A student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws.



Section 42 Student Rule

- A unit shall not fail to be treated as a low-income unit merely because it is occupied entirely by full-time students if such students are:
- single parents and their children and such parents are not dependents of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children.
- married and file a joint return.



Section 42 Student Rule

- In the case of a single parent with children, the legislative history explains that none of the tenants (parent or children) can be a dependent of a third party.



Section 42 Student Rule

- If a household's status changes (and they don't qualify for an exception), the unit is now out of compliance and no longer eligible to be considered as a low income unit.



HUD Student Rule

- ▶ Enacted in response to Iowa football players receiving Section 8 subsidy.



HUD Student Rule

- Implemented December 30, 2005
- A student enrolled in an Institute of Higher Education will be deemed eligible for assistance if the student meets all other eligibility requirements, passes screening criteria and is:



HUD Student Rule

- Living with parents/guardian or
- Disabled and was receiving assistance as of November 30, 2005
- Over 23 years of age or
- A veteran or
- Married or
- Has a dependent child or
- Can prove independence of parents including providing certification that the parents did not claim the student on the most recent tax return or
- Has parents who are income eligible for the Section 8 program



HUD Student Rule

- ▶ Any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 from private sources or an institution of higher education (as defined under the Higher Education Act of 1965) shall be considered income to that individual.



HUD Student Rule

- ▶ There are two exceptions to this income calculation requirement. No financial assistance that an individual receives under the Higher Education Act of 1965 from private sources or an institution of higher education (as defined under the Higher Education Act of 1965) shall be considered income if the student is:



HUD Student Rule

- ▶ Living with his/her parents/guardian
- ▶ Is over 23 with dependent children



HUD Student Rule

- ▶ Does the law apply to both a part-time and a full-time student enrolled at an institution of higher education?



HUD Student Rule

- ▶ Yes. The law applies to a student who is enrolled either full-time or part-time at an institution of higher education. The law does not exempt a part-time student.



HUD Student Rule

- ▶ Does the law apply to a student who is a person with disabilities?



HUD Student Rule

- ▶ Students with disabilities who were receiving section 8 assistance as of November 30, 2005, are exempt from the restrictions for providing section 8 assistance to college students.



HUD Student Rule

- ▶ Students with disabilities who are applying for, or who started receiving, section 8 assistance after November 30, 2005, are not exempt from the restrictions of the law.



HUD Student Rule

- ▶ If a student is living with his or her parents who are already living in assisted housing and receiving section 8 assistance, must the student meet the eligibility requirements?



HUD Student Rule

- ▶ No. The new law does not apply to students residing with their parents in a section 8 assisted unit or who reside with parents who are applying to receive section 8 assistance.



HUD Student Rule

- ▶ Would any financial assistance received by a student living with his or her parents in assisted housing and receiving section 8 assistance be included in annual income?



HUD Student Rule

- ▶ No. Since the law does not apply to students residing with their parents in a section 8 assisted unit or who reside with parents who are applying to receive section 8 assistance, any financial assistance in excess of tuition would not be included in annual income. The financial assistance would continue to be excluded from annual income.



HUD Student Rule

- ▶ If a student is under the age of 24, not a veteran, unmarried, and has no dependent children, must both the student and the student's parents meet the income eligibility requirements in order for the student to be eligible?



HUD Student Rule

- ▶ If an individual is enrolled as a student at an institution of higher education, is under the age of 24, not a veteran, not married, is not a person with disabilities who was receiving section 8 assistance on November 30, 2005, and does not have a dependent child, in order to be eligible for section 8 assistance, the student must be individually eligible to receive section 8 assistance **and:**



HUD Student Rule

- ▶ the student's parents (the parents individually or jointly) must be income eligible to receive section 8 assistance unless the student can demonstrate his or her independence from parents in accordance with the guidance in the Supplementary Guidance Notice published in the April 10, 2006 Federal Register (71 FR 18146).



HUD Student Rule

- ▶ What happens if the parents refuse to declare or certify to their income?



HUD Student Rule

- ▶ In order for the student to be eligible for section 8 assistance, his or her parents must also be eligible for section 8 assistance, therefore, if the parents refuse to provide a declaration and certification of their income, the student is not eligible unless the student can demonstrate his or her independence from parents.



HUD Student Rule

- ▶ When determining the parent's eligibility under the law do the parents have to meet all of HUD's program eligibility requirements in order for the student to be eligible?



HUD Student Rule

- ▶ No. Since Section 327 is focused on income eligibility of a higher education student, the HUD interprets the section's reference to the eligibility of the parents to also refer to income eligibility.



HUD Student Rule

- ▶ However, parents who are applying to live in the assisted unit with the student and receive section 8 assistance would have to meet all of the program eligibility requirements addressed in the 4350.3.



HUD Student Rule

- ▶ What income limit is used for determining the parents' income eligibility under section 5.612(f)?



HUD Student Rule

- ▶ In determining the parents' income eligibility to receive section 8 assistance, the owner should use the applicable low income limit for the parents' family size for the locality where the parents reside. For example, if the parents live in New York City, the low-income limit for the family size for New York City should be used for determining the parents' eligibility for section 8 assistance.



HUD Student Rule

- ▶ If a student's parents live outside of the United States in areas where income limits have not been established for the section 8 program, the owner should use the applicable low income limit for the parents' family size for the same locality used in determining the student's eligibility.



HUD Student Rule

- ▶ In order to determine the eligibility of parents for section 8 assistance, how will owners and managers obtain and verify income information on the parents?



HUD Student Rule

- ▶ In order to determine the eligibility of parents, the owner may accept a signed declaration and certification of income from the parents, which includes a penalty of perjury clause.



HUD Student Rule

- ▶ If for some reason the owner determines that the parents' declaration and certification of income or their eligibility is questionable, the owner may request and review supporting documentation.



HUD Student Rule

- ▶ Supporting documentation includes, but is not limited to: tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, TANF or Social Security Administration award letters or other official and authentic documents from a federal, State or local agency.



HUD Student Rule

- ▶ How can a student demonstrate his or her independence from parents?



HUD Student Rule

- ▶ To determine a student's independence from his or her parents, the owner should use program practices and criteria already in place. These practices and criteria include, but are not limited to, consideration of **all** of the following:



HUD Student Rule

- ▶ The individual must be of legal contract age under state law.
- ▶ The individual must have established a household separate from parents or legal guardians for at least one year prior to application for occupancy, or the individual must meet the U.S. Department of Education's definition of an independent student.



HUD Student Rule

- ▶ The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.
- ▶ The individual must obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.



HUD Student Rule

- ▶ How do owners need to verify a student's independence?



HUD Student Rule

- ▶ Owner will need to verify by taking into consideration all of the following:



HUD Student Rule

- ▶ Reviewing and verifying previous address information to determine evidence of a separate household, or verifying the student meet's the U.S. Department of Education's definition of "independent student"; and
- ▶ Reviewing prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education's definition of "independent student"); and



HUD Student Rule

- ▶ Verifying income provided by a parent by requiring a written certification from the individual providing the support.
- ▶ Certification is also required if the parents are providing no support.



HUD Student Rule

- ▶ What is the definition of an institution of higher education under section 102 of the Higher Education Act of 1965?



HUD Student Rule

- ▶ The definition used for an institution of higher education under 20 U.S.C. 1001 and 1002 of the Higher Education Act of 1965 is quite lengthy. See Appendix A of the Supplementary Guidance Notice published in the April 10, 2006 Federal Register (71 FR 18146) for the definition.



HUD Student Rule

- ▶ What is the definition for “dependent child” and “dependent children” for the purposes of the law?



HUD Student Rule

- ▶ “Dependent” in the context of the eligibility restrictions, means a dependent child of an enrolled student who meets the criteria in 5.612. Dependent child is defined in HUD’s income eligibility as a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or a full-time student.



HUD Student Rule

- ▶ What is included as “financial assistance”? Does it include scholarships as well as Federal, State and local grants and loans?



HUD Student Rule

- ▶ Financial assistance includes any assistance in excess of tuition (e.g., athletic and academic scholarships) that a student receives:
- ▶ This includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, and Federal Work Study programs.
- ▶ (2) Assistance from private sources.
- ▶ Non-governmental sources of assistance, including assistance that may be provided to a student from a parent(s), guardian or other family member, whether residing within the family in the section 8 assisted unit or not, and from other persons not residing in the unit.
- ▶ (3) From an institution of higher education requires reference to a particular institution and the institution's listing of financial assistance.



HUD Student Rule

- ▶ HUD has interpreted the term “financial assistance” to not include loan proceeds for the purpose of determining income. Therefore, Perkins loans, Stafford loans and Plus loans under the Higher Education Act of 1965 are not considered as financial assistance.



HUD Student Rule

- ▶ How should “parents” be defined? What if a student lives with a grandparent, aunt, guardian, etc., do they have to meet the qualifications also?



HUD Student Rule

- ▶ For purposes of this law, and consistent with long-standing HUD policy regarding eligibility for the section 8 programs, parents means the biological or adoptive parents, or guardians (e.g., grandparents, aunt/uncle, godparents, etc.), or such definition as may be adopted by the owner through appropriate amendment to its admissions policies.



HUD Student Rule

- ▶ Does the law apply to any program other than section 8?



HUD Student Rule

- ▶ The law only applies to a student applying to receive or who is currently receiving section 8 assistance.



HUD Student Rule

- ▶ What if a student has a dependent child who does not live in the unit with the student, is the student eligible under the law without having to take into consideration his or her parents' income or having to demonstrate his or her independence from parents?



HUD Student Rule

- ▶ No. In order to be eligible under the law, the dependent child should live in the unit with the student. If the student shares custody of the child, the child must live in the unit 50% or more of the time, which is the same guidance used for determining the unit size for the family.



HUD Student Rule

- ▶ If the student is pregnant does she qualify as having a dependent child under this law?



HUD Student Rule

- ▶ No. The unborn child is only taken into consideration for purposes of establishing the student's income eligibility and applicable unit size.



HUD Student Rule

- ▶ If the student is married but not living with his or her spouse, is the student eligible under the law without having to take into consideration his or her parents income or having to demonstrate his or her independence from parents.



HUD Student Rule

- ▶ No. In order to qualify as being married under this law, the spouse should be living in the unit with the student. In instances where the student is not living with his or her spouse, the income of the student's parents would be taken into consideration unless the student can demonstrate his or her independence from parents.



HUD Student Rule

- ▶ Is a student only required to meet the eligibility requirements under the new law at the time of move-in or at the time of the first certification implementing the law or will he or she have to meet the requirement at the time of each annual recertification?



HUD Student Rule

- ▶ Owners must ensure at each annual recertification that a student remains eligible to receive section 8 assistance.



HUD Student Rule

- ▶ Will owners be required to obtain and verify income information on the parents at every annual recertification to determine if the student continues to be eligible?



HUD Student Rule

- ▶ Yes. Owners must ensure at each annual recertification that a student remains eligible to receive section 8 assistance.



HUD Student Rule

- ▶ If a student's parents are not living together, and when the owner assesses their income eligibility it is determined one parent is eligible and one parent is ineligible, how should the eligibility of the student be determined?



HUD Student Rule

- ▶ In this instance, the student would not be eligible to receive section 8 assistance. In order for the student to be eligible to receive section 8 assistance, both parents must also be eligible to receive Section 8.



HUD Student Rule

- ▶ Does living in a dormitory count when determining the one-year period the individual must have established a household separate from parents?



HUD Student Rule

- ▶ No. The owner may not take into consideration the time that the individual lived in a dormitory when determining the one-year requirement.



HUD Student Rule

- ▶ If in a household made up of several individuals, one individual is determined to be an ineligible student, how will the assistance for this household be determined? Will the assistance be prorated like it is for the non-citizen rule?



HUD Student Rule

- ▶ Assistance will not be prorated.
- ▶ If this is an applicant household, the household will be prohibited from participating in the section 8 program.
- ▶ If this is an existing household receiving section 8 assistance, the assistance will be terminated in accordance with the guidance in Chapter 8, Section I of the 4350.3.



HUD Student Rule

- ▶ If an individual decides to enroll in a class at the community college, such as a pottery class, that is not taken for the purpose of obtaining a degree, certificate, or other recognized educational credential, is he or she considered a part-time student under the law?



HUD Student Rule

- ▶ No. If the person is not enrolled in the class because it is required for the purpose of obtaining a degree, certificate or program leading to a credential, they would not be covered by the restrictions of the law.



HUD Student Rule

- ▶ Can an owner evict an ineligible student or require the student to move?



HUD Student Rule

- ▶ No. An owner cannot evict or require an ineligible student to move from a unit as long as the student is in compliance with the terms of the lease. Although the student is allowed to remain in the unit, the student will no longer be eligible to receive section 8 assistance.



HUD Student Rule

- ▶ A household applying for section 8 assistance is made up of:
 - ▶ one person who is not a student, is head of household and has a dependent child, and
 - ▶ one student who is eligible, and
 - ▶ one student who does not meet the eligibility requirements of section 5.612

- ▶ Would this household be eligible to move-in and receive Section 8 assistance?



HUD Student Rule

- ▶ No. The applicant household would not be eligible to move-in and receive section 8 assistance because the household contains an ineligible student.



HUD Student Rule

- ▶ A household is currently receiving Section 8 assistance. The household family is made up of:
 - ▶ one student who is 22 years old, is head of household, and has a dependent child
 - ▶ another student who does not meet the eligibility requirements of section 5.612.

- ▶ Is this household eligible to continue receiving Section 8 assistance?



HUD Student Rule

- ▶ No. In order for the household to be eligible for section 8 assistance, each individual student must meet the student eligibility requirements in section 5.612.



HUD Student Rule

- ▶ A current household is made up of:
 - ▶ two full-time students, and
 - ▶ one part-time student
- ▶ Must each student meet the eligibility requirements in section 5.612?



HUD Student Rule

- ▶ Yes, each student must meet the eligibility requirements in section 5.612 in order for the household to receive section 8 assistance. If any of the students do not meet the eligibility requirements, the section 8 assistance must be terminated.



HUD Student Rule

- ▶ If an applicant household contains an ineligible student, can the household move in and pay the market rent?



HUD Student Rule

- ▶ If an applicant family has a family member who is an ineligible student, the family would be ineligible for section 8 assistance and would not be eligible to move in and pay market rent without HUD approval.



HUD Student Rule

- ▶ Will the owner now be required to verify whether or not a school qualifies as an institution of higher education?



HUD Student Rule

- ▶ Yes. The owner will need to ensure that the school meets the Department of Education's definition for an "institution of higher education."
- ▶ Once the owner has determined that the school does or does not meet the definition, he or she can use the same supporting documentation for each tenant attending that particular school.



Questions?

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