

**Questions and Answers Presented During the RHIIP Help Desk
Representative Conference Call
April 12, 2006**

**Eligibility of Students for Section 8 Assisted Housing
Supplementary Guidance**

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

Yes. The new law applies to both full-time and part-time students. There is no exemption for part-time students.

2. Is a student who is currently residing in assisted housing and receiving Section 8 assistance grandfathered in under these new requirements?

No. Students currently living in assisted housing and receiving section 8 assistance will not be grandfathered in. As stated in the Final Rule, residents currently receiving section 8 assistance should be recertified as soon as it is practicable. The latest that this new law can be implemented for these residents is at their annual recertification.

3. If the student is living with his or her parents who are already receiving section 8 assistance, must the student meet the eligibility requirements?

4. **No. Neither part of the new law, neither the restrictions in section 327(a) of the law nor the inclusion of financial assistance in excess of tuition in annual income in 327(b) of the law, applies to students who are living with their parents who are already living in an assisted unit and receiving section 8 assistance nor do they apply to students living with parents who are applying for section 8 assistance.**

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

To be consistent with long-standing HUD policy regarding eligibility for the section 8 programs, parents is defined as the biological or adoptive parents or guardians, such as grandparents, aunt or uncle, godparents, etc. Owners have the discretion to use this definition or to adopt their own definition. Whatever definition they use must be defined in the admission policies for their property.

6. 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?

Yes. In determining the eligibility for section 8 assistance, an owner must first determine whether or not the individual is:

- **Under the age of 24 and**
- **Enrolled at an institution of higher education**

Once it is determined that the individual is a student then the owner needs to determine whether or not the student:

- **Is a veteran**
- **Is married, or**
- **Has a dependent child**

If the student does not meet any of the second set of criteria, then there is a two-part test that must be met in order for the student to be eligible for section 8 assistance:

(1) the student must be eligible for section 8 assistance AND

(2) the student's parents, individually or jointly, must be eligible for section 8 assistance

UNLESS the student can demonstrate his or her independence from parents.

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

No. As stated in the final rule, the parents' eligibility under the new law only refers to income eligibility.

8. What income limit is used for determining the parents' income eligibility?

The income limit used for determining the parents' income eligibility is the applicable *low* income limit for the parents' family size for the locality where the parents live.

For example, if the parents live in New York City, the *low* income limit for the family size for New York City would be used.

If the student's parents live outside of the United States in areas where section 8 income limits have not been established, then the owner will use the

applicable *low* income limit for the parents' family size for the same locality used in determining the student's eligibility.

For example, if the student must meet the income limit for Iowa City, Iowa, then the owner would use the *low* income limit for the family size for Iowa City, Iowa for determining the parents' income eligibility.

When determining family size, the owner will use the same guidelines used for determining the family size when determining a household's income eligibility for assistance that are provided in Chapter 3 of Handbook 4350.3 REV-1.

9. 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?

To determine the eligibility of the parents, the owner may accept a signed declaration and certification of income from the parents. HUD will not be providing a certification form for the owner to use. As stated in the notice, the declaration and certification form the owner develops must include a penalty of perjury clause.

If for some reason the owner determines that the parents' declaration and certification of income or their eligibility is questionable, the owner may request that the parents provide documentation to support their income. This would include, but not be limited to, such items as IRS tax returns, consecutive and original pay stubs, bank statements, benefit statements, etc.

10. What happens if the parents refuse to declare or certify to their income?

The student will not be eligible to receive section 8 assistance.

11. How can a student demonstrate his or her independence from parents?

To determine a student's independence from his or her parents, the owner should use practices and criteria already in place. These practices and criteria are the same that are currently in paragraph 3-16 of Handbook 4350.3 REV-1 (this is where the "already in place" comes from) and are re-stated in the notice, with one exception. The notice states that the owner must take into consideration ALL of the criteria included in the notice. Therefore, the owner must follow the guidance that is in the notice.

If the owner wants to use additional criteria they can, as long as they apply it consistently for all applicants or tenants.

Criteria for determining independence from parents:

1. **The student must be of legal contract age under state law.**
 2. **The individual must have established a household separate from parent(s) 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.**
 3. **The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.**
 4. **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.**
12. How will owners verify a student's independence from his or her parents in order to determine that the student's parents' income is not relevant for determining the student's eligibility?

To verify a student's independence from his or her parents, the owner must take into consideration ALL of the following:

1. **Review and verify previous address information to determine evidence of a separate household from parents OR verify that the student meets the U.S. Department of Education's definition of "independent student".**
2. **Review the prior year income tax returns to verify that the student was not claimed on the parents' or legal guardians' tax returns. If the owner has verified that the student meets the U.S. Department of Education's definition of independent student then he or she does not have to review the prior year income tax returns to verify that the student was not claimed on the parents' or legal guardians' tax returns.**
3. **Verify the income provided by the student's parents by requiring a written certification from the individual providing the support. This certification is required even if the parents are not providing any support to the student.**

If the owner establishes additional criteria for determining the student's independence from parents, verification would also have to be obtained in accordance with the owner's policies.

13. What is the definition of "independent student" used by the Department of Education for Title IV aid purposes?

In order to meet the U.S. Department of Education’s definition of “independent student” that is used for Title IV aid, the 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 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 parent);**
- e. Be a graduate or professional student; or**
- f. Be married.**

14. What is included in “financial assistance”? Does it include scholarships as well as federal, State and local grants and loans?

Financial assistance includes any assistance the student receives that is in excess of tuition under the Higher Education Act of 1965, from other sources, and from institutions of higher education.

- 1. Under the Higher Education Act of 1965. This includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program and the Federal Work Study programs.**
- 2. Assistance from private sources. This would be non-governmental sources of assistance, including assistance that may be provided to a student from a parent, 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. This requires a reference to a particular institution and the institution’s listing of financial assistance.**

Financial assistance does not include loan proceeds, therefore, the Perkins, Stafford and Plus loans under the Higher Education Act of 1965 are not considered as financial assistance.

15. What is included in “tuition”? Does it include other fees charged by the educational institution?

Tuition has the same meaning in this law that is given this term by the institution of higher education in which the student is enrolled. Tuition may or may not include other fees charged by the educational institution.

The owner will have to verify with the institution of higher education where the student is enrolled what is included in the term tuition for that particular institution. The owner will have to do this before they can determine the amount of financial assistance that will be included in annual income.

16. What is the definition of “dependent child” and “dependent children” for the purposes of the new law?

For the purpose of this law, “dependent” means a dependent child of an enrolled student where the student has to meet the eligibility restrictions under the new law.

HUD’s definition of “dependent” as defined in HUD’s income eligibility regulations at 24 CFR 5.603 is “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.”

17. What is the definition of a veteran?

The owner has the discretion for determining the definition of “veteran” under this law, however, they may want to consider using the Department of Veterans Affairs’ definition that is provided in the notice since it is the widespread definition used in other federal programs.

18. 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 new law or will he or she have to meet the requirements at the time of each annual recertification?

The owner must ensure that at each annual recertification, the student remains eligible to receive section 8 assistance by applying the same criteria they did when they first established the student’s eligibility under the new law.

This means that where both the student and the student’s parents must be income eligible for the student to continue to receive section 8 assistance, the owner will be required to determine the parents’ eligibility annually also.

19. 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?

Assistance will not be prorated. If a current household has a member who is an ineligible student, the household will not be eligible to receive section 8 assistance as long as the ineligible student remains in the household.

If an applicant household has an ineligible student as a member of the household, the household is not eligible for section 8 assistance.

If, in a household that is currently receiving section 8 assistance, the owner determines that one of the household members is an ineligible student, the assistance for that household must be terminated in accordance with established requirements in Chapter 8 of Handbook 4350.3 REV-1 and the household given the required 30-day notice that their rent is being increased to the contract rent for their unit. The assistance will remain terminated as long as the ineligible student remains in the household. Should the ineligible student move out, the household would again be eligible for section 8 assistance, if available. In this instance, the remaining household members, with the owner's approval, could choose to move in another eligible person or, if the household composition doesn't require the unit size they are living in, the owner may require them to move to a unit of the appropriate size.

Owners cannot evict the ineligible student nor can the owner require the student to move out as long as the student is in compliance with the lease.

20. In a partially assisted section 236 project, if a current household is not eligible for section 8 assistance because it has a household member who is not eligible under section 327 of the law, can the household be recertified under the section 236 program?

In a section 236 project where only some of the units are covered by a section 8 contract, if it is determined that a household no longer qualifies for section 8 assistance because there is an ineligible student in the household, the owner must terminate the section 8 assistance. The household now becomes a section 236 household and the household's rent would be calculated using the section 236 rent formula. However, the student now has to be eligible using the guidelines for student eligibility currently in paragraphs 3-16 and 3-33 of Handbook 4350.3 REV-1 in order for the household to be assisted under the section 236 program.

When determining the student's eligibility under other HUD assisted multifamily programs the owner needs to remember that the inclusion in annual income of any financial assistance in excess of tuition only applies to the section 8 program, therefore, financial assistance continues to be excluded income for any other HUD programs in accordance with 24 CFR 5.609(c)(6).

21. Should the owner revise the project's Tenant Selection Plan to include the requirements of the Final Rule?

The owner should immediately update the Tenant Selection Plan for the property to incorporate the policies for admittance of students enrolled at an

institution of higher education. This should be completed before implementing the new student restrictions. The owner should already have something in the Tenant Selection Plan based on the student eligibility requirements in Handbook 4350.3 REV-1, so this will just be a matter of the owner updating the Tenant Selection Plan to be consistent with the new law.

The owner should also notify both applicants on their waiting list and their current residents of the new student eligibility requirements, if they have not already done so.

22. Do the requirements in paragraphs 3-16 and 3-33 on student eligibility and verification currently in Handbook 4350.3 REV-1 still apply?

The requirements currently in paragraphs 3-16 and 3-33 of Handbook 4350.3 REV-1 continue to apply for students living in units covered by other HUD programs, such as the section 236 program.

The handbook will be updated with all of the student eligibility requirements in a future change.

23. Is there any process for students to appeal the owner's or management agent's decision under these regulations?

Owners will continue to provide applicants the opportunity to meet with them to discuss any rejection for admittance and provide residents the opportunity to meet with them when assistance is terminated. These provisions are already in place and discussed in Handbook 4350.3 REV-1 and the model leases.

Additional Questions Asked by the RHIIP Help Desk Representatives

1. Where do we get updates on information concerning the student rule?

The Final Rule was posted in the December 30, 2005 Federal Register

The Supplementary Guidance Notice was posted in the April 10, 2006 Federal Register

www.hudclips.org

The Questions and Answers will be posted on the RHIIP web site.

<http://www.hud.gov/offices/hsg/mfh/rhiip/mfhrhiip.cfm>

The Questions and Answers will also be posted on the RHIIP Listserv. If you haven't signed up for the RHIIP Listserv you can do so by:

1. Visit **www.hud.gov**
 2. Click on the **Mailing Lists** link on the lower left hand side of the page.
 3. Click the **Multifamily Housing RHIIP Tips Listserv** link in the middle of the page.
 4. Enter your email address.
 5. **Open your email account and respond to a confirmation email within 48 hours to complete your registration.**
2. In a case where both the student and the parents are individually eligible for assistance, what happens when the parents are divorced?

This question will be answered with the release of the Questions and Answers upon completion of Departmental Clearance.

3. What kind of timeframe is given to owners to update the Tenant Selection Plan?

As stated in the Supplementary Guidance Notice, owners should immediately update their Tenant Selection Plans to reflect the new income eligibility restrictions for students.

4. Can I have clarification regarding termination of assistance for someone in the household who is ineligible? What happens in this situation?

If an owner determines that a student is ineligible to receive section 8 assistance, the section 8 assistance must be terminated in accordance with established requirements in Chapter 8 of HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

The owner cannot evict or require the ineligible student to move as long as the student is in compliance with the lease.

For example, if the owner determines that a household member is an ineligible student, the owner must give the household proper notification that their section 8 assistance is being terminated and at the same time provide the household the required 30-day notice that the household's rent is being increased to market. As long as the household pays the increased rent, the household (the student) is in compliance with the lease. If the household (the student) doesn't pay their rent, then they are in non-compliance with the lease and the owner could pursue eviction.

5. Will the law be changing to exclude disabled students from the rule?

At this time there is no exemption under the law for disabled students.

6. In a case where there is a 22-year old student, unmarried but has a dependent child, does the rule apply?

No, the law does not apply in this case. The fact that the student has the dependent child exempts her from the rule.

There will be further guidance on this issue in the Questions and Answers once Departmental clearance has been completed.

7. In a case where there is a student who is currently living in a section 8 unit who does not meet the requirements, will the student have to pay market rent?

Yes, the student, or household the student resides in, will be required to pay market rent. See the answer to Question 4 above.

Remember though that the new rule does not apply to a student who is living in an assisted unit with his or her parents who are receiving section 8 assistance or living with parents who are applying for section 8 assistance.