

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Low Income Housing Tax Credit Program

POLICY STATEMENT

NON-CUSTODIAL CHILDREN AS HOUSEHOLD MEMBERS

In some situations, a child may be cared for by a person who does not have legal custody or guardianship of him or her and spend a substantial amount of time with that caretaker. These care arrangements can be temporary, of unknown duration, sporadic (the child lives there only sometimes) and/or “at-will” (the guardian can remove the child from the household or the caretaker can end the arrangement at any time). A “non-custodial” child is an individual under the age of 18 who is not emancipated, not residing in a unit with his or her parent or legal guardian, and not in the process of being adopted or for whom legal custody or guardianship is not in the process of being obtained. There are two issues related to non-custodial children:

- (1) income-eligibility of the household, and
- (2) occupancy in a restricted unit.

“Non-custodial children” is a topic that is not specifically or adequately addressed in the HUD 4350.3. Until specific guidance is provided by HUD or the IRS, non-custodial children should be treated according to the rules provided for foster children, which are the most analogous situation discussed in the HUD 4350.3. Similar to foster children, they cannot be included for purposes of determining the income-eligibility of the household. However, in accordance with the Fair Housing Act (discussed below), non-custodial children are permitted to reside in the restricted unit.

(1) Income Eligibility

A determination must be made as to whether or not to count the child as a household member for income-eligibility purposes. In some instances, a tenant (or owner/management agent of an LIHTC project) will attempt to count the child as a household member simply to use a higher income limit based on the larger family size or in order to meet a full-time student prohibition exception. In some cases, the household would not be eligible to reside in an LIHTC unit without the inclusion of the child. To promote consistency in determining who to count as a household member and who cannot be included, a child who does not reside with his or her legal custodian and whose legal permanent residence is someplace other than the LIHTC unit, should **not** be counted as a household member for purposes of determining the income-eligibility of the household. The child should be counted as a guest or as part of an “unofficial” foster care arrangement. Neither guests nor foster children can be included as household members for income-eligibility purposes {*HUD Handbook 4350.3, Figure 3-6*}.

In order to count a child who is under the age of 18 and not an emancipated minor as a household member for income-eligibility purposes, the LIHTC unit must be the child’s permanent residence and another member of the household (who is listed on the lease and/or the CTE 320) must meet one of the following criteria:

- (1) Have legal custody or guardianship of the child (as can be documented by court papers). The child may also be counted as a household member for income-

- eligibility purposes in situations in which an adult is awaiting a decision from a court regarding custody or guardianship if this can be documented with legal papers {*HUD Handbook , Appendix 11, Item 19A*}. A situation in which an adult “intends” to pursue custody but has not yet done so is not adequate to establish eligibility; or
- (2) Have claimed the child as a dependent on the most recently filed tax return (as can be documented by the tax return) and anticipate claiming the child as a dependent for the present calendar year; or
 - (3) Be in the process of adopting the child (as can be documented by court papers).

Ex: *The Smith family, which consists of two adults, are prospective residents in an LIHTC development. The Smiths have a seven month old grandchild who they have been caring for since birth. The mother and father of the child (neither of whom will live in the tax credit unit) are willing to sign a notarized statement (probably not legally binding in this situation) indicating that the living arrangement is unlikely to change in the next twelve months. The grandparents anticipate claiming the child as a dependent for the present calendar year. Since the grandparents do not have official legal custody or guardianship, are not in the process of adopting the infant, and have not yet claimed the infant as a dependent on their tax returns, the grandchild cannot be counted as a household member for purposes of determining eligibility to reside in the unit. The income-eligibility of the Smiths must be evaluated based on a two, not three, person family size. If the grandchild is claimed as a dependent for tax purposes this year by the grand parents for this calendar year and he or she continues to reside in the unit, the child can be counted as a household member the following year.*

Documentation of legal custody, guardianship or dependency status should be obtained for any child whose mother or father does not reside in the LIHTC unit if the tenant is attempting to count the child as a member of the household for income-eligibility purposes. It is not necessary for the owner/management agent to document custody or guardianship of children who reside in the unit with a parent (unless there is reason to believe that the child is not eligible to be counted as household members).

(2) Occupancy

The residency aspect of non-custodial children is discussed in The Fair Housing Act. The Fair Housing Act (Title VIII of the Civil Rights Act, 42 U.S.C. 3601) is a statute that, in part, prohibits discrimination based on familial status in most housing and housing-related transactions. The Fair Housing Act defines “familial status” as one or more individuals (who have not attained the age of 18 years) domiciled with:

1. A parent or another person having legal custody of such individual or individuals (regardless of age or number of children); or
2. The designee of such parent or other person having such custody, with the written permission of such parent or another person.