


STETSON LAW

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2024 Supplemental Security Income (SSI) Program Update

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Outline of Today's Presentation

SSI Program Update

- In-kind Support and Maintenance Changes
 - Background
 - The Future of ISM
 - The Problem
 - Regulatory Changes
 - Legislation
 - Smart use of ISM Payments from a Trust
- Overpayment Recovery Changes

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Changes to In-kind Support and Maintenance Policy in the SSI Program

Introduction – The State of Things

SSA is now making the biggest changes in ISM policy in 40 years.

Today, after we take a brief look at prior policy and procedure, we will compare and contrast that with changes under the new regulations. We will also look at how these changes will be implemented based on instructions SSA has issued to date.

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What is ISM?

In-kind support and maintenance (ISM) is unearned income received by or given to an individual in the form of support and maintenance. It is considered income because someone else, either within or outside of the individual's household is paying for it. The Social Security Act considers ISM, along with other forms of unearned income, when determining supplemental security income (SSI) eligibility and payment amounts.

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The Legal Basis for ISM

Statutory Law – The Social Security Act

- The State programs that preceded SSI often undertook detailed analysis of the household budget to establish an applicant's level of financial need.
- One of the founding principles of SSI is that, it should be based on a "flat grant" approach that does not involve program administrators in the detailed household budgets of millions of recipients.
- The law creating the SSI program included the one-third reduction provision so that SSA would not have to determine the actual value of room and board when a recipient lived with a friend or relative.
- A congressional committee report indicated that the reduction would apply regardless of whether the individual made any payment toward household expenses

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The Social Security Act at §1612(a)(2)(A) (42 U.S.C. 1382a(a)(2)(A))

(a) For purposes of this title, income means both earned income and unearned income; and—

2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1611 shall be reduced by 33 1/3 percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph...

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Code of Federal Regulations

- Support and maintenance is not defined in the Social Security Act.
- Effective September 30, 2024, support and maintenance in-kind is defined at 20 CFR 416.1121 as “shelter furnished to you that we value depending on your living arrangement. (Food is not included in the calculations of in-kind support and maintenance.)”
 - Previously, SSA defined it at 20 CFR 416.1130(b) as “any food or shelter that is given to you or that you receive because someone else pays for it.”
 - Prior to March 9, 2005, support and maintenance included the receipt of clothing.

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Code of Federal Regulations

Although the provision was intended to be simple to administer, it did not adequately define many concepts or address differences in living arrangements among SSI recipients.

During implementation of the legislation, the agency determined that the value of the one-third reduction (VTR) provision was extremely narrow and that another rule should be developed to cover other in-kind support provided that did not fit under the VTR rule. SSA created the PMV rule and the pro rata-share concept through regulations in an attempt to better address equity among recipients. However, these regulations compromised the simplification objective of the "flat grant" approach.

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Program Operations Manual System (POMS)

- Statute includes one paragraph on ISM
- Regulations have 14 short sections
- POMS has about 250 pages of instructions

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Determining the Value of ISM

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.

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 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.

The following policies apply to the VTR:

- In 2024, the VTR is equal to \$314.33 for an individual and \$471.66 for a couple based on an FBR of \$943.00 and \$1,415.00, respectively.
- When the VTR applies, it applies in full or not at all. The amount of the VTR cannot be rebutted.
- When the VTR applies, no additional ISM is countable, even if it is received from outside of the household.
- When the VTR applies, no income exclusions apply to the VTR (including the \$20 general income exclusion). The VTR is a reduction in the payment rate and not a charge of unearned income.
- The VTR may apply even if the individual receives part of his or her food and shelter from inside the household and part from outside. It is not necessary that an individual receive food and shelter from inside the household on each day of the month to apply the VTR.

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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 2024 the PMV is equal to \$334.33 for an individual and \$491.66 for an eligible couple, based on an FBR of \$943.00 and \$1,415.00, 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 or the actual value, whichever is less.
- While the VTR is a reduced payment level, the PMV is considered a type of unearned income. The PMV amount is equal to one-third of the FBR plus \$20 because, in application, the \$20 is equal to the \$20 general income exclusion, which when applied means that the maximum amount of the VTR and the PMV are the same.

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The Current Status of ISM*

Total number of SSI recipients				7,341,000
Number of SSI recipients with ISM-related payment reductions				793,000 (~10%)
	VTR	PMV –maximum reduction	PMV – less than maximum reduction	
Affected recipients (number)	358,000	227,000	207,000	
Affected recipients (% of ISM recipients)	45%	29%	26%	
Mean SSI reduction	\$280.33	\$300.33	\$112.00	

* As of January 2022. (FBR = \$841)

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Federal Living Arrangement Categories

Federal Living Arrangement Categories			
Category	Definition	Payment Rate	Percentage of Recipients
FLA A	An adult, noninstitutionalized individual living in his or her own household.	Full FBR	81%
FLA B	Recipient lives in the household of another and receives both food and shelter from other members of the household.	Subject to VTR	5%
FLA C	Eligible child younger than age 18 who lives with a parent.	Full FBR	12%
FLA D	Eligible person living in a public or private medical institution, with Medicaid paying more than 50 percent of the cost of his or her care.	\$30 Payment Limit	2%

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The Future of ISM – The Problem

Calculating ISM is labor intensive, time consuming, expensive, intrusive and highly inaccurate.

- Although about 10 percent of SSI recipients are ultimately charged with ISM, a living arrangement determination must be made for all individuals.
- An ISM determination must be considered any time there is a change in an individual's living arrangement.
- Additionally, ISM is a leading cause of SSI overpayments and underpayments, according to the Government Accountability Office (GAO) and SSA's Inspector General. ISM has been identified as one of the leading causes of overpayments in the SSI program every year since at least 2002.
- ISM and living arrangements have also been a leading cause of SSI underpayments for over a decade. ISM has traditionally accounted for about one-third of all improper payments.

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Recent SSA Regulatory Actions

On February 15, 2023, SSA published a Notice of Proposed Rulemaking titled "Omitting Food From In-Kind Support and Maintenance Calculations."

We propose to update our regulations to remove food from the calculation of In-Kind Support and Maintenance (ISM).

- The public comment period closed on April 17, 2023.
- 4,386 comments received with more than 95% favorable.

On March 27, 2024, SSA published the final rule, which was effective September 30, 2024.

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Justification for Excluding Food

Simplifies policy:

- Reduce the amount of program rules an applicant or recipient needs to understand;
- Reduce the amount of information that applicants or recipients must report, both during the application process and in post-award reporting (fluctuating income/averaging);
- Simplify and shorten processing; and
- Lead to fewer benefit recalculations (and therefore, for example, possibly fewer ISM-related overpayments).

Promotes Equity:

- Providing increased financial security to affected beneficiaries;
- Providing consistent treatment of food support regardless of source;
- Reducing reporting requirements and the effects of reporting on applicants and recipients; and
- Facilitating improved food security among certain beneficiaries.

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Impact of Excluding Food

- Include only shelter costs in ISM calculations
- Changes in which ISM rule applies
- Potential to increase payments

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What are Shelter Costs and Expenses

When computing household operating expenses, only the following 9 items will be 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

NOTE: Condominium fees in themselves are not household costs. However, condominium fees may include charges, which are household costs (e.g., garbage removal). To the extent that such charges are identifiable, use them in the computation of inside and outside ISM.

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Retention of a Food-Related Question

Although SSA eliminated food expenses from ISM calculations, they will still consider food expenses to determine whether to use the VTR rule or the PMV rule in certain circumstances, but not include those expenses in the actual income calculation.

In the NPRM, SSA proposed that they would continue to ask applicants and recipients the following questions about food:

- (1) Do you buy food separately from the household?
- (2) Do you eat all meals out? and
- (3) Do you receive Supplemental Nutrition Assistance Program (SNAP) benefits?

If applicants or recipients answer "yes" to any of these questions, even if the applicant or recipient lives in another person's household, SSA would evaluate their ISM using the PMV rule.

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Retention of a Food-Related Question

Based on comments and further analysis, SSA modified the final regulation to only require one additional question to be asked about food:

Do others within your household pay for or provide you with all of your meals?

The change was made because the original 3 questions would not have identified all of the circumstance in which the PMV rule could have applied (e.g., other public food assistance programs, people outside of the household paying for food, earmarking).

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Impact of the Change

SSA conducted an analysis of the impact of the change on current ISM recipients (assuming no change in situation).
85% No change in payment, 11% increase, 3% reduction

Current Rules	Proposed Rules	Impact	Percentage Of Current ISM Recipients	Average Change In Monthly Payments (2023)
PMV	PMV	No change In payment	48	0
PMV	PMV	Increase in payment	2	\$105
PMV	No ISM	Increase in payment	3	\$81
VTR	VTR	No change In payment	30	0
VTR	PMV	Increase in payment	6	\$166
VTR	PMV	No change In payment	7	0
VTR	PMV	Reduction in payment	3	(\$20)

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Fiscal Impact of the Change

SSA estimates that this change will result in an increase in Federal SSI payments of a total of about \$1.6 billion over the period of fiscal years 2024 through 2033. This represents an increase in Federal SSI payments of 0.2%.

SSA estimates that this proposal will result in net administrative savings to the agency of \$26 million for the 10-year period from FY 2024 to FY 2033. These savings are partially offset by implementation costs.

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Other Related Changes

The regulation contains two other changes related to income:

- Current regulations at 20 CFR 416.1131(a) state the VTR applies if the recipient is receiving food and shelter from the person in whose household they are living. In practice, SSA also considers food and shelter received from others living in the household. New regulations reflect this practice.
- 20 CFR 416.1102 is revised to clarify that income includes things received constructively as well as actually (i.e., under your control versus in your hands).

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Policy Impacts of the Change

- Trusts (or anyone) can now pay for food. Payments must still be third-party payments and not cash to the beneficiary.
- No longer have to launder payments for food through an ABL account (but you still can use this method).
- SSI recipients can focus their contributions on shelter expenses to minimize benefit reductions.
- Debit/credit cards no longer have to be restricted for food.

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Recent SSA Regulatory Actions

On August 24, 2023, SSA published a Notice of Proposed Rulemaking titled "Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients."

We propose to revise our regulations by applying nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States. The exception recognizes that a "business arrangement" exists when the amount of required monthly rent for a property equals or exceeds the presumed maximum value.

- The comment period closed on October 23, 2023.
- 179 comments received, 170 supported policy change.

On April 11, 2024, SSA published a final rule, which was effective September 30, 2024.

SSA issued a POMS rewrite of SI 00835.380, Rental Subsidies on 09/24/24.

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Prior Regulatory Policy

The regulation at 20 CFR 416.1130(b) states that an individual is not receiving ISM in the form of room or rent if they are paying the required monthly rent charged under a "business arrangement."

Under the prior regulatory definition, a "business arrangement" existed when the amount of monthly rent required to be paid equals the current monthly rental value (CMRV)—that is, the price of the rent on the open market in the individual's locality.

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Rental Subsidy Policy

- **Rental subsidy** - An individual receives in-kind support and maintenance (ISM) in the form of a rental subsidy when the rent required by the landlord (including a flat fee payment) is less than the amount charged under a business arrangement.
- A **landlord** is a party who provides living quarters in return for rent. A landlord and his or her tenant(s) cannot be members of the same household.
- Someone in the household has rental liability so the PMV applies.
- According to POMS, SSA develops subsidy when someone in the household is related as parent or child to the landlord or spouse.

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Foundation for Change - First Exception to Prior Policy

Based on the ruling in *Jackson v. Schweiker*, 683 F.2d 1076 (7th Cir. 1982), in the States in the Seventh Circuit (Illinois, Indiana, and Wisconsin), a business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the Presumed Maximum Value (PMV).

In those States, if the required amount of rent is less than the PMV, SSA will impute as in-kind support and maintenance, the difference between the required amount of rent and either the PMV or the current market value, whichever is less.

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Foundation for Change - Second Exception to Prior Policy

In response to *Ruppert v. Bowen*, 871 F.2d 1172 (2d Cir. 1989), SSA issued Acquiescence Ruling (AR) 90-2(2) for the States of Connecticut, New York and Vermont.

The Court directed that a determination be made as to whether an applicant or recipient received an "actual economic benefit" from a rental subsidy, before charging the applicant or recipient with in-kind support and maintenance.

SSA determined it will apply the same rule as *Jackson*.

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Foundation for Change – Third Exception to Current Policy

In a settlement of the class action case *Diaz v. Chater*, No. 3:95-cv-01817-X (N.D. Tex. Apr. 17, 1996), SSA agreed to revise its rental subsidy policy as it is applied to residents of the State of Texas. In the settlement agreement, SSA agreed not to charge a rental subsidy whenever the required rent equals or exceeds the presumed maximum value (PMV).

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Final Regulation

In the final regulation, SSA revised 20 CFR 416.1130 to modify the definition of when a “business arrangement” exists from one where the amount of monthly required rent equals or exceeds the current market rental value to one where the amount of monthly required rent equals or exceeds the Presumed Maximum Value (PMV).

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Justification for the Policy Change

The rationale of the courts that resulted in the situation previously in place in seven states, in particular in *Jackson* and in *Ruppert*, also supports extending this policy to the other states.

- Change promotes a uniform national policy and thus equality.
- Ensures the economic benefit to all recipients regardless of State of residence.
- Fosters efficiency in administration due to consistency.
- Reduces time for calculations of ISM.
- Implements external stakeholder suggestions.
- Rent payments will be compared to a national standard, the PMV, instead of fluctuating geographical/market differences.
- Less intrusive questioning and fewer contacts with landlords.

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Example – Prior Policy

- SSI recipient living with their ineligible spouse and child.
- Renting a single-family home owned by the recipient's mother.
- The mother/landlord alleges CMRV of \$1,500 per month.
- Required rent is only \$350 per month.

Equation	Application to Example
CMRV – Required rent = Household (HH) ISM	\$1,500 - \$350 = \$1,150
Household ISM/Number in HH = ISM to SSI recipient	\$1,150/3 (people in HH) = \$383.33
Compare to PMV (cap)	\$383.33 > \$334.33
SSI payment = FBR - PMV	SSI payment = \$943 - \$314.33* = \$628.67

* PMV (\$334.33) – GIE (\$20) - \$314.33

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Example – New Policy

Same facts as previous example

Equation/Process	Application to Example
Compare CMRV to PMV, PMV < CMRV	\$334.33 < \$1,500
Required rent > PMV	\$350 > \$334.33
No ISM charged to SSI recipient	SSI payment = \$943

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Fiscal Impact of the Change

- SSA estimates that implementation of this rule would result in a total increase in Federal SSI payments of \$837 million over fiscal years 2024 through 2033.
- These estimates reflect:
 - approximately 41,000 individuals who would be eligible under current rules will have their Federal SSI payment increased by an average of \$132 per month.
 - an additional 14,000 individuals who are not eligible under current rules who would be newly eligible and would apply for benefits under the proposed rule.
- SSA estimates that this proposal will result in net administrative savings of \$10 million for the 10-year period from FY 2024 to FY 2033.

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Recent SSA Regulatory Actions

On September 29, 2023, SSA issued an NPRM titled "Expand the Definition of a Public-Assistance (PA) Household."

"We propose to expand the definition of a public assistance (PA) household for purposes of our programs, particularly the Supplemental Security Income (SSI) program, to include the Supplemental Nutrition Assistance Program (SNAP) as an additional means-tested public income maintenance (PIM) program. In addition, we seek public comment on expanding the definition to include households in which *any other* (as opposed to *every other*) member receives public assistance. We expect that the proposed rule would decrease the number of SSI applicants and recipients charged with in-kind support and maintenance (ISM)."

- The public comment period closed November 28, 2023.
- 221 comments received, 95% supported the proposals

On April 19, 2024, SSA published a final rule, which was effective September 30, 2024.

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Prior Policy

Public Assistance (PA) Household Defined

A public assistance household is one in which every member receives some kind of public income-maintenance (PIM) payments. These are payments made under:

- Title IV-A of the Social Security Act —Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF)
- Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);
- The Refugee Act of 1980 (those payments based on need)
- The Disaster Relief and Emergency Assistance Act
- General assistance programs of the Bureau of Indian Affairs;
- State or local government assistance programs based on need (tax credits or refunds are not assistance based on need); or
- Department of Veterans Affairs programs (those payments based on need).

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Public Assistance Household Policy

- If an SSI applicant or recipient lives in a PA household, SSA does not consider them to be receiving ISM from other people within the household (*i.e.*, "inside ISM") (No VTR).
- This policy is based on the idea that if the other individuals in the household are receiving a PIM payment, they need their income (and resources) for their own needs and therefore cannot support the SSI applicant or recipient.

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Final Regulation

In the final regulation, SSA adopted 3 changes in 20 CFR 416.1142(a):

- Revising the definition of “public assistance household” to clarify that this is a term of art and only applies to SSA programs.
- Adding the Supplemental Nutrition Assistance Program (SNAP) to the list of PIM programs.
- Changing the definition of a PA household to one which has both an SSI recipient or applicant and at least one other household member receiving a listed PIM payment.

A rewrite of POMS SI 00835.130 Public Assistance Households was issued on 09/24/24.

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Justification for the Policy Change

Since the creation of the SSI program in 1972 and establishment of the PA household policy in 1980, the landscape of means-tested public benefit programs has changed significantly.

- | | |
|---|---|
| <ul style="list-style-type: none"> • Aid to Families with Dependent Children (AFDC) (entitlement) replaced by Temporary Assistance to Needy Families (TANF) (block grant) in 1997. • Between 1980 and 2022 there was an 82% decrease in AFDC/TANF recipients. • There was an 81% decrease in VA needs-based pensions over the same period. | <ul style="list-style-type: none"> • 100% increase in Supplemental Nutrition Assistance Program (SNAP) recipients. • 70% increase in Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) recipients. • 75% increase in Medicaid recipients. • 65% increase in HUD housing assistance recipients. • Low Income Home Energy Assistance Program (LIHEAP) recipients fluctuates, but generally up. • For comparison - 50% increase in SSI recipients. |
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Justification for the Policy Change

- SNAP participation overlaps to a great extent with participation in other means-tested programs. Expanding the definition of a PA household to include SNAP would capture about 67 percent of SSI recipients who are also living in households currently participating in Medicaid, HUD public housing and voucher programs, or LIHEAP.
- SNAP does not have a cap on enrollment.
- SNAP certified for relatively longer time periods.
- These changes will reduce administrative burdens for SSI applications and recipients, as well as for SSA.

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Bonus Time - Deeming

- “Deeming” is the process of considering a portion of another person's income to be the income of an SSI applicant or recipient.
- SSA's current policy excludes from deeming the amount of any public income-maintenance (PIM) payments an ineligible parent or spouse receives under the programs listed in the PA household definition, any income that those programs counted or excluded in determining the amount of the PIM payments they received, and any income of the ineligible spouse or parent that is used by a PIM program to determine the amount of that program's benefit to someone else.
- Adding SNAP to the list of PIM payments will decrease the amount of income that is deemed to SSI recipients from an SSI-ineligible spouse or parent who is receiving SNAP benefits, any income that was counted or excluded in figuring the amount of the SNAP benefits would not be deemed to the SSI applicant or recipient.

09/26/24 – POMS SI 01320.141 Deeming: Public Income Maintenance Payments

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Fiscal Impact of the Change

- SSA estimates that implementation of this rule would result in a total increase in Federal SSI payments of \$15 billion over fiscal years 2024 through 2033.
- In FY 2033 roughly 277,000 Federal SSI recipients (4 percent of all SSI recipients) will have an increase in monthly payments compared to current rules, and an additional 109,000 individuals (1 percent increase) will receive Federal SSI payments who would not have been eligible under current rules.
- Some individuals may have a decrease in SNAP benefits due to increased SSI payments.

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Additional Policy Change—Shifting From “Every” to “Any” Member of the Household

In the NPRM, SSA proposed to consider an SSI applicant or recipient to be residing in a PA household if the SSI applicant or recipient and *any other* (as opposed to *every*) additional household member receives public assistance. This proposal is adopted in the final regulation.

- Relies on other agencies who already make household determinations.
- Current rule detrimental when HH members ineligible due to reasons other than need (citizenship, time limits, immigration status, etc.).
- Reasonable to infer when 2 members of HH qualify for PIM, all members are low-income.

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The Future Of ISM - Implementation

SSA will undertake an extensive POMS rewrite and systems changes.

- Over 60 POMS sections have to be updated.
- Only a handful released by 09/30/24.

Stop-gap measures

- EM-24047, "SSI Living Arrangements Regulatory Changes - Technician Instructions for Identifying and Processing Affected Cases," issued September 20.
- EM-24048, "Omitting Food from In-Kind Support and Maintenance Calculations," issued September 26.

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The Future Of ISM - Implementation

Redevelopment of any cases with:

- Type H income (ISM under PMV rule)
- Type J income (VTR)
- Rental subsidy
- Deeming

New systems page – Household Living with Others

- PA household development including SNAP
- New food question – "Others in the household pay for or provide all of your meals?"
 - If yes, VTR path
 - If no, FLA-A and outside ISM development.

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The Future Of ISM - Implementation

New edits and alerts for rental subsidy cases in States other than New York, Connecticut, Indiana, Illinois, Wisconsin, Vermont, or Texas.

- New living arrangement development effective 09/30/24.
- New LA development must take place at the beginning of each new year as the Cost of Living Adjustment (COLA) will change the amount of the PMV reduction amount, so rental subsidy must be refigured based on the new PMV amount.

All deeming cases must be reviewed to determine of the exclusion of income from parents and ineligible spouses receiving SNAP payments is identified and considered.

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The Future Of ISM - Legislation

Most legislative options options that have been considered are typically cost neutral, meaning that some SSI recipients would be better off, and others would be worse off than under current law.

- The President's fiscal year 2020 and 2021 budgets proposed one such option — it would have replaced ISM with a flat-rate benefit reduction (SSA has traditionally estimated 7 percent) for adult SSI recipients who are living with any other adult(s), otherwise called benefit restructuring. The 7 percent figure generally provides neutrality for program costs.
- Another approach would be to eliminate ISM altogether. No other Federal benefit programs consider in-kind support and maintenance. Both the SSI Restoration Act of 2021 (The SSI Restoration Act, H.R. 3824 and S. 2065) and President Biden's 2020 campaign plan (The Biden Plan for Full Participation and Equality for People With Disabilities) would have eliminated ISM counting.

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The Cost of Change

The reason that benefit restructuring proposals received so much attention is that elimination of ISM outright is very expensive. In 2008, it was estimated that eliminating ISM counting would cost SSA \$1.2 billion annually. Today, inflation adjusted annual costs would be about \$3 billion. This cost is weighed against estimated annual administrative savings of approximately \$70 million.

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The Cost of Change

For the period 2024 – 2033, unadjusted annual program cost of the 3 final regulations changes is estimated at \$1.7 billion.

Annual administrative costs are estimated to increase by \$4.7 million.

Omit food	\$26 million savings*
Rental subsidy	\$10 million savings*
Expand PA HH	<u>\$83 million cost</u>
Net cost	\$47 million cost (2024-2033)

*Offset by unspecified implementation costs

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Smart Use of ISM Payments From a Trust

- Just because payment for shelter by a trust may result in counting the shelter received as income for SSI purposes, you should not be afraid to allow for discretionary payment for shelter (or food) by the trust if it may result in a better life situation for the trust beneficiary.
- The first inclination may be to prohibit any distributions for shelter because it will reduce the amount of the SSI check. And by no means should the trust state that the trust will pay for shelter needs and risk the trust being considered a support trust.
- However, there may be distinct benefits to allowing a trustee to make discretionary payments for shelter, as the situation may require. In fact, the way the rules function, it may be malpractice to impose too restrictive rules on a trustee.

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Smart Use of ISM Payments From a Trust

Trust A - Prohibits any payments for food or shelter.
Trust B - Permits payments for food and shelter. Recipient makes no contribution and is subject to PMV reduction.
Trust C - Permits payments for food and shelter. Required reduced rent no longer subject to subsidy.
Trust D - Permits payments for food and shelter. Distributions through an ABLE account.

	Trust A	Trust B	Trust C	Trust D
Beneficiary's monthly payment from SSI check				
Shelter	\$600	\$0	\$335	\$0
Food	\$300	\$0	\$0	\$0
Monthly trust payments				
Shelter	\$0	\$1000	\$0	\$1000
Food	\$0	\$500	\$500	\$500
Reduction in the beneficiary's monthly SSI check due to trust disbursements				
Federal Benefit Rate (FBR)	\$943	\$943	\$943	\$943
Reduction due to ISM counting under the PMV rule	\$0	(\$334.33)	\$0	\$0
Net SSI benefit to beneficiary	\$943	\$628.67	\$943	\$943
Beneficiary's available lifestyle				
From trust	\$0	\$1500	\$500	\$1500
From SSI	\$943	\$628.67	\$943	\$943
Total lifestyle	\$943	\$2128.67	\$1443	\$2443
Available discretionary funds	\$43	\$628.67	\$608	\$943

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Smart Use of ISM Payments From a Trust

What are some of the things that a trustee must consider in determining whether to make distributions for shelter and how much to distribute?

- First, does the trust permit distributions for food and/or shelter?
- Second, the trustee should be sure to maintain SSI and Medicaid eligibility, even the receipt of one SSI dollar. Circumstances such as eligibility for SSDI benefits or the receipt of other earned or unearned income valued at or above the PMV would make trust disbursements for shelter and the resultant reduction in benefits due to ISM inadvisable.
- Third, the trustee must consider the amount available in the trust, the beneficiary's life expectancy and the period of time that the trust is expected to provide for.

Note: The PMV is rebuttable, in other words, if the value of the shelter received is worth less than the PMV, the individual will be charged with the actual value of the shelter. Therefore, a reduction in the amount of the distribution may still permit a distribution to be made while maintaining eligibility for benefits.

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Changes in Title II and XVI Overpayment Recovery

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Changes in Overpayment Recovery

In October 2023, SSA launched a review of its overpayment policies and procedures. As a result, it recently issued a number of changes:

- Reduction in default recovery withholding rate;
- Shifting burden of proof as to whether claimant was at fault;
- Extension of time for repayment plans; and
- Enhanced overpayment waiver process.

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Changes in Overpayment Recovery

When SSA determines that an individual receiving Title II benefits is overpaid, they send them a notice requesting a full and immediate refund, and inform them of their right to request a waiver of recovery or request a reconsideration of the overpayment.

If the overpaid individual does not:

- repay,
- request a waiver, or
- request a reconsideration

prior to the end of the 60-day due process period, SSA will, in most cases, automatically recover the overpayment by withholding 10 percent of their Title II monthly benefit credited amount, or \$10 per month, whichever is more. They will recover the overpayment by withholding until the overpayment is fully recovered.

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Changes in Title II Overpayment Recovery

On March 25, 2024, SSA issued Emergency Message (EM) 24011. Effective on that date, SSA decreased the default Title II overpayment recovery withholding rate from 100 percent of the monthly Social Security benefit to 10 percent of the benefit or \$10, whichever is greater.

NOTE: Section 1631(b)(1)(B) of the Social Security Act generally provides that the rate of adjustment of payment to recover SSI overpayments will be the lesser of:

- Ten percent of the recipient's total monthly income (countable income plus SSI and State supplementary payment)(usually equal to the FBR); or
- The recipient's entire monthly benefit.

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Changes in Title II Overpayment Recovery

Extended Time Period

EM-24011 E. states in the NOTE that:

The request for a 10 percent overpayment recovery rate will take priority over the recent change to procedure requiring the collection of overpayments within 60 months (GN 02210.030). Individuals will default to 10 percent withholding even if the amount collected will not facilitate recovery within 60 months.

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Changes in Overpayment Recovery

Option to Request a Lower Rate

If a beneficiary requests a repayment plan with a rate lower than 10%, a representative will approve the request if it allows recovery of the overpayment within 60 months – a recent 2 year increase from the previous policy of only 36 months. If the beneficiary's proposed rate would extend recovery of the overpayment beyond 60 months, the Social Security representative will gather a verbal income, resource, and expense summary from the beneficiary to make a determination. (SSI recipients don't have to provide a summary.)

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Changes in Title II Overpayment Recovery

Rate Adjustment for Current Recipients

Individuals currently repaying an overpayment with a recovery rate greater than 10 percent can request to have the rate adjusted to 10 percent or \$10, whichever is greater. SSA will send a one-time notice to all overpaid individuals who have a repayment rate greater than 10 percent.

Certain recovery payments are not eligible for the 10 percent rate, e.g., situations of fraud or similar fault, misuse of benefits, and penalties.

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Changes in Title II Overpayment Recovery

Change in Administrative Waiver Policy – Title II

POMS GN 02250.350, TN 56 (05-24) increased the administrative waiver tolerance from \$1,000 to \$2,000.

When a liable person requests waiver and the total amount of that person's liability is \$2,000 or less, recovery will be waived because it would impede the efficient administration of the Act, unless there is some indication that the person may be at fault.

- Original total must be \$2,000 or less
 - Not each overpayment
 - Not if reduced by repayment to \$2,000

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Change in Title XVI Overpayment Recovery

Change in Administrative Waiver Policy - SSI

POMS SI 02260.030 TN 47 (05-24) updated the administrative waiver tolerance to \$2,000 for SSI.

- Effective May 13, 2024, we may administratively waive recovery or adjustment, i.e., administratively discontinue waiver development, on an overpayment if the original amount (not the balance) is \$2,000.00 or less.
- We do not use administrative waiver development discontinuance policy unless the recipient (or representative) makes a specific written or oral request for waiver or reconsideration.
- We administratively discontinue waiver development unless we believe there is an indication of fault on the part of the overpaid recipient. In such a case, we will conduct full waiver or reconsideration development.

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Changes in Overpayment Recovery

Revised Waiver Process

- In September 2023, SSA introduced a revised form (SSA-632) to help streamline the waiver process.
- They also indicated that they would be publishing proposed regulatory changes this Fall to streamline processes and reduce burden so eligible individuals can more easily seek debt relief.

We propose to simplify our rules for how an individual can demonstrate eligibility for waiver of recovery of an overpayment debt they have incurred. Our goal is to ensure that overpayment recovery does not unduly burden those in underserved, vulnerable, or marginalized communities.

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Changes in Overpayment Recovery

Take Aways – Overpayments

- Always review the overpayment and request reconsideration when appropriate.
- Request a reduced recovery rate, less than 10%, if needed.
- Always request waiver.

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2024 Supplemental Security Income (SSI) Program Update

Questions?

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