

CHAPTER 5 – HOUSEHOLD COMPOSITION AND DEMOGRAPHICS

This Chapter contains a partial listing of rules governing the eligibility of certain tenants. For more information regarding tenant eligibility, consult Section 42 of the Code or a LIHTC textbook or guide. The HUD 4350.3 handbook also provides information about household composition.

Section 5A - Overview of Household Composition and Demographics

Part 500 : Determining Household Composition

Household composition (i.e. which persons must be counted as household members) for all programs is based on the guidelines outlined in HUD Handbook 4350.3. A link to the Handbook is included on the MSHDA website.

Part 502 : Changes in Household Composition

In general, a household's composition should not be changed within the first six months of its initial lease without re-qualifying the household, unless the change was unforeseen at the time of move-in or was due to an extenuating circumstance. Intentionally understating or overstating the number of household members in order to meet a particular income limit is an act of fraud that will result in a finding of noncompliance.

Tenants must accurately disclose the composition of their households in order to properly determine income eligibility. Owners/management agents must ensure that all new move-ins certify that there are no known or anticipated changes in the household composition during the initial six-month lease term. At move-in, the owner/management agent must require that each adult household member execute a sworn affidavit (Tenant Income Certification) attesting to the household composition. By signing the TIC (discussed in **Part 618**), the tenant indicates that the household composition listed on the form is correct and that there are no certain or anticipated changes in the household composition that will occur during the certification period.

If the owner/manager determines that the tenant purposely failed to disclose an anticipated change in the household size, whether due to the move-in or move-out of a household member, a re-determination of eligibility must be made. If the change was in any manner anticipated, then the revised household composition must be used to reevaluate initial qualification or income at move-in. For example,

The income limits at Apple Meadows are \$20,000 for a one-person household and \$24,000 for a two-person household. Mary moved in and qualified as a one-person household with an income of \$15,000 on April 1, 2008. Jill presently resides in another development but plans to move-in with Mary when Jill's lease ends in one month on April 30, 2008. At the time of completing her rental application for Apple Meadows, Mary did not disclose the fact that Jill (who has an income of \$17,000) was planning to move-in with her. Therefore, Mary

is not permitted to add Jill as a second occupant of her unit during the first six months of her tenancy because her addition to the household was known at the time of Mary's original application and because their combined income (\$32,000) exceeds the income limit (\$24,000) for a two-person household that was in effect at the time of Mary's move-in.

The procedures for a re-calculation of a move-in income are discussed in **Part 300** (Overview of Initial Certification Requirements). A re-calculation is not required for the move-in or move-out of a dependent child, dependent student, or unborn child, who can be added or subtracted from the household at any time. As stated in the IRS 8823 Guide, unanticipated decreases in family size do not trigger the immediate income certification of a new household. Subsequent annual income recertifications will be based on the income of the remaining members of the household. A change in the size of a household (move-ins, move-outs, or substitutes of a household member) is acceptable at the time of recertification; however, the Next Available Unit Rule (discussed in **Part 806**) may be triggered.

Subleasing LIHTC units is not permissible.

Note: This Part applies to all programs (except HUD programs, including Section 8 and Section 236, which must conduct move-in certifications and interim recertifications in accordance with the HUD 4350.3.)

For a related discussion, see **Part 504** (The "Totem Pole" Rule).

Part 504 **The "Totem Pole" Rule**

As discussed in the IRS 8823 Guide, "A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit." This is sometimes referred to as the "Totem Pole Rule".

Example #1 - Bill and Susan moved into the unit in June 1998 and were LIHTC-eligible at that time. In March 2001, Susan vacated the unit and a new roommate, Stephanie, moved into the unit. A recertification of the household (now comprised of Bill and Stephanie) was conducted in June 2001. The household's income was under the LIHTC maximum allowable at the time of the June 2001 recertification. In September 2004, Bill vacates the unit and Stephanie desires to remain. At this point, all of the original household members (Bill and Susan) have vacated the unit, thus triggering the "Totem Pole Rule". Since Stephanie was a resident member of the "household" when it was determined to be under the LIHTC maximum allowable income at the time of the June 2001 recertification, she is permitted to continue residing in the LIHTC unit and does not have to be re-qualified as income-eligible.

Example #2 – Carla and Shelly moved into the unit in April 2004 and were certified as being income-eligible at that time. In February 2005, Carla vacated the unit and a new roommate, Laura, moved into the unit. In April 2005, the household (now comprised of Shelly and Laura) was recertified. At the time of the April 2005 recertification, the household's income was above the income limit in effect at that time. However, since the project has a 100% applicable fraction, the Next Available Unit rule did not require that the household vacate the unit. The income of the Shelly/Laura household exceeded the two-person income at

the time of the April 2006 recertification as well. In September 2006, Shelly moved out of the unit. With Shelly's vacating of the unit, none of the original household members (Carla and Shelly) remain in the unit, thus triggering the "Totem Pole Rule". Because the Shelly/Laura household had an income that was above the LIHTC limit during each of its recertifications in which Laura was included as a household member, Laura must be re-qualified as a new move-in household (and have an income that is less than the maximum allowable for a one-person household) in order to be eligible to continue to reside in the LIHTC unit. Note, however, if the Shelly/Laura household had been certified at less than the income limit at any one of the April 2005 and April 2006 recertifications, there would be no need to re-qualify Laura when Shelly vacated the unit.

Note: Example #2 is applicable only when a full recertification is conducted in accordance with the procedures discussed in [Part 354](#) (Procedures for Recertification) and does not apply to projects that have eliminated recertifications (as discussed in [Part 362](#)). For a related topic, see [Part 502](#) (Changes in Household Composition).

Note: HUD Programs, including Section 8 and Section 236, must conduct interim recertifications in accordance with the HUD 4350.3 whenever there is a change in household composition.

Part 506 : **Occupancy Guidelines**

Unless otherwise specified in the program guidelines or in the Regulatory Agreement for a particular development, there are no LIHTC requirements governing minimum or maximum household size for a particular unit size. However, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g. Section 8, Housing Choice Vouchers, and Rural Housing Services). Management must be aware of applicable occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that establish a maximum or minimum number of persons per unit. MSHDA advises all owners or agents to be consistent when accepting or rejecting applications. Further, MSHDA strongly encourages owners to monitor occupancy levels to assess whether units are being over-utilized or under-utilized. Owners that agreed to promote economic integration by serving market rate tenants (non-tax credit units) must evenly distribute low-income (restricted) units among bedroom types and buildings, except in elderly developments.

Note: Occupancy guidelines and Tenant Selection Criteria must be incorporated into the development's management plan ([Chapter 11](#)) for MSHDA Direct Loan Projects.

For Information about Collection and Reporting Requirements for Tenant Data, Household Composition, and Demographics see [Part 702](#) (HUD's Required Tax Credit Data Collection) and [Part 700](#) (MSHDA's On-Line Tenant Data Reporting).

Section 5B – Students

Part 508 Overview of Students

If a single applicant (or tenant) or all household applicants (or tenants) in a unit are full-time students and not married, then that household is usually not eligible to reside in a LIHTC unit, unless it meets one or more of the student exemptions discussed below. A household is ineligible if all members of the household are full-time students at the time of initial occupancy or at any time during the certification period.

To be deemed an ineligible student household, the unit must be occupied entirely by household members who are ineligible full-time students. If any of the household members is a non-student or attends school part-time, or if any member qualifies for one of the exceptions discussed in [Part 514](#) (Exceptions to the Full-Time Student Exclusion in LIHTC Projects), the household is not deemed an ineligible student household. The definition of a Full-time Student is discussed in [Part 510](#). The definition of an educational institution is discussed in [Part 512](#).

Unlike income limits, ineligible student status is not avoided by “grandfathering” qualifications that existed at an earlier time. At no time during the lease, or any extension thereof, may the unit be occupied entirely by full-time students who do not meet any of the exceptions. If a household qualified at move-in but later became comprised entirely of full-time students (not meeting any of the exceptions), the household would no longer be qualified to occupy a LIHTC unit. Further, if the household initially met one of the exceptions, but at some point during the lease or extension thereof no longer meets that exception (such as, for example, when the sole minor child moves out of the unit), at that time it becomes an ineligible student household.

In addition to topics discussed in this Section of the Compliance Manual, information about students is discussed in [Part 372](#) (Income and Assets of Students) and [Part 384](#) (Student Financial Assistance in Excess of Tuition).

Note: Tax-exempt bond projects now follow the same student rules as LIHTC.

Part 510 Definition of A Full-Time Student

Treas. Reg. §1.151-3(b) and (c); IRC §152(f)(2); and §170(b)(1)(A)(ii)

The applicable definition of a student is a full-time enrollee at an educational institution with regular facilities, other than a correspondence school. To document student status (either full-time or part-time), a letter or other official documentation is to be obtained from the educational institution indicating that it classifies the person as a “full-time” or “part-time” student.

Certification Year v. Calendar Year – Include as full-time students:

- An individual who attended school during five calendar months during the calendar year (January 1 – December 31). The five calendar months do not have to be con-

secutive or contiguous. Include any month during which the student attended full-time for one or more days.

- An individual who is attending school full-time on the effective date of the certification or recertification.
- A person who anticipates attending school full-time at any time during the certification year, which begins on the effective date of the certification and ends one year from the effective date of the certification.

When determining whether an individual is a full-time student, note the following:

- Include as full-time students those persons who are enrolled full-time in a junior college, community college, college, university, graduate school, or post-graduate school (such as medical school or law school).
- Include as full-time students those persons who are enrolled full-time in a trade school, mechanical school, technical school, proprietary school, or vocational school with a diploma or certificate program.
- Include as full-time students those persons, either over or under the age of 18, who are full students in kindergarten, elementary, middle school, or high school (Grades K-12).
- Include those persons completing an internship, thesis, or research as part of an academic program for educational credits if the school classifies the particular student as “full-time”.
- Include those persons who are taking all or a portion of their classes via the Internet if the school considers that person to be a full-time student, and the school is not a correspondence school.
- Include those persons who are on break from school, including summer and spring breaks, and are planning to return to school for the next semester.
- Include an individual who is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization or of a state or political subdivision of a state.
- Persons who are full-time students and who are also employed full-time or part-time are still counted as full-time students.
- Persons studying for the GED and persons attending adult education courses or “night school” (for the purpose of obtaining a high school diploma or GED) are not counted as “full-time students”.
- A household containing full-time students is not ineligible if it includes at least one child or adult who is not a full-time student. Unborn children can be counted as a non-student, as discussed in **Part 558** (Pregnant Women, Unborn Children, and Children in the process of being adopted).

- Headstart, preschool, and nursery school do not count as “school” for LIHTC-purposes.
- Persons who are participants in apprenticeship programs or receiving on-the-job training (not necessarily funded under the JTPA) are not considered “full-time students”.
- Part-time students are not counted as “full-time students”.
- A student who is enrolled part-time at more than one school must be counted as a full-time student if his/her combined number of credits would be considered full-time at any one of the schools he/she attends. (Note: The IRS has not made an official determination on this situation. However, MSHDA recommends that owners/management agents take this most conservative position.)

As stated previously, if at least one member of the household is not a full-time student, the household is not classified as an ineligible student household. **Part 514** (Exceptions to the Full-Time Student Exclusion in LIHTC Projects) contains additional information about households that are not counted as ineligible student households.

Part 512 : **Definition of an Educational Institution**

IRC §170(b)(1)(A)(ii)

Section 170(b)(1)(A)(ii) defines an educational institution as “*an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.*”

- The student rules applicable to the LIHTC program do not address schools that conduct classes online via the Internet. The LIHTC program does, however, state in Treas. Reg. §1.151-3(c) that “the applicable definition of a student is a full-time enrollee at an educational institution with regular facilities, other than a correspondence school.” A school that conducts **all** of its classes **exclusively** on-line is similar to a correspondence school and thus is not counted as a school for purposes of determining status.
- An individual who takes all of his or her classes on-line at a school that offers one or more “live” classes (including those courses in which the instructor/lecturer is present in a classroom with students or appears via satellite or on a television monitor) is counted as a student for LIHTC purposes, even if the individual is not or does not plan to enroll in any “live” classes.

Part 514 : **Exceptions to the Full-Time Student Exclusion in**
: **LIHTC Projects**

IRC§42(i)(3)(D)

A household that is comprised entirely of full-time students may still be eligible to reside in a LIHTC unit if the household satisfies the conditions of either (1) or (2) below:

(1) *At least one household member is:*

- A. *Receiving assistance under Title IV of the Social Security Act (welfare);*
- B. *Enrolled in a job-training program receiving assistance under the Workforce Investment Act (formerly called the Job Training Partnership Act (JTPA)) or under other similar federal, state, or local laws; or*
- C. *An individual who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act [foster care].*

(2) *A unit occupied entirely by full-time students if such students are:*

- D. *A single parent receiving AFDC payments with dependent children who are also students;*
- E. *A single parent and his or her 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*
- F. *Married and filing a joint tax return.*

Each of the exemptions listed above is discussed in greater detail in **Parts 516 - 526**. **Part 510** (Definition of a Full-time Student) also contains information about households that are not subject to the full-time student exclusion.

Part 516 : **Student Exception A (Title IV of the Social Security Act)**

In regard to Title IV of the Social Security Act ("Title IV"), note the following:

- Title IV includes only welfare benefits (commonly known as Temporary Assistance to Needy Families or TANF, public assistance, or Family Independence Program, formerly called AFDC). TANF is an acceptable Title IV program.
- The Food Stamp program is funded under the Food Stamp Act of 1977, not Title IV of the Social Security Act. Therefore, the receipt of food stamps alone does not qualify a household for this student exemption.
- Social Security benefits and Supplemental Security Income (SSI) are not part of Title IV.

- Work-study and Pell Grants are not part of Title IV.
- Medicaid and Medicare are not part of Title IV.
- HUD rental assistance (e.g., Section 8, Housing Choice Voucher) is not part of Title IV.
- Unemployment Compensation, Workers Compensation, and disability benefits are not part of Title IV.

Part 518 **Student Exception B (Job Training Program)**

In regard to job training programs, note the following:

- The Workforce Investment Act (WIA) replaced the Job Training Partnership Act (JTPA).
- The student must be enrolled in a job training program receiving assistance under the WIA (employment and training programs for native Americans, migrant or seasonal farm workers, Job Corps, veterans employment programs, State job training programs, career intern programs, etc.) or other similar Federal, State, or local laws. It may help to compare a questionable program’s “mission statement” to the WIA to see if it has a comparable purpose.
- Programs similar to WIA include only vocational programs funded by a local, state, or federal government agency. Privately funded vocational programs do not meet this exception, unless, in the case of a non-profit entity, the funding was received from a government entity and was specifically mandated to be used for vocational programs.
- Participants in Michigan’s No Worker Left Behind (NWLB) program are not prohibited full-time students for LIHTC purposes. The NWLB program qualifies as a program that is similar to WIA. Additional information about the NWLB program is included in **Part 374**.
- The Vocational Rehabilitation and Employment Program administered by the U.S. Department of Veterans Affairs is a job training program that is similar to the WIA program.
- Pell Grants, GI Bill, ROTC, and work-study do not qualify as WIA programs.
- Apprenticeship programs and trade schools do not qualify as WIA programs.
- Trade school, mechanical school, technical school, and other vocational schools with a diploma or certificate program do not, by themselves, qualify as WIA programs. To qualify under this student exception, the individual must be enrolled in a WIA or similar program.

- Privately-funded job retraining or tuition assistance payments, such as those that might be offered by an employer for laid off workers, do not qualify as a WIA program. Job retraining programs that are implemented in conjunction with a government-funded retraining program could possibly qualify as similar to WIA.

Also note the following in regard to job training programs:

- Per the HUD Handbook 4350.3 (Exhibit 5-1, Income Exclusions, Item #(8)(e)) (a link to the Handbook is included on the MSHDA website), none of the funds provided by the job training program (including amounts for student financial assistance in excess of tuition) are counted as part of the household's annual income. None of the costs of tuition, books, materials, fees, etc. are counted as part of household income if these costs are paid for from funds provided by the job training program. For additional information about the student financial assistance in excess of tuition, see **Part 384**.

Part 520 :: **Student Exception C (Student Previously in Foster Care)**

In regard to an individual who was previously in foster care, note the following:

- This exception applies to an individual who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act.
- Per H.R. 3221, Sec. 3004 (IRC 42(i)(3)(D)), students who were previously under the care and placement of the state foster care agency are not considered ineligible full-time students.
- To claim the exception, an applicant or resident must present documentation from the state or local children's services agency indicating they are currently assisted by a foster care program, are transitioning out of such a program, or were previously in foster care.
- This exception applies to new move-ins or student eligibility certifications that occur or are conducted after July 30, 2008.

Part 522 :: **Student Exception D (Single Parents receiving Welfare)**

In regard to "*Single parents receiving AFDC payments with dependent children who are also students*", note the following:

- The single parent receiving welfare benefits is not required to claim the child(ren) as dependents on the tax return in order to qualify under this exception.

- The AFDC (Assistance to Families with Dependent Children) program was replaced by TANF (Temporary Assistance to Needy Families).
- This student exception is available only to those TANF receipts who receive cash assistance (which may be via a check, direct deposit or electronic payment card). The receipt of child care assistance, Medicaid, or other insurance or health benefits, food stamps, Social Security benefits (or SSI), housing expense assistance, and other types of benefits or assistance provided to low-income families do not, by themselves, meet the criteria for this student exception.
- For additional information about welfare, see **Part 516**.

Part 524 **Student Exception E (Single Parent with Dependent Children)**

In regard to “A single parent and his or her 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”, note the following:

- “Dependent” is defined in IRC §152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.
- The Mortgage Forgiveness Debt Relief Act of 2007 amended the LIHTC student rule to clarify that single parents and their children can all be full-time students and still qualify for Housing Credit-financed apartments, effective immediately for all past and future Housing Credit allocations. Before this law was enacted, if single parents and their children were all full-time students, they were eligible for Housing Credit apartments only if none of them could be claimed as a dependent on another person’s tax return. With the new law, the household is eligible even if the children are claimed by a parent not residing in the LIHTC unit, provided the single parent residing in the LIHTC unit is not being claimed as a dependent on another individual’s tax return.
- Example: *Pamela Smith is a divorcee who resides in a LIHTC unit with her two minor children. Ms. Smith and the two children are all full-time students. Pamela Smith’s ex-husband claims the children as dependents on his tax return. Pamela Smith claims herself on her own tax return. The household is not a prohibited student household for LIHTC purposes. However, if Pamela is claimed as a dependent on her parent’s tax return the household is an ineligible student household.*
- This exception can apply to a household with minor children (i.e. under age 18) and, in some circumstances, one with adult children (i.e. age 18 and over). There are some circumstances in which a parent may claim an adult child as a dependent and, thus, that household may meet this student exception. The single parent must actually be claiming the adult child on his or her federal tax return (except if the adult child is being claimed by his or her other parent), not simply be eligible to claim the adult child but electing not to do so.

Part 526 Student Exception F (Married and Filing A Joint Tax Return)

In regard to “*Married and Filing a Joint Tax Return*”, note the following:

- MSHDA has adopted the interpretation outlined in the IRS 8823 Guide, which states that if a married person or couple is entitled or eligible to file a joint tax return, even if they have not yet filed one or do not plan to file one, the person or couple qualifies for the exception under IRC §42(i)(3)(D)(ii)(II).
- The married student must provide a copy of a marriage license, along with a self-affidavit indicating that the marriage license is still valid (i.e. the couple didn’t subsequently divorce).
- A married individual cannot qualify for this student exception if he/she maintains a dual residence and the LIHTC unit is not the individual’s primary and permanent residence. For related discussions, see **Part 556** (Married Persons Not Living With Spouse) and **Part 548** (Primary Residency).
- While the IRC Section 42 contains the phrase “... *occupied entirely by full-time students if such students are*”, the General Explanation of the Tax Reform Act of 1986 (dated May 4, 1987 and sometimes termed “the Blue Book”) contains the phrase “*no one of whom is entitled to file a joint tax return*”. Thus, the LIHTC industry generally requires only that at least one household member be married and entitled to file a joint tax return in order to invoke this exception to the student rule.
- As of July 30, 2008, the student restrictions for “married persons” under the tax-exempt bond program are now the same as those under the LIHTC program.

Part 528 Certifying Student Eligibility – Student Certification Form

- Each adult household member must indicate on a MSHDA checklist whether or not the member is a full-time student. If one or more adult household members indicate that he or she is a full-time student or if student status is unclear, the owner/management agent must have each adult member of the household complete a Student Eligibility Certification form (discussed below).
- Every household that contains a member who is a full-time and part-time student over the age of 18 must complete a **Student Eligibility Certification Form** for the initial certification and for every recertification of the household, including every annual self-certification (as discussed in **Part 364**). The Student Eligibility Certification Form indicates that the household is either not comprised entirely of ineligible full-time students or that it meets one of the student exemptions. The completed form must be included in the tenant file. A copy of this form is available on the MSHDA website. A form similar to Michigan’s Student Eligibility Certification form is referred to as a “Student Status Verification” form in the IRS 8823 Guide.

- The Owner/management agent must send a **Student Verification Form** to each educational institution that the tenant indicates that he or she attends either full-time or part-time, except for K-12 schools. This form is completed by (or requests information from) the educational institution about the tenant's present enrollment status at the school, the date last attended, anticipated graduation date, whether the school classifies the tenant as a full-time or part-time student, etc. There is no specific format or mandated form required by MSHDA for the Student Verification form. It is permissible to use other documentation (such as a printout or letter) from the educational institution, provided it is sent directly to the owner/management agent and adequately details the necessary student information. A sample Student Verification Form is available on the MSHDA website.
- All household members over the age of 18 (including full-time or part-time students) and emancipated minors who are not the dependent of another person in the household (i.e. being claimed on that person's tax return) must be deemed as head of household, spouse, or co-head for LIHTC purposes. As discussed in **Part 372** (Income and Assets of Students), all income, whether earned or unearned, of such persons must be included as part of household income.
- MSHDA encourages owners and managers of LIHTC projects to include a lease provision in all Housing Credit properties that requires tenants to immediately notify management of any change in student status.
- Some LIHTC rules, such as those for income eligibility, allow a unit to remain qualified even if household income later rises above the applicable income limit. There is no such rule for units that become occupied entirely by students not meeting one of the exceptions detailed above. If this should happen, the unit immediately becomes a non-qualified unit, potentially triggering recapture.
- For any household which has a full-time or part-time student over the age of 18, the eligibility status of the household should be updated every semester.

Part 530 **Part I of the HUD Student Rule:**
 Student Eligibility Guidelines

This Part applies to HUD Section 8 Programs only.

This Part discusses the portion of the HUD Student Rule that impacts the eligibility of a particular individual to reside in a restricted unit. The portion of the HUD Student Rule that pertains to income calculation is discussed in **Part 384**. The HUD Student Rule **does not apply to LIHTC projects** (except those with HUD-financing or those projects subject to HUD regulations). This Part of the Manual is included for background information only.

On January 30, 2006, HUD's final rule regarding student eligibility for Section 8 assistance became effective. In brief, pursuant to Section 5.612 of the Final Rule, to be eligible to receive Section 8 rental assistance, any person who is enrolled in an institution of higher education, either part-time or full-time status, must meet at least one of the following criteria:

- be over the age of 23 (meaning age 24 and older);
- be a veteran of the United States Military;

- be married and have at least one dependent child;
- qualifies as a person with disabilities, as defined in section 3(b)(3)(E) of the United States Housing Act of 1937 and receiving assistance under Section 8 as of November 30, 2005; or
- be otherwise eligible, consisting of being income eligible and either:
 - having parents that are, individually or jointly, income eligible; or
 - qualifying as an independent student.

The above student eligibility criteria apply only to “HUD’s Sec. 8 programs”, which include Sec. 8 new construction, Sec. 8 substantial rehab, Sec. 8 state agency, Rural Housing Services Sec. 515, loan management set-aside, property disposition set-aside programs, Sec. 202/8 direct loan program, housing choice voucher program, project-based certificate program, project-based voucher program, and Sec. 8 moderate rehab program.

The HUD student eligibility guidelines **do not apply** to LIHTC, tax-exempt bonds, HOME, or Pass-Through programs, unless those programs are combined in a project with one of the above-mentioned HUD programs. For projects with both LIHTC and one of the above-mentioned “HUD Sec. 8 programs”, **both** the HUD student eligibility guidelines and the LIHTC student guidelines (see **Part 508**) must be satisfied.

Part II of the HUD Student Rule (Student Financial Assistance in Excess of Tuition) is discussed in **Part 384**.

Section 5C - Elderly

Part 532 LIHTC – Definition of Elderly

State Housing Development Authority Act - Act No. 346 of the Public Acts of 1966, as amended

LIHTC projects funded under the elderly statutory set-aside must have 100% of the units in all of the buildings of the project set-aside for elderly persons. Each Tenant/Unit File must include the name, date of birth, and proof of age (such as a copy of a driver's license or birth certificate or copies of documents provided by the Social Security Administration) for each member of the household.

1. LIHTC Projects funded prior to 1996 Michigan Qualified Allocation Plan (QAP)

A project that includes a set-aside for the elderly must conform to the Federal Fair Housing Act (discussed in [Part 534](#)).

2. LIHTC Projects funded under the 1996 Michigan QAP or later QAP

A. Pursuant to the MSHDA Act, elderly designated developments not subject to HUD or Rural Development (RD) rules must have units occupied by:

- 1) a single person who is 55 years of age or older; or
- 2) a household in which at least one member is 55 years of age or older and all other members are 50 years of age or older.

The MSHDA Act definition does not contain an exception to the elderly age requirement for disabled persons or for minor children who are in the custody of an elderly person.

B. HUD, Rural Development and Tax Abatement Projects for the Elderly

- 1) Projects subject to HUD rules must follow HUD's definition of elderly. Some HUD projects may be eligible to use HUD's Near Elderly guidelines.
 - a) HUD's Definition of Elderly – A family whose head, spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together or one or more persons who are at least 62 years of age living with one or more live-in aides. (Note: The owner/management agent should consult HUD to ensure that it is following the proper elderly guidelines for that government program.)
 - b) Definition of Near Elderly - A family whose head, spouse, or sole member is a person who is at least 50 years of age, but below the age of 62; two or more persons who are at least 50 years of age, but below the age of 62, living together; or one or more persons who are at least 50 years of age, but below the age of 62, living with one or more live-in

aides. (Note: The owner/management agent should consult HUD to ensure that it is following the proper elderly guidelines for that government program.)

- 2) Projects financed or regulated by RD must follow RD's definition of elderly.
 - a) USDA (RD) Definition of Elderly – In general, USDA's definition of an elderly family is one in which the head, spouse, or sole member is at least 62 years old or is a disabled person of any age. However, for the Section 504 grants and Section 538 programs, nonelderly disabled households are not included in the definition of elderly. (Note: The owner/management agent should consult RD to ensure that it is following the proper elderly guidelines for that government program.)
- 3) Projects that receive a tax abatement based on their status as "elderly" must retain a copy of the most current tax abatement ordinance and must abide by the definition of elderly in the ordinance, which could have additional restrictions.

Part 534 **Fair Housing Act - Definition of Elderly**

A project that includes a set-aside for the elderly must conform to the Federal Fair Housing Act. The Fair Housing Act prohibits discrimination in residential rental activity, and prohibits adults-only housing unless the housing falls within stated exceptions for housing for older persons. In general, the Fair Housing Act lists the following permissible forms of the housing for the elderly.

- Housing intended for and solely occupied by residents who are 62 or older;
- Housing intended and operated for persons 55 or older, where at least 80% of the total housing units are occupied by at least one resident who is 55 or older; or
- The project is financed, constructed, and operated under the RHS (formerly Farmers Home) Section 515 program for the elderly (i.e. where each resident is either 62 or older or is a person with a handicap or disability, regardless of age, as such terms are defined in the RHS program).

Projects funded under the MSHDA Direct Loan Program (discussed in **Chapter 11**) and LIHTC projects allocated credit under the elderly statutory set-aside must comply with the elderly definition as iterated in the MSHDA Act.

The Authority does not administer or enforce the Fair Housing Act; however, owners of projects that committed to a set-aside for the elderly must demonstrate they are operating in conformance with the Fair Housing Act. For more information, see **Part 566** (Housing Laws) and the Fair Housing Administration Web Site (www.hud.gov).

Note the following in regard to LIHTC projects for the elderly:

- The community space requirement for elderly projects is discussed in **Part 870** (Community Service Facilities).
- The age requirement applies to all households in the project, including those residing in units that are market rate/unrestricted.
- Elderly projects are exempt from the requirement that market rate units be evenly distributed among bedroom types and buildings, as discussed in **Part 802** (Mixed Income Projects).

Documenting Age

Age can be documented by any of the methods listed in Appendix 3 of the HUD 4350.3, including:

- Birth Certificate
- Baptismal Certificate
- Military Discharge papers
- Valid passport
- Census document showing age
- Naturalization certificate
- Social Security Administration Benefits printout

State-issued Driver's licenses and identification cards are also acceptable methods of verifying age. Driver's licenses are discussed in **Part 640**. Birth certificates are discussed in **Part 636**. Social security cards are discussed in **Part 638**. Citizenship documentation is discussed in **Part 642**.

Section 5D - Special Needs / Developmentally Disabled

Part 538 : Persons with Special Needs / Developmentally Disabled

As part of Michigan's Qualified Allocation Plan, MSHDA identifies special needs groups that require special targeting under the Tax Credit Program because of a lack of affordable housing. These special needs groups include, among others, large households, the elderly, persons with disabilities, and transitional housing for the homeless. In the tax credit application process, an owner may commit to serve a special-needs group by setting aside a percentage of the units for that group. The special needs set-aside, if any, and the percentage of units to be targeted is identified in the Reservation Application and in Exhibit B of the Regulatory Agreement (Restrictive Covenant). All special-needs set-asides are determined using the lesser of the unit fraction or the floor space fraction of the units in the set-aside. For all special-needs set-asides, an owner must maintain documentation to demonstrate affirmative marketing and other best efforts to fill the units with residents from the set-aside group.

Owners and managers of LIHTC projects must take care not to violate federal rules, including but not limited to the Fair Housing Act and Civil Rights laws. For related discussions, see [Part 546](#) (Transient Persons), [Part 632](#) (Guarantors and Cosigners), [Part 866](#) (General Public Use Requirements), and [Part 870](#) (Community Service Facilities).

For projects that committed to serving persons with special needs as part of the Allocation scoring process or as required in the Regulatory Agreement, a copy of the signed agreement with the Michigan Departments of Community Health or a signed legal contract with a local service provider must be included in the Development File (discussed in [Part 214](#)). Such projects include those projects that committed to servicing or were required to serve developmentally disabled persons under a qualified program of the Michigan Department of Mental Health and those projects specifically designed to serve persons with special needs who receive substantial support services as a result of a contract (or equivalent relationship) with a local service provider.

Part 540 : Permanent Supportive Housing

Beginning with the August 2008 Qualified Allocation Plan, 25% of the Michigan's total credit available for allocation is set-aside for Permanent Supportive Housing projects. Guidelines and compliance requirements for permanent supportive housing units and projects are contained in Addendum VI (Permanent Supportive Housing Inclusion Plan Requirements) of MSHDA's Combined Application for Rental Housing Programs, which is available on the MSHDA website (www.michigan.gov/mshda, select "Developers and Contractors", then select "MSHDA's Combined Application for Rental Housing Programs").

In addition, all projects with allocated tax credits (excluding elderly projects and projects using tax-exempt bond financing) are required to target ten percent (10%) of the total units for Supportive Housing tenants. For information about this requirement, see the "General Threshold Requirements" section of MSHDA's Combined Application for Rental Housing Programs, which is available on the website as discussed above.

Section 5E - Section 8 and Housing Choice Voucher Recipients

Part 542 : Discrimination against Section 8 and HCV Participants Is Prohibited

USC Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart D, Section 42(h)(6)(B)(iv)

IRC Section 42(h)(6)(B)(iv) prohibits refusing to lease to a Section 8 voucher (now termed Housing Choice Voucher) or certificate holder solely because that person is such a holder. A household is considered to be a “Section 8 participant” until such time that the amount of rental subsidy received by the household is reduced to zero (for any reason, such as an increase in income or withdrawal from the Section 8 program). Leasing policies that discriminate against or have the effect of excluding a large portion of Section 8 participants are prohibited.

A non-exhaustive list of unacceptable leasing practices includes:

- Requiring an excessive security deposit amount;
- Requiring that the head of household or at least one adult member be employed;
- Requiring an excessive number of references;
- Prohibiting current tenants from participating (enrolling) in the Section 8/HCV program;
- Refusing to execute the Section 8/HCV lease addendum or required lease form;
- Refusing to use the lease term end or start date required by the HCV Program (discussed further in **Chapter 11**);
- Refusing to use the certification and recertification effective dates required by the HCV Program or the PHA issuing the voucher or certificate (discussed further in **Chapter 11**); or
- Requiring that an HCV tenant meet a minimum income in order to be eligible for occupancy, as discussed below.

Minimum Income Policies for Section 8 Participants

One prohibited leasing practice involves imposing minimum income requirements for Section 8/HCV participants. It is permissible, however, to require that Section 8 holders show adequate income to pay the out-of-pocket portion of rent, such as three times (or other reasonable multiplier commonly used in the local rental housing industry) the amount of tenant-paid rent, not including the subsidy amount paid by Section 8.

Example #1: Happy Villas has a policy of requiring that all applicants have a minimum income amount that is three times the rent. Susan, a prospective resident of Happy Villas, is an HCV participant who has zero income. HCV rules require that she pay \$25 per month in rent. If Happy Villas’ minimum income policy is applied to Susan, the \$25 mandatory minimum rent requirement must be subtracted from the amount of rent Susan pays. Thus, the minimum income that can be required of Susan is \$0 (\$25 tenant-paid rent less the \$25 minimum required by HCV). It is not permissible for Happy Villas to require that Susan provide documentation that she has \$75 per month (\$900 annual) or more in annual income in order to reside Happy Villas.

Example #2: Happy Villas has a policy of requiring that all applicants have a minimum income amount that is three times the amount of the rent. Stewart, an HCV participant, ap-

plies for occupancy in a unit with a contract rent amount of \$500, of which Section 8 pays \$400 per month and the resident pays \$100. Since HUD requires that Section 8 participants pay at least \$25 per month, \$25 must be deducted from the tenant paid portion before multiplying by three. The minimum income that can be required of the Stewart is \$100 less \$25 times three (\$75 x 3 equals \$225 per month, which is \$2,700 annual). In other words, it is not permissible for Happy Villas to require that Stewart have more than \$2,700 in annual income as a condition of eligibility to reside in the LIHTC unit.

Example #3: Thomas, an HCV participant, applies for occupancy in a unit with a contract rent amount of \$500, of which Section 8 pays \$400 per month (\$4,800 annual) and the resident pays \$100. The development has a minimum income policy of \$18,000. Even if the development states that it will count the \$4,800 subsidy payment toward the minimum income requirement (leaving \$13,200), it is not permissible to require that a Thomas or any other Section 8/HCV household show sufficient income to meet the \$18,000 minimum in order to be eligible for occupancy.

Minimum incomes, in general, are discussed in [Part 420](#).

Other Types of Screening Criteria

- An HCV household can be denied residency if it fails to meet any other consistently applied screening criteria (i.e. criminal background, eviction history, credit rating), aside from the minimum income requirement.

For more information regarding Section 8 participants and projects, see [Chapter 11](#) (Additional Information about Qualifying Section 8 and Housing Choice Voucher Participants for LIHTC Units).

Section 5F - Citizenship / Legal Residency Requirements

Part 544 : Citizenship / Legal Residency Requirements

Low income housing tax credit units are not to be occupied by households comprised entirely of illegal aliens.

The IRS code does not include guidelines on citizenship / legal residency or establish specific citizenship / legal residency requirements for LIHTC or tax-exempt bond funded developments. However the IRS has included the following guidance in the Chapter 13 of the 8823 Guide:

“The FHA (Fair Housing Act - Title VIII of the Civil Rights Act of 1968) does not prohibit discrimination based solely on a person’s citizenship status. Therefore, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate FHA. Owners implementing citizenship or immigration screening measures must make sure they are carried out in a uniform, nondiscriminatory fashion. Questions concerning the Fair Housing Act should be referred to the state’s HUD regional office”.

For related topics, see [Part 566](#) (Housing Laws), [Part 636](#) (Birth Certificates), [Part 638](#) (Social Security Cards and Numbers / Alien Registration Numbers), and [Part 642](#) (Citizenship Documentation).

Section 5G - Transient Persons

Part 546 : Transient Persons

Under IRS program guidelines, a unit cannot be tax credit eligible if it is used on a transient basis. “Transient” is not defined in Section 42 or other IRS regulations, but the legislative history of Section 42 notes that a unit is deemed to be transient if the initial lease term is less than six months, with the exception of single-room-occupancy (SRO) developments assisted under the Stewart B. McKinney Act.

When leasing to “transient” individuals and other persons, owners and managers of LIHTC projects should note the following:

- It is not permissible to allow an agency (such as a charitable organization) to rent LIHTC units such that the agency itself places its clients in the unit, whether due to confidentiality, mental illness, etc. The actual tenant who will reside in the unit must enter into the lease agreement.
- It is permissible to have a co-signer or guarantor endorse the lease for persons who have insufficient incomes, no established credit, lack of references, or for other reasons, as discussed in [Part 632](#) (Cosigners and Guarantors).
- It is permissible to have a court-recognized guardian or holder of a power of attorney sign the certification paperwork if the resident is unable to sign.

Leases with an initial term of six months that then convert to a month-to-month tenancy after the completion of the six months can still be considered “non-transient”.

See [Part 622](#) (Overview of Lease Agreements) and [Part 866](#) (Units Must be for Non-Transient Use) for related discussions.

Part 548 : Primary Residence

As a general rule, the LIHTC unit in which the adult member(s) of the household reside must be that individual’s primary residence. Unless specifically allowed per the HUD 4350.3 (discussed later under “Absent Members of the Household”), it is not permissible to lease LIHTC units to individuals or to count as household members persons who reside elsewhere during a portion of the year or who maintain dual places of residences.

Examples:

1. *Peggy is a one-person household. She resides in Michigan during the months of April through November, but regularly lives out of state in a condominium she leases there during the winter months. It is not permissible to count Peggy’s unit as occupied by an eligible LIHTC household during the time period she resides out of state. However, since only a minimum six-month lease is required for LIHTC units, it is*

permissible to lease a unit to Peggy with an April move-in date and a November move-out date (provided she meets all of the LIHTC eligibility criteria).

- 2. Jack works (or attends college) in Nectarine City, which is three hours away from Apricot City where he resides in a house with his spouse and children. Jack desires to rent a LIHTC unit (as a one-person household) in Nectarine City to stay in during his work (or school) days, but intends to continue to reside at his Apricot City home during non-work (non-school) days. It is not permissible to lease a LIHTC unit to Jack since the LIHTC unit in Nectarine City is not Jack's primary and permanent residence.*
- 3. Same as #2 above, but Jack desires to move-in with John, who lives in the Nectarine City LIHTC unit as his (John's) primary residence. Jack cannot be counted as a member of John's household for purposes of determining eligibility if Jack maintains a dual residence. However, any and all monetary contributions to the household that Jack makes (rent payments, payment of utility bills, cash gifts to John, etc.) must be counted as part of the income of John's household.*
- 4. Same as #3 above, but Jack resides in John's unit more than 50% of the time and continues to maintain a dual residence. Since Jack lives in the LIHTC unit more than 50% of the time, all of his income (not just the portion that he contributes to John's household) must be counted as part of household income for purposes of determining the LIHTC eligibility of John's household. John remains a one-person household because Jack cannot be counted as a household member due to his dual residence. Jack's spouse's income does not have to be counted as part of John's household income because Jack is not being counted as a member of John's household.*

Note: It is permissible for an LIHTC tenant to own real estate (including a house or rental property) as an asset, provided the tenant does not reside there.

Absent Members of the Household

The HUD 4350.3 discusses several situations in which it is permissible for an absent household member to be counted as a household member for eligibility purposes. Such individuals include (but are not limited to) dependent children who are away at college, temporarily absent household members, military spouses stationed elsewhere, persons permanently confined to a nursing home or medical facility who are being counted as household members, and children who are part of joint custody arrangement who reside in the unit 50% or more of the time.

All persons who live in the LIHTC unit as their primary residence must be counted as a household member (with the exception of live-in care attendants). The incomes of these persons must be counted for purposes of determining the eligibility of the household to reside in the LIHTC unit.

For a related topic, see [Part 556](#) (Married Persons Not Living with his/her Spouse).

Section 5H - Other Demographic and Household Composition Issues

This Section contains a partial listing of rules governing the eligibility of certain tenants. For more information regarding tenant eligibility, consult Section 42 of the Code or a LIHTC textbook or guide. The **HUD 4350.3** handbook also provides information about household composition.

Part 550 : Tenants Must Be Members of the General Public

LIHTC units must be available for use by the general public. For information about the general public use requirement, see **Part 868** (General Public Use Requirements). For information about elderly set-asides, see **Part 532**. For information about special needs set-asides, see **Part 538**.

Part 552 : Managers / Employees as Tenants

It is permissible for a manager, assistant manager, or other employee of the owner to reside in a unit within a project. An employee can reside in a unit that is designated as common area or in a rental unit.

A household is eligible to reside in a unit that is designated as a common area unit if the head of household (or co-head) is a full-time employee at the particular development. Persons who are employed less than full-time at the development are not eligible to reside in a common area unit. Persons (such as regional managers) who are employed at multiple projects are not eligible to reside in a common area unit.

The manager or employee may be included as an eligible LIHTC tenant if he/she is income-qualified. All tenants, including employees of the development, occupying LIHTC rental units that are not “common area” must be income-eligible, rent-restricted, not be an ineligible full-time student household, and be under a lease with an initial term of at least six months. If the manager or employee receives free rent or a rental discount, the imputed value of the rent or discount must be counted as income.

For additional information regarding common area residential units, see **Part 856** (Common Area Residential Units). For a related topic, see **Part 370** (Income-qualifying a Development’s Employees).

Part 554 : Live-In Care Attendants

A live-in care attendant (also sometimes termed a “live-in aide”) for an income-eligible tenant should not be counted as a household member for purposes of determining the applicable income limits. A live-in attendant is a person who lives with an elderly, disabled or handicapped individual, is essential to that individual’s care and well-being, is not obligated for the individual’s support and would not be living in the unit except to provide the support services. The need for a live-in care attendant must be documented in the Tenant/Unit File (see **Part 646**). In order for a tenant to have a “live-in care attendant”, two criteria must be met:

- 1) The tenant must have documentation (i.e. letter from a doctor) indicating the need for a live-in attendant. The letter from the doctor need not elaborate on the reason for the need of a live-in attendant or the medical condition of the tenant; and
- 2) The person acting as the live-in attendant must be in the unit solely for the purpose of providing live-in care services to the tenant.

If the qualified tenant vacates the unit, the attendant must vacate as well. If an attendant would like to reside in a restricted unit, the household must be certified according to initial eligibility requirements outlined in **Part 300** (Summary of Initial Tenant Certification Procedures).

Part 556 **Married Persons Not Living With Spouse**

Some applicants or current tenants are married but do not reside with a spouse. In some situations, the prospective resident's income alone is within LIHTC guidelines, but the inclusion of the absent spouse's earnings makes the household ineligible to reside in a restricted unit. The determination of annual income must be made in a manner consistent with Section 8 guidelines in HUD Handbook 4350.3. The HUD Handbook does not specifically address marital separation; however, it does state the following:

1. Spouses are counted as family members [Figure 3-6, Page 3-56];
2. The head, spouse, and co-head must always be listed on the HUD 50059 Data Requirements, even if they are temporarily absent [Part 3-10a(3), Page 3-15]; and
3. Annual income includes all amounts, monetary or not, which go to or are received on behalf of the family head, spouse or co-head, or any other family member (*even if the family member is temporarily absent*).

The HUD 4350.3 discusses the following situations, which are somewhat analogous and which involve a marital separation:

- A military spouse is counted as a household member even though the absent spouse is not physically residing in the unit. It further states that if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head.
- The income of a household member who is confined to a nursing home can be excluded only if that person is permanently absent.

In the absence of documentation that a spouse is permanently absent, the absent spouse should be considered a "Temporarily Absent Family Member" and that spouse's income and assets must be included as part of household income. The income of a permanently absent household member is not included as part of household income (unless the resident members elect to include the absent member's income).

Following is a non-exhaustive list of items that can be used to document that a separation is permanent:

- Divorce filing or legal separation documents

- Documentation from an attorney or legal aid office indicating that the prospective resident/tenant has filed, is pursuing or has inquired about a divorce or legal separation
- Copy of legal restraining order or documentation that the prospective resident/tenant has experienced domestic violence
- A statement from a person who provided counseling to the tenant in an official capacity as part of his or her occupation (i.e., attorney, therapist, marriage counselor, clergy) indicating that the separation is permanent. The statement must be sworn or prepared on the counselor's business letterhead.
- A sworn statement from the tenant indicating the following:
 - The spouses operate as separate households and the absent spouse will not reside in the unit; and
 - The separation is **permanent**.
- Legal or official documents indicating two separate residences for the spouses. Possible documents include tax returns or an active, signed lease agreement (for a development other than the LIHTC project for which occupancy or eligibility is being sought) with only one of the spouses listed as an occupant.
- Other possible documents include welfare, food stamps or Housing Choice Voucher rental assistance statements showing that the benefits are currently being received by one of the spouses and those benefits are based on a household composition that does not include the other spouse.

For a related topic, see **Part 548** (Primary Residence).

Part 558 **Pregnant Women / Unborn Children and Children
in the Process of Being Adopted**

In accordance with HUD Handbook 4350.3 Rev. 1, unborn children and children who are in the process of being adopted (who do not live in the unit) can be counted as household members for the purpose of determining the appropriate income limit. Their unearned income is not counted in determining annual income. Documentation of pregnancy (only a sworn self-statement from the tenant can be requested as documentation) must be provided and included in the tenant file if the pregnancy is being used to establish eligibility to reside in a restricted unit. For pending adoptions, documentation of the pending official adoption must be provided by the tenant and be included in the tenant file.

In some situations, a household may be income-eligible to reside in the restricted unit even without the inclusion of the unborn child as a household member. In such situations, the pregnant resident/applicant can elect to not count her unborn child as a household member for income-eligibility purposes. If the pregnant resident/applicant elects not count the unborn child as a household member, no documentation (self-affidavit) of pregnancy can be required of the resident/applicant. Upon completion of a subsequent recertification, all persons, including children who were unborn at the time of the previous certification, must be included as household members.

LIHTC Student Status - Unborn children can be used to establish that a particular household is not comprised entirely of full-time students because at least one member, the unborn child, is a non-student. If the unborn child is being used to establish student eligibility, documentation of pregnancy (a self-affidavit) must be included in the tenant file. If the pregnancy ends and an infant does not become a member of the household, the household immediately is no longer eligible if

the remaining members are all full-time students. LIHTC student status is discussed in **Parts 508 – 530**.

HUD Student Rule – It does not appear that an unborn child qualifies as a “dependent child” for purposes of excluding student financial assistance in excess of tuition from the household income calculation unless the household can establish that the unborn child could be claimed as a dependent for the current tax year. For example, if the certification is being conducted for an effective date of September 1, 2007 and the child is anticipated to be born by December 31, 2007, the parent will claim the new born as a dependent for 2007. The tenant must include the anticipated date of birth on the sworn self-affidavit as documentation. Owner/managers should consult a tax professional if there are questions about the eligibility of an individual to be counted as a dependent of the household for purposes of the HUD Student Rule. Part II of the HUD Student Rule (Student Financial Assistance in Excess of Tuition) is discussed in **Part 378**.

For a related topic, see **Part 380** (Child Support Income).

Part 560 **Non-Custodial Children / Guests as Occupants**

In some situations, a child may be cared for by a person who does not have legal custody or guardianship and may 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 may be motivated to count the child in order to use a higher income limit based on a larger family size or to meet an exception to the full-time student prohibition. In some cases, the household would not be eligible to reside in a 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 TIC) 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 if an adult is awaiting a decision from a court regarding custody or guardianship as 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 documented by the tax return) and anticipates claiming the child as a dependent for the present calendar year; or
- (3) Be in the process of adopting the child (as documented by court papers).

Ex: The Smith family, which consists of two adults, are prospective residents in a LIHTC development. The Smiths have a seven month old grandchild who they have been caring for since birth. The child's parents (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 grandparents for this calendar year and the child continues to reside in the unit, the child can be counted as a household member the next year.

Documentation of legal custody, guardianship, pending custody/guardianship/adoption actions, or dependency status must be obtained for any child whose mother or father does not reside in the LIHTC unit in order 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 a household member).

(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 describes "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.

Non-custodial children are permitted to reside in the LIHTC unit.

Part 562 **Market-Rate Tenants**

Market-rate tenants are those households that are unrestricted as to both income and rent. Market-rate tenants are sometimes referred to as unrestricted or unregulated. Market-rate tenants are not required to be certified or recertified, however, certain requirements, as discussed below, impact or apply to all of the units in a building or project, including those occupied by market-rate tenants.

- Tenant Data Requirements for Market-Rate Tenants - Tenant data for market-rate tenants must be entered into the MSHDA's Online Tenant Data Reporting System (see **Part 700**). This data includes the unit number, number of bedrooms in the unit, move-in date, move-out date, name of the head of household, number of household members, and rent amount.
- Elderly projects - All units in Authority-financed elderly developments and all developments allocated tax credits under the elderly set-aside must be occupied by households that meet the appropriate elderly definition (see **Part 532**). The elderly definition applies to all households, including those residing in units that are unrestricted as to income and rent.
- General Public Use and Non-Transient Use - All units in the project must be available for use by the general public (as discussed in **Part 868**) and must be used on a non-transient basis, except for permissible transitional housing for the homeless (as discussed in **Part 866**);
- Fair Housing – All units, including those occupied market rate/unrestricted tenants, are subject to the Fair Housing Act (discussed further in **Part 566**). As Part of the Annual Certification of Continuing Compliance (discussed in **Part 706**), the owner/management agent must notify MSHDA if the project has had any findings of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619. A finding of discrimination includes an adverse final decision by the secretary of HUD, 24 CFR 180.680 or by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
- Physical Condition - Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections has not issued a report of a violation for any building or low income unit in the project.
- Inspections – Market Rate units may be subject to physical inspections.

For related discussions, see [Part 804](#) (Next Available Unit Rule), [Part 834](#) (Vacant Unit Rule), and [Part 802](#) (Mixed-Income Projects).

Part 564 : **Other Demographic and Composition Topics**

Other topics related to demographics and household composition topics are located in this Compliance Manual as follows:

- Common Area Residential Unit – See [Part 856](#).
- Fair Housing Act – See [Part 566](#).
- General Public Use – See [Part 868](#).
- HUD's Requirement for Tax Credit Data Collection – See [Part 702](#).
- Ineligible Facilities – See [Part 874](#).
- Occupancy Guidelines – See [Part 506](#).
- Owner-Occupied Units and Cooperatives – See [Part 880](#).
- Community Service Facilities – See [Part 870](#).
- Military Basic Housing Allowance - See [Part 380](#).
- MSHDA's Online Tenant Data Entry System – See [Part 700](#).
- Police Substation – See [Part 872](#).
- RHS Residents – See [Chapter 11](#).
- Security Officer's Unit – See [Part 864](#).
- Tenants Occupying Units at 125% AMI and 150% AMI – See [Chapter 11](#).
- Household members who are temporarily or permanently absent – See [Part 546](#).

Section 5I – Federal, State, and Local Housing Laws

In addition to the rules outlined by IRC Section 42, IRS Notices, Revenue Rulings, and Revenue Procedures, and the Michigan Qualified Allocation Plan, there are other federal, state, and local housing laws and codes that the LIHTC Program must comply with. This Section discusses some of those regulations.

Part 566 : Fair Housing, Anti-Discrimination, and Reasonable Accommodations Laws

Owners or agents of LIHTC projects shall comply with federal laws prohibiting discrimination based on race, color, religion, sex, national origin, handicap and familial status. Project owners and agents must also comply with Michigan Laws, which also prohibit discrimination based on age, marital status, height, weight, and disability. Some local ordinances may prohibit discrimination based on source of income and sexual orientation. Additionally, owners cannot refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate (discussed further in [Part 540](#)). All owners, managers, and staff members must be familiar with both state and federal civil rights and fair housing laws.

As part of the IRS annual owner certification requirements, owners must certify to MSHDA any finding of discrimination under the Fair Housing Act. MSHDA will report any discrimination findings to the IRS as required by IRS Form 8823. For additional information regarding the annual owner certification, see [Part 704](#).

Information about the Fair Housing Act is available on the Internet at www.HUD.gov (select “Resources – Library”, Bookshelf 9: “Fair Housing Act”). The Fair Housing Hotline number is 1-800-669-9777. The toll-free TDD number for the hearing impaired is 1-800-927-9275. Information about the Elliot Larsen Civil Rights Act can be obtained on the Michigan Department of Civil Rights Website at www.michigan.gov/mdcr.

The regulations of fair housing, civil rights, equal opportunity and anti-discrimination are as follows:

- **The Fair Housing Act (42 U.S.C. 3601-3620)** prohibits discrimination in the sale or rental of housing, the financing of housing, or the provision of brokerage services on the basis of race, color, religion, sex, national origin, handicap, or familial status. Furthermore, section 104(b)(2) of the Act requires that each grantee certify to the secretary of HUD that it is affirmatively furthering fair housing. The certification specifically requires grantees to conduct a fair housing analysis, develop a fair housing plan, take appropriate actions to overcome the effects of any impediments identified, and maintain records on the analysis, plan, and actions in this regard.
- **Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.2000d et. seq.)** states that no person may be excluded from participation in, denied the benefits of or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin.
- **Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259)** prohibits discrimination against individuals on the basis of race, color, religion,

sex or national origin in the sale, rental, leasing or other disposition of residential property or in the use or occupancy of housing assisted with federal funds.

- **Age Discrimination Act of 1975, as amended (42 U.S.C. 6101)** prohibits age discrimination in programs receiving federal financial assistance.
- **Americans with Disabilities Act (42 U.S.C.12131; 47 U.S.C., 155, 201, 218 and 225)** provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be carried out when readily achievable, easily accomplishable, and able to be carried out without much difficulty or expense.

Information about the Americans with Disabilities Act can be obtained on the U.S. Department of Justice website at www.usdoj.gov/crt/ada. The toll-free information line is 1-800-514-0301 (voice) or 1-800-514-0383 (TDD). Information about Michigan's Disabilities Civil Rights can be obtained on the Michigan Department of Civil Rights (MDCR) website at www.michigan.gov/mdcr. The MDCR telephone number is 1-800-482-3604 (voice) or 1-313/961-1552 (TDD).

Accessibility statutes include the following:

- **Rehabilitation Act (1973) Section 504**
 - Prohibits discrimination in federally assisted program or activity on the basis of disability.
- **Fair Housing Amendments Act (1988; CRA68)**
 - Prohibits housing discrimination based on disability
 - Defines accessibility standards for new projects
- **Americans with Disabilities Act (1998)**
 - Title II mandates equal opportunity to benefit from State/local programs
- **FHAA Standards: 24 CFR 100.205**
 - Applies to new construction rental developments that have four or more units.
 - Impacts public & common use areas, passageways, ground floor & elevator accessible units.
 - Requirements include accessible routes, accessible switches, grab bar reinforcements, and maneuverable kitchens/baths.
 - The development must provide reasonable accommodations and allow reasonable modifications.

For additional information about the Fair Housing Act, see **Part 536** (Fair Housing Act Definition of Elderly).

If specified in the Regulatory Agreement for the project, an affirmative marketing policy is required. A current Affirmative Fair Housing Marketing Plan must be established and adhered to as well as readily available for review. HOME requires affirmative marketing for all properties of five or more units (24 CFR 92.351). Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the property without regard to race, color, national origin, sex, religion, familial status or disability. Owners should display the Fair Housing logo on site as well as in any printed literature or signs.

The affirmative marketing requirements and procedures adopted must include:

1. Methods for informing the public, owners, and potential tenants about federal fair housing laws. (e.g., the use of the Equal Housing Opportunity logo type or slogan in press releases and solicitations for owners; and written communication to fair housing and other groups)
2. Requirements and practices each owner/agent must adhere to in order to carry out the affirmative marketing procedures and requirements (e.g., display the fair housing poster and Equal Housing Opportunity Logo and slogans).
3. Procedures to be used by owner/agents to inform and solicit applicants from persons in the housing market area whom are not likely to apply for housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling centers).
4. Records that will be kept describing actions taken by the owner/agent to affirmatively market units and records to assess the results of these actions.
5. A description of how the owner/agent will annually assess the success of affirmative marketing actions and what corrective actions will be taken where requirements are not met.

The Michigan Landlord-Tenant Act (Act 348 of 1972) regulates relationships between landlords and tenants relative to rental agreements for rental units; regulates the payment, repayment, use and investment of security deposits; provides for commencement and termination inventories of rental units; provides for termination arrangements relative to rental units; provides for legal remedies; and provides penalties. Information about the Landlord-Tenant Act can be obtained at www.legislature.gov.

Note the following in regard to Michigan Landlord Tenant Law and the Low Income Housing Tax Credit (LIHTC) Program:

1. The LIHTC program requires good cause (discussed in [Part 626](#)) for all owner/management agent-initiated lease terminations, non-renewals (refusal to renew a lease agreement), and evictions.
2. The LIHTC program does not permit the subletting of LIHTC units.

LIHTC project must also comply with Michigan's [Truth in Renting Act](#). Note the following:

- Michigan law may not permit an owner/management agent to increase a tenant's rent (i.e. the tenant-paid portion of rent) when new, higher rent limits are published, except upon lease renewal. This topic is discussed further in [Part 428](#) (Changes in Rent Limits and Rent Amounts).
- Michigan law may not permit an owner/management agent to increase a tenant's rent (i.e. the tenant-paid portion of rent) when lower utility allowance figures are published or obtained, except upon lease renewal. This topic is discussed further in [Part 464](#) (Adjusting Tenant Rents When Utility Allowances Change).

Owners/management agents should consult with its legal counsel to ensure compliance with Michigan Landlord Tenant Law.

Part 572	Local Housing Ordinances, Laws and Building Codes
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The Uniform Physical Condition Standards (UPCS) do not supersede or pre-empt local building codes.

For a related discussion, see [Part 762](#) (Local Health, Safety, and Building Code Violations).