

LIHTC/Home (Low Income Housing Tax Credit) Student Status

LIHTC: A unit is not considered an eligible LIHTC unit if all the occupants of such a unit are full-time students.

IRC 151 (c)(4) defines, in part, a “student” as an individual, who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student of an educational organization described in IRC 170(b)(1)(A)(ii). Treasury regulation 1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full- or part-time should be based on the criteria used by the educational institution the student is attending. Part-time student status should be verified with the educational institution. If one household member is a part-time student and all other household members are full-time students, the household is eligible.

An educational organization, as defined by IRC 170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities and technical, trade and mechanical schools. It does not include on-the-job training courses.

Exceptions:

There are exceptions to the full-time student status outlined in IRC 42(i)(3)(D). The section provides that a unit shall not fail to be treated as a low-income unit merely because it is occupied by either an individual who is:

- A. A student receiving assistance under Title IV of the Social Security Act, (TANF). Verification would be a TANF award letter.
- B. A student enrolled in a job training program receiving assistance under the Workforce Innovation and Opportunity Act (WIOA) of 2014 (which superseded the Workforce Investment Act of 1998, which superseded the Job Training Partnership Act of 1982) or under other similar Federal, State, or local laws. Verification would be a copy of the assistance award letter.
- C. The student was previously under the care and placement responsibility of the state agency responsible for administering a plan under Title IV of the Social Security Act (i.e. Foster Care). Verification would be a foster care paperwork from social services.

Or entirely by full-time students if such students are:

- D. Single parents with children, all of whom are students, and such parents and children are not dependents (as defined in IRC 152) of another individual and are not dependents of another individual other than a parent of such children. Verification would be a copy of the tax return or divorce decree.
- E. Married and filing a joint return or are entitled to file a joint return. Verification would be a copy of their tax return or marriage certificate.

Revenue Ruling 2013-17 – Recognizes same-sex marriages, married in any state, that would meet the married and filing a joint return exception.

A unit occupied solely by a low-income tenant who becomes a full-time student after move-in would not qualify as a LIHTC unit

HOME Only: Effective August 23, 2013, HOME-assisted properties have additional eligibility requirements for students. The HOME program has adopted the Section 8 HCV program restrictions on student participation found at 24 CFR 5.612.

If a household contains an adult student enrolled in an institute of higher learning who is under age twenty-four (i.e., age 18-23), then the household must meet an exemption to qualify for HOME assistance. This is true whether the student is **full or part-time**.

If the student meets one of the following criteria, then the household is eligible:

1. Student is a dependent of the household.
2. Student is a veteran of the United States Military.
3. Student is married.
4. Student is a parent with dependent child(ren).
5. Student a person with a disability that was receiving Section 8 assistance prior to 11/30/05.
6. Student can prove independence from his or her parents based on the following:
 - a. Of legal contract age under state law, AND
 - b. Has established a separate residence from parents (not counting a dormitory or student housing) for at least one year, or meets the US Department of Education definition of independent which includes an individual who was an orphan or ward of the state through age eighteen (18), is living with a legal dependent, or is a graduate or professional student, AND
 - c. Is not claimed on parents' tax returns, AND
 - d. Parents must certify whether or not they provide financial assistance (this does not affect student eligibility but could affect income eligibility).

7. If none of the above applies, the household can qualify if the student's parents are income-eligible under the HOME income limits for the county in which they live.

a. If the parents are divorced or separated, get a declaration from both parents.

b. If the parents refuse to provide declaration of income and/or statement of whether or not they provide financial assistance, then the household is not eligible.

Households that do not meet this requirement are not eligible to move into a HOME-assisted unit.

Each household member age 18 to 23 (or if under 18 and treated as head, co-head or spouse) in a HOME-assisted unit to which the student rule applies must complete, sign and date a HOME Program Annual Student Certification upon move-in and then annually during the HOME Affordability Period. This form and supporting documentation must be maintained in the tenant file along with the tenant income certification.