

## Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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### E-NAHMA Analysis 2006-0120: New Student Eligibility Requirements for Section 8: Part I

This E-NAHMA Analysis describes what is known to date about the new policies governing eligibility of students for Section 8 assistance. It will describe the new law, legislative history, final rule and concerns raised by NAHMA members.

Until further guidance is issued by HUD, NAHMA is unable to definitively answer several important questions about how this new rule will be implemented. Assumptions made from the best available information will be offered, but members should be cautioned that these assumptions are no substitute for official agency guidance.

HUD staff have assured NAHMA that further official policy guidance is under development and forthcoming. It could be released by the middle of next week. When it becomes available, Part II of this NAHMA Analysis will be issued.

#### **Effective Date**

The final rule, “Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937” Docket no. FR-5036-F-01, is effective January 30, 2006.

#### **Background**

Last year, Senator Tom Harkin (D-IA) wrote legislation intended to prohibit student-athletes with athletic scholarships from receiving Section 8 rental assistance. Specifically, Senator Harkin’s legislation prohibits Section 8 assistance to students enrolled in “an institution of higher education,” who are under 24 years old, unmarried, non-veterans with no dependent children and who would not be individually eligible or have parents who would be eligible for this program. Additionally, any financial assistance (in excess of amounts received for tuition) must be counted as income in determining Section 8 eligibility, except for a person over the age of 23 who has dependent children. Harkin successfully offered his language as an amendment to the Senate’s FY 2006 Transportation, Treasury, HUD appropriations bill.

NAHMA met with Senator Harkin’s legislative staff in October 2005 to discuss the amendment. We expressed support for the concept of the legislation, but we did raise concerns about the effects on current tenants, the potential for high vacancy rates at properties in college towns, how income would be calculated and the need to ensure affordable housing is a stepping stone to self-sufficiency. We also offered some recommendations for clarifying the amendment in the final HUD appropriations bill. We

were assured that Senator Harkin was trying to close loopholes that allowed student-athletes on scholarship to live in Section 8 housing, and it was not his intention to prevent otherwise eligible Section 8 tenants from furthering their education.

The student eligibility amendment was retained in the final bill, which President Bush signed into law on November 30, 2005 (P.L. 109-115).

A press release issued by Senator Harkin's office on December 12, 2005 describes the new restrictions for students and the reasons he has pushed this issue:

“The Harkin provision requires that HUD develop new regulations that take into account parental income to determine Section 8 housing eligibility for students unless they are over 24, married, veterans, or have dependents. This is the same criteria students must meet to be declared “independent” for federal financial aid purposes. Additionally, any financial aid received over tuition will be counted as income. The legislation requires that HUD issue final regulations within 30 days of enactment. This 30-day period expires on December 29, 2005.

Given that Section 8 housing is very limited and the current waiting list is two years long, Harkin called on HUD to issue regulations that include an accelerated review of current Section 8 residents to determine whether they are truly eligible for government housing, particularly in areas heavily populated with college and university students.

Since learning about this loophole, Harkin has repeatedly called on the Bush Administration to take action against abuses in the public housing system which has allowed student-athletes receiving scholarships and housing stipends to displace needy Iowans in an Iowa City public housing facility. Although HUD issued revised Section guidelines in August 2005, the limited changes did little to close the loophole. Subsequently, abuses in the system have continued even though the average waiting period is two years for Iowans who truly need Section 8 housing.”

HUD's new Section 8 student eligibility rule was published in the *Federal Register* on December 30, 2005. It was issued as a final rule without public comment because of the statutory deadline.

## **Summary**

The final rule closely follows the new statutory language found in Title III, Section 327 of P.L. 109-115. The legislation consists of three paragraphs, which read:

“(a) No assistance shall be provided under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) to any individual who—

- (1) 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));
- (2) is under 24 years of age;
- (3) is not a veteran;
- (4) is unmarried;
- (5) does not have a dependent child; and
- (6) is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible, to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.

(c) Not later than 30 days after the date of enactment of this Act, the Secretary of Housing and Urban Development shall issue final regulations to carry out the provisions of this section.”

The final rule codifies the legislative language. New eligibility restrictions and income determinations for students at “institutions of higher education” are established. Members should be aware that “institutions of higher education” include postsecondary vocational institutions, “proprietary institutions of higher education” which prepare students for “gainful employment in a recognized occupation,” as well as accredited post-secondary colleges and universities. The statute and the final regulation are specific to Section 8 programs--both project-based and tenant-based.

Pursuant to the statutory requirements in the HUD appropriations bill, the new final rule:

- Updates the definitions of income in Section 8 programs:
- Includes eligibility of students’ parents in income eligibility for the student;
- Changes the criteria for Section 8 eligibility when the tenant/applicant is a student;
- Places the responsibility on owners to ensure tenants /applicants are eligible and income qualified for Section 8; and
- Specifically directs PHAs to “deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education...”

There does not appear to be a grandfathering option for in-place student tenants. According to the Department’s supplementary information in the *Federal Register*:

“HUD strongly encourages public housing agencies, owners, and management agents administering Section 8 programs to, as soon as it is practicable, recertify existing Section 8 participants that have family members that may meet the requirements of Section 327 of the Act. Prompt recertification, in addition to careful applicant screening, will ensure compliance with the restrictions of the new law.”

The most substantive parts of the new rule are found in 24 CFR part 5, subpart F (which governs income eligibility for Section 8).

- There are two changes to Section 5.609 (Annual income):
  - Section 5.609(b): A new paragraph (b) states that for purposes of determining income eligibility under the Section 8 programs, educational financial assistance which exceeds amounts received for tuition counts as income, except for persons over the age of 23 with

dependent children-as provided in the law. Also, the regulation clarifies that loans are not considered “financial assistance.”

- Section 5.609(c): Paragraph (c), which formerly listed the full amount of student financial assistance among the types of compensation excluded from annual income, now reflects that this exclusion is subject to the restrictions in Section 5.609(b) for Section 8 programs.
- Section 5.612: This new section, “Restrictions on assistance to students enrolled in an institution of higher education” codifies the six new criteria for determining whether students are eligible for Section 8 set out in the FY 2006 Transportation, Treasury, HUD appropriations bill (P.L. 109-115, Title III, Section 327(a)). In supplementary information which accompanied the final rule in the *Federal Register*, HUD made a point to note, “Since Section 327 is focused on income eligibility of a higher education student, the Department interprets the section’s reference to the eligibility of the parents to also refer to income eligibility.”

Additionally, the final rule makes conforming amendments to:

- 24 CFR 880.603(b) [Section 8 HAP Program for New Construction, Determination of eligibility and selection of tenants];
- 24 CFR 883.302 [Section 8 HAP Program—State Housing Agencies, Definitions, Annual Income];
- 24 CFR 884.102 [Section 8 HAP Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects, Definition of income];
- 24 CFR 886.102 [Section 8 HAP Program—Special Allocations, Definition of income];
- 24 CFR 886.132 [Section 8 HAP Program—Special Allocations, Tenant selection];
- 24 CFR 886.321(b) [Section 8 HAP Program—Special Allocations, Marketing];
- 24 CFR 891.610(c) [Supportive Housing for the Elderly and Persons with Disabilities, Selection and admission of tenants];
- 24 CFR 982.201 [Section 8 Tenant-Based Assistance: Housing Choice Voucher Program, Eligibility and Targeting]; and
- 24 CFR 982.552 [Section 8 Tenant-Based Assistance: Housing Choice Voucher Program, PHA denial or termination of assistance for family].

### **Issues of Concern to NAHMA**

**Neither the statutory language nor the final rule makes distinctions between full time and part time students.** The new restrictions and income determinations appear to be applicable to both full-time and part-time students, which represents a major change in policy. In the Low Income Housing Tax Credit program, “full time student households” are not eligible for occupancy unless they meet one of four exceptions. There is no such distinction made in the new Section 8 laws. We have asked HUD to clarify this matter in additional guidance.

**There is no grandfathering for in-place tenants.** HUD has urged owners and agents to begin recertifying tenants who may no longer qualify for Section 8 under the new law. As of Jan. 30, students at higher education institutions (who do not meet the exemptions) are no longer eligible for Section 8. Past experience suggests these tenants would be taken to market rent if they no longer qualify, or (if living with others) assistance for the household would be prorated. Prompt instructions on treatment of in-place tenants who no longer qualify are urgently needed.

**The new Section 8 language refers to students enrolled at “an institution of higher education.”** As discussed earlier, the definition of “institution of higher education” is much broader than just colleges and universities. Therefore, the impact of these new restrictions will not be limited to the college students from wealthy families on athletic scholarships who inspired the legislation.

**It would be very helpful to have specific examples of how to determine whether a student is eligible for Section 8 assistance.** One assumes that an income-qualified student (either as an applicant or current tenant) would be eligible if he/she falls outside one of the ineligible criteria specified in the new law (under 24 years old, non-veterans, unmarried, have no dependent child, and “is not otherwise individually eligible, or has parents who, individually or jointly are not eligible, to receive assistance under section 8...”). The examples should also describe when affordable housing operators must look at the parents’ income and how a final eligibility determination for the student should be made using this information.

**Although parents’ income is counted in determining whether the student is income qualified (unless they meet an exception), it is not clear how affordable housing operators are to determine whether the parents are income qualified.** Must the parents be certified as well? NAHMA has asked HUD to provide additional guidance on this matter.

**There is a potential for high vacancies at properties in college towns.** It is generally agreed that janitors working at the universities would benefit more from affordable housing than the students, but the working poor are often over-income. In order to avoid vacancy problems, this issue should be addressed. HUD has waiver authority that could be helpful in such situations.

**Applicability to other HUD programs.** While the best information available indicates the new restrictions and income calculations for students are limited to Section 8 assistance, NAHMA would like HUD to state this clearly in additional guidance.

### **Positive Aspects of This Policy/Proposal**

**The concept of the legislation, reflected in the final rule, is commendable.** That is, Section 8 assistance is too scarce a resource to be consumed by students who do not need the help.

**It makes sense to count financial assistance in excess of tuition as income.** With scarce Section 8 resources, it is essential to make sure assistance is directed to those who truly need it.

**The regulation clearly states that loans are not considered “financial assistance” for the purpose of determining income.** This is a very important clarification from HUD.

**The rule is not applicable to children in grades K-12.** While we remain concerned about the scope of the new restrictions, it is clear that the new policies are applicable to students seeking higher (most likely post-secondary) education, and they will not present the same problems encountered in the LIHTC program where children in grades K-12 are counted towards a “full-time student household.”

**Finally, this new rule underscores the need for a single student occupancy policy across affordable housing programs.** NAHMA would like a single standard that would create uniformity in the regulations, provide clear policy guidance to management agents and owners, encourage economic self-sufficiency for the tenants and allow residents to reach their full potential.

### **NAHMA's position**

We firmly believe that residents in affordable properties should not be penalized for trying to improve their circumstances and create a better life for their families through education. Rather, they should be commended for their efforts.

Eligible income-qualified students should be permitted to receive Section 8 assistance. While NAHMA believes the legislative intent of the new restrictions was to ensure students *are in fact* income qualified, we do not believe part-time students should be disqualified from the Section 8 program. Additionally, we are concerned about additional administrative burdens owners and agents will encounter when trying to factor parents' income into eligibility determinations for students.

NAHMA supports the underlying premises of the new restrictions. We agree that students from financially secure families should not receive Section 8 rental assistance at the expense of those who truly need the assistance and do not have other means to pay their rent. Nevertheless, we feel certain aspects of the policy are overly broad, and we will seek a constructive dialogue with the Administration and Congress to refine it.