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New Student Eligibility Requirements for Section 8: Part II

Effective Date or Deadline

HUD's April 10 notice, "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance," was released as clarification to 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, which became effective January 30, 2006.

Background

E-NAHMAanalysis 2006-0120: New Student Eligibility Requirements for Section 8: Part I discussed the legislative history of the new Section 8 policy for students in detail. As noted, the statutory changes were included as a rider to the FY 2006 Transportation, Treasury, HUD Appropriations bill (P.L. 109-115).¹

¹ Title III, Section 327 of P.L. 109-115 required:

“(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.”

HUD's 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.

Realizing that the final rule left many questions about how affordable housing operators were to actually implement the new policy, HUD published supplementary guidance in the April 10 *Federal Register*. This notice is available on NAHMA's HUD webpage, or through HUDCLIPS at: http://hudclips.org/sub_nonhud/cgi/pdf/3365.pdf. While the guidance was jointly issued by the Office of Housing and the Office of Public and Indian Housing (PIH), this *NAHMA* analysis will focus on its application to the Office of Housing's multifamily programs.

NOTE: This *NAHMA* analysis is intended to provide a general policy overview of the new HUD student eligibility notice; it does not constitute legal advice, nor is it intended as compliance assistance.

Summary

The supplementary guidance answers several outstanding questions related to the final student eligibility rule. The background section of the guidance explains,

“Under the new law and HUD's rule, the eligibility of a student seeking section 8 assistance will be examined along with the income eligibility of the student's parents. Both the student's income and the parents' income must be separately assessed for income eligibility. Additionally, the financial assistance of the student in excess of tuition will be included in annual income when determining the student's eligibility for section 8 assistance, unless the student is over the age of 23 with dependent children, and for rent calculation purposes as addressed in section II, E of this notice. The new law and rule focus on a student under the age of 24 who meets the additional requirements of section 327 of the Act² and who is not residing in a section 8 assisted unit with his or her parents, but who is seeking on his or her own to reside in a section 8 assisted unit. The new law and rule do 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 assistance³...”

Additionally, it answers several key questions NAHMA has raised with the Department. These questions included whether the rule is applicable to part-time students, whether it is limited to Section 8 assistance, what is the timeframe for recertifying in-place students, what happens if in-place students are ineligible, and how should owners / agents verify parents' income? The guidance provides the following answers:

- It applies only to Section 8 programs administered by the Offices of Housing and PIH;
- The rule is applicable to both part-time and full time students;
- With respect to in-place students;
 - Recertifications should begin “as soon as it is practicable,” but, “The latest time...that the eligibility and income requirements can be implemented is at the time of annual recertification;”

² E.g. non-veteran, unmarried, has no dependent children...

³ In several instances, HUD repeats that the new policy applies to students seeking Section 8 in their own right, but does not apply in cases where the student and parents are living together in a unit or when the student lives with parents applying for assistance.

- In-place students determined to be ineligible should have their subsidy terminated, but cannot be evicted if they are in compliance with their leases;
- Assistance can't be prorated; "...if the ineligible student is residing in a household other than with the student's parents the assistance will be terminated for the entire household;"
- To verify the income of a parent(s), owners/agents may accept a declaration and certification of income, which includes a penalty of perjury. Various documents, such as federal tax returns and pay stubs, are listed as supporting documentation that may be requested if the declaration, certification, and eligibility of the parent(s) is in question;
 - HUD cautions that PHAs, Owners and Agents MUST adequately screen and verify income; failure to do so "can result in sanctions being imposed."
 - Additionally, "PHAs must immediately update their Administrative Plans and Owners and Managers must immediately update their Tenant Selection Plans to reflect the new income eligibility restrictions for students."

Of course, one of the most important questions the guidance seeks to answer is how you determine whether a student is eligible in the first place. HUD offers the following instruction:

"For a student under the age of 24 who is not a veteran, is unmarried, does not have a dependent child and who is seeking section 8 assistance, section 327(a) of the Act sets up a two-part income eligibility test. Both parts of this test must be affirmatively met. That is, both the student and the student's parents (the parents individually or jointly) must be income eligible for the student to receive section 8 assistance. If it is determined that the parents are not income eligible, the student is ineligible to receive section 8 assistance."

Based on language in the guidance and subsequent exchanges with informed HUD staff, we believe HUD is interpreting the law to mean that if the student is individually eligible for Section 8 assistance, he or she can be receive assistance provided that his/her parent(s) are also income eligible--unless the student can demonstrate independence from the parent(s). If the student is married, or over the age of 24, or is a veteran or has a dependent child, and if the student is himself or herself eligible for Section 8, then income of the parent(s) does not have to be considered.

HUD lays out specific criteria for determining whether a student (who is under the age of 24, is single, childless, and not a veteran) is independent from his or her parents. If the student is independent, the parents' income is not relevant. HUD specifically instructs:

"PHAs, Owners, and Managers of section 8 assistance will need to verify a student's independence from his or her parents to determine that the student's parents' income is not relevant for determining the student's eligibility for assistance by taking into consideration all of the following:

1. Reviewing and verifying previous address information to determine evidence of a separate household, or Verifying the student meets the U.S. Department of Education's definition of "independent student"; and
2. 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 definition of "independent student"); and

3. Verifying income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.”⁴

Financial assistance received in excess of amounts for tuition is to be counted as annual income to the student, unless the student is over the age of 23 and has dependent children. The regulation clearly states that loans are not considered “financial assistance” for the purpose of determining income. If the student is not income-eligible when financial aid in excess of tuition is included in annual income, the student may not receive Section 8.

Based on HUD’s April 10 guidance and subsequent exchanges with knowledgeable HUD staff, here are some examples of how we believe the new student rule is to be implemented. Members are strongly advised to consult their counsel and / or compliance departments before implementing their own policies.

Example 1:

A student applies for Section 8. She is income eligible herself, but is under 24 (let’s say she’s 21), unmarried, childless, and a not a veteran.

- a.) Does this student qualify for Section 8 assistance on her income eligibility alone? **No, the parent(s) must also be income eligible unless the student can demonstrate independence from his/her parent(s).**
- b) Must the parents’ income be taken into account to determine her eligibility? **Yes, unless the student is independent from his/her parent(s).**
- c) If the parents are income-eligible, can this student receive Section 8? **Yes**

Example 2:

A different student applies for Section 8 housing. She is 21, and has a dependent child. She is income-eligible herself.

- a) Must her parents’ income be taken into account to determine whether she may receive Section 8? **No**

In addition to meeting income eligibility tests, students must also satisfy all other Section 8 program eligibility requirements. Rent is determined according to the Section 8 program requirements.

Positive Aspects of This Policy/Proposal

As noted in the summary section, NAHMA appreciates that many of the questions we raised with HUD have been specifically addressed in the guidance. These questions included whether the rule is applicable to part-time students, whether it is limited to Section 8 assistance, what is the timeframe for recertifying

⁴ The definition of “Independent Student” provided in the *Federal Register* on pg. 18149, Appendix A reads, “3. Independent Student for Title IV aid, a student must meet one or more of the following criteria:
a. Be at least 24 years old by December 31 of the award year for which aid is sought;
b. Be an orphan or a ward of the court through the age of 18;
c. Be a veteran of the U.S. Armed Forces;
d. Have legal dependents other than a spouse (for example, dependent children or an elderly dependent parent);
e. Be a graduate or professional student; or,
f. Be married.”

in-place students, what happens if in-place students are ineligible, and how should owners / agents verify parents' income.

Early review of the statutory language and HUD's final rule lent itself to a couple different interpretations of what the new policy actually required. One possible reading was that a student had to be a veteran or married or have a child or be over age 24 AND be income eligible themselves AND have income eligible parents in order to receive Section 8. Another possible reading was student had to be income eligible themselves AND have income eligible parents UNLESS the student was a veteran, married, had a dependent child or was over the age of 24--in which case the parent's income eligibility would not be a factor. The good news is HUD appears to have adopted the latter, less restrictive interpretation of the statute.

Also, it appears that HUD will be providing a sample form owners and agents can use to verify income students receive from their parents. In the DRAFT version of the 4350.3 REV-1 Change 2, which was issued for comment last summer prior to the statutory change, Exhibit 3-15 "Sample Student Certification of Dependent Status and Financial Assistance Provided" would gather much of the required information. NAHMA's comments on the draft Change 2 recommended renaming the form "Parent or Guardian Certification of Independent Status and Financial Assistance Provided" to more accurately reflect its purpose. We also recommend providing a companion form students can use for their certification, titled "Student Certification of Anticipated Financial Assistance."

Issues of Concern to NAHMA

NAHMA strongly urges HUD to provide examples of how to process student applications for Section 8 assistance in its future guidance.⁵ We respectfully request that HUD issue additional guidance which includes realistic scenarios of how to process students' applications for Section 8 assistance.

As noted in previous position statements, NAHMA does not believe the new restrictions should be applicable to part-time students. Likewise, verifying parents' eligibility adds another administrative challenge to an already complicated and lengthy process for determining Section 8 eligibility.

In another noteworthy development, legislation has already been introduced in Congress by Rep. Deborah Pryce and Senator Mike DeWine to ensure disabled students are not adversely affected by the new law. NAHMA is currently reviewing these bills, HR 5117 and S 2591.

NAHMA's position

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 supports the underlying premises of the new restrictions, although we do not agree with every provision in the legislation. 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.

⁵ The examples provided in the summary section of this *NAHMA Analysis* were based on follow-up exchanges with HUD staff after the supplementary guidance was released.

We will continue to inform members through the *NAHMA* analysis format as new developments related to this issue occur. HUD has committed to provide additional guidance in addition to the final rule and the April 10th notice. In the meantime, NAHMA welcomes continued feedback about aspects of the new student policy which require further clarification and which issues have been sufficiently addressed.