



STETSON LAW

**2025 National Conference on Special Needs
Planning and Special Needs Trusts**

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

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Outline of Today's Presentation

SSA Program Update

- New SSI Trust Policy – Undue Hardship Exceptions
- Regulations - Proposed Rule Changes
 - Rescind the Burdensome Use Restrictions of Dedicated Accounts
 - ISM - Recission of Changes to the Definition of a Public Assistance Household
 - Disability Mega-Reg
 - Changing SSA Waiver of Overpayment Recovery Rules and Title II Overpayment Withholding Rate

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**New SSI Trust Policy -
Exceptions for Undue Hardship**

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New SSI Trust Policy – Undue Hardship

Section 1613(e) of the Social Security Act sets forth rules for counting trusts as resources along with exceptions to those rules if a trust meets one of the Medicaid trust exceptions.

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.

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Undue Hardship - Deprivation of Food or Shelter and Limited Funds

Traditional 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.

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New Undue Hardship Exceptions

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

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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)).

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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.

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Application of the Undue Hardship Waiver

SSA will apply undue hardship under this provision with respect to the portion of a trust containing an MSA when **all of the following 5 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.

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Application of the Undue Hardship Waiver

- 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.

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How the Exception Works

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

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Agency Error Resulted in Uncorrectable Trust Deficiency

SSA will apply undue hardship under this provision when **all of the following 6 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;

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Agency Error Resulted in Uncorrectable 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.

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How the Exception Works

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

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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 Claims Specialist (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.

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Example (Continued)

- The RP requests reconsideration and asks why the trust does not meet the Medicaid trust exception. The field office simply affirms the initial determination and states the trust is countable without explaining or providing the notice required by policy.
- The RP appeals the decision to an ALJ and attempts to fix the trust; 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; but the recipient passes away two weeks later, and the trust can not be amended.

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Explanation of Example

- 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.

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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 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.

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Application of the Undue Hardship Waiver

SSA will apply undue hardship under this provision when **all of the following 3 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 trust policy.

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Application of the Undue Hardship Waiver

- 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.

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How the Exception Works

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.
- SSA permits 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).

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How the Exception Works

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 the trust 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**.

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REGULATIONS - Proposed Rule Changes:

Rescind the Burdensome Use Restrictions of Dedicated Accounts

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Rescind the Burdensome Use Restrictions of Dedicated Accounts

- SSA is proposing to update its dedicated account policy to allow these funds to be used for "current maintenance."
- This is a significant and welcome development.

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What are Dedicated Accounts?

- Created in 1996 as part of the Personal Responsibility and Work Opportunity Act.
- When a child receives more than six-times the federal benefit rate, (appx. \$5,800 in 2025) in past-due benefits, that child's parent/payee **must** open a separate bank account before they can receive any of that back payment.
- Once the account is established, the money in the account can only be used on a narrow list of expenses (excluding most daily expenses). Those restrictions remain even after the child reaches the age of 18.
- SSA Act Section 1631(a)(2)(F); 20 C.F.R. 416.640(e)

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Dedicated Accounts: Narrow Expenditures

Permissible

- Medical treatment
- Education
- Job skills training
- Personal needs equipment or special equipment
- Housing modification
- Therapy
- Rehabilitation
- **Other items and services related to the impairment**

Not permissible:

- Items or services not listed
- Repayment of OPs
- **Basic maintenance costs (food, housing clothing and personal items) not related to child's impairment.**

The Social Security Act at 1631(a)(2)(F); POMS GN 00602.140

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Dedicated Accounts: Closely Monitored

"Must Monitor"

- GN 00602.140 says SSA "must monitor" the payee's use of dedicated accounts, thus requiring retention of all receipts of deposits to and expenditure from the account.
- **Form SSA-6233:** 8 page report required of payees annually to justify deposits to and expenditures from the dedicated account.
- **Individualized inquiries:** SSA encourages parents/payees to ask in advance before making an expenditure in the "other" category--what is allowed is discretionary, varies a lot, and not typically reviewable.
- SSA estimates it costs them *at least* 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).

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Dedicated Accounts: Outdated

- No updates since 2011.
- Six prior SSA Commissioners have called for their elimination—Commissioner Astrue described them as "labor intensive and confusing to the public."
- Senate Finance Committee recommended broadening the expenditures as far back as 2003.
- Defines "disability expenses" in a manner that is inconsistent with the ABLE Act of 2014 and the ABLE Age Adjustment Act (2023).

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Obstacles Related to Dedicated Accounts

- **Access to banking:** The account must be a checking, savings, or money market account at a financial institution and must be separate from the account receiving monthly SSI benefits for the same child.
- **Installment policy:** past-due benefits are subject to SSA installment rules (meaning if they get more than 3x FBR, benefits are paid out in 3 installments over 18 months). If parents cannot prove proper use of one installment, SSA won't release the next one.
- **Lack of information:** to families regarding proposed expenditures.
- **Bias:** Overly narrow interpretation of the POMS regarding use of funds.
- **Duration:** Narrow expenditure limits continue even after the child reaches majority.

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Obstacles Related to Dedicated Accounts

High Error Rate:

September 2023 OIG report indicates that SSA did not accurately and timely pay dedicated funds in 86 out of the 100 sampled children. They estimate SSA did not:

- Accurately pay \$27 million in dedicated funds to 5,100 children.
- Timely pay \$305 million in dedicated funds to representative payees of 50,000 children.

2010 OIG report reported that SSA **withheld about \$35 million in past-due benefits** to kids because they did not confirm establishment of a dedicated account.

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Obstacles Related to Dedicated Accounts

Very Burdensome to Administer:

- Due to high-risk of error, **SSA requires employees to manually review cases before releasing past-due dedicated funds.**
- SSA monitors these accounts by soliciting and reviewing SSA-6233-BK forms, where parents annually documents all deposits to and expenditures from dedicated accounts.
- Also, families are encouraged to ask SSA staff before making purchases by calling or visiting Field Offices.
- **2023 GAO report indicates SSA spends \$ 4 million a year monitoring these accounts**
- In 2003, Commissioner Barnhart estimated that eliminating dedicated accounts would save \$25 million over 10 years

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SSA Proposal to Update Dedicated Accounts

- Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions
- RIN 0960-A192
- SSA is proposing to update the regulations to allow recipients and representative payees to use these funds for "the recipient's current maintenance."
- Notice of Proposed Rulemaking (NPRM) currently noted as April 2026.

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In-kind Support and Maintenance (ISM) Policy - Recission of Changes to the Definition of a Public Assistance Household

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Recission of Changes to the Definition of a Public Assistance Household

What is ISM?

Support and maintenance is not defined in the Social Security Act.

- SSA now defines it in regulations at 20 CFR 416.1130(b) as “any shelter that is given to you or that you receive because someone else pays for it.”
- Prior to September 30, 2024, ISM included receipt of “any food or shelter.”
- Prior to March 9, 2005, support and maintenance included the receipt of food, clothing or shelter.

It is considered income because someone else, either within or outside of the individual’s household is paying for it.

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Recent SSA Regulatory Actions

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.**

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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.

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 (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)**;
- 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);
- **The Disaster Relief and Emergency Assistance Act**;
- **General assistance programs of the Bureau of Indian Affairs**;
- **State or local government assistance programs based on need**;
- **U.S. Department of Veterans Affairs programs** (payments based on need); or
- Effective only as of 09/30/2024 - **The Supplemental Nutrition Assistance Program (SNAP)**.

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Justification for the 2024 Policy Change

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

- 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.
- 100% increase in Supplemental Nutrition Assistance Program (SNAP) recipients.
- 70% increase in Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) recipients.
- 75% increase in Medicaid recipients.
- 65% increase in HUD housing assistance recipients.
- Low Income Home Energy Assistance Program (LIHEAP) recipients fluctuates, but generally up.
- For comparison - 50% increase in SSI recipients.

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Bonus Time - Deeming

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

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

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Rescission of Changes to the Definition of a Public Assistance Household

As part of the Spring 2025 Unified Agenda, SSA announced its intent to rescind the regulatory changes to the definition of a public assistance (PA) 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).**

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Recission of Changes to the Definition of a Public Assistance Household

Based on statements made in the Abstract, the policy change is being rescinded because it is perceived to cost too much.

Regulatory Change	Program Costs FY 2023-2033	Administrative Costs 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.

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Recission of Changes to the Definition of a Public Assistance Household

IMPACT OF THE CHANGE

Based on SSA estimates published in support of the regulation change, rescission of the regulation will have the following impacts:

- Roughly 277,000 Federal SSI recipients (4 percent of all SSI recipients) will have a decrease in monthly payments compared to current rules, and
- An additional 109,000 individuals (1 percent) will be ineligible for Federal SSI payments they would have been eligible for under current rules.

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EXECUTIVE ORDER 14219

Sec. 2. Rescinding Unlawful Regulations and Regulations That Undermine the National Interest.

(a) Agency heads shall, in coordination with their DOGE Team Leads and the Director of the Office of Management and Budget, ... review all regulations ... for consistency with law and Administration policy [and] identify the following classes of regulations:

(iv) regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;

(d) The Administrator of [the Office of Information and Regulatory Affairs] OIRA shall consult with agency heads to develop a Unified Regulatory Agenda that seeks to rescind or modify these regulations, as appropriate.

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Statutory Authority for Regulations

Three sections of the Social Security Act give the Commissioner of Social Security broad statutory authority to issue regulations.

Sec. 205. [42 U.S.C. 405] (a) The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

Sec. 1631 [42 U.S.C. 1383] (d)(1) The provisions of section 207 and subsections (a), (d), and (e) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

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Improvements to the Disability Adjudication Process: Sequential Evaluation Process (Disability Mega-Reg)

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Improvements to the Disability Adjudication Process: Sequential Evaluation Process (Mega-Reg)

- Proposed Rule 0960-AI10 (the Mega-Reg)
- Vague description: "We are proposing improvements to the disability adjudication process to ensure our disability program remains current and can be more efficiently administered. This includes proposing policy updates to occupational data sources and optimizing their use to serve our customers and preserve the trust funds."
- NPRM expected December 2025.

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Mega-Reg

Experts believe this proposal contemplates:

- Updating outdated occupational data; and
- Changing how SSA treats critical factors such as:
 - Age;
 - Education and experience;
 - The definition of "substantial gainful activity."

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Mega-Reg: Impact

Estimates are that it will reduce the SSDI program by between 20-30%, with the impact on SSI less clear.

What does this mean?

- Reducing SSDI eligibility by 10% would mean 500,000 losing SSDI benefits over 10 years, including 80,000 widows and children. Additionally 250,000 would lose benefits for part of the 10 years.
- **Possibly the largest decrease in eligibility in the programs history.**

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Mega-Reg Occupational Data

- Dictionary of Occupational Titles (DOT) hasn't been updated since 1992.
- SSA has had an agreement with the Bureau of Labor Statistics Occupational Requirement Survey (ORS) since 2012 to update it.
- Data is not the same – any update would require some policy changes.

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Mega-Reg: Substantial Gainful Activity

Touchstone of disability analysis.

Defined by 20 CFR 404.1572

- (a) "substantial work activity" = "work that involves doing significant physical or mental activities."
- (b) "gainful" = "that you do for pay or profit."

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Mega-Reg: Substantial Gainful Activity

How is SGA measured?

- By value:
 - 2025 for non-blind individuals SGA = \$1620/month
 - 2025 for blind individuals SGA = \$2700
- Social Security policy also looks at time.
The ability to work 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.

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Mega-Reg: Other Factors

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 . . .

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Age: GRIDS

SSA has guidelines that use a GRID to consider how age, education, and work experience impacts the ability to transition to new work.

Age plays a critical role. Age classifications:

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

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Age: GRIDS

Policy currently recognizes that older individuals face barriers transitioning to new work:

- Person A: limited education, no transferrable skills, can do sedentary work, and is 35 = not disabled.
- Person B: Person A: limited education, no transferrable skills, can do sedentary work, and is 55 = disabled.

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What's Next?

On Oct. 5, 2025, Washington Post published an article describing this rule, including changing how age is a factor in disability adjudications from sources within SSA: <https://wapo.st/4h0SAIM>

The White House responded by denying there will be any changes to the disability adjudication in Newsweek on October 6, 2025: <https://www.newsweek.com/white-house-responds-to-social-security-change-report-10832069>. Notably, the White House spokesperson's categorical denial is at odds even with SSA's statement in the same article, noting SSA is looking to propose "policy updates to occupational data sources and optimizing their use to serve customers and preserve the trust fund."

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Changes in Title II Overpayment Recovery

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Changes in Overpayment Recovery

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

If the overpaid individual does not:

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

prior to the end of the 60-day due process period, SSA will, in most cases, automatically recover the overpayment by withholding a percentage of their Title II monthly benefit credited amount. They will recover the overpayment by withholding until the overpayment is fully recovered.

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Changes in Title II Overpayment Recovery

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

Effective on that date, SSA decreased the default Title II overpayment recovery withholding rate from 100 percent of the monthly Social Security benefit to 10 percent of the benefit or \$10, whichever is greater.

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

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

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Changes in Title II Overpayment Recovery

On April 25, 2025, SSA issued Emergency Message (EM) 25029 (reissued as EM 25029 REV on August 28, 2025).

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.

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

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Changes in Title II Overpayment Recovery

EM 25029 REV 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.

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Changes in Title II Overpayment Recovery

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.

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.

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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.

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Withdrawal of Proposed Regulatory Changes

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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2025 Supplemental Security Income (SSI) Program Update

Questions?

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