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Low Income Housing Tax Credit (LIHTC) Student Occupancy Legislative Victory

P.L. 110-142, the Mortgage Forgiveness Debt Relief Act of 2007, amends Section 42 of the Tax Reform Act of 1986 to correct the unintended consequences of the LIHTC student occupancy rule by addressing the “dependent” status of children.

Effective Date of the New Law

President Bush signed the Mortgage Forgiveness Debt Relief Act into law on Dec. 20, 2007. The student rule correction is effective for credits allocated “before, on, or after” Dec. 20. It applies to the LIHTC portfolio.

Background

Section 42 of the Tax Reform Act of 1986 was originally designed to prevent full-time college students from reducing the housing stock available to individuals and families that truly needed the low-income housing tax credit units. It prohibited full-time students from qualifying for low-income housing, unless they were:

- Receiving Temporary Assistance to Needy Families (TANF);
- Enrolled in a federal, state or local job training program;
- Single parents and their children and such parents ***and children are not dependents (as defined in section 152) of another individual;*** or
- Married full time students who file a joint return.

Although well intentioned, this strict policy had unintended consequences. Under this policy, children in grades K-12 count toward the determination of whether family is a full-time student household. A single parent with school-aged children who has returned to school full-time and whose child (in grades K-12) was claimed as a dependent on the

other parent's tax return would not qualify for the single parent exemption. The household became ineligible to live in LIHTC units because the parent was pursuing an education and obeying the law by sending children to school!

NAHMA felt strongly that this policy needed a correction. First, it contradicted the No Child Left Behind Act's commitment to ensure children receive a quality education. Low-income families should not ever have to choose between obeying the law by educating their children or losing their housing. Furthermore, education—in the form of a GED or advanced degree—enables low-income families to expand economic opportunities—through promotions and career changes—which will allow them to own a home or rent a market-rate apartment. In January 2006, NAHMA met with Treasury and International Revenue Service officials to discuss key tax-related policy priorities, including the student rule. At the time, Administration officials informed us they were aware of the problems and sympathetic to our request, but they did not believe they had the regulatory authority to change the student rule. A statutory change would be necessary.

With a clear direction, NAHMA engaged industry partners in our cause. On June 2, 2006, NAHMA led an industry coalition in formally requesting statutory changes to the LIHTC student rule which recognized current economic realities and remained consistent with the original legislative intent. The resulting legislation (S. 3941) proposed three specific statutory changes, which:

- Specified that minor children in grades K-12 should not count toward the determination of who is a full-time student household;
- Eliminated the requirement that a single parent and their children must not have been claimed as dependents of another individual to qualify for the single parent with children exemption; and
- Added a new exemption for working adults who are full-time students pursuing a high school diploma or GED.

Unfortunately, S. 3941 was not signed into law before the 109th Congress adjourned in late 2006. NAHMA would have to find a new sponsor for this legislation when the 110th Congress convened in January 2007.

Our hopes were renewed in the 110th Congress when Senator Charles Grassley, Ranking Member of the tax-writing Senate Finance Committee, introduced S.1241. S. 1241 is a stand-alone bill which fixes the “dependent” status of the child issue, but does not permit the LIHTC exemption of adults pursuing their GED or higher education nor does it removed children in grades K-12 from consideration as “full-time students” for LIHTC purposes. NAHMA also worked to ensure that the student occupancy issue was addressed in a House Ways and Means Subcommittee Hearing on “Tax Incentives for Affordable Housing” on May 24, 2007. We reached out to educate Subcommittee members about this problem in advance of the hearing. Additionally, we submitted a statement for the record which endorsed S. 1241, but asked for the additional exemptions for K-12 and adult GED students. Please [click here](#) for a copy of the statement.

S. 1241 did not pass the Senate Committee on Finance, however, the language was added to the Senate version of the Mortgage Forgiveness Debt Relief Act of 2007, S. 1394.

Summary of the Issues

The Mortgage Forgiveness Debt Relief Act of 2007, H. R. 3648, originally agreed to and passed by the House on October 4, 2007 did not include language to modify the student rule within the Internal Revenue Code (IRC). The amendment was first included in the Senate version of the bill, S. 1394, and then sent back to the House for approval of H. R. 3648. It was on December 18, 2007 that the House accepted the Senate amendments, including the clarification of the “dependent” status of the child, and clearing the measure for Presidential approval. Section 6 of the bill expands the single parent exemption. It changes the tax code to read:

“Single parents and their children and such parents are not dependents (as defined in section 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”.

The Mortgage Forgiveness Debt Relief Act of 2007 was signed into law on December 20, 2007 as P.L. 110-142.

Positive Aspects of the Law

Many of the problems associated with single parent families being disqualified from LIHTC units under the student rule originated from the fact their children were claimed as dependents by the other parent. The modification to the student rule has adequately addressed most of the problems that disqualified otherwise eligible single parent families with children.

Issues of Concern to NAHMA

There are two issues of outstanding concern: the new language does not exempt adults pursuing their GED full-time and it does not reverse the IRS position that children in grades K-12 count as “full-time students.” NAHMA does not believe this will negatively impact most single parent families seeking an exemption. However, we would prefer that K-12 education be removed from consideration altogether, both for minor children and for adult GED students.

NAHMA’s Position

NAHMA has achieved a strategic priority for 2008 of advancing “a legislative fix for the LIHTC definition of full-time student occupancy eligibility rules” with the reform of LIHTC Student Occupancy Policy. We believe the occupancy prohibitions for full-time student households had become an obstacle for low-income families trying to better themselves and are pleased that P.L. 110-142 is now effective.

While we are disappointed to see that an exception was not made for adults returning to school full time to pursue their GED or a change in standards for what constitutes a full-time student household, the current legislation will alleviate almost all of the barriers to LIHTC housing that single parent households, where all family members are students,

have encountered. Considering the current issues on the Hill, NAHMA is pleased that Congress was able to change the language of the “dependent” status of the child.

It is unlikely the current Congress would make further corrections, in part because of the tight legislative schedule for the remainder of this year. NAHMA will consult with its Tax Credit Committee leadership about the decision whether to pursue a correction for adult GED students and exempt minor children in grades K-12 from consideration as “full-time” students at a later date or in the next Congress, which will convene in January 2009.