

January, 11 2007

TO: State Directors
Rural Development

ATTN: Rural Housing Program Director

FROM: Russell T. Davis *(Signed by Brad Martin) for*
Administrator
Housing and Community Facilities Programs

SUBJECT: Student Income Eligibility Determination for
Rural Development Multi-Family Properties

This unnumbered letter is issued to clarify how to determine student income eligibility for applicants and tenants at Rural Development Multi-Family Housing (MFH) properties, including those with Rental Assistance (RA).

As required by 7 CFR 3560.153, the calculation of household income and assets for Rural Development MFH properties is defined as follows: (a) Annual income will be calculated in accordance with 24 CFR 5.609; (b) Adjusted income will be calculated in accordance with 24 CFR 5.611.

On December 30, 2005, the Department of Housing and Urban Development (HUD) issued a final rule amending 24 CFR 5.609 to add a new paragraph (b)(9) to include, as annual income, any financial assistance in excess of amounts for tuition that a student receives who meets the criteria of the new §5.612. In determining the income eligibility of a student at any Rural Development MFH property regardless of subsidy status, the student's financial assistance in excess of tuition as defined in §5.609(b)(9) will be included in the calculation of annual income.

This guidance does not affect the eligibility of a student's parents when the student is receiving financial assistance and the student is residing with his or her parents, or is residing with parents who are applying to receive RA. This only affects the eligibility of students applying for occupancy in a Rural Development MFH property separate from their parents.

EXPIRATION DATE:
January 31, 2008

FILING INSTRUCTIONS:
Housing Programs

All student applicants for assistance must also meet all other Rural Development program requirements that determine eligibility for occupancy.

In determining the eligibility for rental 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

On July 27, 2006, President Bush signed into law an amendment that exempts college students with disabilities from the restriction on providing subsidy to college students if the student with the disability as defined in section 7 CFR 3560.11 was receiving the assistance as of November 30, 2005.

The following attachments provide additional guidance:

1. Attachment A - is entitled "Eligibility of Students – Frequently Asked Questions (FAQs)" originally developed by HUD and modified for Rural Development purposes.
2. Attachment B is the final rule concerning the eligibility of students dated December 30, 2005.
3. Attachment C is the supplemental guidance dated April 10, 2006. The attachments are also available at <http://www.hud.gov/offices/hsg/mfh/rhiip/mfhrhiip.cfm>.

This guidance supersedes the guidance regarding student income found in HB-2-3560, Attachment 6-A. If you have any questions regarding this memorandum, please contact Joan Atkinson of the Multi-Family Housing Portfolio Management Division at (202) 720-1609.

Attachments

**Eligibility of Students
Frequently Asked Questions (FAQs)**

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 RA grandfathered in under these new requirements? **No. Students currently living in assisted housing and receiving RA will not be grandfathered in. Residents currently receiving rental assistance should be recertified. The latest that this new law can be implemented for these residents is at their annual certification.**

3. If the student is living with his or her parents who are already receiving RA, must the student meet the eligibility requirements? **No. The new law does not apply to students who are living with their parents who are already living in an assisted unit and receiving RA nor do they apply to students living with parents who are applying for RA.**

4. 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. Borrowers 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. (RD concurs with this definition).**

5. 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 income eligibility for assistance, a Borrower must first determine whether or not the individual is:**

- a) **Under the age of 24 AND**
- b) **Enrolled at an institution of higher education**

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

- a) **Is a veteran**
- b) **Is married, or**
- c) **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 RA:

- (1) The student must be eligible for assistance AND**
- (2) The student's parents, individually or jointly, must be eligible for assistance UNLESS the student can demonstrate his or her independence from parents.**

6. When determining the parents' eligibility do the parents have to meet all of Rural Development's program eligibility requirements in order for the student to be eligible? **No. The parents' eligibility only refers to income eligibility.**

2

7. 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 Greensboro NC, the low income limit for the family size for Greensboro NC would be used. If the student's parents live outside of the United States in areas where income limits have not been established, then the Borrower 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 Borrower would use the low income limit for the family size for Iowa City, Iowa for determining the parents' income eligibility.

8. In order to determine the income eligibility of parents for RA, how will Borrowers and managers obtain and verify income information on the parents? **To determine the eligibility of the parents, the Borrower may accept a signed letter of certification of income from the parents. If the Borrower determines that the parents' declaration and certification of income is questionable, the Borrower 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.**

9. What happens if the parents refuse to declare or certify to their income? **The student will not be eligible to receive assistance.**

10. How can a student demonstrate his or her independence from parents? **To determine a student's independence from his or her parents, the Borrower should use practices and criteria already in place.**

- a. **The student must be of legal contract age under state law.**
- b. **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.**
- c. **The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.**
- d. **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.**

11. How will Borrowers 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 Borrower must take into consideration ALL of the following:**

a. 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".

b. 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 Borrower 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.

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

12. 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.

13. 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.**

a. **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.**

b. **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.**

c. **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.

14. 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 Borrower 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 Borrower will have to do this before they can determine the amount of financial assistance that will be included in annual income.**

15. 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 Borrower must ensure that at each annual certification, the student remains eligible to receive 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 RA, the Borrower will be required to determine the parents’ eligibility annually also.**

16. 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? **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 RA 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 assistance. If, in a household that is currently receiving RA, the Borrower determines that one of the household members is an ineligible student, the assistance for that household must be terminated and the household given the required 30-day notice that their rent is being increased to the note 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 may again be eligible for assistance, if available? In this instance, the remaining household members, with the Borrower’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 Borrower may require them to move to a unit of the appropriate size. Borrowers cannot evict the ineligible student nor can the Borrower require the student to move out as long as the student is in compliance with the lease.**

17. Should the Borrower revise the project’s Management Plan to include the requirements of the Final Rule? **The Borrower should immediately update the Management 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 Borrower 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.**

18. Is there any process for students to appeal the Borrower’s or management agent’s decision under these regulations? **Borrowers will provide appeal rights as required by 7 CFR 3560.160 for this and any adverse action.**

19. What kind of timeframe is given to Borrowers to update the Management Plan? **Borrowers should immediately update their Management Plans to reflect the new income eligibility restrictions for students.**

20. Can I have clarification regarding termination of assistance for someone in the household who is ineligible? What happens in this situation? **If a Borrower determines that a student is ineligible to receive assistance, the assistance must be terminated. The Borrower cannot evict or require the ineligible student to move as long as the student is in compliance with the lease.**

For example, if the Borrower determines that a household member is an ineligible student, the Borrower must give the household proper notification along with appeal rights, that their assistance is being terminated and at the same time provide the household the required 30-day notice (or whatever is required by the local jurisdiction) that the household's rent is being increased to basic or note rent. This notice should include appeal rights as required by 7 CFR 3560.160. 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 Borrower could pursue eviction.

21. 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.**

22. In a case where there is a student who is currently living in RA unit who does not meet the requirements, will the student have to pay basic or note rent? **Yes, as the level of the student's income dictates, the student, or household the student resides in, will be required to pay basic or note rent.**