



To: Owners and Managers of Low Income Housing Tax Credit Projects
From: Brian Carnahan, Director, Office of Program Compliance
Re: Application of the Tax Credit Student Rule
Date: March 24, 2008

Two recent events prompted the Ohio Housing Finance Agency (OHFA) to reevaluate how it interprets the tax credit program definition of a full-time student for the purpose of applying the student rule. The first key event was the publication in January 2007, of the IRS Guide for Completing Form 8823. In the Guide, and in public comments, IRS officials indicate there are no exceptions to the student rule other than those provided in the Code. For some time, OHFA has, along with other housing agencies, followed a National Council of State Housing Agencies best practice that suggested exempting students in K-12 from the full-time student definition.

A second critical event occurred on December 20, 2007, when President Bush signed the Mortgage Forgiveness Debt Relief Act of 2007, H.R. 3648. In addition to eliminating the income tax due when a portion or all of the mortgage debt on a residence is forgiven, the Act amends the housing credit student rule exemption for single parents to allow children of a single parent to be claimed as a dependent by the parent not residing in the unit. Prior to this amendment, the child could not be claimed as a dependent by another individual and still qualify for the exception. The amendment expands the number of households eligible for housing. It ensures single parent households are not denied housing because of student status. Single parents who are full-time students, and their children who are in grades K-12, will not be denied housing because of student status.

As a result of the recent amendment, and continued IRS guidance suggesting a strict interpretation of the student rule, OHFA will begin to apply the full-time student definition to students in grades K-12. If a household is composed entirely of full-time students (including students in grades K-12), the household's initial or continuing eligibility for a tax credit unit is contingent upon meeting one of the following four exceptions as defined in Internal Revenue Code Section 42(i)(3)(D)(ii):

1. Receiving assistance under title IV of the Social Security Act (e.g. receipt of cash payment under TANF), or;
2. Enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or;
3. Single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or;
4. Married and file a joint return. (The Guide states "eligible to file" is sufficient).

Owners are required to implement the student rule, as defined in the Internal Revenue Code, beginning July 7, 2008. Units currently occupied by households initially qualified by excluding students in grades K-12 will not be considered out of compliance by OHFA. New households composed of full-time students that do not meet one of the exceptions, or existing households that become composed of full-time students and do not meet one of the exceptions, will be considered out of compliance after July 7, 2008.

Questions regarding this memo may be directed to the appropriate Compliance Analyst. Contact information for all Program Compliance staff can be found at:
www.ohiohome.org/compliance_tc/contacts.htm.