

WEBVTT

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Thanks for joining.

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We'll get started in another minute.

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[Recording in progress]

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hi, everyone.

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We'll get started in another minute.

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Thanksfor joining.

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Welcome, everybody.

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We'll wait one more second because we have a number of people joining.

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Thanks so much.

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I'm going to go ahead and get started.

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My name is Deborah.

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I'm the deputy director of the National Housing Law Project.

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I'm joined today by two colleagues, Lila and Bridget.

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We are here to talk about the new H.U.D. regulations related to income and assets.

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Welcome all.

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Before we jump in, I want to remind everyone that H.U.D. regulations related to income and assets are all covered in great deal in HLP's green book which hopefully, you have on your digital desk books.

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We are updating the green book.

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We are updating it to reflect all of the changes to H.U.D. regulations, we'll discuss today.

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Please keep an eye out for e-mails from NHLP for updates to the digital green book.

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We'll let you know as we roll those out.

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Today's agenda, I'm going to first provide a brief overview of the HOTMA statute.

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Then we'll cover new rules around income adjustments and deductions and cover new and clarified income exclusions to H.U.D. rules.

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We'll talk about assets.

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If we have time, we'll review briefly a number of additional regulations.

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We'll be sure, though, to leave about ten minutes at the end for questions.

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We have the questions and answer box up for -- ready to go with questions.

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I see people are putting them in, which is great.

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Put the questions in the chat box.

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Q&A box.

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I want to note that this webinar is not a comprehensive review of all of the new regulations and notice just published by H.U.D.

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We basically provide an overview of sections that have changed and provide a few examples of revised regulations.

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What we have done is, we have chosen what we cover here based on what we think is relevant to all of you, legal services, legal services attorneys, and based on the questions we get from the housing justice network and things on the listserv, what we have done is published

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accompanying materials to go along with the webinar that cover a broader range of the revised regulations, so just know that today is really just a brief overview of the rule and we provide specific examples of the changes to the regulations.

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As I said, first -- we are going to save questions until the end.

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Please, keep putting them in the Q&A box.

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We'll have time for questions, and we hope to use the questions entered here as part of a good basis for FAQ that we manage or put out to the network based on what comes in during the webinar.

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First, HOTMA, housing opportunity through modernization act of 2019.

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It was signed into law by President Obama.

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It revises regulations for H.U.D. housing programs in a number of areas, including inspections, project-based vouchers, and as we talk about today, rules around income and assets in a number of areas.

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The goal of HOTMA was to streamline rules for the various programs and modernize them, make common sense changes to the Federal rules around the programs.

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Some provisions of HOTMA were self-implementing, which means they went into effect right away.

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A number of provisions required action by H.U.D.

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H.U.D. has been slowly rolling out regulations since 2016.

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It's published in some cases, a number of notices related to specific provisions of the rule of the statute, and it's been sort of an ongoing slow implementation.

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NHLP has published, received yesterday or today, and we'll follow up with the materials again, a quick reference guide to implementation of title one HOTMA, which covers the sections we talk about today and others that is a primer on where each of the sections of HOTMA are with

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respect to implementation.

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There have been many notices related to it.

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This final rule we talk about today is pursuant to sections 102, 103, 104 of hot ma.

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We are going to specifically focus on H.U.D. rules around income and assets.

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Note that all of the new regulations we talk about today with one exception go into effect in January of 2024.

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We are talking about them today because many housing authorities in particular are in the process of drafting admin plans #, so we wanted to get the information in everyone's hands as soon as possible so you can comment because of the impact of policies on the tenants that are

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renting.

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as you know, you can reach out to NHLP staff for assistance with the PHL plans.

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I'll highlight some of the other materials for you all before we get into the substance.

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I mentioned that you all received budget materials.

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One is analysis for NHLP.

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Everything we talk about today includes additional revisions regulatory revisions we won't cover in the webinar.

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We didn't have it ready today, but you will receive the HGN and outline for additional provisions on the rule that we are going to discuss today.

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There is the quick implementation guide and I also wanted to highlight that H.U.D. has excellent resources on HOTMA on its webpage.

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There is a webpage linked to the materials we sent to you and H.U.D. has done a training series on this rule.

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There is a two-part training series, specifically on income and assets, part one is here.

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Part two didn't make it on to the slide.

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I'll flag a few resources for you all because we are going to cover today but not too much detail.

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I thought H.U.D. did a good job.

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There is the student resources sheet, Lila will get to later in the program.

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H.U.D. has helpful resource on it and the heart of expenses we talk about later in the preparation important for clients experiencing disability and others experiencing exemptions.

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There is a resource sheet by H.U.D. on that too.

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Definitely, check out H.U.D.'s resources, the tradings, post slides that are helpful too.

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There are additional resources to help with this rule.

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HRART.

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all right.

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Thank you.

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With that, I'll turn it over to Lila to talk about income reductions and deductions.

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>> Lila: Thanks, Deb.

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We can go to the next slide.

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so for adjusted income, the definition remains similar, your annual income minus deductions.

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There have been a few big changes in the way adjusted income is in terms of ducks.

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deductions.

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There are mandatory deductions and permissive deductions.

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For the mandatory deductions, categories have remained the same, \$480 deduction for each dependent adjusted for inflation moving forward each year annually, and for -- there is a \$525 deduction adjusted for annual inflation.

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The next section is a change where previously there was a deduction for amounts that exceeded 3% of annual income for unreimbursed health and medical care expenses.

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That amount is going to be increased to 10%.

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Now it has to be sums that exceed 10% annual income for medical expenses to be deducted.

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Finally, the -- there is a deduction for reasonable child care expenses necessary to enable a family member to be employed or further their education.

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PHAs can adopt additional deductions.

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They must put them in writing.

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There will be no additional funding from H.U.D. if they decide to make additional deductions -- permissive deductions.

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Deb, next slide.

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There are two new categories of hardship exemptions as well.

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For those families currently receiving the mandatory deduction for unreimbursed medical and health expenses, since the amount is going to move up from 3% to 10%, there is a phased in approach for those that are already receiving that deduction.

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In the first year, the deduction for the expenses will be for the expenses exceeding 5% of annual income.

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Second year, it will be for expenses exceeding 7.5% of annual income and third year, it's going to come on to the statutory requirement of expenses exceeding 10% of annual income.

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The second category for hardship exemptions is general.

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It's hardship due to increase and qualified expenses or changes that wouldn't otherwise trigger interim examination exceeding 5% of annual income.

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That relief ends when circumstances change or after a 90 day period and that can be extended an additional 90 days as hardship continues.

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This is available to the family in the phased in approach.

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Once you decide to go into the general exemption, you can't go back to the phased in approach if that happens.

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Next slide.

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>> Thanks, Lila.

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All right.

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I think it's back to me for incoming exclusions.

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That was a brief summary.

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There are more read materials.

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Please put questions in the Q&A.

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I'm going to talk about a handful of new and/or clarified income exclusions.

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First, before talking about the exclusions, what is income?

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The golden rule of the H.U.D. program has remained the same.

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The golden rule has been everything received as income unless it's otherwise excluded.

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It's sort of a weird definition in the sense that it's defined by what it's not, and H.U.D. did sort of revise the language that everything coming in is income unless excluded in 5.609B.

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It's everything coming in unless excluded, but also imputed returns on assets over \$50,000 as well as return on assets that you can calculate.

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Whether or not it's below or above \$50,000.

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This is done by the CPI.

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H.U.D. has a new provision that basically all -- in order to calculate a family's income, they'll use income from the previous year -- basically, to determine what is income for the coming year.

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So, we'll talk about how things like non-referring income play out in this scenario.

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There is a new safe harbor.

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This is really important.

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That's that PHA owners with the H.U.D. program can use other programs, 5.609C.

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H.U.D. spell out the programs allowable, including tax credits, Medicaid, so long the determination is made within the prior year, housing providers can use the income determination and huddles, we are not getting into the details today, but H.U.D. lays out how housing authority

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and owners can verify the new alternative income.

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Somebody corrected me, thank you.

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I said CPI, it's the # pass, thank you.

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you can Google and find it easily.

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2 new safe harbor is important.

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It allows streamlining income across programs and benefits the tenants when the burden is on the housing authority to use less resources to tabulate income because they can use other determinations.

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This is an area where it would be important for advocates to do advocacy with the housing authority and say there are voucher tenants living in tax credit properties.

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How about implementing the rule from the last year?

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You will save yourself time and headache for the tenants.

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I'll go to the first example of a revision to an existing exclusion.

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It's really a clarification.

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In some cases, the new rule is as stated, but in others, it is a change.

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High clarifies the new regulation that distributions of principle from any kind of trust, revocable or non-revocable are excluded from income, and any, no matter what, special needs trusts, non-revocable trusts outside of the control of the family, any distribution from principle

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is excluded by this rule.

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Distributions of income used to pay the cost of health and medical care expenses for minor also excluded, generally income from the trust is included.

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Here it clearly states an exception to that.

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You know, this change is really important because it no longer puts people who have for example special stress at a disadvantage.

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Special needs trust is an irrevocable trust outside control of the family.

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H.U.D. really here followed the decision # of the case in Massachusetts settles any disagreement over whether distributions from trust principles are counted as income.

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The rationale here is important for families that remember experience and disability with a special needs trust.

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The idea is, if it was excluded going in, it should be included as income coming out.

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Special needs trust may have been needed for family as a result of a settlement from something that happened where the tenant resulted in the tenant experiencing disability.

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That may be excluded coming in.

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Then, housing authorities were counting disbursements even from income coming out.

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The court agreed that rational was flawed and H.U.D. finally changed the rules and good new it is and clarity around this important issue.

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The next example of an exclusion that I will discuss is the exclusion for payments made to keep family members at home.

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This is 5.609 new B19.

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H.U.D. excludes from income payments made to keep a family member with a disability living at home.

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This is clarification of an existing rule with important updates.

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The exception covers a broad range of payments by state Medicaid managed system and other state agencies for care giving.

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It doesn't specify the source of the funds as long as they are used for inhome support care for family members.

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Importantly, the rule clearly states that includes payments made to another household member caring for an individual in their family experiencing disability.

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The goal here is to examine payments.

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The broader public policy goal is to avoid institutionalization of the family member which H.U.D. promotes.

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This follows the California supreme court decision in housing v. Riley authority.

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In that case, miss Riley was receiving in home payments on behalf of her daughter who experienced a developmental disability.

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Miss Riley argued that the payment shouldn't count as income, but because the regulation was confusing, it wasn't clear from the housing authority perspective that it should be exclude.

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Another important revision, need for advocates to revise regulations.

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This should simplify it too.

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the next example is non-reported income.

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This is -- this is an area, whether or not certain nonrecurring income was exempt from the income rules was a huge source of confusion for tenants and advocates and other stakeholders.

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It's good to see that there is -- H.U.D. has new rules on this.

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Not necessarily new rules.

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Clarity around the rules, and it does provide for additional definitions which should help.

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It -- nonrecurring income continues to be excluded from the definition of income.

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It's defined as income not to be repeated in the coming year based on information that the family provides.

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H.U.D. provides examples of nonrecurring.

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Around census time, there are a lot of questions on the listserv around is census work going to count as income for purposes of the H.U.D. program.

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The answer is no.

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Other things on the list, economic stimulus payments.

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This came up a lot during the pandemic, does not count as income.

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Gifts for holidays, in kind donations from food banks, lump sum addition to lottery winnings.

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This list is non-exhaustive so we have to see how can we analyze this to income in the future, but there is a list of regulations.

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What is not nonrecurring income but provides examples, income earned as an independent contractor, day laborer or seasonal worker are not non-recurring income.

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Really important here that income, as a day laborer or seasonal worker counts and should be included even if the source, deed or amount varies.

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These -- these jobs are further defined in the regulations.

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Settlements and judgments are excluded from income.

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H.U.D. does distinguished back pay received as a settlement or judgment.

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If there is back pay related to raise or promotion, it would count.

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It's used to project the person's income for the following year.

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many of you are litigating civil rights clients.

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It's secluded from income, but this is one area.

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There is a lot of intersection with the asset rules and income rules.

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This is one specific area.

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Settlements and judgments are generally counted with the one exception being if, say, it's a claim for -- settlement of negligence for malpractice that results in a person with disability, that doesn't count.

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That is one exemption from the asset world.

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Generally, settlements and judgments are considered assets.

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There is a new asset limitation Bridget will talk about.

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It's \$100,000 asset limitation from the H.U.D. program.

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Important red flag working with clients and settling cases that it could disqualify anything over \$100,000 to disqualify the family because of access limitation and the income derived from assets, anything over \$50,000 counts as income.

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Any actual income from the settlement, whether or not it's over \$50,000.

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I'm now going to turn it over to Lila to talk about the final example of income exclusions, student financial assistance.

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>> Lila: All right, moving into the student financial assistance.

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This is a pretty complicated one.

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Just so you know, H.U.D. is coming out with guidance around this later in the year, so I think everyone will have questions about how this is going to apply, and hopefully, the guidance will be helpful that's going to come out.

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There are now two categories of student financial assistance excluded from income.

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The first category is assistance excluded per section 479B of the higher education act.

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Current examples of that are Pell grants, teach grants, Federal work study programs, loans.

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This will be updated next year around July 2024.

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There is a change coming next year to what falls under that category.

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In the second category is "other assistance."

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this is assistance for tuition, books and supplies, room and board and fees required and charged to a student by the institution who is not the head of household or spouse and the reason for a student who is not head of household reasonable cost while attending and residing in

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the unit.

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One way that it's going to be calculated about which assistance is going to be excluded, this is a tip on how those assistants will be excluded.

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One of the main things they look at, they'll calculate what the costs are.

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Once that's determined, if the costs are less than the assistance received in the first category, under 479B, only the amounts under 479B will be excluded.

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I have examples coming up to # show this.

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If the costs are more than the assistance under 479B, then all of the amounts under 479B are excluded, plus the lower amount of assistance under "other category" or amount under the other category, covering the actual costs.

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I have examples coming up to explain this.

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This is an example of where the actual costs -- the assistance under 479B exceeds the actual costs.

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Under this example, the costs are \$20,000.

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The total financial assistance that the student is receiving is \$31,000 broken up to 26,000 of that for assistance under 479B, and 5,000 from the other category, other assistance.

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In this circumstance, the student is receiving far more financial assistance than their actual cost, and the assistance they are receiving under 479B exceeds actual costs.

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In this circumstance, though it exceeds actual costs, all of the amounts under 479B will be excluded from income.

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The other assistance will be included in income.

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I have two more examples here to show when the cost exceeds the assistance under 479B, in this circumstance, example two, the actual costs are 22,000, but in total, the student is receiving financial assistance of 20,000 split between amounts that fall under the first category

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479B and other assistance.

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Because all of that amount of financial assistance is going to the actual costs, they'll both be excluded so the total financial assistance under both categories is excluded for the student.

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If you look at example three, the actual costs are less than total financial assistance.

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In this circumstance, 479B will be excluded.

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In the other, only the costs are excluded but not the amount extra.

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The extra \$2,000 in assistance that came from the other assistance category will be excluded.

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Next slide.

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There is an exception for section 8.

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Under 479B of the education act, it requires assistance under the higher education act to be excluded from H.U.D. income calculations, but H.U.D. appropriations and this is through fiscal year 2022 have included a provision that has created an exception to 479B for section 8

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tenants.

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Those appropriations are enacted on a year by year basis.

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With that exception, section 8 students 23 or under or without a dependent child, any amounts received in excess of tuition in other required fees and KHARPBLs shall be considered income.

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That includes amounts received under 479B of the higher education act.

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If you go back to the first example -- sorry, yes, this one.

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In this circumstance where the cost of attendance was \$20,000 but the amounts received under 479B was 26,000, generally, the total amount under 479B would be excluded.

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For the section 8 student, only 20,000 would be excluded because that is the actual covered cost.

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The other 6,000 would be included in income.

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That is a weird exception for section 8.

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H.U.D. will come out with more guidance later this year.

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245's it.

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I'll pass it back to Deb or Bridget.

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>> Bridget: Good afternoon, everyone.

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I'm Bridget Simmons.

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She her pronounces.

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Today, I'll cover changes to the asset requirements made by HOTMA.

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HOTMA made significant changes to the asset requirements for people applying or assisted by public housing in section 8 programs.

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The changes aim to allow low income families to qualify for assistance while not penalizing families while they work toward building wealth, hence the definition for net family assets.

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then, finally, H.U.D. raises the threshold 5,000 to \$50,000.

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H.U.D. restructures and revises the net family asset definition.

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The changes do not significantly change the definition, but in the definition, H.U.D. clarifies that the net family asset calculation does not include the value of non-necessary items of personal value with a combined total of 50,000 or less.

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The calculation also does not include a trust fund that is not revokable by the family or under the control of the family as long as that fund continues to be not revokable or under the control of the family.

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Then, finally, the changes to the definition -- oh, I'm sorry.

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The asset -- we could go to the next slide.

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Often times when folks going through the calculation, they are thinking, what is an asset?

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What is not?

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If the asset is not explicitly included, it just be included in the net ascetical collation.

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The definition includes all necessary items.

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The definition now includes a list of excluded items whereas before, there was an exclusion list in the regulation.

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The new definition includes the list of items excluded from the calculation, including 50,000 in combined value of all non-necessary personal property.

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The value of real property that the participant has no effective legal authority to sell.

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The value of any retirement plan account recognized as such by the IRS, the value of education savings, tuition accounts, baby bond accounts and once again, a trust fund not revokable by or under the control of the family as long as the fund continues to be not revokable or under

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the control of the family.

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H.U.D. states it will issue additional guidance regarding how to determine whether an item is a necessary item of personal property versus a non-necessary item of personal property.

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Remember, all non-necessary personal property is excluded if the total adds up to 50,000 or less.

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If that number is above 50,000, then it is included in the family ascetical collation.

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Also, as noted before, the 50,000 figure will be adjusted annually.

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if a family has \$50,000 or less in assets, the housing providers are not required to accept self certification.

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I note that because tenants and advocates should be attendanttive to how housing providers implement self certification as to how they administer programs including the asset limitations.

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It must comply with fair housing requirements.

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Next slide.

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If family has a present ownership, interest in and the legal authority to sell real property suitable for their occupancy.

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As noted here on the slide, there are several exceptions to the asset requirements.

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The final rule also lists instances where H.U.D. will consider a property not suitable for the family's occupancy.

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A property will be considered unsuitable if it doesn't meet the family's accessibility needs if the property itself, the size of the property doesn't sufficiently accommodate the family, if the geographic location of the property creates a hardship for the family, or the real

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property has condition issues.

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The final rule does not change the current practices regarding how housing providers will calculate the value of real property.

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H.U.D. indicates in the final rule that they'll publish additional guidance or determining if an item is a necessary item of personal property or if it should be included in the evaluation of non-necessary items.

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H.U.D. will issue additional guidance regarding accepting documentation for determining if a family has an interest in real property and calculating negative assets in real property.

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Housing providers may accept a participant's self certification that a family's assets do not exceed 50,000 and that the family does not have current ownership interest in real property.

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They still need to verify other aspects of the rule so the family has the right to sell real property suitable for occupancy.

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Finally, in regard to the asset requirements, the final rule gives housing providers the ability to enforce restrictions or establish exceptions to the restrictions.

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Where the housing provider seeks to evict asset requirements, action must be initiated within six months unless it's within provisions of the law.

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As I mentioned twice before, advocates and tenants should be attentive to how they enforce restrictions because they must be done with fair housing requirements.

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With that, I'll turn it back over to Deb.

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>> Deb.

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Thanks.

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I think Lila --

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>> Lila: Yes.

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For the other regulations, there are changes that apply to the home.

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, the housing trust fund.

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The changes are to make the programs conform with income and asset with other H.U.D. programs.

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There is a chart on page 9601 in the Federal register that does a breakdown of what the changes are and where they are made to conform with the other H.U.D. income and asset rule and where they remain different.

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I encourage you to look at that.

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Next slide.

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Before we hop off, I wanted to go over the interim reexamination rule.

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A tenant can request interim examination when there is a change.

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A reasonable processing time for reexamination is no more than 30 days when the family reports the changes to a PHA.

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An examination is required when the tenant's income decreases 10% or more or increases 10% or more except that they will not consider increases in earned income unless they have received a reduction during if certification period and PHA may choose not to conduct reexamination in

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the last three months of a certification period.

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Next slide -- that's very general summary of what the rule is.

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So the effective date of the rent changes, if the family timely reports the change, a rent increase, the PHA must provide 30 days advanced notice of rent increase and that is effective first of the month beginning end of the 30 day period and rent decreases timely reported, they

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would be effective first day of the month after the date of the reported change.

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If a family did not report the changes, this would become retro actively first of the month following the date of the change and for decreases, effective first rent period following reexamination.

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>> This is me.

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Thanks, Lila.

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This came up a lot during the pandemic.

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We were arguing that housing providers shouldn't apply retro actively any increase decreases because it reduces tenant rent.

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There are inconsistencies across the # line.

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I encourage people to look at the regulations.

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The last thing to mention is the income family housing rule.

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H.U.D. has published a lot of notices on this.

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This final rule slightly revises what the tenant put out.

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It goes into effect by June 14, 2023 because housing authorities should have implemented it for the most part and substantively remains the same, but as a reminder, generally, after 24 consecutive months and proper notice from the PHA, a family becomes what H.U.D. calls a

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nonpublic housing income family that, the family pays alternative rent or has housing authorities with discretion to terminate the policy in place and whether or not the overincome is in the proclamations, so just flagging, 24CFR509, we are interested to hear what housing

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authority is doing for income tenants after the 24 month period.

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Not sure how big of an issue it is in many jurisdictions.

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Let us know.

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Then, before we get to questions, I was going to mention that the earned income disregard is another really important element of the rule in the written analysis.

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It's being phased out so folks know.

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It's being phased out so by 2026, there will be no tenants that will be taking advantage of earned income disregard any longer.

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You will see that will be eliminated from the regulations all together.

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Then, I wanted to just also mention one clarification around the asset limitations.

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As Bridget said, housing providers can choose whether or not to apply \$100,000 asset limitation.

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This is an area -- the statute seems clear.

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As much as H.U.D. clarified parts of the regulation in the rule, this is an area that seems to have muddied the waters.

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We'll provide -- we are going to provide additional guidance on this.

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It seems the regulation is -- the intent of the statute itself and parts of the regulation make it sure it's discretionary.

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In H.U.D. and training seem to contract what is in the regulation.

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We'll seek clarification for you and update materials accordingly.

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Then, with that, I'm going to turn to a couple of minutes for questions.

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We are following up with specific questions.

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First thing I'm going to address is this part of the preparation, the question is, payments to a family member, I'm guessing is a personal assistant or with disabilities is excluded.

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The answer is, probably yes.

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The intent of the regulation is excluding payments made to family members to avoid institutionalization of a family member.

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Typically, the payments are made by state agencies.

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Payments like this for the personal care system are handled differently state by state.

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We are advocating the definition of payments.

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In some states, different agencies provide the payments to families.

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I think in most cases, it's the resource of the payment that in most cases, I think the personal care assistance for a person in the household is a household member would qualify for the exemption.

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That's exactly what the revision is.

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That's is short answer.

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We have to look to see what the source of the funds is.

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The next question, can nonrecurring payments include Zell payments.

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This is a fact specific question.

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I would say, yes.

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Zell payments are not enumerated on the list of nonrecurring payments.

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The question I have for the advocate, what is the source of the payment?

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Typically it would be exempt income.

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we'll provide more-thorough answers.

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Okay, this is a question from Lila about rent decreases, retro actively.

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I saw you answered a few of these.

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Does the housing authority have discretion to implement rent decreases retro actively?

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1PHA allows rent incomes March 1, and decreases first half of the month, March 15, can that continue?

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>> I'll double check this.

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I want to say, yes.

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There is flexibility.

