



Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

Summary

On December 30, 2005, HUD published a final rule (FR-5036-F-01), entitled, *“Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937,”* implementing section 327 of the Appropriations Act of Fiscal Year (FY) 2006. The final rule became effective January 30, 2006. In brief, the law and final rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, is 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.

To assist public housing agencies (PHAs) in implementing the new law and final rule, and to ensure that section 8 assistance is provided to those truly in need of and eligible for assistance, the Department issued supplemental guidance on April 10, 2006, entitled, *“Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplemental Guidance.”*

Questions & Answers

Following are two groups of questions and answers: Group I and Group II concerning Section 327 of the Act and the implementing final rule. Group III is definitions.



Group I:

- Section 8 eligibility
- Income determinations
- Rent

Group II:

- Applicability
- Agency policies
- Reexamination of Family Income
- Reexamination of Family Income and Termination of Assistance
- Pro-ration of Assistance

Group III:

Definitions

Group I—Section 8 Eligibility, Income Determinations, and Rent

Section 327 of the FY 2006 Appropriations Act		Final Rule, FR-5036-F- 01	Question	Answer
1 *	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to the Public Housing program?	No. The Act and the implementing final rule (FR-5036-F-01) do not apply to the Public Housing program. The Act and final rule apply only to Section 8 programs.
2 *	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to students that currently reside with parents in a section 8 rental assisted unit or students applying for section 8 assistance with their parents?	No. The new law and final rule do not apply to these students. The law and final rule focus on students who are under the age of 24, are not veterans, are unmarried, or are without children who seek or receive section 8 assistance separate from their parents.
3 *	Section 327(a)(1)	Section 5.612(a)	Do the student eligibility requirements apply to full and part-time students who are enrolled at an institution of higher education?	Yes. The eligibility requirements apply to both full and part-time students enrolled at an institution of higher education, as defined under 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).
4 *	Section 327(a)(1)-(6)	Section 5.612(a)-(f)	Do the Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any dependent children applying for Section 8 assistance in the Section 8 program is ineligible for Section 8 assistance?	Yes. The Act and final rule provisions mean that any student who is enrolled at an institution of higher education who is under the age of 24, is not a veteran, unmarried, and does not have any children, and 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. <u>Unless</u> the student is determined independent (by PHAs) from his or her parents, as discussed in this guidance, 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 OR whether the student's parents, individually or jointly, are income eligible for Section 8 assistance. 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

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Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F- 01	Question	Answer
			when determining the student's eligibility for section 8 assistance, <u>unless</u> 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.
5 *	Section 327(a)(6)	Section 5.612(f)	Concerning the eligibility of parents, individually or jointly, do parents have to meet <u>all HUD program eligibility requirements</u> in order for the student to be eligible for Section 8 housing assistance?
6	Section 327(a)(6)	Section 5.612(f)	Also concerning the eligibility of parents, individually or jointly, how does the PHA know whether to determine the eligibility of the parents "individually" or "jointly"? Are there any established criteria a PHA may use in making this determination? PHAs may adopt and implement the following criteria for determining whether to obtain the declaration and certification of income from parents, individually or jointly. <ul style="list-style-type: none"> ■ If the student's parents are married and living with each other, obtain the declaration and certification of income from each parent. ■ If the student's parent is widowed or single, obtain the declaration and certification of income from that parent. ■ If the student's parents are divorced or separated, obtain the declaration and certification of income from each parent. ■ If the student has been living with one of his or her parents and has not had contact with or does not know where to contact his or her other parent, obtain from the student a certification under penalty of perjury, addressing the circumstances (including a statement that the student has not received financial assistance from the parent) and obtain from the parent whom the student has been living or has contact with the declaration and certification of income.
7	Section	Section	In determining the eligibility of the parent(s) to receive assistance, which The PHA should use the Income Limit for the area where the parent(s) resides (24 CFR 982.201(b)(4)). In the example provided, the PHA should

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Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F- 01	Question	Answer	
	327(a)(6)	5.612(f)	HUD Income Limit area should the PHA use: the income limit for the area where the student intends to reside, or the income limit for the area where the parent(s) currently resides? For example, if the student is applying for Section 8 housing assistance in Johnson City, Tennessee, but the parent(s) lives in New York City, New York, which HUD Income Limit area should be used in determining the parent(s) program eligibility?	use the income limit for the area in New York where the parent(s) lives.
8 *	Section 327(a)(6)	Section 5.612(f)	Which income limit (i.e., extremely low-income, very-low income, or low-income) should a PHA use in determining the income eligibility of the parent(s)?	Both students and parents must meet the <u>low-income limit</u> .
9	Section 327(a)(6)	Section 5.612(f)	How should the PHA define parents? What if the student lives with a grandparent, aunt, uncle, guardian, etc., do they have to meet the qualifications also?	For purposes of the student eligibility restrictions, and consistent with long-standing HUD policy regarding eligibility for the section 8 programs, the term “parents” means the biological or adoptive parents, or guardians (e.g., step-parents, grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.
10	Section 327(a)(6)	Section 5.612(f)	In admitting college students to Section 8 rental programs, it appears that the PHA will now have to determine the	Correct. The PHA will have to determine the eligibility of each student family member, parents (in cases where the student has not established independence from parents), and the student family household as a unit. For example, three college students applying for Section 8 rental housing

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Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F- 01	Question	Answer
*		eligibility of the: <ol style="list-style-type: none"> 1. Student 2. Parent(s), unless the income of the student's parents is not relevant or the student can demonstrate to the absence of, or his or her independence from Parents. 3. Student family household 	assistance, as a family unit, would have to be income eligible for Section 8 assistance (24 CFR 982.201). Also, under 5.612(f), each student individually would have to be eligible and the parent(s) of each student would have to be eligible for Section 8 rental assistance, unless the student can show the income of the student's parents is not relevant or the student can demonstrate to the absence of, no financial support from parent(s) or his or her independence from, parents.
11 *	Section 327(b) Section 5.609(b)(9)	What exactly are the types of "financial assistance" under the Higher Education Act of 1965 that must be considered as income under Section 327?	Types of financial assistance under the Higher Education Act of 1965 would include: the Pell Grant, the Federal Supplemental Educational Opportunity Grant (FSEOG), Academic Achievement Incentive Scholarships, State assistance under the Leveraging Educational Assistance Partnership Program, the Robert C. Byrd Honors Scholarship Program, and federal Work-Study (FWS) programs. Although considered "financial assistance" under the Higher Education Act of 1965, Perkins loans, Stafford loans, and Plus loans <u>are not</u> considered income for purposes of determining student eligibility for Section 8 housing assistance. For complete information, see Title IV, Part A, under the Higher Education Act of 1965, as amended, located at: http://www.ed.gov/policy/highered/leg/hea98/index.html
12 *	Section 327(b) Section 5.609(b)(9)	Is the income students receive from federal Work-Study (FWS) programs considered earned income for purposes of determining income eligibility?	Yes. It is considered financial assistance under the Higher Education Act of 1965. If its financial assistance under the Act, then it is counted as income under 327.

**Group II—Applicability, Agency Policies, Verifications/Reexaminations,
Continuation and Termination of Assistance (24 CFR 982.552(b)(5))**

Category	Question	Answer
13 *	Applicability Will the students currently participating in HUD's Section 8 program be grandfathered into the program? Does the rule apply to existing Section 8 student participants?	No. Neither section 327 nor the final rule provides for a grandfathering clause for current Section 8 student participants. Therefore, section 327 and the final rule apply to existing Section 8 student participants. However, as previously stated, the law and final rule do not focus on students residing with their parents in a section 8 assisted unit or students who reside with their parents who are applying to receive section 8 assistance. Rather, it focuses on certain students who seek or receive section 8 assistance, separate from their parents.
14 *	Agency Policies Do PHAs have to update their Administrative Policies (24 CFR 982.54) before implementing Section 327 and final rule?	Yes. PHAs must immediately update their Administrative Plans to reflect discretionary policies concerning the new income eligibility restrictions for students (24 CFR 982.54).
15 *	Verifications Will PHAs now be required to obtain income information on the parents, in determining the eligibility of parents for Section 8 rental assistance?	Yes. To satisfy this requirement, PHAs may accept from a parent (s) a declaration <and> certification of income, which includes a penalty of perjury. The PHA retains the right to request and review, supporting documentation at any time the PHA determines the declaration, certification, and eligibility are in question. Supporting documentation includes, but is not limited to: IRS tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, other official and authentic documents from a federal, State, or

**Group II—Applicability, Agency Policies, Verifications/Reexaminations,
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Category	Question	Answer
		local agency.
16 *	Verifications Since Section 8 assistance can no longer be provided to certain students (24 CFR 5.612), and this may include a parent's income eligibility test, does this mean that PHAs will have to verify the parent's income eligibility annually, during reexamination, to determine whether the student continues to be eligible for the program after admissions? Prior to the effective date of the final rule, PHAs administering Section 8 programs did not have to verify the income of eligibility (i.e., family meets income limits) of the family after admissions.	PHAs administering the Section 8 program will have to verify the income eligibility of the parent(s), at least annually, to determine whether the student remains eligible for the Section 8 program. In accordance with 24 CFR 982.552(b)(5), if after reexamining the parent's income, the student is determined to be ineligible for Section 8 assistance, as specified in 24 CFR 5.612, the PHA must terminate assistance to that family member (i.e., student). Again, the family is entitled to an informal hearing to discuss the termination of assistance.
17	Reexamination of Family Income The preamble of the final rule "strongly encourages PHAs, 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." What does this mean? What happens if the PHA cannot recertify Section 8 participants until the family's next annual recertification? Will the PHA be penalized?	HUD understands that some PHAs may not have the resources or the capability to recertify participant family income until the family's next annual recertification. However, in order to remedy the problem of ineligible college students participating in HUD's Section 8 rental assistance programs, as quickly as possible, the Department recommends recertification sooner rather than later (i.e., as soon as it is practicable). If a PHA is unable to recertify family income until the next annual reexamination, that PHA will not be penalized. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual reexamination.
18 *	Reexamination of Family Income and As it concerns 24 CFR 982.552(b)(5) of the final rule, if after reexamining a student household's income (the student's or	Yes. Applicant and participant student households are entitled to request and receive an informal hearing to discuss the reasons for the denial or termination of assistance, in accordance with established program procedures and requirements (See 24 CFR

**Group II—Applicability, Agency Policies, Verifications/Reexaminations,
Continuation and Termination of Assistance (24 CFR 982.552(b)(5))**

Category	Question	Answer
Termination of Assistance	parent(s) income), the PHA determines the student is no longer eligible for Section 8 rental assistance, is the student family entitled to a grievance hearing?	982.554 and 24 CFR 982.555, respectively).
19 Continuation and Termination of Assistance	Scenario I: Three full-time college students apply for Section 8 housing. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA deny Section 8 rental housing assistance to the entire family—all three students— or can the student family choose to remove the ineligible student from the family application so the two eligible students can be admitted to the program?	In scenario I described, the PHA will notify the applicant student family of its decision to deny assistance to the student household because of one of the student 's ineligibility for Section 8 assistance. The notice will state that the student household may request an informal review of the PHA's decision and how to obtain the review (24 CFR 982.554). During the informal review, the student family may choose to remove the ineligible student from the family application for assistance so that the two eligible students may be admitted to the program. The PHA must notify the student household of the PHA's final decision after the informal review, including a brief statement of the reasons for the final decision.
20 Continuation and Termination of Assistance	Scenario II: Three full-time college students are residing in a Section 8 rental assistance unit. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA terminate the Section 8 rental assistance to the entire family—all three students— or can the student family choose to remove the ineligible student from the student household so the two eligible students can continue to be assisted under the program.	In scenario II described, the PHA will notify the student household of its decision to terminate Section 8 rental assistance to the family. The notice will contain a brief reason for the PHA's decision (i.e., ineligibility of a college student 24 CFR 5.612) and inform the student household of its right to an informal hearing. For the housing choice voucher (HCV) program, eligible students residing in households with ineligible students shall not have their assistance terminated, but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate Rehabilitation, Project-Based Certificate, and Project-Based Voucher programs.
21 Pro-ration of Assistance	Can the PHA <u>prorate</u> the student household's assistance, based on a percentage of the	No. PHAs may not prorate assistance to family households composed of eligible and ineligible students.

**Group II—Applicability, Agency Policies, Verifications/Reexaminations,
Continuation and Termination of Assistance (24 CFR 982.552(b)(5))**

Category	Question	Answer
*	total number of members of the family household that are eligible for assistance?	

Group III—Definitions

Section 327 of the FY 2006 Appropriations Act	Final Rule FR-5036-F-01	Questions	Answers
Section 327(a)(1)	Section 5.612(a)	What is the definition of an institution of higher education under section 102 of the Higher Education Act of 1965?	Also provided in Appendix A of the supplemental guidance, a complete definition of an institution of higher education under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .
Section 327(a)(3)	Section 5.612(c)	What is the definition of a “veteran”?	For purposes of administering the student eligibility restrictions, PHAs may find it useful to adopt the term “veteran” as used by the Department of Veterans Affairs (38 U.S.C. 101(2)): (2) the term “veterans” means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. A complete definition of veteran (38 U.S.C. 101) can be found on GPO Access, United States Code Main Page at: http://www.gpoaccess.gov/uscode/index.html .
Sections 327(a) and (b) *	Sections 5.612(e) and 5.609(b)(9)	As used in the Act and final rule, how are the terms “dependent child” and “dependent children” defined?	“Dependent child” and “dependent children,” as used in the Act and final rule, have the same meaning as provided at 24 CFR 5.603: <i>Dependent</i> : 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 is a full-time student. To be sure, the child or children must reside in the student family household.

Group III—Definitions

Section 327 of the FY 2006 Appropriations Act	Final Rule FR-5036-F-01	Questions	Answers
Section 327(b) *	Section 5.609(b)(9)	<p>Does financial assistance include federal, State, and local grants, scholarships, and loans?</p> <p>Section 327(b) states: "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."</p>	<p>Student financial assistance, as used in the Act and final rule, means any assistance (in excess of amounts received for tuition) that an individual receives:</p> <ul style="list-style-type: none"> (1) Under the Higher Education Act of 1965 (2) From private sources (3) From an institute of higher education <p>Such financial assistance may include federal, State, and local grants and scholarships (athletic and academic), fellowships and student educational financial assistance from parents, guardians, or other persons residing outside of the student family household. HUD has interpreted the term "financial assistance," as used in Section 327(b) to not include loan proceeds for the purpose of determining income.</p>
Section 327(b) *	Section 5.609(b)(9)	In the new law, how is student to be defined?	Student means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.
Section 327(b)	Section 5.609(b)(9)	What is included in tuition? Does it include other fees charged by the educational institution?	Tuition shall have the meaning given this term by the institution of higher education in which the student is enrolled.

