



**STETSON LAW**

2026 National Conference on Special Needs Planning and Special Needs Trusts  
Housing Boot Camp: Laws, Benefits, and Creative Solutions

**Gimme Shelter**  
**Supplemental Security Income Policy**  
**Related to Shelter and Housing Support**

Presented by Ken Brown  
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**STETSON UNIVERSITY**  
Center for Excellence in Elder Law  
ACCESS AND BENEFITS ALL  
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## INTRODUCTION

This session will cover SSI rules related to shelter and housing support, including:

- the home exclusion and its application;
- In-kind support and maintenance rules related to shelter;
- how payments from trusts and ABLE accounts may be used to obtain shelter and how they may impact benefits.

Additional discussion will also include accessory dwelling units (ADUs) as a potential housing option for individuals receiving SSI, how they fit into current policy and some possible issues that may require further exploration.

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## Supplemental Security Income Policy Related to Shelter and Housing Support

- Housing is often the single biggest barrier to independence for eligible individuals with disabilities who rely on Supplemental Security Income (SSI) and Medicaid.
- Where a person lives can affect their eligibility for and amount of Supplemental Security Income (SSI) benefits. We will examine the current SSI policy on home ownership, renting or sharing a living space or other living arrangements.
- Families sometimes try to solve housing through special needs trusts (SNTs). However, housing support from a trust can create SSI complications.
- Even when families have resources, paying for rent or utilities the "wrong" way can cause an SSI payment reduction, create overpayment notices, or raise questions about continued eligibility.
- We will look at some alternative methods to providing housing without significantly impacting eligibility for and the amount of benefits.

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## The SSI Home Exclusion

An individual's home, regardless of value, is an excluded resource.

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## What is a Home?

An individual's home is property in which they have an ownership interest and that serves as their principal place of residence. It can include:

- the shelter in which they live;
- the land on which the shelter is located; and
- related buildings on such land.

An individual's principal place of residence is the dwelling the individual considers their established or principal home and to which, if absent, they intend to return. It can be real or personal property, fixed or mobile, and located on land or water.

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## Ownership

- For the home exclusion to apply, the individual must have an ownership interest in the property. Then ownership interest can be legal or equitable.
- An "equitable" ownership interest in property can result from personal considerations or from:
  - making mortgage payments;
  - making or paying for additions to a shelter; or
  - making improvements to a shelter.
- If an individual lives in a home owned by a trust and is the beneficiary of the trust, even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it.

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### Exclusion of the Home Includes Land on Which the Shelter is Located

For purposes of excluding “the land on which the shelter is located,” it is not necessary that the individual own the shelter itself.

**EXAMPLE:** If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter).

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### Exclusion of the Home Includes Adjoining Property and Related Buildings

The home exclusion applies not only to the plot of land on which the home is located, but also to any adjoining land. Land that adjoins the home plot is land not completely separated from the home plot by land in which neither the individual nor their spouse has an ownership interest.

Easements and public rights of way (e.g., utility lines, roads, etc.) do not separate other land from the home plot.

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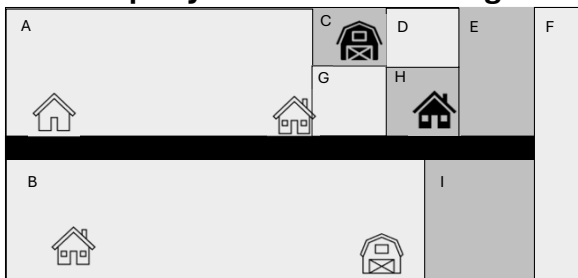
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### Exclusion of the Home Includes Adjoining Property and Related Buildings



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### Continued Exclusion of the Home During Periods of Absence

If an individual is temporarily absent from the home he or she owns, the home continues to be excluded as long as,

- If the individual is in an institution, and a spouse or dependent relative is living in the home.
- If not institutionalized, the individual intends to return to the home, or
- If the house is co-owned, sale of the home would cause undue hardship, due to loss of housing for the co-owner.
- If the individual has left his or her home due to domestic abuse, the individual has not established a new principal place of residence or otherwise has taken action rendering the home no longer excludable.

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### Intent to Return

An individual's home continues to be excluded if the individual leaves the home but intends to return to it.

This statement governs the "intent to return" determination unless the statement is self-contradictory. If the individual's statement of intent is self-contradictory, SSA will contact someone who knows the situation, such as a physician, family member, or close friend or relative, to clarify the situation.

SSA does not consider other factors, such as the individual's age, physical condition, or other circumstances when determining intent to return home. Assuming the individual is mentally competent, age, mental capacity, and physical condition are not factors in evaluating the individual's statement of intent.

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### SSI Trust Policy And The Home Exclusion

There are several policies associated with the home exclusion that interact with trust policy that may be advantageous to a trust beneficiary receiving SSI.

- If the trust is a resource to the individual, the property at issue is subject to exclusion as a home. Even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it.
- If the trust is not a resource to the individual, then the property also is not a resource to the individual, regardless of whether the property serves as the individual's principal place of residence.

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## General In-Kind Support and Maintenance (ISM) Policy

SSA has two rules that apply to determining the value of ISM. The rules are mutually exclusive in that when one rule applies, the other does not. These two rules are the Value of the One-Third Reduction (VTR) Rule and the Presumed Maximum Value (PMV) Rule.

When it applies, the VTR is a statutory one-third reduction in the SSI payment rate. On the other hand, the PMV is a regulatory maximum cap on the amount of ISM that can be charged.

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## Value of the One-Third Reduction (VTR) Rule

SSA will reduce the applicable Federal benefit rate (FBR) by one-third when an individual or couple:

- Lives throughout a month in another person's household; and
- Receives both food and shelter from others living in that household.

In 2026, the VTR is equal to \$331.33 for an individual and \$497.00 for a couple based on an FBR of \$994.00 and \$1,491.00, respectively.

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## Presumed Maximum Value (PMV) Rule

- When a beneficiary or couple receives ISM, is eligible for payment and the VTR does not apply, SSA uses the PMV rule to determine the value of ISM received.
- The amount of the PMV is equal to one-third of the Federal benefit rate for an individual or couple, plus \$20. In 2026 the PMV is equal to \$351.33 for an individual and \$517.00 for an eligible couple, based on an FBR of \$994.00 and \$1,491.00, respectively.
- The PMV is a regulatory cap on the amount of ISM that can be charged. The PMV is a rebuttable presumption, i.e., the regulation presumes that the value of ISM is worth one-third of the FBR plus \$20. If the individual or couple successfully presents evidence that the food or shelter has a lower value or cost (rebutts the PMV), SSA values the ISM at the current market value (CMV) or the actual value (AV), whichever is less.

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## In-Kind Support and Maintenance (ISM)

An eligible individual does not receive in-kind support and maintenance (ISM) in the form of rent-free shelter while living in a home in which he or she has an ownership interest.

A trust beneficiary with an "equitable ownership interest in the trust principal" does not receive rent-free shelter (ISM).

They also are not subject to the PMV since they are not living in the "household of another."

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## Purchase of a Home

- If the trust, whose principal is not a resource, purchases the home outright and the trust beneficiary lives in the home in the month of purchase, the home is income in the form of ISM, and reduces the trust beneficiary's payment no more than the PMV in the month of purchase only, regardless of the value of the home.
- If the trust, whose principal is not a resource, purchases the home with a mortgage and the trust beneficiary lives in the home in the month of purchase, the home would be ISM in the month of purchase. Each of the subsequent monthly mortgage payments results in the receipt of income in the form of ISM to the trust beneficiary living in the house, each valued at no more than the PMV.

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## Household Expenses (Shelter Costs)

In any month that a trust pays household expenses (shelter costs), the individual receives ISM valued at no more than the PMV.

When computing ISM, only the following 10 items are used:

- Mortgage (including property insurance required by the mortgage holder)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal

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## Household Expenses

If the trust pays for repairs, maintenance, improvements, or renovations to the home, such as renovations to the bathroom to make it ADA accessible, installation of a wheelchair ramp or assistive devices, or replacement of a roof, the trust beneficiary does not receive income.

Disbursements from the trust for improvements increase the value of the resource and, unlike household operating expenses, do not provide ISM.

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## Achieving a Better Life Experience (ABLE) Accounts

Using a trust in conjunction with an ABLE account provides many advantages, especially in providing for housing.

- The POMS explicitly permits transfers from a special needs or pooled trust to an ABLE account up to the annual contribution limit (\$20,000 for 2026). The benefit to this arrangement is that a transfer that would otherwise count as income is excluded from income.
- If those same funds are subsequently disbursed from the ABLE account to directly pay for housing (shelter) expenses, the shelter received does not count as income in the form of in-kind support and maintenance.

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## Support Payments

The use of a trust with an ABLE account also provides a method to avoid income counting for support payments such as child support or alimony.

- If a support payment is paid directly into an ABLE account, the payment is income because the ABLE account owner is the person legally entitled to receive that payment.
- If support payments are irrevocably assigned to a trust (a court order is deemed to be an irrevocable assignment), the payment is not income when deposited into the trust.
- The support payment can then be transferred into an ABLE account for the use of the trust beneficiary, avoiding income counting upon receipt, and if used correctly, avoiding income counting upon expenditure.

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## Timing Problem – Retained Funds

Withdraw funds from the ABLE account and pay the housing expenses in the same calendar month.

- SSA counts a distribution for a housing expense or for an expense that is not a QDE as a resource, if the designated beneficiary retains the distribution into the month following the month of receipt.
- If the designated beneficiary spends the distribution within the month of receipt, there is no effect on eligibility.

EXAMPLE: Retained distribution intended for housing expenses is a resource  
Amy takes a distribution of \$500 from their ABLE account in May to pay a housing expense for June. They deposit the \$500 into their checking account in May, withdraws \$500 in cash on June 3, and pay their landlord. This distribution is a housing expense and part of their checking account balance as of June 1, which makes it a countable resource for the month of June.

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## Paying Housing Expenses from an ABLE Account

### Helpful Hints for Paying Rent and Utilities from an ABLE Account

- Pay housing providers directly from the ABLE account
- Schedule automatic recurring payments
- Save Housing Documentation in One Place
- Use Clear Transaction Descriptions
- Avoid Cash Withdrawals for Housing

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## Accessory Dwelling Units (ADUs)

An “Accessory Dwelling Unit” or “ADU” is defined by the American Planning Association as “a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home.”

Generally, as an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area. However, an attached ADU may share kitchen or bathroom facilities with the main dwelling unit (depending on local zoning requirements).

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## ADU, aka...

- accessory apartment
- backyard bungalow
- basement apartment
- casita
- carriage house
- coach house
- English basement
- garage apartment
- granny flat
- guest cottage
- guest house
- in-law suite
- multi-generational house
- ohana unit
- secondary dwelling unit

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## Types of ADUs



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## Ownership Issues Related to ADUs

Ownership issues related to ADUs often arise because the ADU is located on the same parcel as the primary home, creating questions about property rights, control, financing, and inheritance.

Common issues include:

- Single Property Ownership
- Co-Ownership and Family Arrangements
- Title and Financing Concerns
- Inheritance and Estate Planning
- Zoning, Land Use and Property Rights Disputes

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## Co-Ownership and Family Arrangements

When parents, adult children, other relatives, or a trust help finance or occupy an ADU, disputes can arise over:

- Who owns the ADU structure.
- Rights to occupy the unit.
- Responsibility for maintenance and repairs.
- What happens if the property is sold.

Without a written agreement, these arrangements can become contentious.

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## Title and Financing Concerns

Because the ADU is usually part of the same real estate parcel:

- It generally cannot have a separate deed.
- Mortgages and liens typically affect both the main house and the ADU.
- Lenders may require all owners of the property to sign financing documents.

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## Inheritance and Estate Planning

If an ADU is intended for a child or elderly parent, problems may arise after the property owner's death:

- The ADU may pass with the entire property under a will or state inheritance laws.
- Occupants of the ADU may not automatically gain ownership rights.
- Heirs may disagree about whether to keep, occupy, rent, or sell the property.

Estate planning can help clarify these issues.

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## Zoning, Land Use and Property Rights Disputes

Ownership conflicts can arise when:

- Neighbors challenge ADU construction.
- Property boundaries are unclear.
- Easements or access rights affect the ADU.
- Owners disagree about use restrictions or rental rights.
- Zoning restrictions on and requirements of rental units or owner-occupancy requirements.

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## Why Ownership Matters for SSI Benefits

### Home Exclusion

- Regardless of its physical form, legally an ADU is part of the same property as the main home. It cannot be bought or sold separately. The owner of the ADU is the owner of the main home.
- To qualify for the home exclusion, an individual must have an ownership interest, legal or equitable, in the home.

You should note however, that without an ownership interest, a home would not count as a resource to the individual, but there are other consequences that flow from not having an ownership interest.

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## Why Ownership Matters for SSI Benefits

### ISM

- Without an ownership interest, the individual would be required to pay rent or else be charged with in-kind support and maintenance (ISM) in the form of rent-free shelter. Or they could be subject to the value of the one-third reduction (VTR) in their benefits because they are residing in the household of another.
- Paying rent or shelter costs is not a bad thing in and of itself, but if the goal is to maximize benefits, paying rent and expenses or incurring a reduction for ISM is a step in the wrong direction.

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## Trust Management

If a trust is paying for the construction of an ADU for the use of the trust beneficiary, the trustee may feel it is necessary, in its fiduciary duty, for the trust to obtain an interest in the ADU.

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## Possible Solutions for the Ownership Issue

### Equitable Ownership

An "equitable" ownership interest in property can result from personal considerations or from:

- making mortgage payments;
- making or paying for additions to a shelter; or
- making improvements to a shelter.

If an individual alleges an unwritten equitable ownership interest, SSA will gather all the necessary information and forward it to the Regional Chief Counsel for an opinion based on State law.

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## Possible Solutions for the Ownership Issue

### Condominium or Separate Ownership Structures

- In most jurisdictions, there's a preferred way to create separate ownership of homes: the subdivision process. But what if there's a desire to separate ownership and subdivision isn't an option?
- Some states and local governments allow legal mechanisms, such as condominiumization or lot splits, that can create separate ownership interests for an ADU. However, such situations are currently rare and availability varies significantly by jurisdiction. Local zoning and property laws determine whether separate ownership is allowed.

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## Condominiumization

This situation arises most often when:

- (1) properties are on top of one another as in multi-story buildings, or
- (2) land use regulations make it difficult or impossible to subdivide property horizontally (i.e., minimum lot sizes can't be met; subdivision regulations that preclude a desired site layout; there's no way to provide every lot required street frontage).

Conveniently, all 50 states and the District of Columbia have adopted condominium statutes that allow property to be converted to condominium ownership and back again. Legally, condominiums are 'creatures of the state,' meaning that their existence depends on state laws that lay out the rules for their creation, maintenance, and dissolution.

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## Possible Solutions for the Ownership Issue

### Partial Life Estate

- One possible avenue that could be explored is the use of a partial life estate. I say "partial" life estate since both the primary house and the ADU are part of the same deed and property, and a regular life estate would give the tenant use of and rights to the entire property. A partial life estate can legally apply to a specific portion or acreage of a larger piece of real estate (such as an ADU) rather than the entire property.
- When you create a partial life estate, you split the legal ownership and use rights for just a designated section of land or a specific structure (such as a house while leaving surrounding acreage out, or vice versa). It can apply to a specific floor, a guest house, or a defined acreage of a larger farm.

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## How a Partial Life Estate Works

- The deed or trust must explicitly describe the specific portion assigned to the life tenant. It requires an accurate, legally sound survey and distinct legal description of the specific portion attached to the deed.
- **The Life Tenant:** Obtains the exclusive right to use, occupy, or collect income from that specific part of the property for the rest of their life.
- **The Remainderman:** Holds the future interest to inherit that exact portion of the property automatically when the life tenant passes away, and, if the remainderman is not the original grantor, bypassing probate.
- Duties like taxes and maintenance are typically prorated or assigned based on the terms of the agreement.

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## Key Advantages

- **Targeted Inheritance:** Directs a specific house, building, or section of land to a chosen heir, unless it returns to the grantor.
- **Probate Avoidance:** Transfers the designated portion automatically to the remainderman upon death.
- **Continued Control:** Guarantees the life tenant a secure place to live or use during their lifetime without interference.

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## Critical Risks & Limitations

- **Subdivision Restrictions:** Local zoning laws, county ordinances, or HOA rules may legally restrict dividing a single residential structure or lot.
- **Shared Control:** Depending on whether it is with or without "powers," you may need the remainderman's signature to sell, mortgage, or alter the designated portion later.
- **Practical conflicts:** Sharing access to utilities, land, or common areas can create friction between the life tenant and the remainderman.
- **Maintenance & Taxes:** The life tenant remains legally responsible for taxes, insurance, and upkeep on the property, which can get complicated if only a sub-portion is metes-and-bounds defined.
- **Medicaid recovery implications:** Medicaid estate recovery depends on the rules of the State where the property is located. There may also be transfer implications for the original property owner.

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## Tiny Houses

There is some variation in defining a tiny home, but there are examples and they are usually based on floorspace.

- The International Residential Code states that a tiny house's floorspace is no larger than 400 square feet (37 m<sup>2</sup>).
- Merriam-Webster says they can be up to 500 ft<sup>2</sup>.
- One architectural firm used a threshold of 600 ft<sup>2</sup> to define a tiny home.

What further complicates the definition is that tiny homes may or may not be mobile and lack clearly defined features.

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## Tiny Houses

One of the biggest obstacles faced by the tiny-house movement is the difficulty of finding a location in which such a house can be constructed.

- Zoning regulations typically specify minimum square footage for new constructions on a foundation, and
- For tiny houses on wheels, parking on one's own land may be prohibited by local regulations against camping.
- Prohibitions may also extend to mobile homes, RVs, or temporary structures. Many localities do not allow these forms as legal dwellings, primarily due to concerns over stability, sanitation, and permanence.

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## Tiny Houses on Wheels

- RV parks do not always allow tiny houses unless they meet the criteria required for Recreational Vehicles (RVs).
- Tiny houses on wheels are considered RVs and are not suitable for permanent residence, according to the Recreational Vehicle Industry Association (RVIA).
- From *RV Business*, "The RVIA will continue to shy away from allowing members who produce products that are referred to as 'tiny houses' or 'tiny homes.'"

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## SSI Policy on Tiny Houses

- In general, SSA should consider any tiny house built on a foundation with utility hookups as real property, the same as it would consider an ADU or other full-sized house and the same policy considerations would apply.
- Considering a mobile tiny house (which would be considered as personal property), for purposes of the home exclusion, a home can be real or personal property, fixed or mobile, and located on land or water. For purposes of excluding "the land on which the shelter is located," it is not necessary that the individual own the shelter itself.
- EXAMPLE: If an individual lives on their own land in someone else's trailer, the land meets the definition of a home and is excluded. However, if the individual does not own the shelter, it is necessary to consider whether the shelter results in in-kind support and maintenance (ISM) (e.g., rent-free shelter).

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## Use of Land

- The use of land alone is not a household cost. Thus, if an individual receives land or the use of land without charge, this does not result in outside ISM. Similarly, third party vendor payments of real property tax, rent or mortgage on land alone do not cause an individual to receive ISM in the form of shelter.
- A trailer space rental fee which is for space alone is not a household operating expense for purposes of determining ISM. However, if the fee is not for use of land alone, that part of the fee which is for water, sewer, etc., is part of the household costs for purposes of determining inside and outside ISM.

EXAMPLE: James Smith, an eligible individual, lives alone in a house trailer they own. The trailer is situated on the property of their sibling, Bill. James pays no rent for the use of the land. Bill provides water and electricity free of charge. The free use of the land results in no ISM to James. However, James is charged with outside ISM based on the CMV of the water and electricity.

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## Questions?

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