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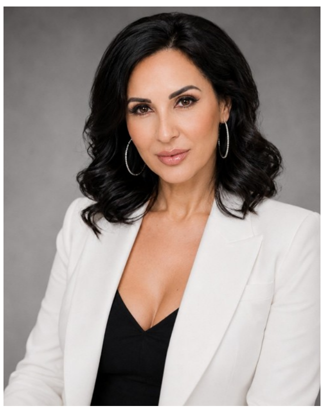
LIHTC Student Rule Explained: Common Scenarios and Compliance Mistakes

A practical guide to one of the most misunderstood eligibility rules in the Low-Income Housing Tax Credit program



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The LIHTC student rule sounds simple until a real household walks through the door. A college student with a child. Two married graduate students. A household with three full-time students and one part-time student. A former foster youth. A resident who becomes a student after move-in. The correct answer depends on the entire household, the timing, and whether a statutory exception applies.

THE RULE IN ONE SENTENCE

A LIHTC unit generally cannot qualify as a low-income unit when it is occupied entirely by full-time students for the required period unless the household meets one of the exceptions in Internal Revenue Code Section 42(i)(3)(D).

Start With the Household - Not the Individual Student

The most important concept is that the LIHTC student rule is a household-level test. Having one full-time student in a unit does not automatically create a student-rule problem. The concern arises when every occupant is a full-time student and no qualifying exception applies.

That is why a compliance specialist should never stop after asking, 'Are you a student?' The correct review identifies the student status of every household member, determines whether each person meets the full-time definition, and then tests the household against the statutory exceptions.

What Does 'Full-Time Student' Mean?

For LIHTC purposes, IRS guidance applies the student definition in IRC Section 152(f)(2). A person is generally treated as a student when, during some part of each of five calendar months during the calendar year, the person is a full-time student at a qualifying educational organization. The five months do not have to be consecutive.

Full-time status is based on the educational institution's own criteria. Property staff should not invent a credit-hour standard when the school has already defined what constitutes full-time attendance.

Important details

- A partial month can count as one of the five calendar months.
- The five months do not need to be consecutive.
- Elementary and secondary schools can fall within the student definition, not just colleges and universities.
- Technical, trade, and mechanical schools can qualify educational organizations.
- On-the-job training is not treated the same as attendance at a qualifying educational organization.
- Part-time students do not make an otherwise mixed household an all-full-time-student household.

The Five Major LIHTC Student Exceptions

Internal Revenue Code Section 42(i)(3)(D) provides exceptions that can allow a unit occupied entirely by full-time students to continue qualifying. The file should document the specific exception being used - not simply state 'student exception applies.'

1. TANF / Title IV Assistance

A student receiving assistance under Title IV of the Social Security Act may qualify for the exception. In practice, the file should contain documentation sufficient to establish that the assistance falls within the statutory category applicable to the exception.

2. Former Foster Care

A student who was previously under the care and placement responsibility of the state agency administering an applicable Title IV-B or Title IV-E plan may qualify. Do not assume every informal caregiving arrangement is foster care; obtain documentation supporting the qualifying status.

3. Qualifying Job Training Program

A student enrolled in a qualifying job-training program receiving assistance under the former Job Training Partnership Act or a similar federal, state, or local law may qualify. The program itself matters, so the file should document the nature and funding/authority of the training program rather than relying only on the resident's description.

4. Single Parents and Their Children

An all-full-time-student household may qualify when it consists of single parents and their children and the dependency requirements in Section 42 are satisfied. This exception is frequently oversimplified. The parent cannot be a dependent of another individual, and the children's dependency status must satisfy the statutory rule.

5. Married Students Filing a Joint Return

An all-full-time-student household can qualify when the students are married and file a joint federal income tax return. Compliance staff should verify the facts supporting the exception and follow the state housing finance agency's documentation requirements.

HCA TIP

The exception belongs to the household facts, not to a checkbox. If the household changes, re-test the student rule.

Common Scenario #1: One Full-Time Student + One Nonstudent

A two-person household consists of one full-time college student and one adult who is not a full-time student.

Result: The unit is not occupied entirely by full-time students, so the LIHTC full-time student prohibition does not disqualify the household on that basis. The file should still document each member's student status.

Common Scenario #2: One Full-Time Student + One Part-Time Student

Both adults attend college, but the school considers one full-time and the other part-time.

Result: The household is not entirely composed of full-time students. A common mistake is treating 'student' and 'full-time student' as interchangeable. They are not.

Common Scenario #3: Two Full-Time College Students

Two unrelated roommates are both full-time students for at least five calendar months and no exception applies.

Result: This is the classic nonqualified full-time-student household. The unit generally cannot be treated as a qualified low-income unit while the disqualifying condition exists.

Common Scenario #4: Married Full-Time Students

A married couple are both full-time students and file a joint federal income tax return.

Result: The household may meet the married-student exception. The file should contain the documentation required by the allocating/monitoring agency to substantiate the exception.

Common Scenario #5: Single Parent + Child

A single parent is a full-time student and the child is also considered a full-time student, such as a school-age child. Staff may initially think the household automatically fails because everyone is a student.

Result: The single-parent exception may apply if the statutory dependency requirements are satisfied. This is exactly why staff should test exceptions before declaring an all-student household ineligible.

Common Scenario #6: Three Full-Time Students + One Part-Time Student

Three members are full-time students. The fourth household member attends school part-time.

Result: Because not every household member is a full-time student, the unit is not an all-full-time-student household. The student rule does not disqualify the household on that basis.

Common Scenario #7: A Resident Becomes a Full-Time Student After Move-In

A qualified household moves into the property. Later, the last nonstudent household member enrolls full-time, making every member a full-time student.

Result: Student status is not merely a move-in question. IRS compliance guidance expects student status to be verified at move-in and on a continuing basis during the compliance period. The household must be re-tested when facts change.

The property should determine whether an exception applies and document the result. Waiting until the next state audit to discover the change can create an avoidable compliance issue.

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Common Scenario #8: Full-Time for Only Four Calendar Months

A resident attends full-time for four calendar months during the year and is not otherwise a full-time student for a fifth month.

Result: The five-calendar-month element is not met based on those facts. Staff should document the actual enrollment period rather than assuming a semester automatically equals five months.

Common Scenario #9: Five Months, But Not Consecutive

A student attends full-time in January and February, leaves school, and later attends full-time during August, September, and October.

Result: The five months do not need to be consecutive. This person can meet the full-time-student timing test.

Common Scenario #10: Children in School

A family includes a parent and school-age children. Staff sometimes forget that elementary and secondary education can be relevant to the federal student definition.

Result: Do not assume minors are irrelevant to the student analysis. Determine each household member's status, then evaluate whether the entire household is composed of full-time students and whether an exception applies.

The Most Common Compliance Mistakes

Mistake #1: Denying Every Household With a College Student

The LIHTC rule is not 'no college students.' A household can include one or several students and still qualify. The critical question is whether the unit is occupied entirely by full-time students and, if so, whether an exception applies.

Mistake #2: Forgetting the Five-Month Test

A person who attends full-time for fewer than five calendar months may not meet the federal full-time-student definition for this purpose. Conversely, the months do not have to be consecutive.

Mistake #3: Using the Property's Own Definition of Full-Time

Full-time status should be based on the educational institution's criteria. A leasing specialist should not decide that 12 credits is always full-time without confirming the school's standard.

Mistake #4: Ignoring School-Age Children

The analysis is not limited to adults or college students. Elementary and secondary schools are included in IRS guidance describing qualifying educational organizations.

Mistake #5: Assuming 'Single Parent' Automatically Means Exception

The single-parent exception contains dependency requirements. Staff must verify that the actual household meets the statutory test.

Mistake #6: Treating Marriage Alone as Enough

The statutory exception refers to married students who file a joint return. Do not reduce the exception to 'they are married.' Document the requirement specified by Section 42 and follow agency guidance.

Mistake #7: Checking Student Status Only at Move-In

Student status can change after admission. A household that qualified in January may become an all-full-time-student household later. Continuing compliance procedures should capture those changes.

Mistake #8: Using a Generic Student Affidavit Without Verification

A form is only as useful as the facts supporting it. When a household's eligibility depends on student status or an exception, obtain the documentation required by your state allocating agency and maintain a clear audit trail.

Mistake #9: Applying the LIHTC Rule to a Layered Property Without Checking the Other Program

HUD, HOME, Rural Development, and other housing programs can have their own student-related eligibility or income rules. At a layered property, passing the Section 42 student rule does not automatically mean the household satisfies every other program.

Mistake #10: Assuming Every State Agency Documents the Rule the Same Way

Section 42 is federal tax law, but state housing credit agencies monitor LIHTC compliance and may prescribe forms, certifications, verification practices, or additional procedural expectations. Always check the property's current state compliance manual.

HCA's Recommended Student-Rule Review

1. List every household member, including minors.
2. Ask whether each member attends school and identify the educational institution.
3. Determine whether each student is full-time under the school's standard.
4. Document the calendar months of full-time attendance.
5. Determine whether all household members are full-time students.
6. If not all are full-time students, document the conclusion and continue the normal eligibility review.
7. If all are full-time students, test every applicable Section 42 exception.
8. Obtain documentation supporting the exception under the state agency's requirements.
9. For layered properties, separately test the household under every applicable housing program.
10. Revisit student status at required recertifications and whenever a household change affects the analysis.

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A Good Tenant File Should Tell the Whole Story

A reviewer should be able to understand the student-rule determination without reconstructing the file from scratch. The file should identify who is a student, whether each person is full-time, the relevant months, the school used to determine status, the exception relied upon when applicable, and the documents supporting that conclusion.

The strongest compliance files do not simply contain a signed form. They show the reasoning behind the eligibility decision.

How Housing Consultants of America Can Help

Housing Consultants of America supports LIHTC owners, developers, management companies, nonprofits, and affordable housing teams with tenant-file reviews, 100% file audits, third-party compliance support, temporary compliance staffing, lease-up assistance, training, policy review, and layered-program compliance.

HCA can help identify student-rule errors before a state monitoring review, review complex household scenarios, audit existing files for inconsistent documentation, and train leasing and compliance teams to apply the rule consistently.

The LIHTC student rule is manageable when staff follow the same sequence every time: identify the household, determine full-time status, apply the five-month test, test the exceptions, document the conclusion, and remember that layered programs may impose additional requirements.

Compliance Sources

- Internal Revenue Code Section 42(i)(3)(D) - Certain students not to disqualify unit.
- Internal Revenue Code Section 152(f)(2) - federal student definition referenced in IRS LIHTC guidance.
- IRS Guide for Completing Form 8823 / Publication 5913 - Category 11, Low-Income Units Occupied by Nonqualified Full-Time Students.
- Applicable state housing finance agency LIHTC compliance manual and required student-status forms.

Compliance note: This article is educational and is not tax or legal advice. Owners and agents should apply current federal law together with the monitoring requirements of the applicable state housing credit agency and the requirements of any additional programs layered on the property.