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June 27, 2011

The Honorable Shaun Donovan
Secretary
Department of Housing and Urban Development
451 Seventh St., SW
Washington, D.C. 20410

Dear Secretary Donovan:

We write to request that the Department promptly clarify its rules to resolve a problem affecting adult Section 8 tenants seeking to further their education. As a result of a statutory implementation that is out-of-step with legislative intent, some adult tenants with no dependents that receive student financial assistance for miscellaneous fees and costs of attending college (not living expenses) are facing unaffordable rent increases, forcing them to abandon their education in order to keep their affordable housing. After providing background on the problem and the relevant legislation, this letter recommends a straightforward solution that can be expeditiously adopted.

Under 24 C.F.R. § 5.609(b)(9), which implements an FY 2006 appropriations provision, student financial assistance in excess of "tuition" qualifies as adjusted income for purposes of rent calculation for all Section 8 tenants (both vouchers and project-based), unless the student is over 23 with dependent children. HUD guidance defines "tuition" in accordance with the meaning given by the "institution of higher education in which the student is enrolled."¹ Increasingly, many colleges and universities, especially public institutions, are labeling some or all of the costs of attendance as "fees" rather than "tuition." As a result, reading § 5.609(b)(9) on its face, some project-based Section 8 landlords and PHAs administering voucher programs count financial assistance that goes to college "fees" as adjusted income, thus increasing tenants' rent. However, because no portion of the assistance paying for college "fees" -- sometimes hundreds or even thousands of dollars annually -- is actually available to tenants to cover housing expenses, low-income tenants cannot afford these higher rents.

South Coastal Counties Legal Services, Inc. is aware of several tenants in Massachusetts who have suffered from project-based Section 8 landlords' strict interpretation of § 5.609(b)(9). The situation of one of the tenants, an SCCLS client, illustrates the problem. The tenant is a 42 year-old woman with a permanent physical disability. In 2009, with the support and encouragement of the Massachusetts Rehabilitation Commission, she applied and was accepted to the local community college. She planned to become a nurse. At the time, the tenant lived on SSDI and SSI benefits of \$808 per month and paid

¹ Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice, 71 Fed. Reg. 18,146 at 18,149 (April 10, 2006); HUD Handbook 4350.3, Occupancy Requirements of Multifamily Housing, Glossary ("tuition"), p. 33.

\$144 per month in rent. She could not afford to attend college without financial assistance. She applied for and was awarded a federal Pell Grant in the total projected amount of \$2,483 for her first year of college.

The community college allocated \$192 of the Pell Grant to tuition and the remaining \$2291 to various "college fees." The landlord classified the "fees" as income for the school year because it constituted "financial assistance in excess of tuition" under § 5.609(b)(9), and thus raised her rent to \$244 per month. Given her fixed income, the tenant could not afford the \$100 monthly rent increase. In order to keep her affordable housing, she dropped out of college. She applied to the community college again in 2010, but withdrew her application after learning that she would face a similar rent hike. She would like to return to school in the fall of 2011 and study to enter the health care field, but cannot do so until this problem is resolved.

Congress did not intend such a harsh and unreasonable result. For many years, under HUD rules, adjusted income did not include any student financial assistance.² In 2004, after media accounts of college athletes with well-to-do parents living in HUD-assisted housing, Congress amended the definition of adjusted income (for Section 8 and public housing) to include the portion of an athletic scholarship "available for housing costs."³ In 2005, Congress amended the definition of adjusted income (for Section 8 programs alone) to include financial assistance in excess of tuition, unless the student is over 23 with a dependent child.⁴ HUD then implemented this change in § 5.609(b)(9) and the Supplementary Guidance.⁵

Senator Harkin, who had introduced the 2005 provision as an amendment to the FY 2006 appropriations bill, made clear in his floor statement that the purpose of the provision was to close the loophole that the 2004 bill opened for students who do not receive an athletic scholarship, but nevertheless receive financial assistance "available for housing costs."⁶ Congress clearly did not intend to impute to tenants financial assistance that is unavailable for housing costs, but is instead used to cover mandatory costs of attendance beyond what the school calls "tuition."

Since most tenants receiving Section 8 that are over 23 and without dependent children are people with disabilities or elderly, the burden of HUD's existing narrow interpretation of "tuition" falls especially on disabled adult students, certainly an unintentional result. A proper clarification would help tenants with disabilities attend school to develop employable skills that would decrease public assistance burdens.

HUD could quickly solve this problem by amending the supplementary guidance, clarifying that the term "tuition" does in fact encompass any mandatory costs of attendance that colleges and universities

² See 24 C.F.R. 5.609(c)(6) (1997) - (2005). "Annual income does not include the following:... The full amount of student financial assistance paid directly to the student or to the educational institution..."

³ Pub. L. No. 108-447, § 224, 118 Stat. 3142 (2004).

⁴ Pub. L. No. 109-115, § 327, 119 Stat. 2466 (2005). Congress has included the provision in each subsequent appropriations bill. See, e.g. Pub. L. No. 111-117, § 215, 123 Stat. 3100 (2009).

⁵ Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule, 70 Fed. Reg. 77,742 (2005); Supplementary Guidance, Notice, 71 Fed. Reg. 18,146 at 18,149 (April 10, 2006).

⁶ "Clearly, students who are truly needy should have access to section 8. Help with housing often makes the difference between being able to get an education and not being able to make ends meet. However, kids whose parents have the means to help them should not be living in this housing. And if they are getting a housing stipend, some of it should actually be spent on housing. That's all I ask." 131 Cong. Rec. S11549 (2005).

charge, including costs labeled as “fees.” These costs should also include other necessary educational expenses that are not available for housing costs, such as books and supplies. The guidance could also explain that financial assistance that goes straight to the educational institution does not constitute financial assistance that the “individual student receives” under § 5.609(b)(9).

Because we know that HUD is dedicated to ensuring that Section 8 tenants have access to higher education as well as affordable housing, we appreciate your prompt resolution of this matter and a written response. Please feel free to have your staff contact me for any further information required.

Sincerely,

A handwritten signature in cursive script that reads "James R. Grow".

James R. Grow
Deputy Director

cc: Carol Galante, Deputy Assistant Secretary for Multifamily Housing
Sandra Henriquez, Assistant Secretary for Public and Indian Housing
Camille Acevedo, Office of General Counsel