

TENANT ELIGIBILITY REQUIREMENTS



Topics to be covered

- Review of basic tenant eligibility requirements
- Income/Occupancy Waivers
- Occupancy Standards & Eligibility
- Student Eligibility

BASIC TENANT ELIGIBILITY REQUIREMENTS



Basic Eligibility Requirements

- Applies to all Applicants
- Must be Income Eligible
 - Cannot exceed the Moderate Income Limit as established by the Agency
 - For current income limits, refer to the HUD User Website at: <http://www.huduser.org/DATASETS/il.html>
 - If applying for Rental Assistance, household cannot exceed the low income limit (80% of median income)
 - Annual income and Adjusted income is still to be calculated in accordance to HUD Regulations (24 CFR 5.609 & 5.611)
 - This was recently revised and will discuss in detail later on in this presentation

Basic Eligibility Requirements

- Meet the program definition of an eligible household
 - Borrower must determine eligibility for occupancy based on tenant selection criteria as outlined in Management Plan
 - i.e. Credit references, criminal background checks, landlord reference, etc.
 - Must be of legal age to enter into binding contract (Most States are 18 years)
 - If Elderly Designated Complex – tenant or co-tenant must be 62 years of age or disabled
 - Must meet occupancy standards as established in Management Plan
- Tenants and Borrowers must execute an Agency approved tenant certification form (3560-8) establishing tenant's eligibility {7 CFR 3560.152 (e)}
 - If no tenant certification or it has expired – tenant is not considered eligible and full Note Rate Rent will be charged
 - If tenant refuses to recertify – proceed with termination of lease



INCOME/OCCUPANCY WAIVERS



Income/Occupancy Waivers

- Applicable regulation: 7 CFR 3560.152 (d)
- Waivers may be granted for the following reasons:
 - Income Ineligible Tenants
 - Tenant will pay Full Note Rate Rent
 - Failure of Household to meet occupancy standards (will cover later)
 - Tenant's rent is still based on 30% of their adjusted income
- **Waivers may NOT be granted for Age Ineligibles**

Income/Occupancy Waivers

- Borrower must make request in writing to RD for waiver
- Following information must be provided
 - Evidence that there are no eligible persons on waiting list
 - Demonstrate that a diligent but unsuccessful effort to rent any vacant units to eligible tenant household has been made.
 - May include advertisements, posting notices in public places, holding open houses, contacts to other housing agencies, real estate agencies, etc.



Income/Occupancy Waivers

- Borrower must agree to the following:
 - Agree to continue to locate eligible tenants and retain copies of all marketing efforts
 - Lease Agreement will not be for more than 12 months.
 - After 12 months, it will become a month-to-month lease.
 - Part X of Tenant Certification form should have the appropriate box checked indicating either “Eligible” or “Granted an Income and/or Occupancy Waiver”
 - Must be transmitted via MINC

Income/Occupancy Waivers

- RD may approve Waiver for temporary periods not to exceed 1 year for the entire complex (*not tenant specific*)
 - Once waiver is granted, no additional documentation is required to be submitted to RD during that period
 - During this period, tenants would not be required to move if an eligible applicant becomes available on the waiting list
 - Once waiver period has passed, ineligible tenant will be required to move if eligible household becomes available
 - RD will track this in MFIS under Servicing Efforts
 - After 1 year, borrower will need to provide supporting documentation if waiver is still needed



OCCUPANCY STANDARDS



Occupancy Standards

- Borrowers must define their occupancy standards in their Management Plan with the concurrence of Rural Development {7 CFR 3560.155 (e)}
 1. Must include minimum and maximum number of people allowed in a unit of a particular size
 - i.e., For a 1 bedroom unit – minimum of 1 person and a maximum of 2 people; 2 bedroom unit – minimum of 2 people and a maximum of 4, etc.

Occupancy Standards

2. Procedures for assigning units – the order in which eligible applicants and existing tenants will be housed or rehoused (*7 CFR 3560.155*)
- First priority – existing tenants who are considered over- or under- housed if relocating them into the vacant unit would bring the household into compliance with the occupancy policy for the property
 - If there are several occupancy ineligible tenants (i.e., 1 person in a 2 bedroom unit), the first household required to move would be the one whose lease expires first
 - Second Priority – waiting list, selected in the following order:
 - Very low income applicants
 - Low income applicants
 - Moderate income applicants

Occupancy Standards

3. The following would take priority over your normal occupancy standards {7 CFR 3560.154 (g)}:

- The applicant who requires the special design features of a unit accessible to individuals with disabilities
- The applicant has a Letter of Priority Entitlement (LOPE)
 - Applicant must still meet eligibility requirements
- The applicant was displaced from Agency-financed housing but was not issued a LOPE
- The applicant was displaced in a Federally declared disaster area

Occupancy Standards

4. Must address how fair housing requirements will be met, including how reasonable accommodations will be made for applicants and tenants with disabilities; HB-2-3560, Chapter 6, 6.13 A states: “A tenant who is disabled will not be considered over housed if the tenant requests an additional room for a live-in aide or an apparatus related to the tenant’s disability.”

NOTE: Would be considered reasonable accommodation for 1 person household to live in a 2 bedroom unit if the tenant obtains doctor’s statement explaining their need for the additional bedroom. **They would be considered eligible and no waiver would be needed.**

Over/Under-Housed Tenants

- At a minimum, the Management Plan should define what is considered over- and under-housed tenants

Over-Housed Tenants

- Tenants are considered over-housed if there are too many bedrooms for the number of people (i.e., 1 person in a 2 bedroom unit)
 - This exact standard must be included in the Management Plan
 - If no appropriately sized unit is available, tenant must vacate if there is an eligible applicant on the waiting list within 30 days or at the end of their lease, whichever is greater
 - Can make exceptions on a project by project basis

Occupancy Policy Exception

- Complexes built with no 1 bedroom units may make an exception to this requirement in their occupancy policy {7 CFR 3560.155 (e)}
 - Example: Complex only has 2 bedroom units and they have single applicants seeking housing. They can change their Management Plan to state they will allow 1 tenant households if no other eligible applicants are available.

Under-Housed Tenants

- Tenants are considered under-housed if there are too many people for the number of bedrooms as specified in the occupancy standards
 - i.e., occupancy standards state that the maximum number of people that can reside in a 2 bedroom unit is 4 people and there are 5 people in the household
- Tenants in these situations should be offered the next available unit of the appropriate size prior to an offering it to the eligible applicant on the waiting list {7 CFR 3560.155 (c)}
 - Can make exceptions on a project by project basis

Under-Housed Tenants

- Exceptions to under-housed:
 - Superseded by State and Local occupancy codes
 - Size of unit dictates that more people can reside in the unit (occupancy set by sq. ft. vs. number of bedrooms)
 - 2 bedroom unit that has 900 sq. ft. might have room for more people than a 2 bedroom unit with 600 sq. ft.

Lease Agreement Clauses

- Section II, 4 (g) – Covers requirement for tenants who are determined to be over-housed and under-housed

“I understand that if the unit which I occupy becomes over-housed or under-housed under Landlord’s occupancy rules, or should I no longer meet the eligibility requirements of the housing complex during the term of the Lease, this Lease may be subject to termination in accordance with Section IV 1 (c) herein, or Tenant may, at Landlord’s option, be required to move to Landlord’s next available appropriately sized unit”

Lease Agreement Clauses

- Section IV, 1 (c) covers ineligible tenants:
“Non-Eligibility: The Landlord may terminate this Lease if the Tenant, although initially eligible, no longer meets the occupancy eligibility requirements as to number of tenants under the housing project’s or rental unit’s applicable restrictions, including the criteria set forth in 7 C.F.R. 3560.155 (c) and (e). Tenant agrees to vacate the rental unit within 30 days of Landlord’s notice that Tenant is no longer eligible for occupancy, or at the expiration of the Lease, whichever is greater, unless the conditions cited in 7 C.F.R. 3560.158 (c) exist”

Occupancy Ineligible Tenants

- Handbook 2, Chapter 6, 6.30 covers ineligible tenants due to occupancy issues
 - The rules for relocating occupancy ineligible tenants depends on:
 - Lease Agreement expiration
 - Available applicants
 - Appropriate size units

What Would You Do?

- Scenario #1
 - Tenant is still in their 1 year lease as an occupancy ineligible tenant (1 person in 2 bedroom unit)
 - There are no eligible applicants needing a 2 bedroom unit on the waiting list
 - There is an appropriately sized unit available for the ineligible tenant to move into

Answer – Scenario #1

- Tenant would not be required to move during the 1 year lease period
 - Would recommend that the unit be offered and the tenant move into the appropriately sized unit so they will become eligible
 - If they choose not to move they are putting themselves in danger of being in a situation where an eligible applicant needs the occupied unit. If that happens, the ineligible tenant would be required to either move into an appropriately sized unit, if available, or vacate the property

What Would You Do?

- Scenario #2
 - Occupancy ineligible tenant's lease has expired and it has converted to a month-to-month lease
 - There are no eligible applicants on the waiting list
 - There is an appropriately sized unit for the ineligible tenant to move into

Answer – Scenario #2

- Tenant should be offered and move into the appropriately sized unit so they will become eligible
- If they do not move and an eligible applicant needs the occupied unit, the ineligible tenant would be required to either move into an appropriately sized unit, if available, or vacate the property

What Would You Do?

- Scenario #3
 - Occupancy ineligible tenant's lease has expired and it has converted to a month-to-month lease
 - Eligible applicant is on the waiting list needing the 2 bedroom unit
 - Appropriate size unit is available for the occupancy ineligible tenant to move into

Answer – Scenario #3

- Tenant must be offered and move into the appropriately sized unit so they will become eligible
- If they do not move into the appropriately sized unit, borrower must terminate the lease and the ineligible tenant would be required to vacate the property

What Would You Do?

- Scenario #4
 - Occupancy ineligible tenant's lease has expired and it has converted to a month-to-month lease
 - Eligible applicant is on the waiting list needing the 2 bedroom unit
 - Appropriate size unit is not available for the occupancy ineligible tenant to move into

Answer – Scenario #4

- Since there is no appropriately sized unit for the occupancy ineligible tenant to move into, the only option this tenant has is to vacate the property or the borrower will terminate the lease

Occupancy Ineligible Tenants

- There are only 2 instances where the household may continue to reside at the property after the lease has expired (with Agency approval) {7 CFR 3560.158 (c) (2)}:
 - There are no eligible applicants on the waiting list (as discussed previously)
 - The required time period (30 days) for vacating the unit would create a hardship on the household (i.e., need an additional 15 days to vacate, death in family, etc.)
 - This is not permanent – just an extension of time for the household to vacate
- Tenants would still be covered by their month-to-month lease and be required to vacate when eligible applicant is available to move in

Who Pays Tenant's Moving Expense?

- If a current tenant is required to move into a suitably sized unit, who is required to pay for the moving expense?
 - HB-3-3560, Chapter 10, Section 4, 10.25 2 states “Tenants must agree to transfer to a correctly sized unit when one becomes available and must pay all costs associated with moving.”
 - RD Lease Agreement contains this provision (1st page, 4th paragraph)
 - Lease agreement gives option that landlord can pay this expense if agreed to in writing

Relocating Tenants

- If a tenant is moving into another unit, the following steps should be followed:
 - Modify the Tenant Certification to show the new unit number. This may also affect the amount of rent they will be paying
 - Do NOT need to re-verify income or transmit a new tenant certification
 - Revise the Lease Agreement to show the correct unit number, security deposit amount (if there is a change) and rent amount (changes must be initialed and dated by tenant and management)
 - Address security deposit amount based upon Management Plan (i.e., do you refund security deposit based upon the move-out inspection and recollect the new security deposit amount for the new unit; just collect the difference between the two units, etc.)
 - Conduct move-in/move-out inspections of units
 - Transmit appropriate action in MINC



MINC TRANSMISSIONS

- Once the tenant moves into another unit or vacates the property, you must transmit the appropriate MINC transaction:
 - Vacate – tenant has vacated the property
 - Inside Transfer – tenant has moved into another unit within the same property
 - This transaction will re-calculate proper rent amount
 - Eviction – if tenant has been notified they must leave the property but are still within their 30 days to vacate

Remaining/Surviving Household Members

- 7 CFR 3560.158 (d) covers remaining/surviving household members
 - They may continue to occupy a unit after the departure or death of the tenant or co-tenant, regardless of age, provided that:
 - They continue to be eligible with respect to income
 - They occupied the unit with the original tenant at the time the original tenant died or departed
 - They execute a tenant certification establishing their own tenancy
 - They have the legal ability to sign a lease except where a legal guardian may sign when the tenant or member is otherwise eligible
 - The household meets the occupancy standards in family complexes only (elderly is exempt)

Remaining/Surviving Household Members – Elderly Housing

- The surviving members of the household may remain in the unit in which they were residing at the time of the tenant's or co-tenant's death even if the household is over-housed

Remaining/Surviving Household Members – Elderly Housing

- The only time the household would have to relocate:
 - The rental unit has accessibility features for individuals with disabilities and the household no longer needs those features; and
 - There is an applicant on the waiting list with a need for the features
 - Household will be required to move within 30 days if there is a suitable size unit for them to move to
 - If no suitable sized unit, household can remain until a unit becomes available
 - If there is no applicant on the waiting list needing the features, the household may remain in the unit until the project receives an application from an individual needing the features (see above for relocating criteria)



Remaining/Surviving Household Members – Family Housing

- If the household is now over- or under-housed, they must move to a suitably sized unit within 30 days of its availability if eligible applicant is on waiting list needing that size unit
- If a suitably sized unit does not exist at the property, they must vacate at the end of the 30 days or at the end of their lease, whichever is longer if there is an eligible applicant on the waiting list needing that unit

HELPFUL TIPS

- Review the following with all applicants and tenants:
 - Occupancy Standards of the complex
 - Appropriate lease clauses
 - Who will pay if tenants must relocate to another unit
 - How security deposits will be handled if tenant must relocate to another unit
 - What happens if an eligible applicant comes along needing the unit occupied by the ineligible tenant (move into appropriately sized unit or vacate)
 - Annually, if household is ineligible, remind them of the possibility of having to move to another unit or vacate the property

Borrower Monitoring of Ineligible Tenants

- Review Tenant Certification forms to verify if Part X has been properly completed
- Review Project Worksheet to verify that tenant is reflecting the correct Code for Ineligible Tenants (O = Occupancy Ineligible, I = Income Ineligible, or B = both Income and Occupancy Ineligible)
 - If not, transmit a modified tenant certification via MINC (do not change effective date of tenant certification)
- Review Waivers to determine when 1 year period ends
 - If waiver is still needed after 1 year, must submit request to RD for approval (submitted prior to the 1 year period to avoid any lapse in the waiver period)
 - Marketing efforts must have been to eligible applicants in order to grant the waiver



Agency Monitoring of Ineligible Tenants

- On a monthly basis, RD will be reviewing reports and checking Project Worksheets to monitor both occupancy and income ineligible tenants
 - Ineligible Tenants should reflect one of the following codes on the Project Worksheet:
 - (O) for occupancy ineligible
 - (I) for income ineligible
 - (B) for both occupancy and income
 - If any are found, make sure there is a Servicing Effort (Occupancy Waiver) entered in MFIS (should only be for 1 year period)
 - Make sure there is a signed waiver for the complex allowing ineligible tenants to reside there
 - If you find any that have been coded incorrectly, contact the borrower to retransmit the tenant cert to show ineligible and to request a waiver
 - RD will review tenant files for required documentation to support occupancy standards

STUDENT ELIGIBILITY



Committed to the future of rural communities.

Can Students be a Tenant or Co-Tenant in RD Financed Properties?

- YES
 - Must meet income requirements
 - Must meet tenant selection criteria including all screening, references, etc.,
 - Must be of legal age or legally able to enter into a binding contract under state law;

What is a Student?

- Must be enrolled in a institution of Higher Education which means:
 - School only allows students who have graduated from high school or equivalency (GED)
 - State Authorized Institution that provides a program of education beyond high school
 - Awards a bachelor's degree or provides not less than a 2 year program
 - Is a public or nonprofit institution
- Can be a full-time or part-time student

Exceptions/Changes

- If LIHTC property or Federal Home Loan Funds are involved, need to comply with their rules
- In 2007, RD adopted HUD's Section 8 student eligibility and income rules. Then, in 2011 RD again changed the student income policy, but not the student eligibility policy.
- Owner should define their student policy in the tenant selection criteria of their management plan.

Determining if Student is Dependent or Independent

- Once you have determined that the applicant/tenant is a student, you must determine their dependence or independence from their parents/guardian
 - This will affect how you calculate their income

Student Considered Independent ?

The following must be verified:

- Applicant is of legal contract age under state law and
- Not claimed as a dependent on parents/guardians tax return (can request copy of tax return if needed) **; and
- Previous address information is not the same as parents/guardian **; and
- Has Applicant established a separate household for at least one year prior to applying for housing**

** No verification is needed if student meets U.S. Dept. of Education's definition of "Independent Student"



Dept. of Education's Definition of “Independent Student”

- Be at least 24 years old by December 31 of current year in which applicant is applying for housing; or
- Be an orphan or a ward of the court through the age of 18; or
- Be a veteran of U.S. Armed Forces (includes National Guard); or
- Have legal dependents other than a spouse (i.e. children or elderly dependent parent); or
- Be a graduate or professional student; or
- Be married

Student is still a Dependent if they...

- Do not meet the Dept. of Education's "Independent Student" definition; and
- Have not established a household separate from their parents/legal guardians for at least 1 year; or
- Are still claimed by parents or guardian with the IRS

Determining Income Eligibility of a Student

- Once you have determined the type of student you have (dependent or independent), you must determine income eligibility of student
 - For RD properties, annual income does not include the full amount of student financial assistance paid directly to the student or to the educational institution
 - HUD Student Rule for income – ONLY applies to RD/Section 8 properties

Determining Income Eligibility of a *Dependent* Student

- If the student is a Dependent:
 - Both the Student and the Students' parents/guardians must have their income verified to determine income eligibility.
- For Income Eligibility – both the Parents and the Students' income must be below Moderate Income Guidelines
 - Must qualify separately
 - If above Moderate Income Guidelines, Student would not be income eligible
 - Borrower may request a Waiver, if warranted

Determining Income Eligibility of a *Dependent* Student

- To qualify for Rental Assistance – both the Parent's or Student's income must be below Low Income Guidelines
 - Must qualify separately
- If parents refuse or fail to provide proof of income, then applicant (student) is not eligible to live in unit
- If eligible, complete Tenant Certification reflecting combined adjusted income of parents and student to determine proper rental payment
 - To qualify for RA, the combined income must be below low income
- Must recertify annually to determine income eligibility and whether Student still meets Dependent Student Definition



If Student is “Independent”

- Verify all income and deductions of student
 - Annual income does not include the full amount of student financial assistance
 - Must have signed certification from parents/guardian regarding financial assistance they may or may not be providing
 - Not needed if the Student met the Dept. of Education “Independent Student” definition

FAQ

- What income limit is used for determining parents' income eligibility?
 - The applicable low income limit where the parents live in U.S.
- What if the parents live outside the U.S.?
 - Use the income limits established where the students' eligibility is being determined