



STETSON LAW

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Special Needs Planning and Special  
Needs Trusts**

**2025 Supplemental Security  
Income (SSI) Program  
Update**

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**STETSON  
UNIVERSITY**

Center for Excellence in Elder Law

ACCESS AND JUSTICE FOR ALL®

# 2025 Supplemental Security Income (SSI) Program Update

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# **New SSI Trust Policy – Undue Hardship POMS SI 01120.203, Exceptions to Counting Trusts Established on or after January 1, 2000**

## **INTRODUCTION**

On August 26, 2025, SSA issued Transmittal 104 to POMS SI 01120.203, Exceptions to Counting Trusts Established on or after January 1, 2000. (See Appendix A) The transmittal contains three new exceptions to counting a trust as a resource based on undue hardship.

Section 1613(e) of the Social Security Act sets forth rules for counting trusts (established with the assets of an individual on or after 01/01/00) as resources along with exceptions to those rules if a trust meets one of the Medicaid trust exceptions. However, when a trust does not meet a Medicaid trust exception, SSA has the authority to waive applying the rules when such application would cause an undue hardship to the individual in certain circumstances. We are updating our policy to include three additional circumstances for undue hardship application.

The three new undue hardship exceptions relate to:

- a trust that contains funds in a Medicare Set-Aside Arrangement (MSA) for purposes of compliance with the Medicare Secondary Payer (MSP) Act;
- an SSA error results in a trust deficiency that cannot be remedied; and
- a policy-compliant special needs trust or a subaccount of a policy-compliant pooled trust is transferred to a noncompliant pooled trust or special needs trust and the trust beneficiary is not responsible for the transfer.

This is in addition to the current existing undue hardship exception when counting a trust as a resource would cause ineligibility for SSI and the individual would be deprived of food or shelter without SSI payments and has limited available funds.

## **UNDUE HARDSHIP – MEDICARE SET-ASIDE ARRANGEMENT (MSA)**

### **Undue Hardship**

Undue hardship exists if a trust containing funds in a Medicare Set-Aside Arrangement (MSA) would be a countable resource under section 1613(e) and the MSA funds may only be used for certain medical expenses consistent with the Medicare Secondary Payer (MSP) Act.

## **Medicare Secondary Payer (MSP) Act**

Under the MSP Act, Medicare may not pay for a beneficiary's medical expenses when payment has been made (or can reasonably be expected to be made) under a workers' compensation law or plan, an automobile or liability insurance policy or plan, or under no fault insurance (see 42 U.S.C. § 1395y(b)(2)(A)(ii)).

## **Medicare Set-Aside Arrangement (MSA)**

An MSA is a financial agreement that allocates a portion of an award, judgment, or settlement to pay for all future medical expenses related to the relevant injury or illness, for purposes of complying with the MSP Act. The use of the MSA funds must be legally restricted to such medical expenses that are covered and otherwise reimbursable by Medicare. The funds must also be depleted before Medicare will pay for future Medicare-covered expenses related to the individual's relevant injury or illness that exceed the set-aside amount. There may be cases in which funds in an MSA are placed in a trust.

For additional information, see the CMS factsheet at Appendix B or the following link: <https://www.cms.gov/medicare/coordination-benefits-recovery/workers-comp-set-aside-arrangements>.

## **Application of the Undue Hardship Waiver**

We will apply undue hardship under this provision with respect to the portion of a trust containing an MSA when all of the following criteria are met:

- An MSA is established for the benefit of the SSI applicant or recipient or their spouse.
- Funds in the MSA are placed in a trust or the MSA is administered by a third party such that it is considered a legal instrument or device similar to a trust (see [SI 01120.201G](#)).
- The trust (or legal instrument or device similar to a trust) containing the MSA funds would be a countable resource under section 1613(e) and results in the individual's ineligibility for SSI due to excess resources.
- The MSA contains the necessary legal restrictions on the use of the MSA funds for certain medical expenses (i.e., medical expenses related to the relevant injury or illness that would be covered by Medicare).
- The individual signs a statement for the file and submits all relevant documentation related to the MSA, including documentation that shows how the MSA was created and that the MSA contains the necessary legal restrictions on the use of the MSA funds.

## **Suspension of Resource Counting**

The portion of a trust containing an MSA is not counted as a resource under section 1613(e) (see [SI 01120.201](#)) in any month for which counting it would cause undue hardship under this application.

## **Resource Counting Resumes**

Resource counting resumes for any month(s) for which it would not result in undue hardship, such as if the MSA was dissolved or depleted or the legal restrictions on the use of MSA funds to certain medical expenses were removed.

Undue hardship is a month-by-month determination; however, this application only requires reviews periodically. The MSA may be reviewed during periodic reviews of the record, such as redeterminations, and the individual is responsible to notify SSA if there is any change regarding the MSA consistent with their reporting responsibilities.

## **Example**

An SSI recipient received a workers' compensation settlement of \$15,000 due to a work-related injury. The \$15,000 was allocated for future medical services related to that injury for purposes of the MSP Act and these funds must be depleted before Medicare will pay for treatment related to the injury. The \$15,000 was then placed in an MSA trust that is restricted to medical expenses related to the injury. The CS requests a copy of the settlement agreement and the MSA trust documents, any additional documentation that will show the legal restrictions on the use of the funds, an accounting of the funds, and how the funds are administered.

The CS determines the MSA trust would be a countable resource under section 1613(e). However, because the MSA trust funds are restricted to certain medical expenses (i.e., medical expenses related to the relevant injury that would be covered by Medicare), the CS determines that undue hardship applies in this scenario. The CS obtains the individual's statement and notes the system to reflect the MSA trust does not count as a resource under section 1613(e). The CS also determines that the MSA trust is not a resource under SI 01120.200.

## **UNDUE HARDSHIP – AGENCY ERROR RESULTED IN UNCORRECTABLE TRUST DEFICIENCY**

### **Undue Hardship Definition**

Undue hardship exists, in limited circumstances, if an SSA error results in a trust deficiency that cannot be remedied.

## **Application of the Undue Hardship Waiver**

SSA will apply undue hardship under this provision when all of the following criteria are met:

- There is an error by SSA;
- The trust has a deficiency that would result in the trust's being a countable resource under section 1613(e);
- There is a clear causal connection between SSA's error and that trust deficiency;
- The trust deficiency does not result in a potential benefit that substantially reduces the hardship to the individual;
- The trust deficiency cannot be corrected; and
- Substantive relief cannot otherwise be provided.

## **Suspension of Resource Counting**

The irrevocable trust is not counted as a resource under section 1613(e) (see SI 01120.201) in any month for which counting the trust would cause undue hardship under this application.

## **Resource Counting Resumes**

Resource counting under section 1613(e) resumes only if the circumstances change such that the criteria under this section are no longer satisfied. The individual is responsible for notifying SSA if there is any change regarding the trust consistent with their reporting responsibilities. Although undue hardship is a month-by-month determination, this application does not require monthly or periodic reviews due to the criteria.

## **Example**

A thirty-year-old SSI recipient received a \$7,000 inheritance and established an irrevocable special needs trust through their legal guardian, who is also their spouse and representative payee (RP). The trust was intended to meet a Medicaid trust exception and was reported to the field office. The CS determines that the trust is a countable resource because it contains a noncompliant early termination provision. However, the CS does not issue a notice (as required under SI 01120.204) that explains the problematic provision in the trust and the policy regarding it.

The RP requests reconsideration and inquires as to why the trust does not meet the Medicaid trust exception. The field office affirms the initial determination and simply states the trust is countable without further explaining or providing the notice required by policy.

The RP appeals the decision to an ALJ and attempts to fix the trust; however, the amended trust doesn't resolve the early termination issue. The ALJ decides the trust is still noncompliant due to its deficient early termination provision, notes the applicable policy, and finds it is a countable resource. The RP realizes the trust's deficiency upon reading the ALJ's decision; however, the recipient passes away two weeks later, and the trust can no longer be amended.

In this example, the SSA error was the field office's failure to provide the proper notice required by policy. The RP tried to determine the trust's deficiency and amended the trust; however, the RP didn't have an explanation as to what provision of the trust was problematic or what policy was at issue, so the amendment didn't correct it, which is the causal connection between the error and the trust's deficiency. There is no indication that the trust deficiency resulted in a potential benefit that substantially reduced the hardship to the individual. Finally, due to the recipient's death, the trust can no longer be amended and there is no way to provide substantive relief other than through this undue hardship provision.

## **UNDUE HARDSHIP – ASSETS TRANSFERRED UPON EARLY TERMINATION FROM A COMPLIANT POOLED TRUST OR SPECIAL NEEDS TRUST TO A NONCOMPLIANT POOLED TRUST OR SPECIAL NEEDS TRUST**

### **Undue Hardship Definition**

Undue hardship exists, in certain circumstances, when, upon early termination, assets in a pooled trust subaccount or a special needs trust that was previously determined to be policy-compliant are transferred to a noncompliant pooled trust or special needs trust and the beneficiary is not responsible for the transfer.

See POMS SI 01120.199 for policy related to early termination.

### **Application of the Undue Hardship Waiver**

We will apply undue hardship under this provision when all of the following criteria are met:

- A pooled trust subaccount or a special needs trust was previously determined to meet a Medicaid trust exception and not to be a countable resource (under SI 01120.203 and SI 01120.200).
- The assets in the pooled trust subaccount or special needs trust are transferred to a secondary pooled trust or special needs trust that is intended to meet a Medicaid trust exception (see SI 01120.203), but the secondary trust was not previously evaluated and is subsequently determined to be noncompliant with our policy.

- The SSI applicant or recipient is not responsible for the transfer to the secondary, noncompliant trust or the circumstances related to the early termination and the transfer.

### **Suspension of Resource Counting**

The secondary irrevocable trust is not counted as a resource under section 1613(e) (see SI 01120.201) due to undue hardship for 120 days in order to allow the trust to be amended or the assets to be transferred to a policy-compliant trust.

- The 120-day period begins on the day SSA informs the applicant, recipient, or representative payee via written notification that the secondary trust contains provisions that must be amended in order to qualify for a Medicaid trust exception.
  - If the written notification is mailed, instead of hand-delivered, then the applicant, recipient, or representative payee is considered to be informed five days after the mailing date.
  - We permit a good cause extension if it is requested with evidence that the disqualifying issue cannot be resolved within the 120-day period (for example, if a court must amend the secondary trust and there is a waiting period to get on the court docket).
- The technician follows the recontact controls provided in SI 01120.203H.4.

### **Resource Counting Resumes**

Undue hardship is a month-by-month determination; however, this application only requires a review when the 120-day period (plus any good cause extension) expires. If the secondary trust is not amended to conform with SSA policy requirements or the assets are not transferred to a policy-compliant trust within 120 days (plus any good cause extension), then undue hardship under this provision will no longer be met and resource counting of a trust will generally resume, subject to our policy, at the beginning of the following month.

### **Example**

An SSI recipient has a subaccount in a pooled trust that was previously determined to meet the Medicaid trust exception for pooled trusts and not be a countable resource under our policy (SI 01120.203 and SI 01120.200). However, the pooled trust dissolved, and the trustee transferred the subaccount to a secondary pooled trust intended to meet a Medicaid trust exception. Although the secondary pooled trust's master trust agreement expressed that its terms were intended to form a pooled trust that complied with section 1917(d)(4)(C), the agency determines the secondary pooled trust is not compliant with our policy due to a deficient early termination provision; so, it does not meet a Medicaid trust exception. The technician sends the required written notice to the SSI recipient, who notifies the trustee regarding the matter, and the technician tickles the issue for review in

120 days. The trust is amended to address the issue and conform with our policy within 100 days. The technician does not count the subaccount as a resource due to undue hardship and satisfying the requirements of SI 01120.200 for the first three months and does not count it as a resource due to the Medicaid trust exception and satisfying the requirements of SI 01120.200 for the months thereafter.

## **Regulations - Proposed Rule Changes**

### **RESCIND THE BURDENSOME USE RESTRICTIONS OF DEDICATED ACCOUNTS**

SSA is proposing to update its dedicated account policy to allow dedicated account funds to be used for the recipient's "current maintenance." Rescinding the Burdensome Use Restrictions of Dedicated Accounts, (RIN 0960-A192). This is a significant departure from current policy, which prohibits the use of these funds for maintenance.

#### **Dedicated Accounts Are Currently Limited Tool**

Congress created dedicated accounts in 1996 as part of the Personal Responsibility and Work Opportunity Act. *See* Social Security Act 1631(a)(2)(F)(i); 20 C.F.R. §416.546; 20 C.F.R. §416.640. When SSA owes a child more than six times the federal benefit rate for back benefits (approximately \$5,800 in 2025), that child or the child's parent or payee must open a separate bank account at a financial institution before they can receive any of that money. Moreover, once the account is established, the money can only be used on a narrow list of expenditures, excluding most daily expenses. SSA Section 1631(a)(2)(F); 20 C.F.R. §416.640(e). The money remains subject to the limited restrictions even after the child reaches the age of 18.

Dedicated Accounts have restrictions that differ from the treatment of other SSI benefits.

#### **Dedicated Accounts Must be in a Financial Institution**

The regulations state that when a child is owed more than six times the federal benefit rate for back benefits (approximately \$5,800 in 2025), the money must be paid into an account maintained as described in [416.640\(e\)](#), which requires opening a checking, saving or money market account in a financial institution. If the child, child's parent or payee is unbanked and cannot open an account, SSA will not release the money but are supposed to find a replacement payee. This can be challenging and mean that some children do not get access to their past-due benefits.

#### **Severe Restrictions on Expenditures from Dedicated Accounts**

Dedicated account funds can only be used for the benefit of the child, and:

- "(i) Medical Treatment and education or job skills training;

- (ii) If related to the child's impairment(s), personal needs assistance; special equipment; housing modification; and therapy or rehabilitation; (or)
- (iii) Other items and services related to the child's impairment(s) that we deem appropriate. The representative payee must explain why or how the other item or service relates to the impairment(s) of the child."

20 C.F.R. §416.640(e). SSA sub-regulatory policy clarifies that the money may not be used for any other items including, significantly, for basic maintenance costs like food, housing, clothing and personal items unrelated to the child's impairments, outside emergencies. [POM GN 00602.140](#). If the parent or representative payee misuses the funding – even if it is used to meet the child's needs – they must repay SSA the misapplied funds. There is an exception, however, to allow the funding to be to prevent the child from becoming malnourished or homeless.

These restrictions are stunningly stringent. If a parent of a child who receives SSI uses the funds for a snowsuit, formula, or a taxi to a medical appointment—none of that would be permissible. Moreover, it will expose the family to serious consequences including asking the parent to pay back those funds to SSA. Once she does, these funds are not returned to the account, but are lost to the family.

### **Dedicated Accounts are Intensely Monitored**

SSA is supposed to monitor the use of dedicated accounts. Representative payees must sign a Form SSA-552 to acknowledge they understand the restrictive uses of this funding and their responsibilities. Moreover, parents or payees are expected to “keep records and receipts of all deposits to, and expenditures from, dedicated accounts.” [POMS GN 00602.140](#). They are supposed to complete a SSA-6233-BK to report deposits and expenditures. Parents and payees spend hours keeping and collecting receipts and completing these forms. SSA estimates it costs them 4 million dollars to monitor dedicated accounts. Office of Inspector General, *Dedicated Accounts for Supplemental Security Income Recipients*, SSA, A-04-21-51031 at 2 (Sept. 2023).

Moreover, if a parent or payee would like to use some of the funds for “other items and services related to the child's impairment(s),” SSA policy encourages the parent or payee to inquire about the appropriateness of the purchase with SSA Field Office staff before making the purchase. [POM GN 00602.140](#). Field Office staff are directed to determine whether the expenditure is sufficiently related to the impairment on a case-by-case basis and provide a notice with appeal rights if they deny the use. [POMS GN 00602.140](#). This is a time-intensive process for SSA staff and beneficiaries. This process also introduces significant inequities because Field Office staff have and employ a lot of discretion in approving or denying requests to use this money.

### **Dedicated Accounts are Outdated**

Congress created dedicated accounts in 1996 as part of the Personal Responsibility and Work Opportunity Act, and has not updated its dedicated account regulations since

2011. See Social Security Act 1631(a)(2)(F)(i); 20 C.F.R. §416.546; 20 C.F.R. §416.640. There have been repeated bipartisan calls for their elimination.<sup>4</sup> Six prior SSA Commissioners (acting and confirmed) publicly supported eliminating dedicated accounts, and Commissioner Astrue described them as “labor intensive and confusing to the public.”<sup>1</sup> In 2003, the Senate Finance Committee recommended broadening dedicated account expenditures for “any purpose that is for the good of the beneficiary.”<sup>6</sup> Presidents Bush, Obama and Trump all included dedicated account reforms in their annual budget requests.

Since the last update, Congress passed both the ABLE Act of 2014 and the ABLE Age Adjustment Act (part of Secure 2.0) in 2023, creating tax advantaged savings accounts for people with qualifying disabilities. ABLE accounts and dedicated accounts are conceptually similar and often serve overlapping customers. Both types of accounts represent policy initiatives to ensure people with disabilities have resources available to address their needs. See POMS SI 1130.740; GN 00602.140. In a [2014 Senate Finance Hearing](#) before the Subcommittee on Taxation and IRS Oversight, Senator Michael Enzi (R-WY) explained that ABLE accounts were intended to allow people with disabilities and their families to plan how to use resources to meet their “unique emotional and financial obligations . . . whether it’s paying for specialized care [or] a better quality of life.” This rationale applies equally to dedicated accounts.

ABLE defines “qualified disability expenses” (QDEs) broadly in statute and corresponding SSA policy to include expenses associated with education, housing, transportation, health, and importantly, “basic living expenses.” [POMS SI 01130.740B.8](#). In stark contrast, dedicated account funds can only be used for a narrow range of expenses tied to the recipient’s medical impairment, and SSA’s rules prohibit the funds from being used for basic living necessities like housing, food and clothing. Compare, POMS SI 01130.40 with [20 C.F.R. §416.640\(e\)](#). It is incoherent from a policy standpoint that permissible expenditures from these conceptually similar financial accounts—both serving people with disabilities and sometimes used by the same families—vary so significantly. The divergent definitions of permissible expenditures reflect a shifting understanding of what constitutes a social determinant of health. When dedicated accounts were first created, discussions on preserving health and supporting disability centered around access to traditional public health and medicine. Now, it is widely acknowledged that social determinants of health also include environmental factors such access to safe housing and nutritious food.<sup>3</sup>

## **Rescinding Burdensome Use Restrictions of Dedicated Accounts Benefits Beneficiaries and SSA**

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<sup>1</sup> SSA Comm’r Apfel, Comments accompanying proposed “Social Security Amendment of 2000,” (July 9, 2000) available at <https://www.ssa.gov/legislation/SS%20Amendments%202000.pdf>; SSA Comm’r Barnhart, Comments accompanying proposed “Supplemental Security Income Program Amendment of 2022” (Sept. 2, 2002) available at <https://www.ssa.gov/legislation/Bills/SSIAmend2002.pdf>; SSA Comm’r Astrue, Letter to Honorable Pelosi and Honorable Chaney (May 20, 2008), <https://www.ssa.gov/legislation/Social%20Security%20Amendments%202008.pdf>.

This change will relieve burdens on families. It does not resolve all the barriers created by dedicated accounts (families, for example, still will likely have to be banked to get these funds) but will realign the use of these accounts with modern expectations. Even with SSA's instructions, many families find the severe expenditure restrictions unintuitive. They use the funds to pay for pressing daily needs, which subjects them to risk of needing to repay SSA, and sometimes delay in receipt of additionally owed dedicated account funds. Allowing families to use this funding to meet essential daily needs including buying food, paying towards housing, and clothing more closely aligns policy to expectations.

This update will also reduce the administrative burden on SSA. SSA has been spending more than 4 million dollars a year monitoring dedicated accounts. Office of Inspector General, *Dedicated Accounts for Supplemental Security Income Recipients*, SSA, A-04-21-51031 at 2 (Sept. 2023); [Testimony by Comm'r Barnhart Before the House Ways and Means Subcommittee on Human Resources on The Supplemental Security Income \(SSI\) Program \(Apr. 29, 2004\)](#). Yet, OIG has reported over four reports that SSA has continued to make errors, including following its policies regarding monitoring these accounts. Id. at 3. By loosening expenditure restrictions, monitoring these accounts will likely be less time-intensive.

This update may improve program efficiency. OIG also estimated that SSA underpaid 300 million dollars to 50,000 qualifying children and often significantly delayed payments to families. OIG, A-04-21-51013. By broadening expenditures, it will be easier for SSA to administer this program and avoid these errors.

## **IN-KIND SUPPORT AND MAINTENANCE (ISM) POLICY – RESCISSION OF CHANGES OF THE DEFINITION OF A PUBLIC ASSISTANCE HOUSEHOLD**

### **Changes Under the 2024 Final Rule**

In 2024, SSA published 3 final regulations dealing with ISM that were effective on September 30, 2024.

- SSA modified regulations at 20 CFR 416.1130(b) to **omit food** from the calculations of In-kind Support and Maintenance.
- 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).
- SSA adopted 3 changes in 20 CFR 416.1142(a):
  - Revised the definition of “public assistance household” to clarify that this is a term of art and only applies to SSA programs.
  - **Added Supplemental Nutrition Assistance Program (SNAP) to the list of Public Income Maintenance (PIM) programs.**
  - Changed 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.

See Appendix C for a copy of the final regulations related to public assistance households.

## **Public Assistance (PA) Household Policy**

**SSA assumes that an applicant or recipient who lives in a PA household does not receive any ISM from other household members.** Therefore, an SSI applicant or recipient who lives in a PA household cannot be subject to the Value of the One-Third Reduction (VTR) rule (see SI 00835.200). If the household receives outside ISM, or if the SSI applicant or recipient receives ISM from a source outside the household, the ISM is subject to valuation under the Presumed Maximum Value (PMV) rule.

A **PA household** is one that contains a Supplemental Security Income (SSI) applicant or recipient, and at least one other household member who receives one or more of the listed public-income maintenance (PIM) or PA payments.

## **PIM Payments**

PIM payments (or PA payments) 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) (For AFDC see [SI 00830.400](#) and for TANF see [SI 00830.403](#));
- Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);
- The Refugee Act of 1980 (payments based on need) ([SI 00830.645](#));
- The Disaster Relief and Emergency Assistance Act ([SI 00830.620](#));
- General assistance programs of the Bureau of Indian Affairs ([SI 00830.800](#));
- State or local government assistance programs based on need ([SI 00830.175](#));
- U.S. Department of Veterans Affairs programs (payments based on need) ([SI 00830.300](#)); or
- Effective only as of 09/30/2024 - The Supplemental Nutrition Assistance Program (SNAP) ([SI 01801.005](#)).

## **Why the Regulation was Changed in 2024**

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

- 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.

Between 1980 and 2022, there had been no change in public assistance household policy despite:

- 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 fluctuate, but generally up.

For comparison, there was a 50% increase in SSI recipients for the comparable period.

Adding SNAP (and considering other, more inherently in-kind benefits like Medicaid) reflects the shift in public participation for in-need individuals from using income supports that are purely cash assistance programs (such as those under our prior regulations) toward voucher-based or in-kind support programs.

Additionally, SNAP eligibility and receipt has relatively low State variability. SNAP is a nationwide program with relatively uniform eligibility standards. This will contribute to a more straightforward operational and systems rollout of the new policy, and greater consistency in recipients' experiences across States.

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, as an entitlement program, does not have a cap on enrollment as does the TANF program. SNAP recipient eligibility is also certified for relatively longer time periods, resulting in lower workload. These changes will reduce administrative burdens for SSI applications and recipients, as well as for SSA.

### **Added Impact – Deeming**

In the SSI program, Deeming is the process of considering a portion of another person's income to be the income of an SSI applicant or recipient. This is the cases with eligible and ineligible spouses, eligible children and ineligible parents and eligible aliens and ineligible alien sponsors.

SSA's 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 decreased 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.

### **Shift From “Every” to “Any” Other Member of the Household**

In the final regulation, SSA adopted a change 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 allows SSA to rely on other agencies who already make household determinations. The prior rule, which SSA is reverting to, is detrimental when household members are ineligible due to reasons other than need (citizenship, time limits, immigration status, etc.). In making the 2024 change, SSA found it reasonable to infer that when 2 members of household qualify for PIM payments, all members of the household are low-income.

### **Proposed Rescission**

As part of the Spring 2025 Unified Agenda, SSA announced its intent to rescind the regulatory changes to the definition of a public assistance household. The Abstract of the proposal reads:

We propose to rescind the final rule *Expand the Definition of a Public Assistance Household* (final rule), by removing the Supplemental Nutrition Assistance Program (SNAP) from the list of public income maintenance (PIM) payments. We further propose to adopt our former longstanding definition of a *public assistance household*, according to which every household member has to receive a PIM payment for the household to constitute a public assistance household. We propose to revert to our former policy to promote program integrity and because the benefits derived from the final rule do not outweigh the significant burdens and costs associated with its implementation.

The benefit of deregulation would be increased program integrity. Additionally, rescission of the final rule would be appropriate under E.O. 14219 secs. 2(a)(iv).

The regulation is currently at the Proposed Rule Stage, pending approval from the Office of Management and Budget, and has not been published as a Notice of Proposed Rulemaking in the Federal Register. Once adopted, the policy would revert to the regulation in place since 1980.

### **Why the Change is Being Made Now**

Based on statements made in the Abstract, the policy change is being rescinded because it is perceived to cost too much. We will have to wait for the NPRM to be published to see if SSA conducted a cost/benefit analysis, but we do have the fiscal impact analysis from the prior final regulation.

SSA estimated that implementation of the rule would result in a total increase in Federal SSI payments of \$15 billion over fiscal years 2024 through 2033. It was clearly the most expensive of the three In-kind Support and Maintenance (ISM) changes that were effective on September 30, 2024 at nearly 10 times the cost of omitting food from ISM.

It was estimated that 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. However, some individuals may have a decrease in SNAP benefits due to increased SSI payments.

In a comparison between the other two ISM regulations that were effective on the same date we note the following:

| Regulatory Change     | Program Costs<br>FY 2023-2033 | Administrative Costs<br>FY 2024-2033 |
|-----------------------|-------------------------------|--------------------------------------|
| Omit Food as ISM      | \$1.6 billion                 | \$26 million savings*                |
| Rental Subsidy Change | \$837 million                 | \$10 million savings*                |
| PA Household Change   | \$15 billion                  | \$83 million cost                    |

\* Partially offset by implementation costs

### **IMPROVEMENTS TO THE DISABILITY ADJUDICATION PROCESS: SEQUENTIAL EVALUATION PROCESS (MEGA-REG)**

SSA's Spring 2025 regulation agenda includes a policy proposal claiming to improve the disability adjudication process, due out in December 2025. [Improvements to the Disability Adjudication Process: Sequential Evaluation Process \(RIN 0960-A167\)](#) (emphasis added) The regulatory agenda does not contain much detail, only that SSA is

proposing improvements to the disability adjudication process to ensure disability programs remain[] current and can be more efficiently administered. This includes policy updates to occupational data sources and optimizing their use to serve customers and preserve the trust fund.

(emphasis added). While it is impossible to know what such an obliquely written regulation means, experts believe this refers to SSA's effort to both update outdated occupational data as well as change how it considers age, education, and other eligibility factors. Such a sweeping policy update would impact multiple regulations and could result in the largest benefit cut based on eligibility in the programs history—which is why advocates are referring to it as the Mega-Reg.

[Section 223\(d\)\(2\)\(A\)](#) and [Section 1614\(a\)\(3\)\(B\)](#) of the Social Security Act specify that

An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), “work which exists in the national economy” means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(emphasis added). In other words, central to disability adjudications is not only answering the question of whether someone has severe medical impairment, but whether that impairment would prevent them from engaging in competitive work when considered in conjunction with their age, education, work experience and considering what work exists in the economy. Social Security policy directs that when considering whether someone can do work, SSA adjudicators should typically consider the person’s abilities to do that work on a sustained basis, in an ordinary (unaccommodated) work setting, for 8 hours a day, 5 days a week, or an equivalent work schedule. [SSR 96-8p](#); [POMS DI 24510.057](#).

Currently, SSA relies on occupational information from the Dictionary of Occupational Titles (DOT) to make these determinations. Since the DOT has not been updated since 1992, there is broad, bicameral, agreement that SSA needs to update the occupational sources. SSA has been preparing to adopt the Bureau of Labor Statistics’ Occupational Requirements Survey (ORS) to replace the DOT [since 2012](#). This update is not one-to-one. ORS data differs significantly from DOT data, so any update will require changes to SSA policy, including new regulations and sub-regulatory guidance.

Because this proposal explicitly mentions updating occupational data in order to “preserve the trust fund,” experts are concerned SSA is planning to change its treatment of age, education and other eligibility factors in a fashion that will conserve resources by limiting eligibility. This mirrors a proposal leaked during President Trump’s first administration to the Wall Street Journal published a leaked version of a similar rule. [Kate Davidson, \*Trump Administration Weighs Tighter Requirements for Disability Payments\*, Wall Street Journal \(Jan. 10, 2020\)](#). Mark Warshawsky, a former SSA official that served during President Trump’s first term, has also spoken and written extensively about this proposal. *See e.g. Mark Warshawsky, [Modernizing, Simplifying and Reforming Federal Disability Programs AEI](#) (Feb. 12, 2025)*.

Importantly, this proposal may lessen the impact that SSA considers age to have on employability, among other changes. Currently, SSA considers how an individual’s age, education, and skills interact with their residual functional capacity to work through the use of Medical Vocational Guidelines, often called the vocational “[grids](#).” These guidelines help adjudicators evaluate claims by considering a combination of factors: RFC, age, education and work experience. The grids are structured as tables that outline different

vocational profiles and indicate whether a person is eligible for benefits based on these characteristics.

Age plays a critical role in the grids, because SSA recognizes that the ability to adapt to new work decreases with age. The guidelines divide age into categories using terminology that has not been updated in many years:

- Younger person (under 50)
- Closely approaching advanced age (50-54)
- Advanced age (55-59)
- Closely approaching retirement age (60 and older)

For example, a disabled person aged 55 with limited education and no transferable skill may be found eligible for benefits even if they could technically perform sedentary work because the grids presume older individuals face barriers to vocational adjustment. In contrast, a younger person with the same limitations might be expected to adapt to other work and denied benefits.

Another change being considered is how SSA defines work. SSA is rumored to be considering a new definition of work that would incorporate remote work and consider someone to be working if they could work 30, rather than 40 hours a week.

The grids provide guidance on how to incrementally consider different types of factors at once. Moreover, while some criticize the grids as outdated and overly simplistic, it is clear this framework provides consistency and efficiency. The research supports its continued use. As the population ages, the number of older Americans with work-related limitations has grown, even as the share of people with limitations remains stable. While remote work is [more common than in the past](#), it remains a work benefit that is not universally available and should not be assumed when thinking about nationally available competitive positions.

Jack Smalligan from the Urban Institute published a paper on September 18, 2025, which does a good job explaining how nuanced judgements about how education, age and past-work experiences could increase, decrease, or keep stable the number of Americans found eligible for disability benefits. Jack Smalligan, *Updating Social Security Disability* (Sept. 2025), (See Appendix D) also available at, <https://www.urban.org/author/jack-smalligan>. Moreover, he estimates that if SSA changes how it treats age and other factors as suggested in the leaked proposal, it would reduce SSDI eligibility by as much as 20 percent overall, and 30 percent among older ages. *Id.* at 10. This could total as much as 500,000 fewer SSDI beneficiaries and 80,000 fewer widow and children receiving benefits. Considering that this rule would also increase denials of new applicant, Smalligan estimates this change could amount to 82 billion in denied benefits between 2026-2035.

## **CHANGING SSA WAIVER OF OVERPAYMENT RECOVERY RULES AND TITLE II OVERPAYMENT WITHHOLDING RATE**

## **Background - The Overpayment Process**

An overpayment occurs when you receive more money than you should have been paid. Overpayments can occur for many reasons, like when someone does not timely report work or other changes that can affect benefits or when an individual chooses to continue receiving payments during an appeal. Each person's situation is unique, and overpayments are handled on a case-by-case basis. Social Security is required by law to adjust benefits or recover debts when people receive payments they weren't entitled to.

If an overpayment happens, SSA will notify you and your representative payee, if you have one, by mail. Overpayment notices explain why you've been overpaid, your overpayment amount, your repayment options, and your appeal and waiver rights.

## **Appeal and Waiver Rights**

If you don't agree that you've been overpaid, or believe the amount is incorrect, you can file an appeal using form SSA-561 Request for Reconsideration. Your appeal must be in writing and explain why you think you have not been overpaid, or why you think the amount is incorrect. You can get the form online or by calling SSA. To file an appeal online, visit [secure.ssa.gov/iApplNMD/start](https://secure.ssa.gov/iApplNMD/start).

You have 60 days from the date you received the original overpayment notice to file an appeal. SSA will assume you received this notice 5 days after the date on it, unless you show SSA that you didn't get it within the 5-day period. You must have a good reason for waiting more than 60 days to ask for an appeal.

If you believe you shouldn't have to pay the money back, you can request that SSA waive collection of the overpayment. You must submit form SSA-632 Request for Waiver of Overpayment Recovery, which you can get online or by calling SSA.

**Note:** If you think you are not at fault and your overpayment is \$2,000 or less, you can request a waiver by calling Social Security. They may be able to quickly process your request by phone.

There's no time limit for filing a waiver as long as you prove that both:

- The overpayment wasn't your fault.
- Paying it back would cause you financial hardship or would be unfair for some other reason.

SSA may ask you to give them proof of your income and expenses. They will stop collection of the overpayment until they make a decision on your request for an appeal or waiver.

## **Options for Repaying**

If you agree that the overpayment occurred and that the overpayment amount is correct, you have options for repayment.

If you're receiving Social Security benefits, SSA will withhold 50% of your benefit each month (effective 04/25/2025). If you're receiving Supplemental Security Income (SSI), generally they will withhold 10% of the maximum federal benefit rate each month. SSA will begin withholding your Social Security benefits or SSI payments approximately 60 days after they notify you of the overpayment.

If you can't afford this, you may ask them to take less from your benefit each month. You also have the option of paying back the overpayment at a rate greater than 50%.

SSA may recover an overpayment of Social Security benefits from your monthly SSI payment if you are no longer receiving Social Security benefits; or they may recover an SSI overpayment from your monthly Social Security benefits if you are no longer receiving SSI payments. If you aren't receiving benefits, you should do one of the following:

- Visit [www.pay.gov](http://www.pay.gov) and search for "Social Security" to pay by credit card, debit card, or bank account.
- Using your bank's online bill pay feature, to make a payment to "Social Security Administration."
- Send SSA a check for the entire amount of the overpayment within 30 days.
- Contact them to set up a plan to pay back the amount in monthly installments.

If you are not receiving benefits or become delinquent in your repayment agreement, SSA can recover the overpayment from your federal income tax refund or from your wages if you're working. Be aware that they will also report the delinquency to credit bureaus. Also, they can recover overpayments from future Social Security benefits or SSI payments.

### **Recent Overpayment Policy Changes**

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.

### **Default Overpayment Recovery Rate**

Prior to March 25, 2024, the default overpayment recovery rate was 100 percent of the recipient's monthly benefit.

On March 25, 2024, SSA issued Emergency Message (EM) 24011 (See Appendix D). 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 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.

On April 25, 2025, SSA issued EM 25029 (reissued as EM 25029 REV on August 28, 2025) (See Appendix E). Effective on that date, SSA increased the default Title II overpayment recovery withholding rate from 10 percent of the monthly Social Security benefit to 50 percent of the benefit.

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 50 percent of their Title II monthly benefit credited amount. They will recover the overpayment by withholding until the overpayment is fully recovered.

NOTE: Certain recovery payments are not eligible for the 50 percent rate, e.g., situations of fraud or similar fault, misuse of benefits, and penalties.

EM 25029 REV also states that “[i]f an overpaid individual has a prior overpayment and incurs a new overpayment, all outstanding overpayments will default to the 50 percent benefit withholding rate once withholding for the new overpayment begins (unless a lower repayment rate is separately negotiated or there is fraud or similar fault).”

The 50 percent withholding rate applies to matured overpayments beginning [08/25] and later (excluding fraud or similar fault and cross program recovery). If the 10 percent withholding rate was previously in place on the prior overpayment (because the relevant overpayment notice indicated the default withholding rate would be 10 percent), the 10 percent withholding rate applies to overpayment recovery actions through [07/25].”

Additionally, if SSA issued an overpayment notice prior to April 25, 2025, the individual will retain the 10 percent withholding rate unless they incur a new overpayment. If they incur a new overpayment, all overpayments will default to the 50 percent withholding.

## **Request for a Lower Rate**

If a beneficiary requests a repayment plan with a rate lower than 50%, 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 individual must complete an SSA-634 form (income, resource, and expense summary) in order for SSA to make a determination.  
(SSI recipients don't have to provide a summary since SSA has this information.)

EM-24011 E. stated 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."

EM-25029 REV does not address this issue with the new withholding rate, so I will assume that this policy will continue.

## **Withdrawal of Proposed Regulatory Changes**

Beginning with the Fall 2022 version of the Unified Agenda of Regulatory and Deregulatory Action, SSA listed a proposed regulations change to simplify regulations related to overpayment recovery and make the overpayment waiver process simpler. The Abstract from the Fall 2024 version of the Unified Agenda reads:

We propose to revise our rules relating to recovery of overpaid Social Security payments or benefits ("overpayment debt"). We propose to codify simplifications to procedures for demonstrating eligibility for waiver of recovery of overpayment debt. We also propose to explain our default rate of withholding when recovering overpayments from Title II benefit payments.

In addition, we are conducting a broad review of overpayment policies and may propose further revisions as a result of the review. Our overall goal is to ensure that overpayment recovery does not unduly burden those in underserved, vulnerable, or marginalized communities.

The development of this regulation was informed by correspondences, meetings, and a listening session with advocacy groups representing claimants and beneficiaries. Advocacy partner feedback has been critical in helping us to formulate new overpayment policies. For example, as a part of its commitments to DOJ's Legal Aid Interagency Roundtable initiative, the Agency hosted a virtual listening session with legal aid organizations on June 8, 2023 wherein stakeholders identified numerous challenges associated with

navigating overpayment recovery processes. Sixteen individuals, all from organizations, registered for the event.

In the Spring 2025 version of the Unified Agenda, the Trump Administration has deleted the long-term proposal to simplify the overpayment and waiver process with no explanation.

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## **APPENDICES**

### **APPENDIX A**

#### **POMS Transmittal Sheet – TN 104 and POMS SI 01120.203G.**

##### **POMS Recent Change**

**Effective Dates:** 8/26/2025  
**Identification Number:** SI 01120 TN 104  
**Intended Audience:** See Transmittal Sheet  
**Originating Office:** ORDP OISP  
**Title:** Identifying Resources  
**Type:** POMS Full Transmittals  
**Program:** All Programs  
**Link To Reference:**

#### **PROGRAM OPERATIONS MANUAL SYSTEM**

##### **Part SI – Supplemental Security Income**

##### **Chapter 011 – Resources**

##### **Subchapter 20 – Identifying Resources**

##### **Transmittal No. 104, 08/26/2025**

##### **Audience**

**FO/TSC:** CS, CS TXVI, CSR, CTE, DRT, FR, OA, OS, RR, TA, TSC-CSR;

**Originating Component:** OISP

**Effective Date:** Upon Receipt

## **Background**

Section 1613(e) of the Social Security Act sets forth rules for counting trusts (established with the assets of an individual on or after 01/01/00) as resources along with exceptions to those rules if a trust meets one of the Medicaid trust exceptions. However, when a trust does not meet a Medicaid trust exception, SSA has the authority to waive applying the rules when such application would cause an undue hardship to the individual in certain circumstances. We are updating our policy to include three additional circumstances for undue hardship application.

## **Summary of Changes**

SI 01120.203 Exceptions to Counting Trusts Established on or after January 1, 2000

We made minor language changes throughout to clarify current policy.

We rearranged the content in subsection G to provide an introduction and separate guidance for each circumstance regarding undue hardship.

- In doing so, the original circumstance regarding deprivation of food or shelter with limited funds largely contained the same language, but it was placed in its own subsection (Subsection G.4).
- We added a new circumstance regarding a Medicare Set-Aside Arrangement and instructions regarding it in Subsection G.1.
- We added a new circumstance regarding a trust deficiency issue and instructions regarding it in Subsection G.2.
- We added a new circumstance regarding a transfer issue and instructions regarding it in Subsection G.3.

We made minor revisions to subsection K to include cross references to G for the new hardship circumstances. We rearranged steps 3 and 4 in the chart to improve the workflow.

We also made minor changes in subsections H and K to specify that the undue hardship circumstance at issue in those subsections involved the circumstance regarding deprivation of food or shelter with limited funds.

\* \* \* \* \*

## **G. Policy for waiver for undue hardship**

Section 1613(e) of the Social Security Act (Act) sets forth rules for counting as resources trusts established with the assets of an individual on or after 01/01/2000 (see generally [SI 01120.201](#)),

along with exceptions to those rules if a trust meets one of the Medicaid trust exceptions in section 1917(d)(4)(A) or (C) of the Act for special needs trusts or pooled trusts, respectively. However, when a trust does not meet a Medicaid trust exception, SSA has the authority to waive applying the rules when such application would cause an undue hardship to the individual in certain circumstances.

For purposes of the trust provisions of section 1613(e) of the Act, there are four circumstances wherein undue hardship may be found:

1. the trust contains funds in a Medicare Set-Aside Arrangement (MSA) for purposes of compliance with the Medicare Secondary Payer (MSP) Act;
2. an SSA error results in a trust deficiency that cannot be remedied;
3. a policy-compliant special needs trust or a subaccount of a policy-compliant pooled trust is transferred to a noncompliant pooled trust or special needs trust and the trust beneficiary is not responsible for the transfer; and
4. the individual would be deprived of food or shelter without SSI payments and has limited available funds.

Each of these four circumstances is discussed in more detail below. If all of the required criteria are met for a circumstance, then undue hardship applies for purposes of the trust provisions of section 1613(e) ([SI 01120.201](#)).

**Note:** Qualifying for an undue-hardship waiver only applies to counting a trust under the statutory provisions of section 1613(e) of the Act (see [SI 01120.201](#) through [SI 01120.203](#)). A trust that meets the requirements for undue hardship to apply must still be evaluated under [SI 01120.200](#) to determine if it is a countable resource.

## **1. Undue Hardship - Medicare Set-Aside Arrangement (MSA)**

### **a. Definitions**

#### **i. Undue Hardship**

Undue hardship exists if a trust containing funds in a Medicare Set-Aside Arrangement (MSA) would be a countable resource under section 1613(e) and the MSA funds may only be used for certain medical expenses consistent with the Medicare Secondary Payer (MSP) Act.

**Note:** The undue hardship waiver only applies to the MSA funds and not to any other assets in the trust.

#### **ii. Medicare Secondary Payer (MSP) Act**

Under the MSP Act, Medicare may not pay for a beneficiary's medical expenses when payment has been made (or can reasonably be expected to be made) under a workers' compensation law or plan, an automobile or liability insurance policy or plan, or under no fault insurance (see 42 U.S.C. § 1395y(b)(2)(A)(ii)).

- Essentially, the MSP Act requires that Medicare be the secondary payer when another entity has the primary responsibility of paying for medical care, such as in cases involving workers' compensation and liability insurance.

### iii. Medicare Set-Aside Arrangement (MSA)

An MSA is a financial agreement that allocates a portion of an award, judgment, or settlement to pay for all future medical expenses related to the relevant injury or illness, for purposes of complying with the MSP Act. The use of the MSA funds must be legally restricted to such medical expenses that are covered and otherwise reimbursable by Medicare. The funds must also be depleted before Medicare will pay for future Medicare-covered expenses related to the individual's relevant injury or illness that exceed the set-aside amount. There may be cases in which funds in an MSA are placed in a trust.

General additional information regarding MSAs can be located via a CMS website (see <https://www.cms.gov/medicare/coordination-benefits-recovery/workers-comp-set-aside-arrangements> ).

## **b. Application of the undue hardship waiver**

### i. Applicability

We will apply undue hardship under this provision with respect to the portion of a trust containing an MSA when all of the following criteria are met:

- An MSA is established for the benefit of the SSI applicant or recipient or their spouse.
- Funds in the MSA are placed in a trust or the MSA is administered by a third party such that it is considered a legal instrument or device similar to a trust (see [SI 01120.201G](#)).
- The trust (or legal instrument or device similar to a trust) containing the MSA funds would be a countable resource under section 1613(e) and results in the individual's ineligibility for SSI due to excess resources.
- The MSA contains the necessary legal restrictions on the use of the MSA funds for certain medical expenses (i.e., medical expenses related to the relevant injury or illness that would be covered by Medicare).
- The individual signs a statement for the file and submits all relevant documentation related to the MSA, including documentation that shows how the MSA was created and that the MSA contains the necessary legal restrictions on the use of the MSA funds.

**Note:** The individual's statement (SSA-795) should reflect:

- 1) the MSA is restricted to medical expenses related to the relevant injury or illness that would be covered by Medicare; and
- 2) they understand they must report any changes regarding the MSA's restrictions or report if the MSA ceases to exist.

For example, the SSA-795 may state: "As shown in the submitted workers' compensation settlement agreement dated January 5, 2025, this MSA is restricted to medical expenses related to the relevant injury—a broken right arm—that would be covered by Medicare. I understand that I must report any changes regarding the MSA's restrictions or report if the MSA ceases to exist."

ii. Suspension of resource counting

The portion of a trust containing an MSA is not counted as a resource under section 1613(e) (see [SI 01120.201](#)) in any month for which counting it would cause undue hardship under this application.

iii. Resource counting resumes

Resource counting resumes for any month(s) for which it would not result in undue hardship, such as if the MSA was dissolved or depleted or the legal restrictions on the use of MSA funds to certain medical expenses were removed.

Undue hardship is a month-by-month determination; however, this application only requires reviews periodically. The MSA may be reviewed during periodic reviews of the record, such as redeterminations, and the individual is responsible to notify SSA if there is any change regarding the MSA consistent with their reporting responsibilities.

**Note:** Please refer all cases that may fall under this undue hardship circumstance to your regional office (RO). If necessary, the RO staff will seek guidance from the central office or OPLaw.

**c. Example**

An SSI recipient received a workers' compensation settlement of \$15,000 due to a work-related injury. The \$15,000 was allocated for future medical services related to that injury for purposes of the MSP Act and these funds must be depleted before Medicare will pay for treatment related to the injury. The \$15,000 was then placed in an MSA trust that is restricted to medical expenses related to the injury. The CS requests a copy of the settlement agreement and the MSA trust documents, any additional documentation that will show the legal restrictions on the use of the funds, an accounting of the funds, and how the funds are administered.

The CS determines the MSA trust would be a countable resource under section 1613(e). However, because the MSA trust funds are restricted to certain medical expenses (i.e., medical expenses related to the relevant injury that would be covered by Medicare), the CS determines that undue hardship applies in this scenario. The CS obtains the individual's statement and notes the system to reflect the MSA trust does not count as a resource under section 1613(e). The CS also determines that the MSA trust is not a resource under [SI 01120.200](#).

## **2. Undue Hardship - Agency Error Resulted in Uncorrectable Trust Deficiency**

### **a. Undue Hardship Definition**

Undue hardship exists, in limited circumstances, if an SSA error results in a trust deficiency that cannot be remedied.

### **b. Application of the undue hardship waiver**

#### **i. Applicability**

We will apply undue hardship under this provision when all of the following criteria are met:

- There is an error by SSA;
- The trust has a deficiency that would result in the trust's being a countable resource under section 1613(e);
- There is a clear causal connection between SSA's error and that trust deficiency;
- The trust deficiency does not result in a potential benefit that substantially reduces the hardship to the individual;
- The trust deficiency cannot be corrected; and
- Substantive relief cannot otherwise be provided.

#### **ii. Suspension of resource counting**

The irrevocable trust is not counted as a resource under section 1613(e) (see [SI 01120.201](#)) in any month for which counting the trust would cause undue hardship under this application.

#### **iii. Resource counting resumes**

Resource counting under section 1613(e) resumes only if the circumstances change such that the criteria under this section are no longer satisfied. The individual is responsible for notifying SSA if there is any change regarding the trust consistent with their reporting responsibilities. Although undue hardship is a month-by-month determination, this application does not require monthly or periodic reviews due to the criteria.

**Note:** Please refer all cases that may fall under this undue hardship circumstance to your regional office (RO). If necessary, the RO staff will seek guidance from the central office or OPLaw.

### **c. Example**

A thirty-year-old SSI recipient received a \$7,000 inheritance and established an irrevocable special needs trust through their legal guardian, who is also their spouse and representative payee (RP). The trust was intended to meet a Medicaid trust exception and was reported to the field office. The CS determines that the trust is a countable resource because it contains a noncompliant early termination provision. However, the CS does not issue a notice (as required under [SI 01120.204](#)) that explains the problematic provision in the trust and the policy regarding it.

The RP requests reconsideration and inquires as to why the trust does not meet the Medicaid trust exception. The field office affirms the initial determination and simply states the trust is countable without further explaining or providing the notice required by policy. The RP appeals the decision to an ALJ and attempts to fix the trust; however, the amended trust doesn't resolve the early termination issue. The ALJ decides the trust is still noncompliant due to its deficient early termination provision, notes the applicable policy, and finds it is a countable resource. The RP realizes the trust's deficiency upon reading the ALJ's decision; however, the recipient passes away two weeks later, and the trust can no longer be amended.

In this example, the SSA error was the field office's failure to provide the proper notice required by policy. The RP tried to determine the trust's deficiency and amended the trust; however, the RP didn't have an explanation as to what provision of the trust was problematic or what policy was at issue, so the amendment didn't correct it, which is the causal connection between the error and the trust's deficiency. There is no indication that the trust deficiency resulted in a potential benefit that substantially reduced the hardship to the individual. Finally, due to the recipient's death, the trust can no longer be amended and there is no way to provide substantive relief other than through this undue hardship provision.

## **3. Undue Hardship - Assets Transferred Upon Early Termination from a Compliant Pooled Trust or Special Needs Trust to a Noncompliant Pooled Trust or Special Needs Trust**

### **a. Undue Hardship Definition**

Undue hardship exists, in certain circumstances, when, upon early termination, assets in a pooled trust subaccount or a special needs trust that was previously determined to be policy-compliant are transferred to a noncompliant pooled trust or special needs trust and the beneficiary is not responsible for the transfer.

## **b. Application of the undue hardship waiver**

### **i. Applicability**

We will apply undue hardship under this provision when all of the following criteria are met:

- A pooled trust subaccount or a special needs trust was previously determined to meet a Medicaid trust exception and not to be a countable resource (under [SI 01120.203](#) and [SI 01120.200](#)).
- The assets in the pooled trust subaccount or special needs trust are transferred to a secondary pooled trust or special needs trust that is intended to meet a Medicaid trust exception (see [SI 01120.203](#)), but the secondary trust was not previously evaluated and is subsequently determined to be noncompliant with our policy.
- The SSI applicant or recipient is not responsible for the transfer to the secondary, noncompliant trust or the circumstances related to the early termination and the transfer.

### **ii. Suspension of resource counting**

The secondary irrevocable trust is not counted as a resource under section 1613(e) (see [SI 01120.201](#)) due to undue hardship for 120 days in order to allow the trust to be amended or the assets to be transferred to a policy-compliant trust.

- The 120-day period begins on the day SSA informs the applicant, recipient, or representative payee via written notification that the secondary trust contains provisions that must be amended in order to qualify for a Medicaid trust exception.
  - If the written notification is mailed, instead of hand-delivered, then the applicant, recipient, or representative payee is considered to be informed five days after the mailing date.
  - We permit a good cause extension if it is requested with evidence that the disqualifying issue cannot be resolved within the 120-day period (for example, if a court must amend the secondary trust and there is a waiting period to get on the court docket).
- The technician follows the recontact controls provided in [SI 01120.203H.4](#).

### **iii. Resource counting resumes**

Undue hardship is a month-by-month determination; however, this application only requires a review when the 120-day period (plus any good cause extension) expires. If the secondary trust is not amended to conform with our policy requirements or the assets are not transferred to a policy-compliant trust within 120 days (plus any good cause extension), then undue hardship under this provision will no longer be met and resource

counting of a trust will generally resume, subject to our policy, at the beginning of the following month.

**Note:** Please refer all cases that may fall under this undue hardship circumstance to your regional office (RO). If necessary, the RO staff will seek guidance from the central office or OPLaw.

### **c. Example**

An SSI recipient has a subaccount in a pooled trust that was previously determined to meet the Medicaid trust exception for pooled trusts and not be a countable resource under our policy ([SI 01120.203](#) and [SI 01120.200](#)). However, the pooled trust dissolved, and the trustee transferred the subaccount to a secondary pooled trust intended to meet a Medicaid trust exception. Although the secondary pooled trust's master trust agreement expressed that its terms were intended to form a pooled trust that complied with section 1917(d)(4)(C), the agency determines the secondary pooled trust is not compliant with our policy due to a deficient early termination provision; so, it does not meet a Medicaid trust exception. The technician sends the required written notice to the SSI recipient, who notifies the trustee regarding the matter, and the technician tickles the issue for review in 120 days. The trust is amended to address the issue and conform with our policy within 100 days. The technician does not count the subaccount as a resource due to undue hardship and satisfying the requirements of [SI 01120.200](#) for the first three months and does not count it as a resource due to the Medicaid trust exception and satisfying the requirements of [SI 01120.200](#) for the months thereafter.

## **4. Undue Hardship - Deprivation of Food or Shelter and Limited Funds**

### **a. Definitions**

#### **i. Undue Hardship**

For purposes of the trust provisions of section 1613(e) of the Act, undue hardship exists in a month if:

- failure to receive SSI payments would deprive the individual of food or shelter; and
- the individual's available funds do not equal or exceed the Federal benefit rate (FBR) plus any federally administered State supplement.

**Note:** Inability to obtain medical care does not constitute undue hardship for SSI purposes, although it may under a State Medicaid plan.

#### **ii. Loss of shelter**

For purposes of undue-hardship waiver in the context of section 1613(e) of the Act, an individual would be deprived of shelter if:

- they would be subject to eviction from their current residence, if SSI payments were not received; and
- there is no other affordable housing available, or there is no other housing available with necessary modifications for the disabled individual.

### iii. Available funds

In determining the individual's available funds, we include:

- Income
  - All countable income, including the value of in-kind support and maintenance (ISM), received in the month(s) for which undue hardship is an issue; and
  - All income excluded under the Act received in the month(s) for which undue hardship is an issue.
  - Do not include SSI payments received or items that are not income, per [SI 00815.000](#).

For a list of unearned and earned income exclusions, respectively, see [SI 00830.099](#) and [SI 00820.500](#).

**Note:** The receipt of ISM, in and of itself, does not preclude a finding of undue hardship.

- Resources

Resources include the following:

- All countable liquid resources as of the first moment of the month(s) for which undue hardship is at issue (for a definition of liquid resources, see [SI 01110.300](#)); and
- All liquid resources excluded under the Act as of the first moment of the month(s) for which undue hardship is at issue (for a list of resource exclusions under the Act, see [SI 01130.050](#)).
- Do not include non-liquid resources or assets determined not to be a resource, per [SI 01120.000](#).

SSI benefits retained into the month following the month of receipt are counted as a resource for purposes of determining available funds.

Refer to subsections H and K for procedures on developing and following up on a finding of undue hardship due to deprivation of food or shelter and limited funds.

## **b. Application of the undue hardship waiver**

### i. Applicability

We will apply undue hardship under this provision only when all of the following criteria are met:

- an irrevocable trust would be a countable resource under section 1613(e) and result in the individual's ineligibility for SSI due to excess resources;
- the trust specifically prohibits disbursements, or prohibits the trustee from exercising their discretion to disburse funds, from the trust for the individual's support and maintenance;
- the individual alleges (or information in the file indicates) that not receiving SSI would deprive the individual of food or shelter, with their statement subsequently obtained for the file; and
- the individual's total available funds are less than the FBR plus any federally administered State supplement.

**Note:** If the trust is revocable by the individual, the undue-hardship requirements for this circumstance cannot be met because the individual can access the trust funds for their support and maintenance.

ii. Completing the individual's statement (SSA-795)

The individual's statement (SSA-795) should reflect:

- 1) failure to receive SSI payments would deprive them of food or shelter;
- 2) their total available funds are less than the FBR plus any federally administered State supplement;
- 3) they will promptly report any changes in their income or resources; and
- 4) they understand they may be overpaid if, for any month, available funds exceed the FBR plus any State supplement or if other situations change.

iii. Suspension of resource counting

An irrevocable trust is not counted as a resource under section 1613(e) (see [SI 01120.201](#)) in any month for which counting the trust would cause undue hardship.

iv. Resource counting resumes

Resource counting of a trust resumes for any month(s) for which it would not result in undue hardship.

**c. Example**

Frank filed for SSI in 3/2017 as an aged individual. In 2/2017, Frank received an insurance settlement from an accident that was placed in an irrevocable trust. After

determining that Frank met the other requirements for undue hardship (including a prohibition on the trustee from disbursing any funds for his support and maintenance), the claims specialist determined Frank's available funds. Frank receives \$450 in title II benefits per month. Frank's only liquid resource is a bank account that has \$500 in it. The total of \$950 in available funds (\$450 in title II benefits and \$500 in the bank account) means that undue hardship does not apply in 3/2017, because that amount exceeds the 2017 FBR of \$735. (His State has no federally administered State supplement.)

Frank comes back into the office in 6/2017 and presents evidence that he has spent down the \$500 in his bank account on living expenses in the past three months. As of 6/2017, Frank has no liquid resources, and Frank's income total of \$450 is below the FBR (\$735 for 2017). Frank meets the undue hardship test for 6/2017 (which is Frank's E02 month). The trust does not count as Frank's resource under section 1613(e) in that month. It also is not a resource under [SI 01120.200](#). If Frank's situation does not change, he qualifies for an SSI payment in 7/2017.

## **APPENDIX B**

### **Workers' Compensation Medicare Set Aside Arrangements**

A Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) is a financial agreement that allocates a portion of a workers' compensation settlement to pay for future medical services related to the workers' compensation injury, illness, or disease. These funds must be depleted before Medicare will pay for treatment related to the workers' compensation injury, illness, or disease.

All parties in a workers' compensation case have significant responsibilities under the Medicare Secondary Payer (MSP) laws to protect Medicare's interests when resolving cases that include future medical expenses. The recommended method to protect Medicare's interests is a WCMSA.

The amount of the WCMSA is determined on a case-by-case basis. To assist you in determining if a WCMSA is reasonable, please review Section 15.1 (Criteria) in the *WCMSA Reference Guide*. The guide contains information for attorneys, Medicare beneficiaries, claimants, insurance carriers, representative payees, and WCMSA vendors and is available in the Downloads section at the bottom of this page.

### **When to submit a WCMSA for CMS Review**

While there are no statutory or regulatory provisions requiring that a WCMSA proposal be submitted to CMS for review, submission of a WCMSA proposal is a recommended process. More information on this process can be found on the WCMSA Submissions page (<https://www.cms.gov/medicare/coordination-benefits-recovery/workers-comp-set-aside-arrangements/submission>.)

If you choose to submit a WCMSA for review, CMS requires that you comply with its established policies and procedures. CMS will only review WCMSA proposals that meet the following criteria:

- The claimant is a Medicare beneficiary and the total settlement amount is greater than \$25,000.00; or
- The claimant has a reasonable expectation of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.00

For more information on Review Thresholds, please see Section 8.1 (Review Thresholds) of the *WCMSA Reference Guide* available in the Downloads section found at the bottom of this page.

If you decide to submit a WCMSA for review, it can be submitted electronically through the WCMSA Portal (<https://www.cob.cms.hhs.gov/WCMSA/>) (WCMSAP) or by paper/CD through the mail. The portal submission is the recommended approach for submitting a WCMSA as it is significantly more efficient than sending this information via the mail. For more information about this application, please see the WCMSAP page (<https://www.cms.gov/medicare/coordination-benefits-recovery/workers-comp-set-aside-arrangements/portal.>)

**Note:** For general information on CMS's Coordination of Benefits & Recovery activities, please see the COB&R page (<https://www.cms.gov/medicare/coordination-benefits-recovery/overview.>)

## **APPENDIX C**

(Click on the hyperlink below to see the full Final Regulation.)

### **Expand the Definition of a Public Assistance Household**

**Document Citation:** 89 FR 28608

*Final Rule*, [Expand the Definition of a Public Assistance Household](#) (April 19, 2024)

Summary: We are finalizing our proposed rule 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. We are also revising the definition of a PA household from a household in which every member receives some kind of PIM payment to a household that has both an SSI applicant or recipient, and at least one other household member who receives one or more of the listed PIM payments (the *any other* definition). If determined to be living in a PA household, inside in-kind support and maintenance (ISM) would no longer need to be developed. The final rule will decrease the number of SSI applicants and recipients charged with ISM from others within their household. In addition, we expect this rule to decrease the amount of

income we would deem to SSI applicants and recipients because we will no longer deem as income from ineligible spouses and parents who live in the same household: the value of the SNAP benefits that they receive; any income that was counted or excluded in figuring the amount of that payment; or any income that was used to determine the amount of SNAP benefits to someone else. These policy changes reduce administrative burden for low-income households and SSA.

## **APPENDIX D**

### Updating Social Security Disability

#### **Regulatory Changes Could Significantly Reduce Eligibility for Benefits, Particularly among Older Workers**

*Jack Smalligan*

*September 2025*

**The Social Security Administration directs two important disability programs: Social Security Disability Insurance (SSDI), which is vital for older workers with significant work-restricting impairments who have yet to reach full retirement age, and the Supplemental Security Income (SSI) program, which provides critical income support to the elderly and children and adults with severe disabilities earning little or no income or assets. SSDI and SSI share the same criteria for determining disability eligibility. However, these programs rely on outdated occupational data that threaten the validity and quality of disability decisions. To address this, SSA is drafting a proposed rule to adopt and implement modernized occupational data in the disability determination process. It is also considering changes to other standards and processes used to determine eligibility, including how much weight the age of a claimant should be given in the disability decision.<sup>1</sup> The forthcoming regulation could lead to substantial reductions in program eligibility, particularly among older working adults.**

The Social Security Administration (SSA) has been working across administrations to update the occupational data needed to make disability claims decisions and to develop guidance and procedures for data use. Bipartisan consensus supports modernizing data on work in the economy and functional job requirements. However, the debate centers on how to apply those data and how age should influence eligibility. On some key questions, like the need to adopt modernized data on work in the economy and functional requirements of jobs, different Administrations have agreed on the need for change and source of new data to be used. However, on other questions, like how that data is used and how age should be factored into disability decisions, the views and policy goals of policymakers differ significantly. These differing views could have enormous impact

on program eligibility and benefit payments for millions of people, particularly workers over the age of 50.

The goal of this brief is to clarify the key technical issues under consideration by policymakers at the SSA. We discuss the alternative policy approaches to the forthcoming proposed rule, Improvements to the Disability Adjudication Process: Sequential Evaluation Process,<sup>2</sup> relevant research, and estimates of the potential impact on program participation and spending. Three primary components to the anticipated regulation follow:

- The replacement of the outdated Dictionary of Occupational Titles (DOT) with data from the Bureau of Labor Statistics' (BLS) Occupational Requirements Survey (ORS), which has been underway for many years with bipartisan support
- The implementation of the ORS, including establishment of various thresholds for determining how many jobs exist in the economy at different skill and exertional levels
- Changes to the treatment of age, education, and other elements as eligibility factors, which is separate from the transition from the DOT to ORS

These changes will involve nuanced judgments about how education and past work experience affect an individual's ability to work given their age, and whether enough jobs are available that match the individual's functional capabilities. Overall policy goals are likely to drive decisionmaking on these technical details. One view, championed by Mark Warshawsky, a former Trump administration policy official at SSA, argues that program spending should be reduced and age should be given less weight in the determination process based on increases in longevity and changes in the nature of work (Warshawsky 2023). Wall Street Journal reporting based on a draft version of the rule under the first Trump administration, as well as writings by Mark Warshawsky and conversations with former SSA staff knowledgeable of the draft rule suggest the proposed regulation could reduce eligibility for new applicants to the SSDI program dramatically, potentially by as much as 20 percent overall, and up to 30 percent among older age groups through these changes (Warshawsky and Marchand 2015).<sup>3</sup> The potential impact on the SSI program is unclear. Conversely, Biden administration officials considered research on the negative outcomes for people denied benefits under the current process as evidence of the need to maintain or increase program eligibility, especially for older workers.<sup>4</sup>

To illustrate the potential impact of the anticipated regulation, we estimate the effect of a policy that reduces SSDI eligibility by 10 percent and find that it would result in roughly 500,000 people losing SSDI eligibility by the end of 10 years, including 80,000 widows and children. In addition, another 250,000 beneficiaries would lose eligibility for some of the 10-year period. This would result in

approximately \$82 billion in benefits being denied over 10 years, as well as reductions in eligibility for Medicare, Medicaid or both.<sup>5</sup> The loss of health insurance is especially troubling for a population that disproportionately has serious medical challenges. These reductions would have implications not only for individual beneficiaries and applicants, but also broader effects on labor force participation, poverty rates, and the health and economic security of workers. For older workers denied benefits and unable to earn a steady income, they may resort to claiming retirement benefits at the earliest age of 62, resulting in a lifetime benefit that is 30 percent lower than what they would have received had they qualified for SSDI.

## What Key Issues Surround Updating the Disability Eligibility Process?

Regulatory updates to the disability determination process would likely focus on how SSA implements requirements under the Social Security Act to consider an individual's age, education, and work experience in making eligibility decisions. It is likely that any proposed rule on this topic would be very large and complex, consisting of many interrelated and technical changes. However, the impact of the regulation will be guided by policy decisions on three key elements:

- Should SSA replace the DOT with data from the BLS's ORS?
- How should SSA implement data from the ORS to determine disability eligibility?
- How, and to what extent, should age be considered in assessing an individual's ability to perform work in the economy?

The overarching policy goals of the SSA in these three areas will determine how the regulation impacts the size of the program and its beneficiaries—namely whether it will increase, decrease, or achieve a net neutral impact on participation and spending. In the following sections, we discuss each of these areas and how alternative policy approaches would alter expected outcomes, including relevant research and evidence.

### Issue 1: Adopting Modernized Data on Work in the Economy

To determine whether an individual is considered disabled (see box 1 on the next page), SSA needs current data on occupations in the economy and their requirements. The Social Security Act's definition of disability includes both medical and vocational criteria. To qualify, applicants must have a severe and long-lasting or terminal medical condition that renders them unable to work above a subsistence wage. The final step of deciding whether a claimant is eligible for

benefits requires SSA to determine the individual's residual functional capacity (RFC), essentially what types of mental and physical activities the claimant could still perform given their age, education, and work experience. Once that determination is reached, SSA attempts to find "work which exists in the national economy," including "work which exists in significant numbers either in the region where such individual lives or in several regions of the country."<sup>6</sup>

Currently, SSA relies primarily on the Department of Labor's (DOL) DOT to determine what work exists. In this step of the process, SSA does evaluates if a person is capable of doing the same work they previously did. If they are determined to be unable to do their prior work, SSA uses the person's RFC to assess whether they can perform a comparable or less physically or mentally demanding job. However, using the DOT does not provide a modern catalog of today's jobs because DOL stopped updating it over 30 years ago.<sup>7</sup> Using outdated data poses risks to the integrity of the disability determination process and validity of its decisions. An adjudicator can use the presence or absence of jobs to incorrectly deny or grant benefits to an applicant. The issue has been highlighted in the media, where for example, individuals were reportedly denied benefits because of the availability of jobs like nut-sorter and dowel inspector, which do not exist in large numbers in the national economy anymore, if at all.<sup>8</sup> SSA has taken action to remove some of the most obviously out-of-date jobs from the DOT.<sup>9</sup> Aside from this, the DOT also excludes any new occupations that have emerged since 1991, which is before the advent of the internet, the modern tech sector, and other major employment shifts.

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#### BOX 1

### Social Security Disability Determination Process

The Social Security Administration (SSA) uses a **five-step sequential evaluation process** to determine whether an individual qualifies for disability benefits under the Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) programs. Before beginning this process, SSA determines whether an individual is eligible for SSDI, SSI, or both programs based on past work history, recent earnings, total income, and assets, depending on the program.

- **Step 1.** SSA's assesses whether the applicant is engaging in substantial gainful activity (SGA). SSA defines SGA as earnings above \$1,620 a month in 2025 for non-blind individuals, an amount that is indexed annually to average wage growth.<sup>10</sup> Individuals engaging in SGA are generally not considered disabled.
- **Step 2.** An applicant's claim is reviewed to determine whether the applicant has a severe medically determinable disability that significantly limits their ability to perform basic work activities.
- **Step 3.** SSA checks whether it meets or equals a listing in the SSA's Listing of Impairments, which would automatically qualify the applicant for disability

and allow SSA to approve the claim without the need to advance to steps 4 and 5. The medical listings expedite the approval of applicants whose impairment can be judged to be disabling based on medical evidence alone, avoiding the need for an individualized assessment of their ability to work.

- **Step 4.** If the disability does not meet or equal a listing, SSA evaluates the applicant's residual functional capacity (RFC) to determine whether they can perform any of their past relevant work.
- **Step 5.** If the disability does not meet or equal a listing, the final step assesses whether they can adjust to other work that exists in significant numbers in the national economy, considering their age, education, and work experience. This step involves a vocational analysis and may include input from vocational experts.

**Source:** Wixon, Bernard and Alexander Strand, Identifying SSA's Sequential Disability Determination Steps Using

Administrative Data, Research and Statistics Note No. 2013-01 (released June 2013)

<https://www.ssa.gov/policy/docs/rsnotes/rsn2013-01.html>

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Beginning in 2012, SSA contracted with the BLS to survey employers and explore creation of a new survey, database of occupations, and physical and mental job requirements to increase accuracy in disability determinations based on legal requirements.<sup>11</sup> The goal was to create a database flexible enough to accommodate future changes to jobs and their associated occupational and vocational requirements. To achieve these objectives, BLS fielded the ORS,<sup>12</sup> which includes three phases of data collection, including an initial proof of concept test and two national waves of employer surveys to collect the physical, mental, and vocational job requirements SSA needs. BLS releases ORS data to the public, with limitations to protect the confidentiality of employers.

Although there is broad agreement on the need for this update, its impact will depend on its implementation. The DOT and ORS are different enough from each other in origin, methodology, and application that the use of ORS could dramatically affect overall eligibility as well as the composition of the beneficiary population but in the aggregate, it is unclear that shifting from the DOT to the ORS will alone significantly impact base eligibility.

## Issue 2: Implementing the Occupational Requirements Survey

Replacing the DOT with the ORS will involve many technical decisions that, together, could be used to significantly alter the number and type of approved claims for disability benefits. These technical decisions will be guided by high-level policy decisions and goals. Statements by former Trump officials suggest that reducing costs in the disability program are an overriding policy objective (Warshawsky 2023), aligning with other unprecedented reductions in government spending. However, research that examines outcomes among applicants who are denied

disability benefits under current program rules shows that most go on to experience worsening employment, health, and financial outcomes. In addition, the lengthy application and appeals process itself often keeps people out of work for months.

Below we identify four issues involved in implementing ORS that will likely be addressed the regulation and could be used to alter the net effect of the regulation on disability eligibility. We then discuss research on outcomes for denied applicants.

## Number and Mix of Jobs Available in the Economy

**Eliminating the DOT and incorporating ORS would remove outdated jobs and add newer ones and provide more data on which jobs are available in significant numbers.** SSA must determine whether a given job exists in sufficient numbers in the economy for it to be included in the list of available jobs used in step 5 of the disability determination process. To do that, SSA must decide how many available jobs is “sufficient,” how to define the job categories, and whether being able to perform only one job available in sufficient numbers is enough to deny someone benefits. SSA can also change how it defines the region in which a person works; some jobs may only be available in isolated geographic areas. How should those be treated?

## Cognitive Requirements

ORS provides more granular data on the mental and cognitive demands of jobs. After the first wave of the ORS survey, SSA realized that it did not have enough data on the mental requirements of jobs to implement the ORS. SSA defines two types of functional limitations—exertional and nonexertional. SSA defines an exertional limitation as “an impairment-related limitation that reduces the capacity to sit, stand, walk, lift, carry, push, or pull” (Social Security Administration 2014d). It considers all other limitations “nonexertional” limitations, which relate to cognitive tasks, emotional and psychological functioning, sensory abilities, manipulative or postural tasks, and environmental tolerances. In 2024, BLS published the second wave with the additional needed details. This enhanced detail, along with new adjudication guidance, may influence how SSA evaluates claims involving mental health conditions— either as a primary impairment or as a co-occurring condition with physical disabilities. Improved data on mental requirements could lead to more accurate and equitable determinations.

## Thresholds for Functional Requirements

ORS offers detailed information on functional job demands, but SSA must establish thresholds and decision rules to determine when an individual’s RFC is sufficient to do a particular job. This could greatly affect how many people are found to be disabled. If a claimant has an exertional limitation that prevents them from being able to perform heavy lifting, should they be considered capable of getting a job

where 50 percent of the positions require it? What about an occupation where heavy lifting is required in 25 percent of positions? Or 75 percent? These thresholds can be adjusted to make the program eligibility more or less strict.

### **Intersecting Functional Requirements**

SSA must account for wide variation in the functional requirements of jobs: jobs with the same title can require very different functions. The ORS occupation dataset that SSA is using is challenging because while it shows what proportion of jobs that require each skill in isolation, it does not show how they might combine in a particular position. So, for example, if a person can perform light work, but cannot work outdoors, and a position requires both, job prevalence data alone may not provide a clear answer to whether they can perform the job. More broadly, ORS data show a substantial number of “unskilled” jobs in the economy in terms of educational or training requirements, with 34.1 percent having job requirements that can be learned in one month or less. ORS data also show that 29.3 percent of jobs require only sedentary demands, but SSA often needs to know whether a substantial number of jobs are both unskilled and sedentary. These types of jobs are the ones that individuals with disabilities are most often able to perform in the economy. In preliminary findings, Weaver (2025) examines the ORS data and finds that a simple assumption that the unskilled and sedentary job characteristics are uncorrelated would lead to an erroneous assumption that 10.0 percent of jobs are unskilled and sedentary, whereas BLS has published findings that only 3.6 percent of jobs are unskilled and sedentary.<sup>13</sup>

### **Outcomes among Denied Disability Claimants and Similar Disabled Workers**

Existing research shows that applicants denied disability benefits under the current process experience very poor health and economic outcomes, and raising eligibility standards would likely worsen these harms. Using 2014 survey data on adults ages 18 to 66, Weaver (2021, p. 1) estimates that about 24 million people have applied for Social Security disability benefits at some point, with roughly equal shares ultimately allowed and denied. Denied applicants were found to have only slightly better health than beneficiaries and relative to the overall working-age population, much higher rates of poor health, poverty, and limited earnings.

Denied applicants are unlikely to return to work. Hyde, Wu, and Gill (2018) specifically look at individuals ages 50 and older who are denied at steps 4 and 5 of the eligibility process. They find that five years after the initial decision, only 10 to 20 percent of denied applicants are working, whereas five years prior to the initial denial decision, between 85 and 95 percent of these claimants were working. Johnson and Gosselin (2018) use the Health and Retirement Study to track older individuals and find that about one-half of fully employed workers ages 51 to 54 experience an employer-related involuntary job separation after age 50. The separation substantially reduces earnings for years or leads to long-term

unemployment, often draining their retirement savings and leading to long-term economic hardship.

Adults who develop a work-limiting disability are also more likely to exit the labor market and experience financial hardship and poverty. For the overall working age population, Mudrazija and Smalligan (2019) find that each year, on average, 4.2 percent of adults ages 18 to 62 who are in the labor force report developing a new work-limiting health condition or experience a new health shock. Within two years, these workers are three times more likely to have left the labor force than other workers.

More than half of them do not receive any form of public assistance and do not report being retired. Within six years, over one-third of this group does not receive any public assistance. Poverty rates almost double within two years following the onset of their health issue. Those who do receive some form of public assistance are more likely to see their incomes stabilize while those who do not receive benefits see their economic status erode.

Deshpande, Gross, and Su (2021, p. 151) use SSA administrative records and the variations in disability determination rules related to age to consider key markers of financial distress, including bankruptcy, foreclosure, eviction, and home sale. They find these adverse financial events peak around the time of disability application. They also estimate that a “disability allowance reduces the likelihood of bankruptcy by 20 percent, foreclosure by 33 percent, and home sale by 15 percent.”

A denial for disability benefits can also impact the work requirements in other support programs. Some applicants rely on means-tested assistance, such as the Supplemental Nutrition Assistance Program. However, the Supplemental Nutrition Assistance Program has work requirements that a disability applicant may be unable to satisfy. While the Supplemental Nutrition Assistance Program provides an exemption for people with disabilities, in many states, the person must have qualified for a disability benefit like SSDI or SSI to automatically meet the standard for the exemption (Bergh and Rosenbaum 2023).

### Issue 3: Factoring Age into Disability Determinations

In addition to updating data and thresholds used in the disability determination process, it is likely that SSA will also propose changes to the way the age of a claimant is factored into disability determinations.

The Social Security Act explicitly requires SSA to consider age as a factor in determining disability. While the occupational requirements of jobs and the role of age in an individual’s ability to work are related, SSA could implement changes solely to the occupational requirements without changing any of its age thresholds. However, changes to reduce the role of age as a determination factor, via changes to the “grids” we discuss below, are expected to be one of the main issues in SSA’s

rulemaking under the Trump administration. This approach has been written about by a former SSA policy official who has argued that age should be given very little, if any, weight in disability decisions (Warshawsky 2023) and reported by the *Wall Street Journal*, which obtained a copy of the unpublished rule during the first Trump administration.<sup>14</sup>

Currently, SSA considers how an individual's education, age, and skills interact with the residual functional capacity they have due to their serious disability through use of Medical-Vocational Guidelines, often called the vocational "grids."<sup>15</sup>

SSA's grids form a framework used in the final step of the disability determination process—after a person has been found to have a significant medical impairment—to assess whether a claimant can adjust to other work in the national economy. With the adjudicator having found the claimant to be *medically* eligible in these steps, they determine *vocational* eligibility (i.e., whether those medical impairments preclude substantial work). These guidelines help adjudicators evaluate claims by considering a combination of factors: RFC, age, education, and work experience. The grids are structured as tables that outline different vocational profiles and indicate whether a person is eligible for benefits based on these characteristics.

Age plays a critical role in the grids because SSA recognizes that the ability to adapt to new work decreases with age. The guidelines divide age into categories using terminology that has not been updated in many years:

- Younger person (under 50)
- Closely approaching advanced age (50–54)
- Advanced age (55–59)
- Closely approaching retirement age (60 and older)

For example, a disabled person age 55 with limited education and no transferable skills may be found eligible for benefits even if they could technically perform sedentary work because the grids presume that older individuals face greater barriers to vocational adjustment. In contrast, a younger person with the same limitations might be expected to adapt to other work and thus be denied benefits.

The grids also categorize physical limits of an individual into five categories from "sedentary" to "very heavy" and an individual's education into categories from "unable to read" to "being a high school graduate or having more education." For jobs, the educational grid also categorizes jobs in terms of the amount of training required from "unskilled" (i.e., only a short demonstration needed) to "over 10 years of training."<sup>16</sup>

The grids provide guidance on how to incrementally consider different types of factors at once. For example, the grid recommends that a disabled person 50 or older with seven or fewer years of education who can only do sedentary, unskilled work should be awarded benefits. However, the grid does not recommend that an individual with the same age and education who can do nontransferable semi-skilled work be awarded benefits. The grid provides recommendations for over 80 configurations of these factors.<sup>17</sup> It gets progressively easier for people with physical limitations and limited education or skilled work to get benefits as they get older.

There are many cases where the grid cannot give guidance on a determination, particularly when non-exertional limitations are present. In addition, the grids have been criticized as overly simplistic and out of date. However, it is unclear that the fundamental framework of the grids is dated, as the grids provide a simplified framework for making complicated eligibility decisions in the context of a large federal agency where adjudicators are considering several million individuals a year. And while the grids may increase consistency and efficiency, decisions are ultimately left to the adjudicators reviewing the cases.

While SSA may propose to reduce age as a factor in the forthcoming rule, others have argued that eligibility should be increased for workers with disabilities who are approaching age 62, the early retirement eligibility age (Primus, Watson, and Smalligan 2025).

## **Age and Disability**

As the population ages, the *number* of older Americans with work-related limitations has grown even as the *share* of older people with a limitation remains stable. From 1997 to 2017, the number of adults reporting a health-related work limitation increased from 2.8 million to 5.4 million for people ages 55 to 61 and from 1.7 million to 3.1 million for people ages 62 to 65 (Smalligan, Williams, and Boyens 2019).

Disparities persist in the proportion of older workers with disabilities based on racial and ethnic background and education level. For people who were 62 to 65 in 2017, 27 percent of non-Hispanic Black people and 26 percent of Hispanic people reported health-related work limitations, compared with 19 percent of non-Hispanic white people (Johnson 2018).

While SSDI protects many older disabled workers, many others take early retirement with dramatically reduced monthly benefits. Roughly 15 percent of retirees between 1992 and 2011 reported that they involuntarily retired, with half of this group attributing the decision to poor health (Seligman 2014). Moreover, people who retired early because of a health issue were just as likely to be receiving retirement benefits rather than disability benefits. A substantial portion of early retirees who had health issues were very similar to those receiving SSDI or SSI (Bound and Waidmann 2011). Frietag (Forthcoming) uses administrative data in

Washington State to track SSI applicants in the years before being affected by the grid-related age adjustments and finds two-thirds of older SSI recipients were detached from the formal labor force in the five years prior to being awarded SSI benefits and 40 percent experienced at least three months of homelessness.

Reducing age as a factor would push more older disabled workers to take early retirement benefits instead of SSDI, which can significantly reduce their monthly benefit, permanently undermining their retirement security. SSDI is based on past earnings and is intended to provide an unreduced benefit to workers who are forced to stop working and would otherwise have been penalized for experiencing a severe disability late in life. Without SSDI, older workers who claim retirement benefits at age 62, the earliest eligibility age, would have their benefit reduced by 30 percent compared with their SSDI benefit for the rest of their life, a reduction that also affects benefits paid to eligible spouses, widows, and dependent children.

## Potential Impact on Eligibility and Spending

SSA's expected rule could substantially reduce the size of the SSDI program.<sup>18</sup> As discussed above, the regulation could reduce SSDI eligibility by as much as 20 percent overall, and as much as 30 percent among older age groups (Warshawsky and Marchand 2015).<sup>19</sup> We modeled the effects of a hypothetical 10 percent reduction in allowance rates on applicants for SSDI, an intermediate scenario that could occur if SSA tightens the eligibility criteria for claimants who are ages 50 or older. The expected impact of the regulatory changes would grow over time as more new applicants are subject to the new rules. We used data and projections from SSA's statistical reports and SSA's Office of the Chief Actuary<sup>20</sup> to estimate the number of beneficiaries entering and exiting the program each year from 2026 to 2035. We then estimated the impact of a 10 percent lower allowance rate and found that it would result in 500,000 fewer beneficiaries on SSDI and 80,000 fewer widows and children would be receiving benefits due to the SSDI eligibility of a spouse or parent.<sup>21</sup> Additionally, there would have been another 250,000 people denied SSDI benefits who would have otherwise received SSDI beneficiaries during *some* portion of the 10 years (even if they would have exited the program before the 10th year due to death, medical improvement, increased work activity, or transition to Social Security retirement benefits ). Overall, the affected beneficiaries would have been denied over \$82 billion in benefits over this period, as well as eligibility for Medicare, Medicaid or both. For many individuals, loss of this health insurance would have even greater impact on their quality of life than the loss of cash benefits.

These estimates focus on new applicants because current beneficiaries are usually protected from changes in eligibility rules because the Social Security Act requires that SSA determine a beneficiary has medically improved compared with when originally determined eligible. However, SSA may decide to modify how this requirement is executed and that could mean many current beneficiaries would also

be affected. Given the uncertainty on this point, the impact is not included in our estimates.

The last time an administration attempted to significantly restrict eligibility occurred in the early 1980s, when the Reagan administration initiated more reviews of existing recipients and sent termination notices to hundreds of thousands of beneficiaries. The proposed restrictions being considered would likely represent an even larger change in the number of SSDI recipients, the biggest change to SSDI since the program was established. Despite the Reagan administration efforts to reduce the programs in the 1980s, a combination of court decisions protecting beneficiaries and legislation enacted by Congress ultimately resulted in a substantial expansion of the programs (Berkowitz and DeWitt 2013).

### **Disability Programs Participation Has Declined And Denial Rates are High**

The disability rule changes would be introduced after years of declining participation, historically high backlogs of people waiting for claims decisions, and research showing poor outcomes for workers denied benefits. New claims for SSI and SSDI declined from a peak of 3.3 million in 2011 to 2.3 million in 2024. Overall program participation has declined as a consequence. For SSDI, the number of worker beneficiaries reached a peak of nearly 8.6 million in 2011 and decreased to fewer than 7.4 million by the end of 2023.<sup>22</sup> For SSI, adult disabled beneficiaries peaked at more than 5.6 million in 2011 and decreased to fewer than 5.3 million by the end of 2023.<sup>23</sup>

In the current determination process, two-thirds of claimants are denied at the initial review stage, yet approximately 44 percent of those denied claimants who appeal are ultimately awarded benefits.<sup>24</sup> The awards are not made until after several additional levels of review and months or years of delay. In addition, SSA currently faces a backlog of nearly 1 million claims waiting review at the initial stage, roughly twice as many claims as before the COVID-19 pandemic, and hundreds of thousands more claims are waiting to have an initial denial reconsidered (Boyens and Smalligan 2024). These long wait times for claims decisions impose costs on beneficiaries and the agency.

## **Conclusion**

SSA is considering the most significant changes to the SSDI and SSI programs to date. While widespread agreement has been reached on the need to update data on jobs available in the economy and their functional requirements, adopting that data involves numerous technical policy updates that, taken together, can act to significantly alter program eligibility. In addition, the SSA may change the extent to which age is factored into the disability decision, which would have a dramatic negative impact on the number of applicants granted disability benefits.

If repeated, the approach begun in the Trump administration’s first term could result in unprecedented cuts to disability eligibility and benefits—especially for those over age 50—on the premise that longer life expectancy extends working years. Evidence from denied applicants shows many do not return to work, receive little other income support, and experience declines in health and financial stability. Because gains in life expectancy are uneven, further tightening of an already strict program would likely worsen outcomes overall and increase poverty, hardship, and mortality.

Policymakers must also consider how tightening the Social Security disability program will affect older workers and retirement security. Reducing SSDI and SSI means more people will be forced to claim Social Security earlier, reducing not only their own retirement benefits but also those of their spouses, widows, and dependent children.

## Notes

- <sup>1</sup> For background on the programs see the following publications from the Center on Budget and Policy Priorities, “Chart Book: Social Security Disability Insurance,” updated February 28, 2025, <https://www.cbpp.org/research/social-security/social-security-disability-insurance-0>; and “Policy Basics: Supplemental Security Income,” updated March 20, 2024, <https://www.cbpp.org/research/socialsecurity/supplemental-security-income>.
- <sup>2</sup> Improvements to the Disability Adjudication Process: Sequential Evaluation Process (RIN: 0960-AI67), accessed September 10, 2025, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=0960-AI67>.
- <sup>3</sup> Kate Davidson, “Trump Administration Weighs Tighter Requirements for Disability Payments.” *Wall Street Journal*, January 10, 2020, <https://www.wsj.com/articles/trump-administration-weighs-tighter-requirements-for-disability-payments-11578686424>.
- <sup>4</sup> Information on the policy options under consideration during the prior Trump and Biden administrations was obtained through confidential interviews with former SSA staff who worked on the draft regulations.
- <sup>5</sup> Author’s estimate based on a hypothetical reduction in allowances of 10 percent in new allowances for SSDI. Estimate used data on awards, denials, allowances and program terminations from SSA including “Actuarial Study No. 125,” Office of the Chief Actuary, Social Security Administration, August 2020,

[https://www.ssa.gov/OACT/NOTES/pdf\\_studies/study125.pdf](https://www.ssa.gov/OACT/NOTES/pdf_studies/study125.pdf); “Annual Statistical Report on the Social Security Disability Insurance Program, 2023,” Social Security Administration, Office of Retirement and Disability Policy, October 2024, [https://www.ssa.gov/policy/docs/statcomps/di\\_asr/2023/di\\_asr23.pdf](https://www.ssa.gov/policy/docs/statcomps/di_asr/2023/di_asr23.pdf); “The 2025 Annual Report of the Board of Trustees of the Federal OASDI Trust Funds,” Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, Social Security Administration, June 18, 2025, <https://www.ssa.gov/OACT/TR/2025/index.html>; “Annual Statistical Supplement to the Social Security Bulletin,” Social Security Administration, December 2024, <https://www.ssa.gov/policy/docs/statcomps/supplement/2024/supplement24.pdf>.

Given a range of uncertainties a similar estimate was not made for SSI.

- <sup>6</sup> Social Security Act, Title II, §223. [42 U.S.C. 423].  
[https://www.ssa.gov/OP\\_Home/ssact/title02/0223.htm](https://www.ssa.gov/OP_Home/ssact/title02/0223.htm).
- <sup>7</sup> “Dictionary of Occupational Titles (DOT) Library,” US Department of Labor, Office of Administrative Law Judges, accessed August 1, 2025, <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDOT>.
- <sup>8</sup> Lisa Rein, “Social Security Denies Disability Benefits Based on List with Jobs from 1977,” *Washington Post*, December 27, 2022, <https://www.washingtonpost.com/politics/2022/12/27/social-security-job-titles-disabledapplicants-obsolete/>
- <sup>9</sup> Jeffrey Buckner, “Social Security Updates Occupations List Used in Disability Evaluation Process.” SSA Blog, June 24, 2024, <https://blog.ssa.gov/social-security-updates-occupations-list-used-in-disability-evaluationprocess/>
- <sup>10</sup> Blind claimants have a higher SGA level of \$2,700. Both levels are indexed to wage growth.
- <sup>11</sup> “Occupational Information Systems Project,” Social Security Administration, accessed August 1, 2025, [https://www.ssa.gov/disabilityresearch/occupational\\_info\\_systems.html](https://www.ssa.gov/disabilityresearch/occupational_info_systems.html).
- <sup>12</sup> “Occupational Requirements Survey (ORS),” US Bureau of Labor Statistics, accessed August 1, 2025, <https://www.bls.gov/ors/>.
- <sup>13</sup> “Strength and SVP 1–2: ORS Factsheet,” US Bureau of Labor Statistics, accessed Month Day, 2025, <https://www.bls.gov/ors/factsheet/strength-svp-1-and-2.htm>.
- <sup>14</sup> Kate Davidson, “Trump Administration Weighs Tighter Requirements for Disability Payments,” *Wall Street Journal*, January 10, 2020, <https://www.wsj.com/articles/trump-administration-weighs-tighter-requirements-for-disability-payments-11578686424>.
- <sup>15</sup> Social Security Administration, “Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines,” accessed

September 10, 2025, [https://www.ssa.gov/OP\\_Home/cfr20/404/404-app-p02.htm](https://www.ssa.gov/OP_Home/cfr20/404/404-app-p02.htm); and “DI 25025.035 Tables No. 1, 2, 3, and Rule 204.00,” accessed September 10, 2025, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0425025035>.

- <sup>16</sup> Social Security Administration, “Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines.”
- <sup>17</sup> There are many cases where the grid cannot direct a determination, particularly when non-exertional limitations are present.
- <sup>18</sup> The potential impact of the regulation on SSI is unclear and not estimated here.
- <sup>19</sup> Kate Davidson, “Trump Administration Weighs Tighter Requirements for Disability Payments.” *Wall Street Journal*, January 10, 2020, <https://www.wsj.com/articles/trump-administration-weighs-tighter-requirements-for-disability-payments-11578686424>.
- <sup>20</sup> Authors estimates. See “Actuarial Study No. 125,” Office of the Chief Actuary, Social Security Administration, August 2020, [https://www.ssa.gov/OACT/NOTES/pdf\\_studies/study125.pdf](https://www.ssa.gov/OACT/NOTES/pdf_studies/study125.pdf); “Annual Statistical Report on the Social Security Disability Insurance Program, 2023,” Social Security Administration, Office of Retirement and Disability Policy, October 2024, [https://www.ssa.gov/policy/docs/statcomps/di\\_asr/2023/di\\_asr23.pdf](https://www.ssa.gov/policy/docs/statcomps/di_asr/2023/di_asr23.pdf); “The 2025 Annual Report of the Board of Trustees of the Federal OASDI Trust Funds,” Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, Social Security Administration, June 18, 2025, <https://www.ssa.gov/OACT/TR/2025/index.html>; “Annual Statistical Supplement to the Social Security Bulletin,” Social Security Administration, December 2024, <https://www.ssa.gov/policy/docs/statcomps/supplement/2024/supplement24.pdf>.
- <sup>21</sup> Some individuals are concurrently eligible for both SSDI and SSI. For purposes of these estimates these individuals are included in the SSDI impacts.
- <sup>22</sup> “Annual Statistical Report on the Social Security Disability Insurance Program, 2023,” Section 1.B, Table 3, Social Security Administration, August 13, 2025, [https://www.ssa.gov/policy/docs/statcomps/di\\_asr/2023/sect01b.html#table3](https://www.ssa.gov/policy/docs/statcomps/di_asr/2023/sect01b.html#table3)
- <sup>23</sup> “Annual Report of the Supplemental Security Income Program, 2024,” Table IV.B9, Social Security Administration, May 30, 2024, <https://www.ssa.gov/OACT/ssir/SSI24/ssi2024.pdf>.
- <sup>24</sup> Authors estimates using data from Table 3.22 in the SSA FY 2026 Congressional Justification as well as prior research.

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## About the Author

Jack Smalligan is a senior policy fellow in the Tax and Income Supports Division of the Urban Institute. He analyzes the interactions across disability, retirement, and paid leave policy. Previously, he was deputy associate director at the Office of Management and Budget. Serving five administrations since 1990, Smalligan developed policies that have been incorporated into many pieces of legislation. In 2012, he was a visiting fellow at the Brookings Institution, where he analyzed the Social Security Disability Insurance program. Smalligan received a master's degree in public policy from the University of Michigan.

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## **APPENDIX E**

EM - Emergency Message

**Effective Date:** 03/25/2024

### **Identification**

**Number:** EM-24011 SEN

**Intended Audience:** All  
RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/OCO-CSTs

**Originating Office:** ORDOP OISP

**Title:** Change in Title II Overpayment Default Rate of Benefit Withholding

**Type:** EM - Emergency Messages

**Program:** Title II (RSI)

**Link To Reference:** See References at the end of this EM.

SENSITIVE – NOT TO BE SHARED WITH THE PUBLIC

**Retention Date: October 25, 2024**

### **A. Purpose**

The purpose of this Emergency Message (EM) is to provide interim guidance and inform technicians that we are changing the existing policy and procedure for recovering a Title II overpayment. Policy has been to default to full benefit withholding to recover a Title II overpayment. Effective March 25, 2024, we will apply a default 10 percent withholding rate, or \$10.00 per month, whichever is more, to an overpaid individual’s monthly benefit amount. This policy change only applies to legally defined overpayments and does not apply to individuals who have been convicted of fraud or who have a similar fault determination.

### **B. Background**

This update to SSA policy will reduce the financial hardship experienced by overpaid individuals, who are in full benefit withholding (i.e., LAF D) or repaying at a rate of greater than 10 percent, as well as individuals who will need to repay an overpayment

created on or after April 15, 2024.

### **C. New Procedure**

When we determine that an individual receiving Title II benefits is overpaid, we will still 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, we will, in most cases, automatically recover the overpayment by withholding 10 percent of their Title II monthly benefit credited (MBC) amount, or \$10 per month, whichever is more. We will recover the overpayment by withholding until the overpayment is fully recovered.

In most situations, technicians will not need to take manual action on new overpayments that are created on or after April 15, 2024. Most of the newly posted Title II overpayments will default to the 10 percent benefit withholding for recovery, on the first day of the July Current Operating Month (COM), which is June 26, 2024.

We will issue a one-time notice to all overpaid individuals, who are currently repaying an overpayment at a rate greater than 10 percent, giving them the option to request a lower rate of recovery. For manual overpayment notices requiring fill-ins, we will make corresponding updates to paragraphs in the Manual Adjustment, Credit, and Award Process (MADCAP) system, AURORA, and the Document Processing System (DPS). Technicians should use the applicable paragraphs for all new manual overpayment notices.

**NOTE:** All new overpayments will have a due process recovery date of COM plus three months, which replaces the existing policy of COM plus two months. Extending the due process recovery date will help SSA ensure that overpaid individuals are afforded the 60-day due process period, as well as provide Systems time to implement the actions required to align with the new policy. The change in due process recovery date of COM plus three months will apply to all future overpayments.

**IMPORTANT:** This policy change only applies to legally defined overpayments, as described in GN 02201.001, and does not apply to certain records or overpayments (see Section F.).

### **D. Guidance for New Overpayments Created on or After April 15, 2024**

For most situations, technicians will not need to take manual action on new overpayments that are created on or after April 15, 2024.

The required \$10.00 minimum withholding rate will remain in effect for most individuals. For examples on how the automatic 10 percent and \$10.00 minimum withholding will be applied to new overpayments, see below:

- If the overpaid individual's total monthly benefit credited (MBC) is \$1,200.00, and

they do not have any Medicare involved, we will withhold \$120.00 per month, which is 10 percent of their total monthly benefit.

- If the overpaid individual's total monthly benefit credited (MBC) is \$50.00, and they do not have any Medicare involved, we will withhold \$10.00 per month.

In some situations, technicians may need to complete manual inputs for withholding in the Debt Management System (DMS). For an example of when the 10 percent and \$10.00 minimum withholding will not be applied automatically to a new overpayment, see below:

- If the overpaid individual's total monthly benefit credited (MBC) is \$180.70, and they are paying a monthly SMI premium of \$174.70, we must prioritize the beneficiary's Medicare premiums (i.e., Parts B, C, and D as explained in GN 02602.025C.3.). For this example, technicians will only input a recovery amount of \$6.00 per month. In situations such as these, the \$10.00 minimum will not apply since there is not enough money left to meet the minimum withholding requirement after deducting SMI.

There may be some situations, involving Medicare, where we are unable to input any overpayment recovery. See the below example:

- If the overpaid individual's total monthly benefit credited (MBC) is \$50.70, and they are responsible to pay a monthly SMI premium of \$174.70 (LESSDO cases), we will continue to prioritize the beneficiary's Medicare premiums (i.e., Parts B, C, and D as explained in GN 02602.025C.3.). Their full MBC of \$50.70 will be applied towards the monthly SMI premium. In situations such as these, we will be unable to recover the overpayment.

If an overpaid individual contacts SSA requesting an overpayment recovery rate greater than 10 percent, accept the request and complete the input in DMS. Use the following remarks to annotate the request in DMS:

"BIC XX requested benefit withholding reduction to <enter amount> on MM/DD/YY"

\*\*\*\*\* (Redacted Section)

## **E. Guidance for Existing Overpayments with a Recovery Rate Greater than 10 Percent**

Overpaid individuals, who are repaying an overpayment with a recovery rate greater than 10 percent, will be given the option to request that we reduce their recovery amount to 10 percent, or \$10.00 per month, whichever is more. Requests to reduce overpayment recovery amounts for **existing** overpayments will require manual inputs in DMS.

Overpaid individuals may request that we reduce their existing overpayment recovery rate by contacting the 800# or their local field office for assistance. Unless an exclusion applies (see Section F.), technicians should accept the request and annotate the MBR with a Special Message (SPMSG) using the below language. For guidance on creating a Special Message (SPMSG), please refer to MS 05206.026.

“BIC XX requested benefit withholding reduction to default 10% on  
MM/DD/YY”

Technicians will manually calculate the 10 percent withholding amount that will be deducted from the overpaid individual's benefit.

\*\*\*\*\*(Redacted Section)

NOTE: 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). In other words, individuals will default to 10 percent withholding even if the amount collected will not facilitate recovery within 60 months.

\*\*\*\*\*(Redacted Section)

**NOTE:** If the individual has a settlement agreement with the Office of the Inspector General (OIG) or the United States Attorneys' Office (USAO) and the overpaid individual, consult GN 02201.055 and GN 02230.055B.

Direct all program related and technical questions to your Regional Office (RO) support staff or Program Service Center (PSC) Operations Analysis (OA) staff. RO support staff or PSC OA staff may refer questions or problems to their Central Office contacts.

**Reference:**

- GN 02201.001 - What is a Title Overpayment
- GN 02201.009 – Notification of a Title II Overpayment
- GN 02201.050 – Overpayment Fraud Referral
- GN 02201.055 – Overpayment Recovery after Fraud Conviction
- GN 02210.001 – Overpayment Recovery by Benefit Adjustment
- GN 02210.030 – Request for Change in Overpayment Recovery Rate, Form SSA-634
- GN 02230.055 – Civil Monetary Penalty (CMP) – Posting

- MS 01106.015 – Establish Offset (Debtor) (DROA)
- MS 01106.016 – Establish Offset (OLP) (DROL)
- MS 05206.026 – Special Message (SPMSG)
- SM 00610.710 - Overpayment Recovery Will Continue Past 2049
- SM 00610.715 - Recovery of an Overpayment when the Overpaid Person is in Ledger Account File Status (LAF) Current Pay (C) or Deferred (D)

## **APPENDIX F**

### **Emergency Message - Change to Title II Overpayment Default Benefit Withholding Rate to 50 Percent Withholding**

|                               |                                                                                                  |
|-------------------------------|--------------------------------------------------------------------------------------------------|
| <b>Effective Dates:</b>       | 08/28/2025 - Present                                                                             |
| <b>Identification Number:</b> | EM 25029 REV                                                                                     |
| <b>Intended Audience:</b>     | All RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/OCO-CSTs                                                      |
| <b>Originating Office:</b>    | LP OISP                                                                                          |
| <b>Title:</b>                 | <b>Change to Title II Overpayment Default Benefit Withholding Rate to 50 Percent Withholding</b> |
| <b>Type:</b>                  | EM - Emergency Messages                                                                          |
| <b>Program:</b>               | Title II (RSI)                                                                                   |
| <b>Link To Reference:</b>     | See References at the end of this EM.                                                            |

**Retention Date: 01/28/2026**

#### **Summary of Changes**

##### **Section B**

- Updated the background for clarity.

##### **Section C**

- Clarified the policy.
- Updated the language for clarity.

##### **Section D**

- Moved previous information in section D to section E.
- Added instructions to address reconsideration requests for overpayment notices issued prior to April 25, 2025.

- Added instructions to address waiver requests for overpayment notices issued prior to April 25, 2025.

## Section E

- Moved previous information from section D to this section.

### A. Purpose

The purpose of this Emergency Message (EM) is to provide technicians with instructions for processing overpayment reconsideration and waiver requests after we changed the default Title II overpayment benefit withholding rate from 10 percent to 50 percent. In April 2025, we provided interim guidance and informed technicians that we changed our policy for the default 10 percent benefit withholding rate to recover a Title II overpayment. Effective April 25, 2025, overpayment notices provided a default Title II overpayment benefit withholding rate of 50 percent of the monthly benefit.

### B. Background

When we determine an individual receiving Title II benefits is overpaid, we send them a notice requesting a full and immediate refund and inform them (among other information) of their right to request reconsideration or waiver of recovery. We do not begin withholding right away, which provides overpaid individuals time to request a reconsideration or waiver. We will withhold up to 50 percent of their Title II benefit payment (if there is no fraud or similar fault) until we fully recover the overpayment.

Any new Title II overpayment determination will have the default 50 percent benefit withholding rate automatically applied for overpayment notices sent beginning April 25, 2025, which was the first day of COM 05/2025. If an overpaid individual has a prior overpayment and incurs a new overpayment, all outstanding overpayments will default to the 50 percent benefit withholding rate once withholding for the new overpayment begins (unless a lower repayment rate is separately negotiated or there is fraud or similar fault). In addition, we have updated the Title II initial overpayment notice benefit withholding language. This language replaces 10 percent withholding with 50 percent withholding of the monthly payment beginning with notices sent on or after April 25, 2025.

### C. Instructions for new overpayments

For most situations, technicians **do not** need to take manual actions on new overpayments that are created on or after April 25, 2025. The 50 percent benefit withholding will begin automatically without manual action.

If the overpayment warrants manual posting, you have two options for posting an overpayment manually to the individual's record. You may use either the Manual Adjustment, Credit, and Award Data Entry (MACADE) system or the Debt Management

System (DMS). For more information about posting an overpayment via MACADE, refer to [SM 00865.000](#). For more information about posting an overpayment via DMS, refer to [MS 01102.003](#).

Once you have determined that we overpaid the individual, post the overpayment to their record with a recovery date (DPRD) of the COM plus 3 months (Using COM plus 3 months ensures all individuals have at least 60 days to appeal before withholding begins). You **must** notify the individual, in writing, by sending an overpayment notice. For information about the overpayment notice, refer to [GN 02201.009](#).

When an overpaid individual has a prior overpayment and incurs a new overpayment, all outstanding overpayments will default to the 50 percent benefit withholding rate when withholding for the new overpayment begins (unless there is fraud or similar fault). If the individual contacts us to request a reconsideration or a waiver, we will stop collection activity until we make a determination on their request. Use the PCOPT6900 via Aurora in the initial overpayment notice.

The default 50 percent withholding rate applies to matured overpayments beginning COM 08/2025 and later (excluding fraud or similar fault and cross program recovery). If the 10 percent withholding rate was previously in place on the prior overpayment (because the relevant overpayment notice indicated the default withholding rate would be 10 percent), the 10 percent withholding rate applies to overpayment recovery actions through the COM 07/2025.

For any partial withholding requests, continue to follow normal processing procedures for 2073 cases as outlined in [SM 00610.710](#), Overpayment Recovery Will Continue Past 2073.

**Note:** Upon processing a re-entitlement or reinstatement with a prior overpayment, remember to use the underpayment to reduce or recover the overpayment, if applicable.

**Important:** The 50 percent withholding rate does not impact Title XVI overpayment recovery policies. The Title XVI overpayment recovery rate will remain at 10 percent. For more information on Title XVI overpayments, refer to [SI 02220.001](#). For more information on cross program recovery, refer to [GN 02210.008.D](#) and [SI 02220.020A.7](#).

#### **D. Individual requests a reconsideration or waiver of their overpayment**

An overpaid individual or their representative may request a reconsideration if they disagree with the fact or amount of an overpayment. If we affirm the initial overpayment determination, review the date on the overpayment notice to determine when we issued the notice. If we issued a notice prior to April 25, 2025, they will retain the 10 percent withholding rate when we resume overpayment recovery unless they incur a new overpayment. If the overpaid individual incurs a new overpayment, all overpayments will default to 50 percent withholding as discussed in Sections A and B of this EM. If we

issued a notice of the overpayment on or after April 25, 2025, we will apply the default 50 percent rate.

When the 10 percent withholding rate applies, modify [NL 00703.119](#), “Reconsideration Affirms Overpayment Determination (Reconsideration Only Requested)—Refund Requested and Adjustment Proposed” before sending the notice to the individual using these steps:

1. Select the 3100A or 3104B in the creation path, as applicable.
2. Review the notice universal text identifiers (UTIs) and remove the 3100A or 3104B, as applicable.
3. Add this language where you removed the 3100A using the applicable fill-ins in [NL 00703.119.B](#): *“If we do not receive your refund within 30 days, we plan to recover the overpayment by withholding 10 percent of your total monthly benefit or \$10 (whichever is more) starting with the payment you will receive about \*F2. If the total benefit is less than \$10, we will withhold the entire benefit. We will continue withholding benefits until we fully recover the overpayment.”* **OR**

Add this language where you removed the 3104B using the applicable fill-ins in [NL 00703.119.B](#): *“To recover the overpayment, we will withhold 10 percent of the payment you will receive \*F1 until we recover the overpayment. We will do this starting with the payment \*F2 will receive on or about \*F3.”*

4. After the #Signature UTI, add a new line using #CTenclosure, and select the Refund Envelope.
5. Review the notice to ensure the correct language and Refund Envelope enclosure appears.
6. Send the notice to print.
7. Annotate the reconsideration disposition on the DMS Fact/Amount Appeal Disposition (DRAD) screen, per [MS 01106.011](#) and on the DMS Remarks (RMKS) screen, per [MS 01109.003](#).
8. Add a special message on the MBR with the reconsideration determination per [GN 03102.425.C](#).
9. Complete the SSA-662, Reconsideration Determination per [GN 03102.450](#).

If we reverse the initial overpayment determination, refer to [GN 03102.425.B](#) and [GN 02201.025](#).

An overpaid individual or their representative may request a waiver. If we deny the waiver request, review the date on the overpayment notice to determine when we issued the notice. If we issued the notice prior to April 25, 2025, they will retain the 10 percent withholding rate when we resume overpayment recovery unless they incur a new overpayment. If the overpaid individual incurs a new overpayment, all overpayments will default to 50 percent withholding as discussed in Sections A and B of this EM. We will also apply the 50 percent withholding rate when we resume recovery if we issued notice of the overpayment on or after April 25, 2025. For information on processing waiver requests, refer to [GN 02250.000](#). Before you can deny a waiver, you must follow the instructions in [GN 02270.000](#).

## **E. Instructions for individuals convicted of fraud and similar fault determinations**

Technicians **must** thoroughly review the MBR, ROAR, DMS, and all other electronic files to determine if any of the following applies:

- Fraud conviction
- Similar fault determination
- Court-ordered restitution
- Civil monetary penalties

If the individual has been convicted of social security fraud, been ordered by a criminal court to pay restitution to SSA, or been imposed with civil monetary penalties, or if the agency has determined the individual committed similar fault in obtaining benefits, technicians **must** set the fraud indicator to “Y” (for yes), on the specific ROAR event involving fraud, similar fault, court-ordered restitution, or civil monetary penalties. For instructions on inputting the fraud indicator, refer to [MS 01102.003](#).

If you are developing fraud or similar fault, do not set the fraud indicator to “Y.” Instead, follow guidance outlined in [GN 02201.050B](#) and [GN 02201.050C](#).

**NOTE:** If the individual has a settlement agreement with the Office of the Inspector General (OIG) or the United States Attorneys’ Office (USAO), follow guidance outlined in [GN 02201.055](#) and [GN 02230.055B](#).

Direct all program and technical related questions to your management.

## **References:**

[GN 02201.009](#) – Notification of a Title II Overpayment

[GN 02201.025](#) – Title II Overpayment Reconsideration Request

[GN 02201.050](#) – Overpayment Fraud Referral

[GN 02201.055](#) – Overpayment Recovery After Fraud Conviction

[GN 02210.001](#) – Overpayment Recovery by Benefit Adjustment

[GN 02210.008](#) – Cross Program Recovery (CPR) from Monthly Title II, Title VIII, and Title XVI Benefits to Recover Other Program Overpayments

[GN 02210.030](#) – Request for Change in Overpayment Recovery Rate, Form SSA-634

[GN 02230.055](#) – Civil Monetary Penalty (CMP) – Posting

[GN 03102.425](#) – Reconsideration Notices of Determination

[GN 02250.000](#) – Waiver Provisions for Title II and Title XVI Overpayments

[GN 02270.000](#) – Personal Conference Procedures When Waiver Cannot be Approved - Table of Contents

[MS 01106.011](#) – Fact/Amount Appeal Disposition (DRAD)

[MS 01106.015](#) – Establish Offset (Debtor) (DROA)

[MS 01106.016](#) – Establish Offset (OLP) (DROL)

[MS 01109.003](#) – Remarks (RMKS)

[SI 02220.020](#) – Cross Program Recovery (CPR) of SSI Overpayments from Monthly Title II Benefits