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Department of Housing and Urban Development

24 CFR Parts 5, 880, 883, et al.
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 880, 883, 884, 886, 891, and 982

[Docket No. FR–5036–F–01]

RIN 2501–AD19

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements a new law, enacted as part of HUD's Fiscal Year (FY) 2006 appropriations, that restricts individuals enrolled in an institution of higher education and who meet certain other requirements from receiving assistance under section 8 of the U.S. Housing Act of 1937. The new law directed HUD to issue a final rule within 30 days of enactment of the new law. This rule fulfills the statutory requirement.

DATES: *Effective Date:* January 30, 2006.

FOR FURTHER INFORMATION CONTACT: For Section 8 voucher issues, Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone (202) 708–0477; for the Office of Housing's project-based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6180, telephone (202) 708–3000. For all of the individuals, the address is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. None of the aforementioned telephone numbers are toll-free numbers. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Fiscal Year (FY) 2006 appropriations for HUD were recently enacted in Public Law 109–115 (119 Stat. 2936), which was approved on November 30, 2005 (the Act). HUD's appropriations are found in Title III of this law. Section 327 of the administrative provisions of Title III place restrictions on housing assistance that can be provided to students of higher education under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). Specifically, Section 327 of Public Law 109–115 (Section 327) provides as follows:

''Sec. 327. (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.''

The new law is intended to address recent incidents of college students obtaining federal housing assistance without their educational financial assistance counting as income for purposes of income eligibility for federal housing assistance. The law also describes how educational financial assistance is to be treated in the calculation of income for purposes of determining eligibility.

Section 327 of the Act directs HUD to issue a final rule to carry out this section no later than 30 days from the date of enactment of the law. Since HUD finds the restrictions of the law to be clear, this final rule codifies the restrictions largely as set forth in the statute.

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.

II. This Final Rule

This final rule amends 24 CFR part 5, subpart F, which addresses income eligibility in assisted housing, among other matters, to incorporate the provisions of the new law. Specifically, this rule makes the following amendments to 24 CFR part 5, subpart F.

Section 5.609(b) of subpart F, which lists forms of compensation that are calculated as income, is amended to include as income, for programs under section 8 of the U.S. Housing Act of 1937 (section 8), the educational financial assistance described in Section 327(b) of the Act, except for persons over the age of 23 with dependent children. Section 327(b) provides for such exemption for persons over the age of 23 with dependent children. HUD has interpreted the term ''financial assistance'' as used in Section 327(b) to not include loan proceeds for the purpose of determining income.

Section 5.609(c)(6) of subpart F lists forms of compensation that are excluded from the calculation of annual income. Prior to the change being made by this final rule, § 5.609(c) provided for the full amount of student financial assistance paid directly to the student or the educational institution to be excluded from annual income. Section 5.609(c)(6) is amended to provide, by cross-reference to § 5.609(b), that the exclusion does not pertain, with regard to Section 8 programs, to the financial assistance described in Section 327(b) of the Act.

A new regulatory section, § 5.612, is added to 24 CFR part 5, subpart F, to codify the criteria set forth in Section 327(a) of the Act by which an individual enrolled in an institution of higher education is ineligible for assistance. Subsection (a)(6) of Section 327 concludes the list of criteria by providing that an individual who is enrolled in an institution of higher education is ineligible for assistance if the individual is not otherwise individually eligible, or has parents who, individually or jointly, are ineligible to receive assistance under Section 8. 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.

In addition to the amendments made to 24 CFR part 5, subpart F, this final rule also makes conforming amendments to 24 CFR 880.603(b), 24 CFR 883.302, 24 CFR 884.102, 24 CFR 886.102, 24 CFR 886.132, 24 CFR 886.321(b), 24 CFR 891.610(c), 24 CFR 982.201, and 24 CFR 982.552.

III. Justification for Final Rule

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own

regulations on rulemaking in 24 CFR part 10. Part 10, however, provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (see 24 CFR 10.1). In this rulemaking, however, HUD is issuing a final rule to comply with a statutory directive to issue final regulations within 30 days of enactment of Public Law 109–115.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would impose no additional economic or other burdens on small entities. The entities affected by this rule are agencies administering tenant-based and project-assisted housing and properties that are already required to screen applicants applying for assistance. This rule provides clear directions on how educational financial assistance is to be calculated in an income determination prior to receiving assistance under section 8 of the U.S. Housing Act of 1937.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 5

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs—housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs-housing and community development; Low and moderate income housing; Mortgage insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

24 CFR Part 880

Grant programs—housing and community development; Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development; Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development; Rent subsidies; Reporting and recordkeeping requirements; Rural areas.

24 CFR Part 886

Grant programs—housing and community development; Lead poisoning; Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development; Grant programs—Indians; Indians; Public housing; Rent subsidies; Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 2. In § 5.609, add a new paragraph (b)(9) and revise paragraph (c)(6) to read as follows:

§ 5.609 Annual income.

* * * * *

(b) * * *

(9) For section 8 programs only and as provided in 24 CFR 5.612, 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 from 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 that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, ''financial assistance'' does not include loan proceeds for the purpose of determining income.

* * * * *

(c) * * *

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

* * * * *

■ 3. Add § 5.612 to read as follows:

§ 5.612 Restrictions on assistance to students enrolled in an institution of higher education.

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

(a) 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);

(b) Is under 24 years of age;

(c) Is not a veteran of the United States military;

(d) Is unmarried;

(e) Does not have a dependent child; and

(f) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

■ 4. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 3535(d), 12701, 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 5. In § 880.603(b), the introductory paragraph is revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income eligibility in accordance with 24 CFR part 5, subpart F, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, subpart E, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

■ 6. The authority citation for 24 CFR part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 7. In § 883.302, the definitions of *Family* and *Low-Income Family* are removed and the definition of *Annual Income* is revised to read as follows:

§ 883.302 Definitions.

* * * * *

Annual Income. As defined in part 5 of this title.

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

■ 8. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 9. In § 884.102, the definition of *Income* is revised to read as follows:

§ 884.102 Definitions.

* * * * *

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in 24 CFR part 5, subpart F.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

■ 10. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 11. In § 886.102, the definition of *Income* is revised to read as follows:

§ 886.102 Definitions.

* * * * *

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in part 5 of this title.

* * * * *

■ 12. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 880.

■ 13. Section 886.321(b)(1) is revised to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility of assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, 24 CFR part 5, subpart F).

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 14. The authority citation for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 1437f, 3535(d), 8013, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 15. Section 886.610(c) is revised to read as follows:

§ 891.610 Selection and admission of tenants.

* * * * *

(c) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers and sign and submit consent forms for obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under 24 CFR part 5, subparts E and F.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 16. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 3535(d), 12701, 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 17. Section 982.201(a) is revised to read as follows:

§ 982.201 Eligibility and targeting.

(a) *When applicant is eligible: general.* The PHA may only admit an eligible family to the program. To be eligible, the applicant must be a ''family;'' must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E.

* * * * *

■ 18. Section 982.552 is amended to add a new paragraph (b)(5) to read as follows:

§ 982.552 PHA Denial or termination of assistance for family.

* * * * *

(b) * * *

(5) The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 CFR 5.612.

* * * * *

Dated: December 27, 2005.

Roy A. Bernardi,

Deputy Secretary.

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