

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5036-N-02]

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

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On December 30, 2005, HUD published a final rule implementing a new law that restricts individuals who are (1) enrolled at an institution of higher education (i.e., students), under the age of 24, not a veteran, unmarried, and do not have a dependent child, and (2) seeking assistance under section 8 of the United States Housing Act of 1937 (section 8 assistance) in their individual capacity (that is, separately from their parents) from receiving section 8 assistance if neither the student nor the student's parents are income eligible. This notice provides guidance to further assist with the implementation of these new eligibility restrictions.

FOR FURTHER INFORMATION CONTACT: For section 8 voucher issues, Patricia Arnaudo and LaDonna Reed-Morton, Management and Occupancy Division, Office of Public and Indian Housing, Room 4210, telephone (202) 708-0744; for the Office of Housing's Project-Based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6138, 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 these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION

I. Background

Fiscal Year 2006 appropriations for HUD were enacted in Title III of Public Law 109-115 (119 Stat. 2936) on November 30, 2005 (the Act). Section 327 of the administrative provisions of the Act (1) introduced new restrictions on housing assistance that may be provided to students of higher education under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (1937 Act), and (2) directed HUD to issue a final rule no later than 30 days

following enactment of the Act. In accordance with this statutory direction, HUD published a final rule implementing section 327 of the Act (section 327) on December 30, 2005 (70 FR 77742), and this rule became effective on January 30, 2006.

In brief, the new law and HUD's rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, unmarried and does not have a dependent child, is individually ineligible for section 8 assistance, or the student's parents are, individually or jointly, ineligible for assistance, *no* section 8 assistance can be provided to the student. Unless the student is determined independent from his or her parents, as discussed in this guidance, the eligibility of a student seeking section 8 assistance will be based on both the student *and* the parents being determined income eligible for section 8 assistance.

Under the new law and HUD's rule, the eligibility of a student seeking section 8 assistance will be examined along with the income eligibility of the student's parents. Both the student's income and the parents' income must be separately assessed for income eligibility. Additionally, the financial assistance of the student in excess of tuition will be included in annual income when determining the student's eligibility for section 8 assistance, unless the student is over the age of 23 with dependent children, and for rent calculation purposes as addressed in section II, E of this notice. The new law and rule focus on a student under the age of 24 who meets the additional requirements of section 327 of the Act and who is not residing in a section 8 assisted unit with his or her parents, but who is seeking on his or her own to reside in a section 8 assisted unit. The new law and rule do not apply to students residing with their parents in a section 8 assisted unit or who reside with parents who are applying to receive section 8 assistance. (See definition of "parents" in Appendix A of this notice.)

This notice provides guidance to public housing agencies (PHAs) and multifamily project owners and management agents (Owners and Managers) to assist with implementation of the new eligibility restrictions. Appendix A to this guidance defines certain terms. The new law, HUD's recently issued rule, and this guidance are intended to help ensure that section 8 assistance is provided to those truly in need of and eligible for such assistance.

II. Guidance

A. Covered HUD Programs

The new student eligibility restrictions only apply to HUD's section 8 programs. These new restrictions do not apply to HUD's Public Housing program. The new eligibility restrictions apply to the following section 8 programs administered by the Office of Housing and the Office of Public and Indian Housing.

Office of Housing Programs

- The Section 8 New Construction, Substantial Rehabilitation, State Agency, Rural Housing Services Section 515, Loan Management Set-Aside and Property Disposition Set-Aside Programs; and
- The Section 202/8 Direct Loan Program for the Elderly and Persons with Disabilities.

Office of Public and Indian Housing Programs

- The Housing Choice Voucher Program;
- The Project-Based Certificate Program;
- The Project-Based Voucher Program; and
- The Section 8 Moderate Rehabilitation Program.

B. Student Eligibility Requirements

The new eligibility restrictions imposed on students enrolled at institutions of higher education and seeking section 8 assistance are set out in two parts: Section 327(a) and section 327(b) of the Act.

1. Requirements of Section 327(a) of the Act and 24 CFR 5.612 of the Final Rule

The new eligibility restrictions of section 327(a) are implemented and codified in HUD's regulation at 24 CFR 5.612 and provide as follows:

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

- 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);
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Does not have a dependent child, and
- 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.

For a student under the age of 24 who is not a veteran, is unmarried, does not

have a dependent child and who is seeking section 8 assistance, section 327(a) of the Act sets up a two-part income eligibility test. Both parts of this test must be affirmatively met. That is, both the student and the student's parents (the parents individually or jointly) must be income eligible for the student to receive section 8 assistance. If it is determined that the parents are not income eligible, the student is ineligible to receive section 8 assistance.

As noted earlier in this guidance, based on program practices and criteria already in place, a student under the age of 24 who meets the additional criteria of section 327 of the Act may be income eligible for assistance in circumstances where an examination of the income of the student's parents may not be relevant or where the student can demonstrate the absence of, or his or her independence from, parents. These practices and criteria include but are not limited to consideration of all of the following:

1. The individual must be of legal contract age under state law.
2. The individual must have established a household separate from parents or legal guardians for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of an independent student. (See definition for "independent student" in Appendix A of this notice.)
3. The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.
4. 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. This certification is required even if no assistance will be provided.

PHAs, Owners, and Managers of section 8 assistance will need to verify a student's independence from his or her parents to determine that the student's parents' income is not relevant for determining the student's eligibility for assistance by taking into consideration all of the following:

1. Reviewing and verifying previous address information to determine evidence of a separate household, or Verifying the student meets the U.S. Department of Education's definition of "independent student"; and
2. Reviewing prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education definition of "independent student"); and
3. Verifying income provided by a parent by requiring a written

certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.

As also noted earlier in this guidance, the new law and HUD's rule do not affect students residing in a section 8 assisted unit with his or her parents or who reside with parents who are applying to receive section 8 assistance. The law and HUD's rule focus on a student under the age of 24 who meets the additional eligibility requirements of section 327 of the Act *and* who is already residing in a section 8 assisted unit without his or her parents, or who is seeking on his or her own to reside in a section 8 assisted unit.

2. Requirements of Section 327(b) of the Act and 24 CFR 5.609 of the Final Rule

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. 10001 *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. (See definition of "dependent child" in Appendix A.) For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

HUD's final rule issued on December 30, 2005, amended § 5.609(b) to add a new paragraph (b)(9) to include, as annual income, any financial assistance in excess of amounts received for tuition that a student who meets the criteria of the new § 5.612 receives. With the exception of students who are over the age of 23 with dependent children, students under the age of 24 who are seeking section 8 assistance will need to meet the income requirements for the section 8 program, taking into consideration the additional eligibility restrictions provided in 24 CFR 5.609(b)(9) and 5.612. Therefore, in determining the income eligibility of a student, 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. (Also see definitions "financial assistance" and "tuition" in Appendix A of this notice.) If the student's financial assistance in excess of tuition makes the student

income ineligible for section 8 assistance, the student cannot receive section 8 assistance. The income eligibility of a student will also rely on program practices and criteria already in place that assess the student's independence from his or her parents as addressed in paragraph 1, above.

As noted in this guidance, section 327 was not intended to affect the section 8 eligibility of a student's parents when the student is receiving financial assistance and residing with his or her parents, or is residing with parents who are applying to receive section 8 assistance, but only the eligibility of students applying for or receiving section 8 assistance separately from their parents. The amendment of the procedure for the determination of annual income at § 5.609 by the December 30, 2005, final rule is consistent with this intent.

A student's financial assistance under new § 5.609(b)(9) is considered income only in the context of that student's application for, or retention of, section 8 assistance separately from the student's parents. This is consistent with the language of section 327(b), which states, in relevant part, "For the 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 * * * shall be considered income to that *individual*," (emphasis added). The focus of section 327(b), and of section 327 as a whole, is on the income eligibility of a single student under the age of 24 who is not a veteran, is unmarried, does not have a dependent child, and whether the financial assistance of that individual student in excess of tuition makes that student income ineligible, and whether the income of the student's parents makes the student income ineligible. There is no apparent intent to affect the eligibility of a student's parents when the student resides with his or her parents.

The financial assistance of a student residing with his or her parents therefore would continue to be excluded from annual income under § 5.609(c)(6), which excludes student financial assistance from income. The December 30, 2005, final rule amended the exclusion of student financial assistance from income at § 5.609(c)(6) by making the exclusion, "Subject to paragraph (b)(9) of this section," which is the new section adding student financial assistance as income only to a student applying separately from his or her parents for section 8 assistance.

3. Recertification of Students Already Receiving Section 8 Assistance

HUD strongly encourages PHAs, Owners, and Managers to recertify those section 8 participants who may be affected by this new law as soon as it is practicable. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual recertification.

PHAs, Owners, and Managers must ensure at each annual recertification, a student remains eligible to receive section 8 assistance under the restrictions of this new law.

PHAs, Owners, and Managers have an obligation to make sure that section 8 assisted units are provided to those truly in need of such assistance.

4. All Other Eligibility Requirements Apply

While the new law and HUD's recently issued rule focus on the income eligibility of students, all student applicants for section 8 assistance must also meet all other HUD program requirements that determine eligibility for the section 8 assistance.

C. Screening and Verification of Applicants for Assistance

As it relates to the verification of a parent(s) income, PHAs, Owners, and Managers may accept from a parent(s) a declaration and certification of income, which includes a penalty of perjury. The processing entity retains the right to request and review supporting documentation at any time they determine the declaration, certification, and eligibility of the parent(s) is in question. Supporting documentation includes, but is not limited to: Internal Revenue Services (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, other official and authentic documents from a Federal, State or local agency.

As is the case with all applicants for section 8 assistance, PHAs, Owners, and Managers administering section 8 programs must adequately screen and verify an applicant's source(s) of income. Failure of PHAs, Owners, and Managers, to screen applicants and verify income in accordance with applicable program requirements can result in sanctions being imposed.

PHAs must immediately update their Administrative Plans and Owners and Managers must immediately update their Tenant Selection Plans to reflect the new income eligibility restrictions for students.

D. Denial and Termination of Assistance

Denial of Assistance. An applicant who is a student and who does not meet the income eligibility requirements or who has parents who, individually or jointly, do not meet the income eligibility requirements for section 8 assistance are not eligible for section 8 assistance and will be prohibited from participating in the section 8 Program.

Termination of Assistance. A student under the age of 24 who is not a veteran, unmarried, does not have a dependent child and who is currently receiving section 8 assistance, if at recertification is determined to be ineligible, will have his or her assistance terminated.

Owners and Managers of projects under the Office of Housing's section 8 program cannot evict or require an ineligible student to move from a unit as long as the student is in compliance with the terms of the lease. Although the student is allowed to remain in the unit, the student will no longer be eligible to receive section 8 assistance. The section 8 assistance will not be prorated; therefore, if the ineligible student is residing in a household other than with the student's parents the assistance will be terminated for the entire household. If the ineligible student moves from the unit, the remaining members of the household may again be eligible for section 8 assistance, if available. If the household composition no longer qualifies the household for the unit size, the household may be required to move to an appropriate size unit when one is available, or, with the approval of the owner may move in another eligible person as a member of the household and remain in their same unit.

For PHAs administering the Housing Choice Voucher program, any member within a household comprised of both eligible and ineligible students who is determined ineligible to receive section 8 assistance in accordance with 24 CFR part 5, subpart F, and is terminated under 24 CFR 982.552(b)(5), shall be ineligible to receive continued assistance under the Housing Choice Voucher program. Eligible students, residing in such households, however, shall not be terminated under § 982.552(b)(5), but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate

Rehabilitation, Project-Based Certificate and Project-Based Voucher programs.

Upon notification of denial or termination of assistance, the household is entitled to request an informal hearing to discuss the reasons for the denial or termination, in accordance with established program procedures and requirements.

E. Rent Determination

Determination of rent is made in accordance with the requirements for the section 8 program under which the student seeks assistance.

III. Additional HUD Guidance

In addition to this notice, HUD's Office of Housing and Office of Public and Indian Housing are developing additional guidance. This guidance, when completed, will be posted on HUD's Web site at <http://www.hud.gov>.

Dated: April 3, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Appendix A—Definitions

1. *Dependent Child* in the context of the new eligibility restrictions, means a dependent child of an enrolled student who meets the criteria of 24 CFR 5.612. In this context, "dependent child" is defined in HUD's income eligibility regulations at 24 CFR 5.603 is a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student.

2. *Financial Assistance* included in annual income is any financial assistance that a student receives in excess of tuition (e.g., athletic and academic scholarships) and that the student receives (1) under the Higher Education Act, (2) from private sources, or (3) from an institution of higher education as defined by the Higher Education Act of 1965. Financial assistance does not include loan proceeds.

a. *Higher Education Act Assistance* under the Higher Education Act of 1965 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 Federal Work Study programs.

b. *Assistance from Private Sources* is non-governmental sources of assistance, including assistance that may be provided to a student from 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. *Assistance from an Institution of Higher Education* requires reference to the particular

institution and the institution's listing of financial assistance. (See definition for Institution of Higher Education in 7, below.)

d. *Loans Are Not Financial Assistance*, and, therefore, the loan programs cited in the Higher Education Act of 1965 (the Perkins, Stafford and Plus loans) are not included in the term "financial assistance" in determining student eligibility for section 8 assistance.

3. *Independent Student* for Title IV aid, a 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 a 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 an elderly dependent parent);

e. Be a graduate or professional student; or,

f. Be married.

4. *Parents*, for purposes of the student eligibility restrictions, and consistent with long-standing HUD policy regarding eligibility for the Section 8 Programs, means the biological or adoptive parents, or guardians (e.g., grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

5. *Student* means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.

6. *Tuition* shall have the meaning given this term by the institution of higher education in which the student is enrolled.

7. *Veteran*, as used by the Department of Veterans Affairs, is codified at 38 U.S.C. 101(2). Since use of this definition is widespread in other federal programs affecting veterans, PHAs, Owners and Managers may find it useful to adopt this definition for purposes of administering the student eligibility restrictions.

Definition of veteran from 38 U.S.C. 101(2): The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

8. *Institution of Higher Education* shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

a. Definition of "Institution of Higher Education" From 20 U.S.C. 1001

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term "institution of higher education" means an educational institution in any State that—(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's

degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term "institution of higher education" also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

b. Definition of "Institution of Higher Education" From 20 U.S.C. 1002

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term "institution of higher education" for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions

outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility,

continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term "proprietary institution of higher education" means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term "proprietary institution of higher education" also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term "postsecondary vocational institution" means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term "postsecondary vocational institution" also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

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