

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 5****[Docket No. FR-5226-F-01]****RIN 2501-AD43****Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Conforming Amendment To Include Students With Disabilities Receiving Assistance as of November 30, 2005****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

**SUMMARY:** This rule makes a conforming amendment to HUD's regulation 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. That regulation was required by statute to be promulgated in 2005, and the statute was subsequently amended to exempt from this restriction students with disabilities who were receiving section 8 assistance as of November 30, 2005.

**DATES:** Effective Date: September 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** For Section 8 voucher issues, Danielle L. Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone number 202-402-5264; for the Office of Housing's project-based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6138, telephone number 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 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

Fiscal Year (FY) 2006 appropriations for HUD, enacted in Title III of Public Law 109-115, approved on November 30, 2005, contained an administrative provision (section 327) that placed 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) (1937 Act). Specifically, section 327 provided as follows:

(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.

This law was enacted to address 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 described how educational financial assistance is to be treated in the calculation of income for purposes of determining eligibility.

Section 327 directed HUD to issue a final rule to carry out this section no later than 30 days from the date of enactment of the law, and HUD issued its final rule on December 30, 2005 (70 FR 77742).

Public Law 109-249, approved on July 27, 2006, amended section 327 to exempt, from the restrictions placed on the provision of housing assistance to students enrolled at an institution of higher education, students with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act, and who were receiving assistance under section 8 of the 1937 Act as of November 30, 2005.

FY 2007 appropriations for HUD were provided as part of the Continuing Appropriations Resolutions, 2007, signed by President George W. Bush on February 15, 2007 (Pub. L. 110-5). HUD's FY 2007 appropriations, found in Title I and Chapter 10 of Title II of the Continuing Appropriations Resolution, 2007, funded HUD appropriations accounts at the same levels provided in FY 2006, and under the same conditions and restrictions imposed by Public Law 109-115. Given that funding for FY 2007 was subject to the same conditions

as those imposed on FY 2006 funds, HUD concluded that the restrictions on assistance to students, enacted in Public Law 109-115, as amended by Public Law 109-249, remained in place.

FY 2008 appropriations for HUD were provided as part of the Consolidated Appropriations Act, 2008 (Pub. L. 110-161, approved on December 26, 2007). An administrative provision, section 218, of Title II of Division K of the Consolidated Appropriations Act, 2008, included the language of section 327 as amended by Public Law 109-249, placing restrictions on assistance to students enrolled in institutions of higher education, with an exemption for students who are persons of disabilities who were receiving section 8 assistance as of November 30, 2005.

**II. This Final Rule**

HUD is issuing this final rule to conform its regulation in 24 CFR 5.612 to include the exemption for persons with disabilities who were receiving section 8 assistance as of November 30, 2005.

**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 HUD 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). HUD has determined that prior public comment is unnecessary, because this rule is limited to making a conforming change so that HUD's regulation in 24 CFR 5.612 fully reflects all statutory requirements. No discretion is being exercised through this rulemaking. The statute provides for the exemption that is being added to the regulation, and the statutory exemption has been in place and implemented since 2006.

**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 imposes no additional economic or other burdens on small entities. As noted earlier, this rule is limited to

making a conforming change so that HUD's regulation in 24 CFR 5.612 fully reflects all statutory requirements pertaining to restrictions on housing assistance to students enrolled in institutions of higher education. The entities covered by the statutory restrictions in section 8 of the 1937 Act, which are agencies administering tenant-based and project-based assisted housing, already are familiar with the exemption for students with disabilities receiving section 8 assistance as of November 30, 2005, added by statute in July 2006. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

#### *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 in 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.

- Accordingly, 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 continues 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 § 5.612, remove the word "and" at the end of paragraph (e), redesignate paragraph (f) as paragraph (g), and add a new paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) Is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005; and

\* \* \* \* \*

Dated: August 13, 2008.

**Roy A. Bernardi,**

*Deputy Secretary.*

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**BILLING CODE 4210–67–P**

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#### **POSTAL SERVICE**

#### **39 CFR Part 111**

#### **Implementation of New Standards for Intelligent Mail Barcodes**

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** On April 30, 2008, we published in the **Federal Register** (Volume 73, Number 84, pages 23393–23403) proposed mailing standards to require the use of Intelligent Mail® barcodes on all letters and flats mailed at automation prices as of May 2010. We described two options for using

Intelligent Mail barcodes as of May 2009: The basic option and the full-service option. In this final rule, we summarize comments received in response to our proposed rule and provide our new mailing standards for the use of Intelligent Mail barcodes.

**DATES: Effective Date:** May 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Bill Chatfield at 202–268–7278 or Karen Zachok at 202–268–8779.

**SUPPLEMENTARY INFORMATION:** Current mailing standards require either POSTNET™ barcodes or Intelligent Mail barcodes on letters and flats mailed at automation prices and on letters mailed at Standard Mail® enhanced carrier route prices. Both barcode formats contain routing information, but Intelligent Mail barcodes offer additional options. They can include indicators for added services such as Address Change Service and Confirm®, and enable tracking of individual mailpieces through our processing system. This additional visibility adds value to the mail and enables us to monitor service.

In response to many mailer requests, we will continue to allow POSTNET barcodes on automation letters and flats until May 2011. However, effective May 2009, we will require all automation flats to bear barcodes that include delivery point routing codes, as currently required for automation letters.

In May 2009, we will offer two options for using Intelligent Mail barcodes. Under the basic option, mailers will use the Intelligent Mail barcode on their letter and flat mailpieces. The basic Intelligent Mail barcode contains routing information for the delivery address but does not need to uniquely identify the mailpiece. Under the full-service option mailers must: Use unique Intelligent Mail barcodes on mailpieces; use Intelligent Mail tray barcodes and Intelligent Mail container barcodes; and electronically submit postage statements and mailing documentation.

We will offer customers who qualify for the full-service Intelligent Mail option the following benefits in May 2009:

- Start-the-clock information at no additional charge to notify mailers when USPS® takes possession of mailings, and
- Address correction information at no charge for qualified letters and flats that do not have the most current address or that are undeliverable for other reasons, when those pieces are endorsed as specified for OneCode ACS™.