

Chapter 17
Category 11I
Low-Income Units Occupied by
Nonqualified Full-Time Students

Note

Until further guidance is provided through administrative ruling or regulation, the IRS will evaluate an owner's compliance with the rules for low-income unit occupied entirely by full-time students as explained here.

Definition

This category is used to report LIHC units occupied by nonqualified full-time student households. A unit is *not* considered to be occupied by low-income individuals if all the occupants of such unit are full-time students, no one of whom is entitled to file a joint return.¹

**Defining
"Student"**

IRC §152(f)(2) defines, in part, a "student" as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170(b)(1)(A)(ii) or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in IR §170(b)(1)(A)(ii) or of a state or political subdivision of a state. Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.

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

**Units
Comprised
Entirely of
Full-Time
Students**

Units comprised of full-time students (no one of whom is entitled to file a joint return) do not qualify as low-income units. However, there are exceptions as outlined in IRC §42(i)(3)(D). This section provides that a unit shall not fail to be treated as a low-income unit merely because it is occupied

1. by an individual who is:
 - I. a student receiving assistance under Title IV of the Social Security Act,
 - II. a student 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,² or

¹ H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89

² IRC §42(i)(3)(D)(i), as added by the Housing Assistance Tax Act of 2008. The amendment applies to determinations made after July 30, 2008.

- III. a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws.
- 2. entirely by full-time students if such students are
 - I. single parents and their children and such parents are not dependents (as defined in IRC §152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children,³ or
 - II. married and file a joint return.

In the case of a single parent with children, the legislative history explains that *none* of the tenants (parent or children) can be a dependent of a third party. See S. Rpt. No. 103-37, 103d Cong., 1st Sess. 74 (1993).

Verification and Documenting Student Status

Verifying Student Status at Move In

Owners should verify student status at the time households initially move into low-income units. As with the initial income certification, the verification can be completed within 120 days before, and is effective as of, the day the household actually moves into the unit.

Annual Student Status Verification

The owner should complete student status verifications for each low-income household within 120 days before the anniversary of the effective date of the original student verification. For mixed-used projects, the student status verification can be combined with the tenant income recertification. See Chapter 5.

Documentation

Acceptable methods of verification include third party verifications, oral statements, or review of documents submitted by the student. See Exhibit 17-1 for an example.

In Compliance

A unit is in compliance when (1) it is not occupied entirely by full-time students at qualifying educational organizations for five or more months during the calendar year in which the taxable year of the taxpayer begins, or (2) it is occupied entirely by full-time students that meet one of the exceptions identified in IRC §42 (i)(3)(D). Also, a married couple that is *entitled* to file a joint tax return, but has not filed one, still satisfies the exception under IRC §42(i)(3)(D)(ii)(II).

³ IRC §42(i)(3)(D)(ii), as amended by the Mortgage Forgiveness Debt Relief Act of 2007. The amendment applies to credit allocations before, on, or after the date of enactment and buildings placed in service before, on, or after the date of enactment if IRC §42(h)(4) applies; i.e., buildings financed by tax-exempt bonds subject to volume cap.

Example 1: Newly Married Students

A recently married full-time student couple is looking for housing. The couple is income qualified, but they have not yet filed their first tax return. Even if the couple does not file a joint tax return, they are still entitled to file a joint return and thus satisfy the exception under IRC §42(i)(3)(D)(ii)(II).

Example 2: Full Time Students

Two students attending college full time and working part time share a low-income housing unit with a third person who works full time and is not enrolled at the college. The tenants' combined incomes qualify them as a household for low-income housing.

Example 3: Qualified Educational Organization

An individual is participating in an accreditation program at a research facility. There is no tuition or degree, but the individual receives a small stipend for services provided and an accreditation certificate upon completion of the program. The program is similar to a doctor's residency. The research facility is not an educational organization and the individual would qualify for low-income housing.

Out of Compliance

A unit is out of compliance when it is occupied entirely by full-time students at qualifying educational organizations for five or more months during a calendar year in which the taxable year of the taxpayer begins and who do not meet one of the exceptions identified in IRC §42 (i)(3)(D). The out of compliance date is the first day of the fifth month during the calendar year that the full-time student attended a qualifying educational organization.

Example 1: Continuing Student Status

An otherwise qualifying low-income individual occupies a unit in June. She attended a qualifying educational organization for two months during the calendar year prior to the date she occupied the unit. From September through December of the calendar year she again attends a qualifying educational organization.

The unit is out of compliance on November 1, the first day of the fifth month she attended a qualifying educational organization during the calendar year.

A unit is also considered out of compliance if the owner fails to verify the household's student status at the time of move in, or an annual student status verification was performed late *and after notification of a state agency review*.

Back in Compliance

The unit is back in compliance when is no longer occupied entirely by full-time students or the tenant qualifies under one of the exceptions under IRC §42(i)(3)(D).

References

1. IRC §152(f)(2)
2. IRC §170(b)(1)(A)(ii)
3. IRC §42(i)(3)(D)