

THE HFA INSTITUTE 2024

Understanding HOTMA



National Council of
State Housing Agencies



**MRBs and
Other Federal
Homeownership
Programs**
JANUARY 10 – 12



Housing Credit
JANUARY 9 – 11



**Section 8 and
Other Federal
Multifamily
Programs**
JANUARY 10 – 12



**HOME and
Housing Trust
Fund**
JANUARY 7 – 9



SPEAKERS

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Overview of HOTMA

HUD Multifamily and LIHTC

Introduction

Housing Opportunity Through Modernization Act of 2016 (HOTMA)

Title I contains 14 sections that affect public housing and Section 8

- Initial rulemaking dealt with Sections 101, 105, 106, and 112 mostly impacted PIH Programs (PBV and HQS)
- We will be focusing on Sections 102 and 104

Final Rule

Section
102

- Income reviews

Section
103

- Public housing over-income families

Section
104

- Limitation on eligibility based on assets

Effected Programs

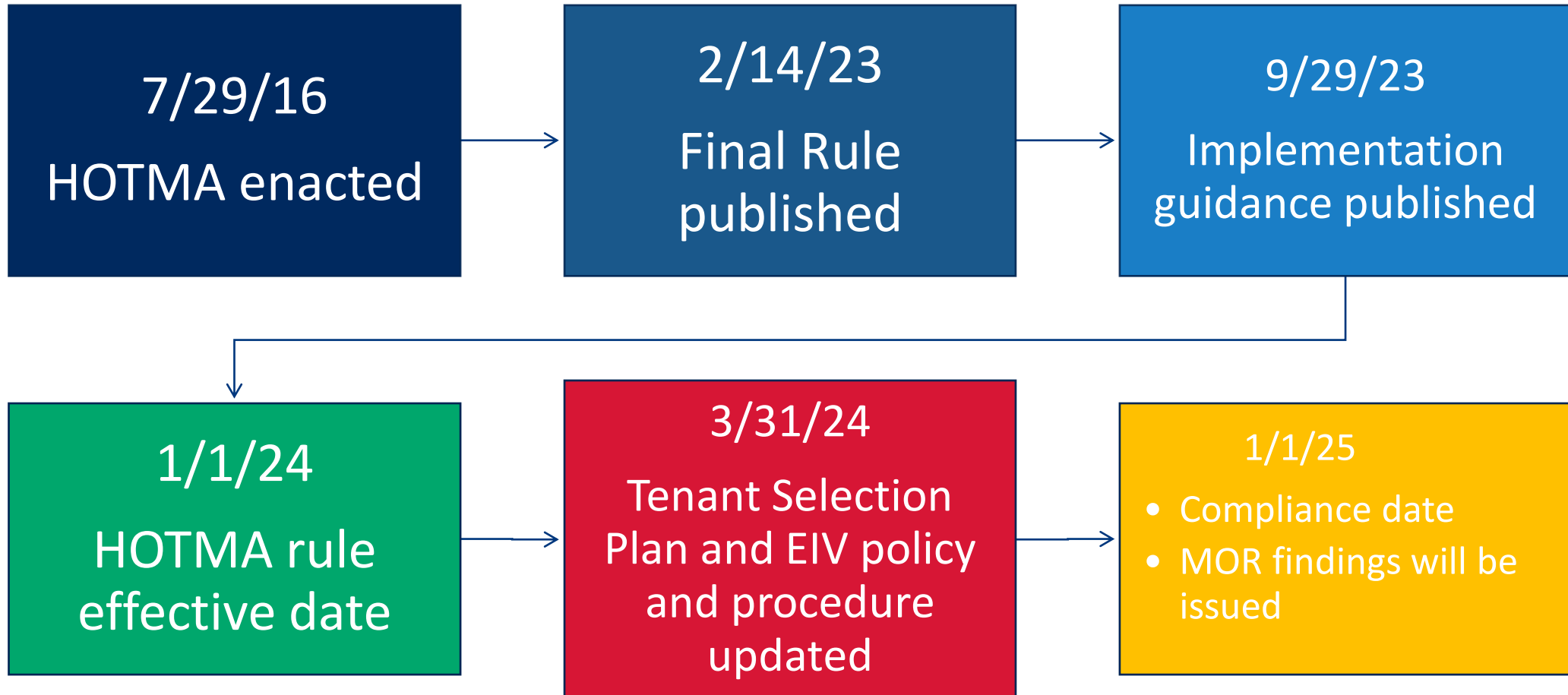
Public Housing	Section 8: HCV	Section 8: PBV (RAD and regular)
Section 8: Multifamily (RAD and regular)	HOME	HOPWA
Housing Trust Fund	202/811	CDBG

“The public should be aware that the effects of this rulemaking are not limited to the programs listed in this rule and preamble.”

- ✓ Example: LIHTC program follows the Section 8 definition of income

Implementation in HUD Multifamily

MF Implementation Timeline



What needs to be updated in the TSP by 3/31/24?

- De minimis errors
- Self-certification of net family assets
- Hardship exemptions for health and medical care/disability assistance expenses and child care
- IRs: increases, decreases, and reporting
- Revocation of consent
- Determination of family income using Safe Harbor verifications

What needs to be updated in the EIV policy and procedure by 3/31/24?

Use during IRs

- Earned income increases
- Income Reports when using Safe Harbor verifications

What about software?

Once an owner's site software is HOTMA compliant, they must take certain steps to notify tenants of lease modifications and that their income determinations will be made consistent with HOTMA's requirements

What about MORs?

Contract Administrators will not issue findings during MORs conducted in 2024 for HOTMA-related findings

- CAs/PBCAs will issue observations with corrective actions

Findings will begin with MORs conducted on or after January 1, 2025

Forthcoming from HUD

- Pre-recorded HOTMA webinars and live Q&As for owners and residents
- Written HOTMA materials directed to owners and residents
- A FR Notice describing the methodology for calculating inflationary adjustments
- Updated list of exclusions via FR Notice
- Updates to TRACS (203.A)
 - Errors are already happening as it seems TRACS has been updated already for some HOTMA-related changes
- Updated HUD Handbook 4350.3
 - Although H Notice 2023-10 supersedes relevant portions of the 4350.3

Forthcoming from HUD

HUD will release updates to the following documents:

- 50059: Full certification
- 50059A: Partial certification
- 9887: Release of information
- 9834: MOR document
- HUD model lease(s)



Additional Guidance

MF HOTMA guidance from HUD:
https://www.hud.gov/program_offices/housing/mfh/hotma

- Careful that you are reviewing MF and not PIH

Dedicated HOTMA email address:

MFH_HOTMA@hud.gov

NMA HOTMA Resources page:
Nanmckay.com/HOTMA

LIHTC Implementation

LIHTC Implementation Timeline

State allocating agencies will have to decide when HOTMA will be implemented in their state

Some state agencies are following the implementation timeline for PBRA

Some third-party consulting firms have stated they will begin auditing for HOTMA on 1/1/2024

LIHTC Implementation Timeline

State agencies need to publish revised TICs and forms

HUD has issued an updated HUD Form-50058 for PIH programs that agencies can review as an example

https://www.hud.gov/sites/dfiles/PIH/documents/50058_Family_Report-2024_9-29-23.pdf

Updated Form HUD-50058

OMB Approval Number 2577-0083 (expires 09/30/2026)

6. Assets

6a. Family Member Name	No.	6b. Type of asset	6c. Is this asset included in net family assets?	6d. Cash value of asset	6e. Actual Income	6f. Imputed Income			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
				\$	\$	\$			
6g, 6h, 6i. Total net family assets, total actual income, total imputed income				\$	6g.	\$	6h.	\$	6i.
6j. Passbook rate (written as decimal)							6j.		
6k. Final asset income: 6h + 6i (see instruction booklet)							6k.		

What Needs to be updated for LIHTC?

- State agency TIC
- State agency compliance manual
 - Need to describe HOTMA implementation plan
- Required and/or recommended forms

What about software?

LIHTC software also needs to be updated

- Software companies are tasked with multiple large-scale changes due to HOTMA for MF and PIH programs

What About the IRS?

Rev Proc 94-65 established the under \$5,000 net family assets threshold self-certification rule

HOTMA has increased the net family assets threshold to \$50,000

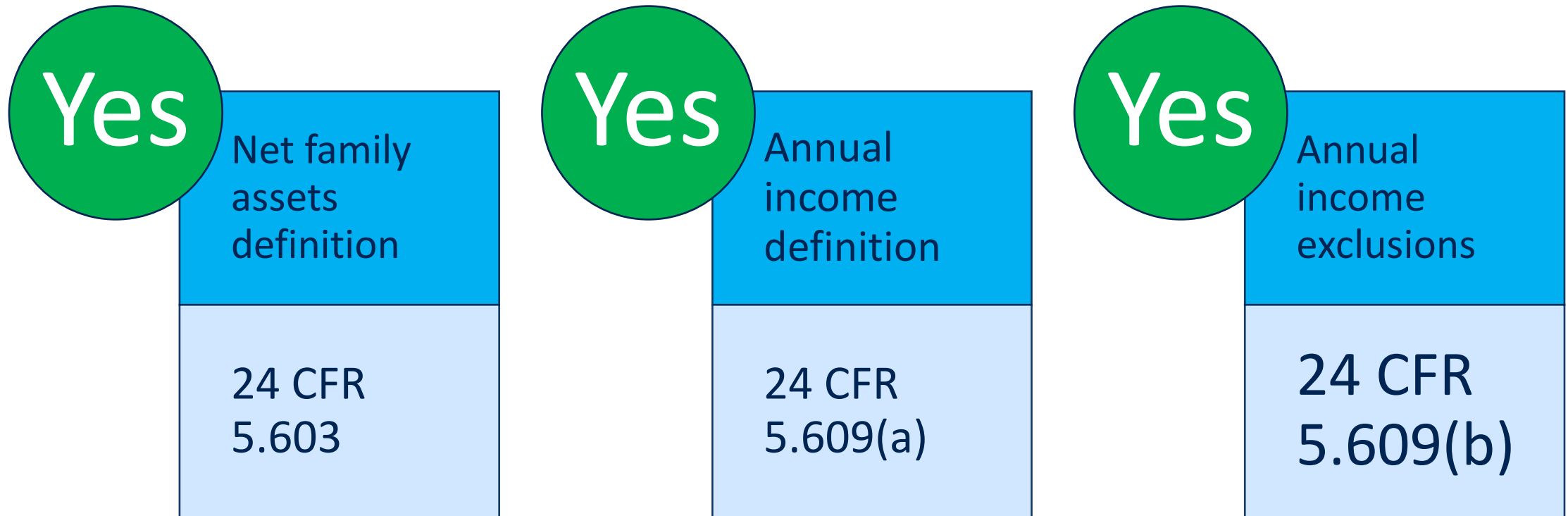
TBD if or when the IRS will issue guidance

What About the IRS?

A revised Guide for Completing Form 8823 has been submitted for review

- Publication is expected by the end of 2024
- Last updated in 2011
- Sections are outdated

What applies to LIHTC?



What partially applies to LIHTC?

Yes/No	Annual income calculation and recertifications
	24 CFR 5.609(c)
	Portion on interims is not applicable but portion on annual appears to be applicable – check state agency guidance

What does not apply to LIHTC?

No

Adjusted income mandatory and additional deductions and hardships

24 CFR
5.611(a)(b)

No

Asset limitation

24 CFR
5.618

Income

New Definition of Annual Income

- Extensively revised definition of annual income
- Regulation lists income that is excluded
 - Previous version listed both inclusions and exclusions
 - All income is included unless specifically excluded

Annual Income

- Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but did not receive
 - For example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders

Summary of Income Included and Excluded by Person

Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors (children under 18 years of age)	Earned income is excluded [24 CFR 5.609(b)(3)]. All other sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)]. All other sources of unearned income, except those specifically excluded by the regulations, are included.

*Regulations no longer includes reference to temporarily³⁰ absent family members.

Foster Children and Foster Adults

New HOTA regulations define foster child and foster adult

Foster care payments received by the family are excluded

Income of foster children and adults is fully excluded

- Both earned or unearned
- Aligns with other HUD programs (PIH)

Independent Contractors

Income received as an independent contractor is included in annual income

- Even if the source, date, or amount of the income varies
- Considered self-employed

Definition

An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax

In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done

Changes to How Income is Calculated

- Many factors impacting income and assets are tied to an inflationary index
 - Will change annually
 - Software will need to be updated

Retirement Accounts

Any distribution of periodic payments from retirement accounts is income at the time it is received by the family



Home-Based Care Payments

Exclude payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit

Home-Based Care Payments

The old 24 CFR 5.609(c)(16) excluded:

- Amounts paid by a State agency to a family with a member who had a developmental disability
- And is living at home
- To offset the cost of services and equipment needed to keep the developmentally disabled family member at home

What's different?

- Payments no longer need to offset the cost of services or equipment
- Covers all payments by state Medicaid-managed care system, other state agency, or authorized entity not just a state agency
- Applies to any family member with a disability, not just a developmental disability

Changes to Student Financial Assistance

The Higher Educating Act requires that all assistance under Title IV of the HEA and Bureau of Indian Affairs student financial assistance be excluded

However, for over 10 years, HUD appropriations have included the Section 8 student rule

For any funds from a year where HUD's appropriations acts include this limitation, it applies

What changed under HOTMA?

For any funds from a year where HUD's appropriations act includes the Section 8 student rule, it applies, and the O/A will follow the pre-HOTMA rule

In other words, we may be using the current HUD student rule for families with Section 8 and the HOTMA student rule for families without Section 8

Student Financial Assistance under HOTMA

HOTMA changed the rules on
student financial assistance

Creates two categories of
student financial assistance

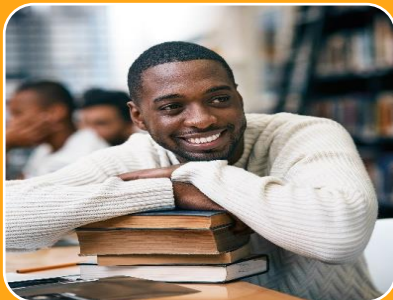


Two Types of Student Financial Assistance



Assistance under section 479B of the Higher Education Act of 1965

- Title IV of the HEA



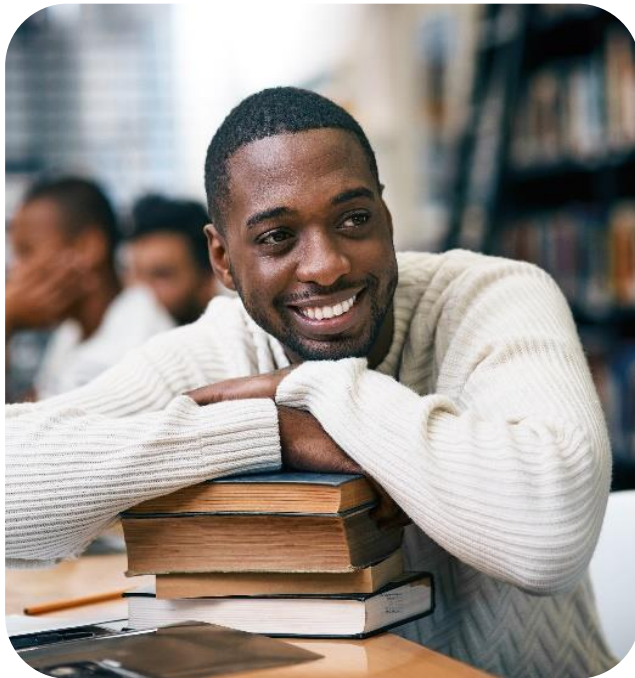
Other student financial assistance

Title IV of the HEA

Must be excluded from the family's annual income

- Pell Grants
- Teach Grants
- Federal Work-Study Programs
- Federal Perkins Loans
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA)
- Bureau of Indian Affairs/Education student assistance programs

Other Student Financial Assistance



Exclude:

- Any other grant-in-aid, scholarship, or other assistance amounts
- For the actual covered costs charged by the institute of higher education
- Not otherwise excluded by the Federally mandated income exclusions (i.e., Title IV of the HEA)

Definition: Actual Covered Costs

The actual costs of:

- Tuition, books, and supplies
 - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board
- Other fees required and charged to a student by the educational institution

Definition: Actual Covered Costs

And, for a student who is not the head of household or spouse/cohead, include:

- The reasonable and actual costs of housing
- While attending the institution of higher education
- And not residing in an assisted unit

Student Financial Assistance

Applies to both full-time and part-time students

May be paid directly to the student or to the educational institution on the student's behalf

HEA Assistance Only

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance

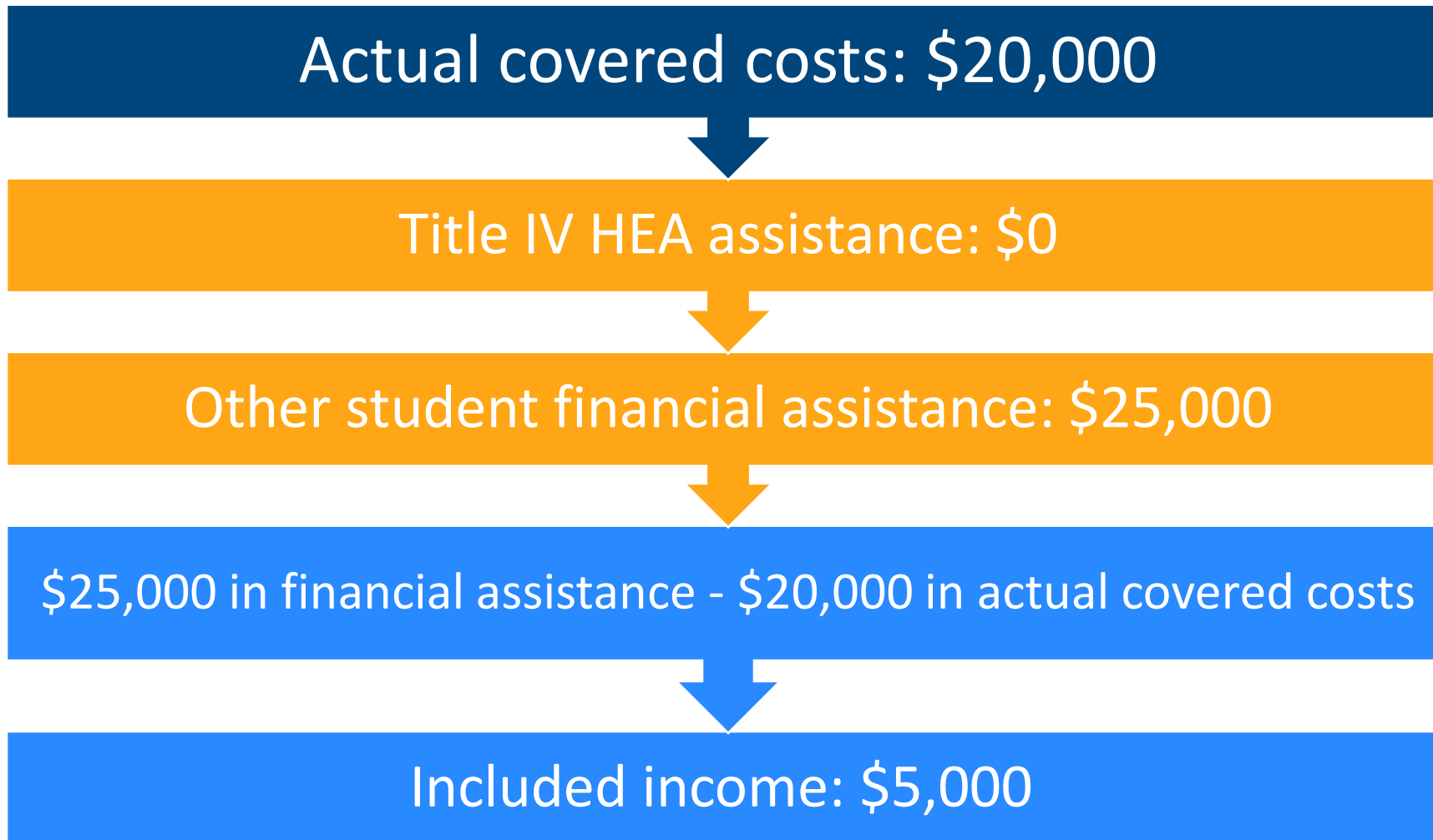
- Exclude the full amount of the assistance received under Title IV
- No need to calculate actual covered costs

Other Assistance Only

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source:

- 1) Calculate actual covered costs
- 2) Subtract the total amount of the student's financial assistance from the student's actual covered costs
- 3) Include any amount of financial assistance in excess of the student's actual covered costs

Other Assistance Only

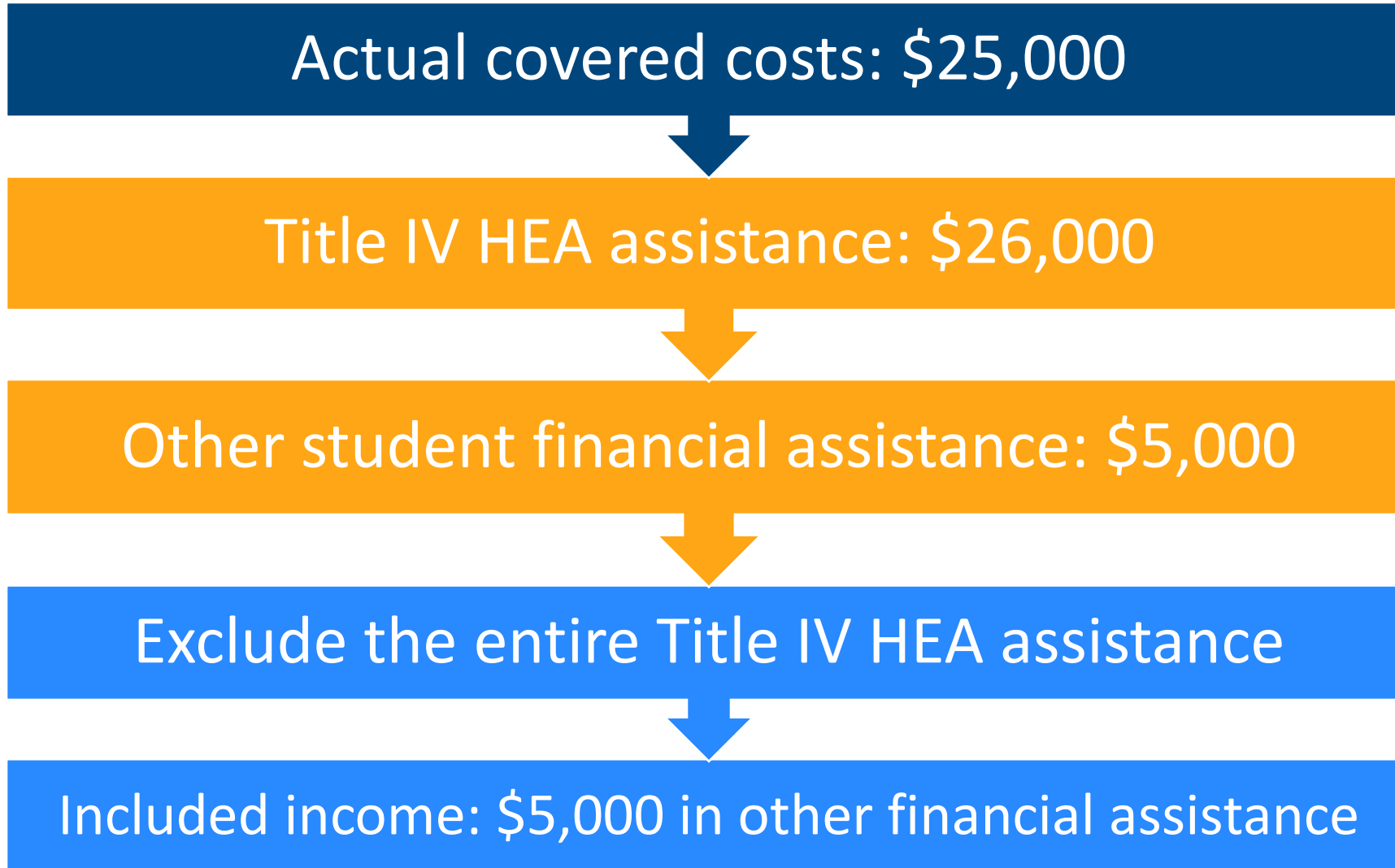


Both

When a student receives assistance from both Title IV of the HEA and from other sources:

- Calculate the actual covered costs
- Assistance received under Title IV of the HEA is applied to the student's actual covered costs first
- Then apply the other student financial assistance to any remaining actual covered costs

Both



Changes to Non-recurring Income



Income with a discrete end date and will not be repeated beyond the family's next annual recert is excluded from income calculation



Does not apply to unemployment income and other types of periodic payments if:

Received at regular intervals

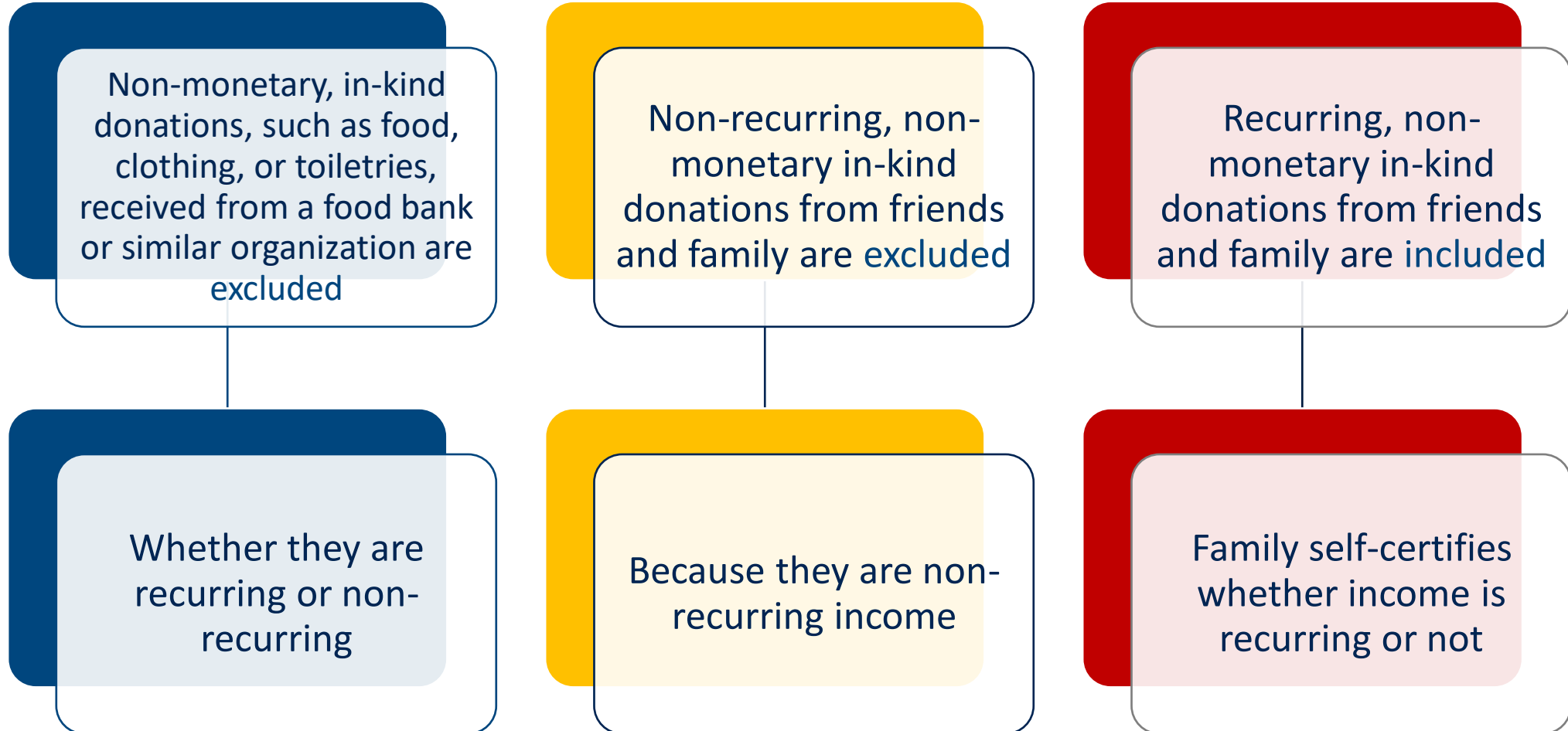
For a period of greater than one year

And can be extended



Income received as independent contractor or day laborer is included even if the source, date or amount is variable

In-kind Donations and Regular Contributions



What does this mean?

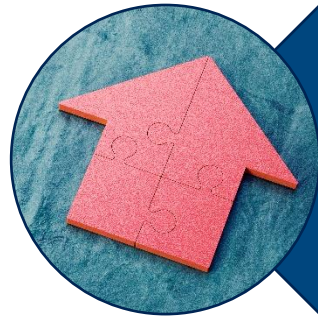
- Lots of changes to how residents' income will be calculated
- Will need intensive staff training on new income calculation procedures
- Will need to message income calculation changes to residents



Assets

Real Property vs Personal Property

HUD categorizes all assets as either:



Real Property



Personal Property

Real Property

- Examples of real property are a home, land, or equity in real property
- Net cash value of real property is considered an asset
- However, real property is not an asset if the family does not have effective legal authority to sell it
 - Co-ownership, tied up in litigation, inherited property in dispute, etc.

Personal Property

Items that are not real property are considered personal property

Includes tangible items like boats and intangible items like bank accounts



Personal Property

HUD categorizes personal property as either:



Necessary



Non-necessary

Necessary Personal Property

Necessary personal property is **excluded** from assets

- Includes items essential for use & occupancy of home, personal effects, items that assist a household member with a disability

Items of personal property that do not qualify as necessary are classified as **non-necessary**

- HUD considers bank accounts non-necessary personal property

Asset Exclusions and Inclusions

Necessary personal property is always excluded from assets

Non-necessary personal property with a combined total value **less than \$50,000** is not considered part of net family assets

Real property that the family does not have effective legal authority to sell is not considered part of net family assets

Treatment of Assets

When combined net family assets total **\$50,000 or less:**

- **Actual** income from assets must be included on the 50059 or TIC
- The O/A may rely on self-certification from the family (including for move-ins)
- Except the O/A must obtain 3rd party verification of all family assets every 3 years
 - Optional policy. The O/A may still third-party verify all assets

Treatment of Assets

When net family assets **exceed \$50,000**:

- The O/A may not rely on self-certification
- Third-party verification of assets is required
- If actual returns cannot be calculated, the O/A must calculate imputed returns using the HUD-determined passbook rate
- For example, real property

Asset Limitation

PBRA/PIH programs only

HOTMA created a limitation on net family assets for the first time (does not apply to LIHTC program)

1. A present ownership interest in, a legal right to reside in, and the effective legal authority to sell, real property that is suitable for occupancy by the family as a residence
2. Net family assets exceeding \$100,000 (adjusted annually for inflation)

Asset Restriction

PBRA/PIH programs only

The asset limitation is **mandatory** at move-in

- The O/A has no discretion when it comes to the asset limitation and applicants
- The O/A must deny program assistance for failure to meet asset restrictions by applicants

Awaiting HUD guidance on possibility that asset limitation is not mandatory at recerts

What does this mean?

- Higher self-certification threshold should result in reducing some administrative burden
- Changes in consideration of real property may impact some residents
- O/As should consult examples of necessary and non-necessary property – not all are obvious
- Still awaiting HUD guidance on asset limitation



Adjusted Income

PBRA/PIH programs only

New Deduction Threshold

The sum of the following that exceeds 10% of annual income:

- Unreimbursed health and medical care expenses
- Unreimbursed disability assistance expenses

Increased from 3% of annual income

- Because of the increase, hardship exemptions will apply

New Definition

The term “medical expenses” has changed to “health and medical care expenses”

Health and medical care expenses. Health and medical care expenses are any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

New Definition

HUD is not permitting O/As to specifically align their policies with IRS Publication 502

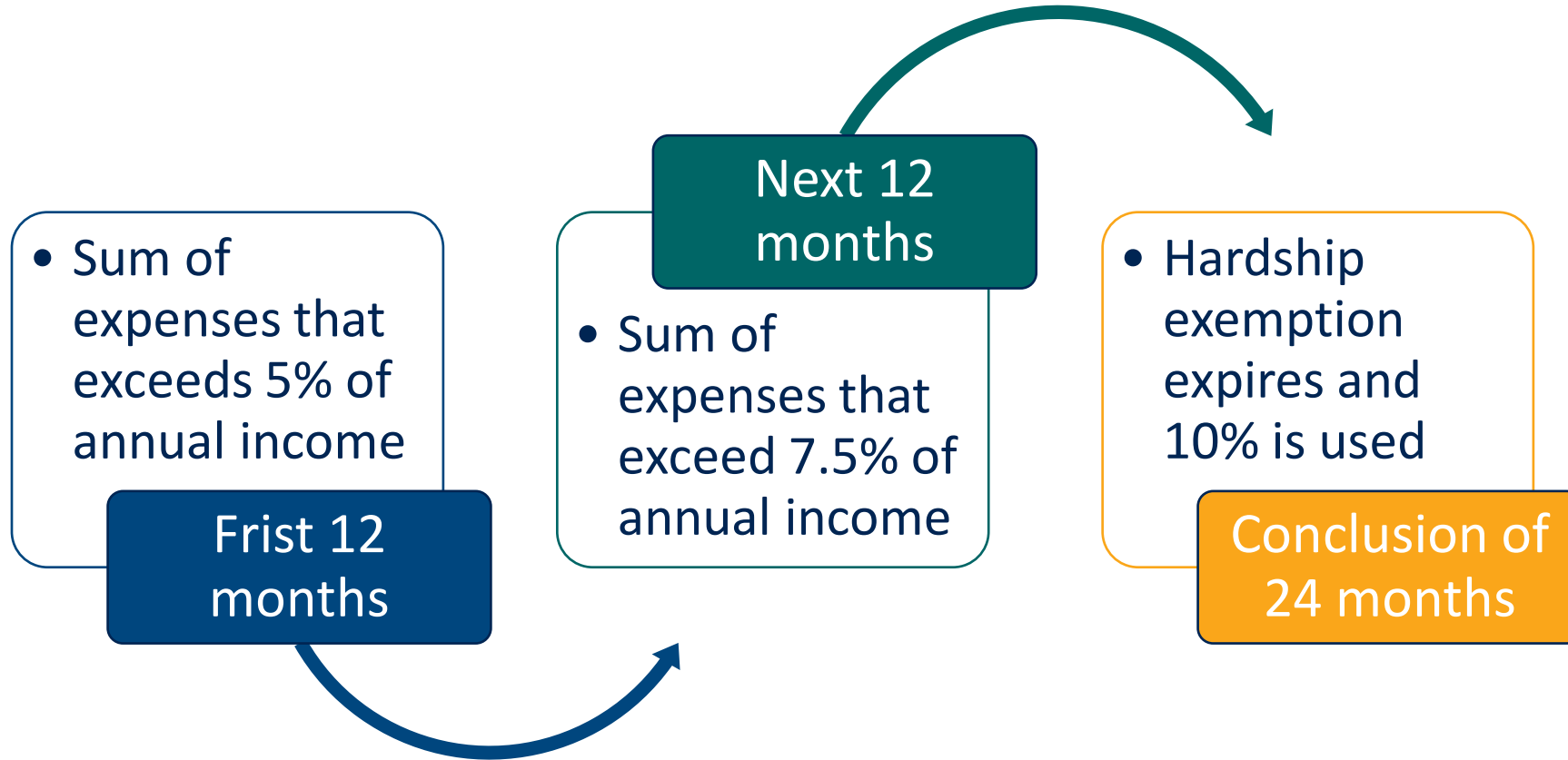
Notice H 2023-10 states O/As have no discretion to make policies in this area and states: *“MF Owners must review each expense to determine whether it is eligible in accordance with HUD’s definition of health and medical care expenses.”*

Hardship Exemptions

HOTMA established new hardship exemption categories for:

- Health and medical care and disability assistance expenses
 - Phased-In Relief: Families already receiving the deduction (**automatic**)
 - General Relief: Families who can demonstrate a financial hardship
- Child care expenses

24-Month Phase-In Relief (Automatic)



Deduction prior to HOTMA was 3%

- $\$40,000 \times 3\% = \$1,200 \rightarrow \$5,000 - \$1,200 = \$3,800$

Year 1: Deduction totals 5% for the first 12 months

- $\$40,000 \times 5\% = \$2,000 \rightarrow \$5,000 - \$2,000 = \$3,000$

Year 2: Deduction totals 7.5% second 12 months

- $\$40,000 \times 7.5\% = \$3,000 \rightarrow \$5,000 - \$3,000 = \$2,000$

Year 3: At the end of 24 months, 10% is used

- $\$40,000 \times 10\% = \$4,000 \rightarrow \$5,000 - \$4,000 = \$1,000$

Phased-In Relief

Prior to the end of 24-months, the family may request a hardship exemption under the general relief category

- If the family is eligible, the first category hardship exemption ends
- Family's hardship is administered with the requirements of the second category

Tracking

O/As must track the 24-month phase-period for each eligible family

- Even if a family's expenses go below the appropriate phase-in percentage during the first or second 12-month phase-in period

Tracking

The phase-in must continue:

- For families who transfer to another unit within the same property
- For families who are living in a unit converting under the RAD program

O/As may establish a policy to continue the phase-in for eligible families who are treated as new admissions under a different program

- For example, move from PH to MF

Ending the Hardship

The O/A may not conduct an interim to remove a hardship exemption

- Unless another change triggers an interim

Instead, the O/A will submit a non-interim transaction

General Relief

Families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances that would not otherwise trigger an interim

General Relief

The family may request a hardship exemption under the second category:

- Regardless of whether the family previously received the health and medical and/or disability assistance deductions
- Or are currently or were previously receiving relief under the first category

Phase-In

If the family qualifies,
the deduction is for
the sum of eligible
expenses that exceed
5% of annual income



End of Exemption

Hardship relief ends the earlier of:

- When the circumstances that made the family eligible for the relief are no longer applicable; or
- 90 days

When exemption is in place, deduction totals 5%

- $\$30,000 \times 5\% = \$1,500 \rightarrow \$8,000 - \$1,500 = \$6,500$

Hardship continues until the earlier of 90 days or when the circumstances are no longer applicable.

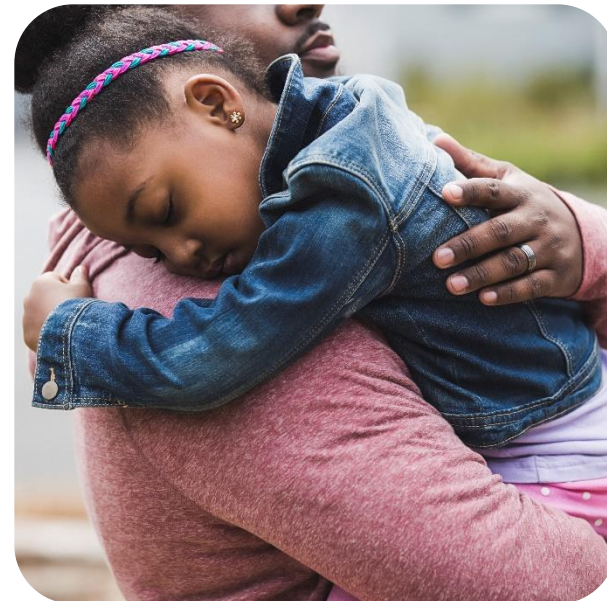
When the exemption ends, 10% is used

- $\$30,000 \times 10\% = \$3,000 \rightarrow \$8,000 - \$3,000 = \$5,000$

Child Care Expenses

Who qualifies?

- A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue receiving the deduction



Child Care Expenses

If the family demonstrates to the O/A's satisfaction:

- The family is unable to pay their rent because of the loss of the child care expense deduction
- The child care expense is still necessary even though the family member is no longer employed or furthering their education

Child Care Expenses

- If the family qualifies, the O/A must continue the child care deduction
- The exemption must remain in place for a period of up to 90 days
- The O/A may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances

What does this mean?

- O/As will have to train staff and message to residents about the new threshold amounts
- O/As will have to manage the phased-in relief hardship over a nearly 3-year period
- Long-term, residents who receive the hardships will not receive as much relief (though will be balanced, in part, by higher elderly/disabled deduction)



Verification

Use of Other Programs' Income Determination

O/As **may** determine a family's annual income (including income from assets) based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs

- This is known as a “Safe Harbor” income determination
- Income determination is prior to any application of deductions

What programs qualify?

- Temporary Assistance for Needy Families (TANF)
- Medicaid
- Supplemental Nutrition Assistance Program (SNAP) Earned Income Tax Credit (EITC)
- Low-Income Housing Credit (LIHTC) program
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC)
- Supplemental Security Income (SSI)
- Other programs administered by HUD
- Other means-tested programs with which HUD has an MOU
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the Federal Register

O/A Policies

O/A policy needs to address:

- If the O/A will accept Safe Harbor determinations
- When they will accept Safe Harbor determinations (move-in, annual, and/or interim recert)
- From which programs they will accept determinations

Use of Other Programs' Income Determination

If the O/A uses a Safe Harbor determination, the O/A may obtain the directly verification from the other program or the family

The verification must:

- State the family size
- Be for the entire family
- State the amount of the family's annual income
 - Income does not need to be broken down by family member or income type

Use of EIV – PBRA/PIH programs only

The O/A is not required to use the EIV Income, IVT, or New Hires reports at annual recert if a Safe Harbor income determination is used

Updated HUD-9887

HUD-9887 will not be submitted to the O/A except under the following circumstances:

- When any person 18 years or older becomes a member of the family
- When a current member of the family turns 18
- As required by HUD or the O/A in administrative instructions

What does this mean?

- O/As will have to consider whether to accept Safe Harbor income verifications and, if so, from what programs
- If O/As do, will need to train staff on when to accept these verifications
- O/As will get some regulatory relief on using EIV (PBRA/PIH) and not having to collect Form 9887 at every annual recert



Annuals and Interims

Calculating Income

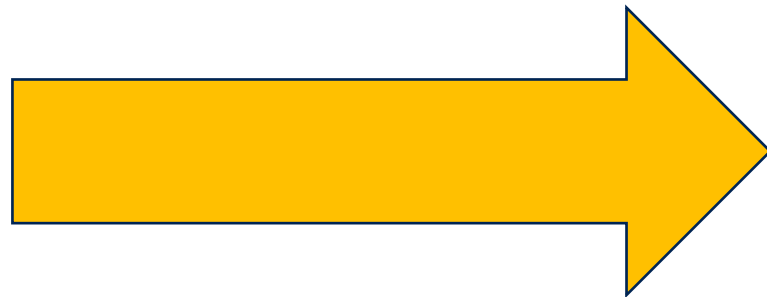
The methodology used for calculating income differs depending on whether income is being calculated at:

- Initial occupancy/assistance
- Interim recertification – **PBRA/PIH only**
- Annual recertification

However, income from assets is always anticipated regardless of certification type

Projecting Income

At initial occupancy and for an interim recertification, the O/A must use anticipated income (current income) for the upcoming 12-month period following the effective date



Annual Recertification

O/As must first determine the family's income for the previous 12-month period and use this amount as the family income; however, adjustments to reflect current income must be made

- Except where a streamlined income determination is used
- Any change of income since the family's last annual, including those that did not meet the threshold to process an interim, must be considered
- **Check state agency guidance for LIHTC**

Non-Interim Transaction PBRA/PIH programs only

Under HOTMA, the reasons an O/A performs an interim are typically dictated by O/A policy

Because of this, families may experience changes within the household that do not trigger an interim recertification under HOTMA but still need to be reported by the O/A to HUD

Non-Interim Transaction **PBRA/PIH programs only**

New action code on the 50059: Non-interim recertification transactions

Notice H 2023-10 has a list of situations that will trigger non-interim transaction

Family-Requested Interims

PBRA/PIH programs only

A family may request an interim at any time for any change in income or family composition

The O/A may decline to conduct interim if the family's adjusted income decreased by less than 10% of adjusted income

- O/A may set threshold lower (e.g., 5%) or may perform interims for any decrease
- O/A must not set threshold higher (e.g., 15%) or establish a dollar figure threshold (like \$5,000)

Interim Decreases

PBRA/PIH programs only

However, O/A must perform an interim for a decrease in adjusted income of any amount if:

- There is a decrease in family size attributed to the death of a family member;
- A family member permanently moves out of the assisted unit

If interim results in no change/decrease in adjusted income, then a non-interim transaction is processed instead of an interim recertification

Interim Increases

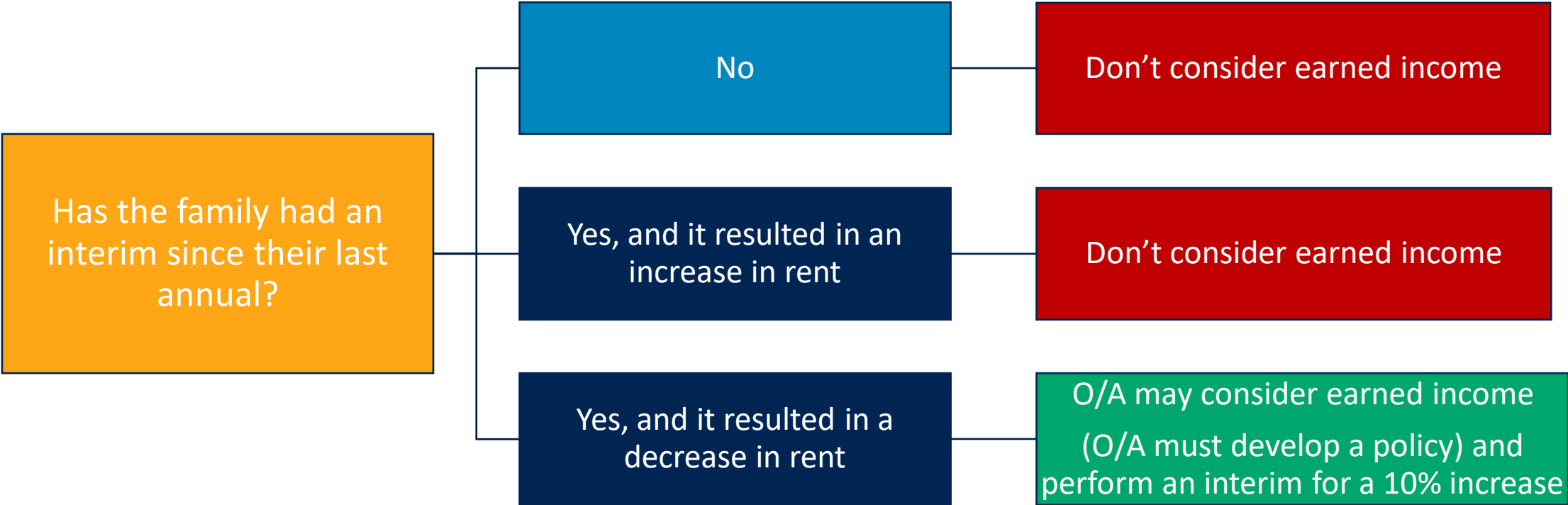
PBRA/PIH programs only

O/As **must not** process an interim recertification for income increases that result in less than a 10% increase in adjusted income

Even if an interim results in a greater than 10% increase, O/As:

- May choose not to conduct an interim during the last three months of a certification
- **May not consider any increases in earned income unless family previously received an interim decrease**

A family reports an increase in earned income between annuals.

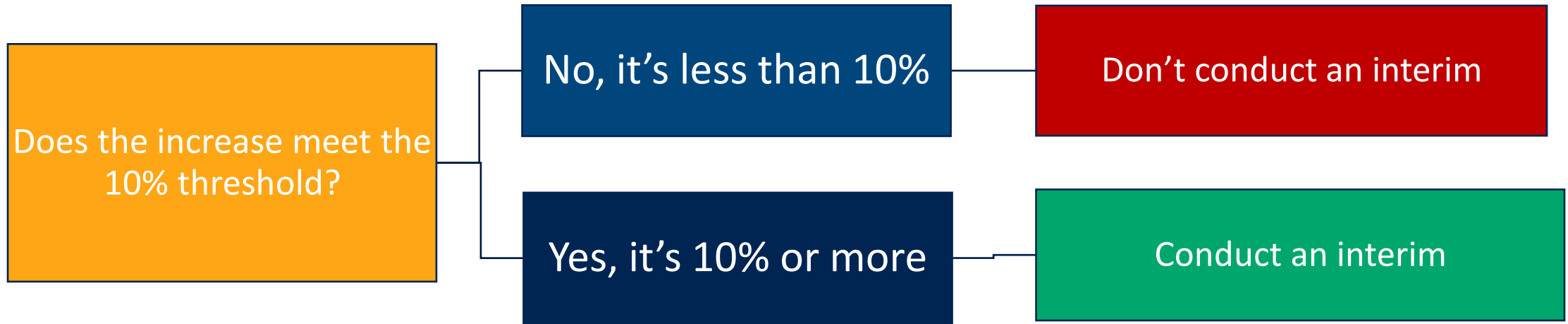


Changes in Unearned Income

PBRA/PIH programs only

For changes in unearned income, the O/A does not consider whether or not an interim was previously performed. The O/A only considers whether the 10% threshold has been met.

A family reports an increase in unearned income between annuals.



What does this mean?

Staff training and resident messaging will be crucial for changes to income certification procedures

- This may be the biggest HOTA-related pain point for residents

O/As have discretion about setting threshold for (decrease) interim certifications

Thank you for attending

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