ISM Contracts

SPECIAL NEEDS PLANNING TO SHELTER EXCESS RESOURCES

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ISM Contracts in the context of penalty-free transfers of huge amounts of excess resources

versus

Costs and limitations of PSCs, SNTs, and other planning alternatives

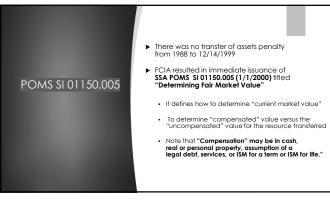
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Historical and Legal Basis

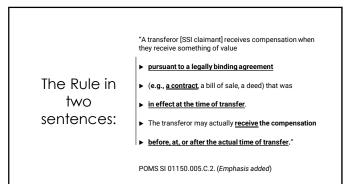
 How many of you use Personal Services Contracts?
 Why? What is the historical and legal basis for a Personal Services Contract being an exception to the SSI transfer of assets penalty?

ANSWER:

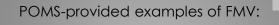
- ▶ The 1999 Foster Care Independence Act
- No federal regulations, but an
- ► SSA POMS SI 01150.005 titled "the definitions of Fair Market Value."



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► Example: Compensation Received as Services

"Linden transferred livestock valued at \$2,000 to their neighbor. As compensation, the neighbor agreed to put a new roof on Linden's home. Received roofing valued at \$2,100. Therefore, the CR determines that Mr. Linden received FMV for his livestock."

Services for life

"If the agreement provides services for the life of the claimant or recipient, determine the yeardy value of the services. When determining the value of compensation for life services, **use the life expectancy table in \$I 01150.005F**."

POMS SI 01150.005.F. Life Expectancy table

"SSA's Office of the Chief Actuary maintains yearly life expectancy tables on the agency's public-facing website.

"Use the most recent table on that website to determine the value of compensation of $\ensuremath{\mathsf{services}}$ for life and ISM for life.

"After you determine the yearly value of services (or ISM), multiply it by the "life expectancy" (which means the average years of life remaining) for the year corresponding to the individual's age and gender."

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to SSA	Chief Ac	tuary C	alculat	or	
https://www Calculator"	ssa.gov/oact/p	opulation/lo	ngevity.html	or Google "S	SA Life Expectan
	how you the average nur	mber of additional year	s a person can expect	to live, based only on t	the sex and date of birth you
enter.					
Sex					
Date of Birth					
	Day V Yea	er 🗸			
Month					

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ISM Contract – POMS SI 01150.005.D.3 rules a, b & c

a. General procedure for documenting the value of ISM

To determine the value of the compensation the individual receives in the form of ISM follow the instructions in SI 00835.001.

Use the actual value of the ISM. For the definition of actual value, see SI 00835.020B.1.

Do not use the value of the one-third reduction (VTR) or the presumed maximum value (PMV) to set the value of the compensation.

ISM Contract – POMS SI01150.005.D.3. – rules a, b & c

b. Obtain statement from ISM provider

Obtain a statement either signed or recorded on a Report of Contact page from the individual providing the ISM to verify that they are providing the ISM in exchange for the transferred resource.

On systems, use the Person Statement page. On paper, use an SSA-795 (Statement of Claimant or Other Person) or the SSA-8011-F3 (Statement of Household Expenses and Contributions) if used to document the ISM determination.

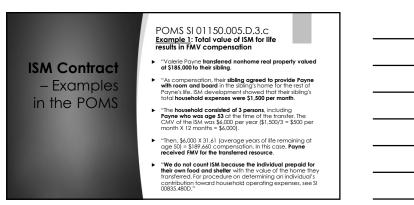
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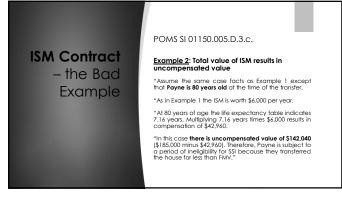
ISM Contract – POMS SI 01150.005.D.3 – rules a, b & c

c. ISM for life of eligible individual

If the agreement states that the receiver of the property will provide ISM for the life of the eligible individual, you should determine the total value of ISM using the table in <u>SI 01150.005F</u>.

Multiply the yearly CMV of the ISM provided by the figure in the "Years of Life Remaining" column which corresponds to the age (or next lower age) of the eligible individual as of the last birthday at the time the resource was transferred.





ISM Contract – SSA Example: Prepaying food	POMS SI 01150.005.C.3.b "Thomas transfers \$30,000 cash to their sibling based on a written contract that they would provide Thomas with food and shelter for 5 years. "The sibling values the food and shelter at \$500 per month. "The CR develops Thomas' living arrangements and determines that Thomas has a flat fee arrangement with their sibling and required to pay \$500 per month. "The food and shelter for 5 years is worth \$30,000 (5 years x
and shelter for Term of Years	\$6.000 per year). "Therefore, Thomas received FMV for the \$30,000 they transferred. "1SM is not counted because the individual has prepaid for their food and shelter with the \$30,000 he transferred."

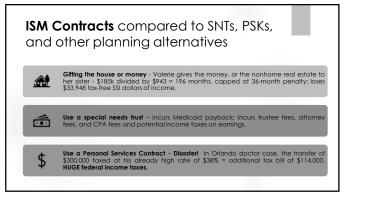
	 Prepaying \$3,000 for nursing services by contract, and none performed to date – OK – look at terms of document – "before, at, or after" contract
Other specific	 Contracting for yard maintenance for five years; \$150 per month (\$1,800 per year = \$9,000 lump sum payment
prepayment examples in	 Clainant Can no longer make payments on real property loan with CNV of \$12,000; equity of \$2k; transferred title to borher tor \$10,000 remaining payments; value of uncompensated transfer is \$2k creating o penalty of normpensated transfer is \$2k 21,21 months, round DOWN to whole number = 2 months)
the POMS	 Claimant's Home for sale on open market at asking price; selier accepts lower offer; the "price paid on the open market establishes the CMV for that item. If the property was sold on the open market, assume that the individual received FMV."
	 Property with no value – transferring a resource with no value = zero uncompensated value
	A MARKET ALL AND A REPORT OF THE ANALYSIS

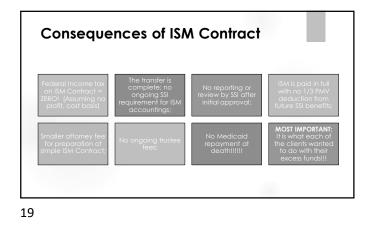
ISM Contract – the Mechanics

Elements/steps:

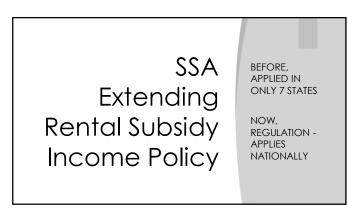
- Do the calculations total the nine "household expenses" divided by number of residents in house = transferror's share; get and document proof of each; add in non-ISM items – Iawn service, pool service, cable IV and Streaming Services; phone, etc.
- Create a written contract for ISM for a term, or for life; if using "food" call it room and board contract; include the calculations in the contract; birthdate of transferor; date of contract signatures of each party
- If for life, get the SSA Chief Actuary Life Expectancy data and print out, attach to contract
- Document where the excess funds came from and the transfer to the ISM provider
- ► Advise transferee that SSA will call to confirm
- Provably notify SSA

D	avid's Rule (not in the POMS):
	YES – when the fiving arrangement arises arganically No – when it's a landlard not related to the SSI claimant
м	y Case Examples:
	► \$300,000 - Orlando doctor, Denver elderly mom
	► \$260,000 - St Pete Sister attorney, Asperger's syndrome brother
	\$130,000 - Single mom/deemor of disabled child, no family, suggests her landlady





Effect of the new federal reg elimination of ental subsidy Agreements in the Contract?
Can you still add "food" and other non-ISM list items in the Contract?
Answer: Yes. The POMS at 0.1150.005 is tilled "Determining Fair Market Value." Lots of things can be purchased for value - see the POMS list - root repairs, nursing services, tawn maintenance, CMV of board and room (includes food) etc.
Do the math, try to stick within the examples of ISM Contracts
Do the math, try to stick within the same principles adding in the share of load, lawn service, pool service, cable IV, internet services, etc.



SSA Example of old policy

A disabled adult son with a wife and child was renting a home from his mother at \$350 per month. The Current Market Rental Value was \$1,500 per month. SSA used to count the difference as Inkind Support and Maintenance (ISM) and applied the Presumed Maximum Value (PMV) rule and reduced the claimant's SSI check in 2023 from \$914 per month to \$589.34 per month, the rates in effect the year of the example:

Example 1-- Current General Rental Subsidy Policy Equation Application of the example CHRV-Required Monthly Rent = Household \$1,500 - \$350 = \$1,150. ISM. \$1,500 - \$350 = \$1,150. Station \$1,500 - \$350 = \$1,150. ISM. \$1,150/3 people in household = \$151/Rental Subsidy to the \$383.33. ISM ris capped at the PNV. \$383.33.3 > \$324.66. SSI payment = FR-PNV. \$51 payment = \$914 - \$324.66 = \$559.34.

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SSA Example of new regulation

As long as a "business arrangement" (lease) exists between the mother and disabled son for an amount of rent equal to or greater than the PMV amount, there is no reduction in the disabled son's SSI disability check. See Example 2 in SSA Notice of Proposed Rule Making:

Example 2--Rental Subsidy Exception Policy Proposed To Be Extended

 PHV < CMRV.</td>
 \$324.66 < \$1,500.</td>

 Required Monthly Rent > PMV.
 \$350 > \$324.66.

 Therefore, no ISM to the SSI Recipient.
 = SSI Payment = \$914.

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20 CFR 416.1130(b)(1) - New reg! (1) We calculate in-kind support and maintenance considering any food or shelter that is

- given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.
- You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly required rent to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1).
- If the required amount of rent is less than the presumed maximum value, we will impute as in-۲ In the required automotion of rein is tass that me presented inclaminative over we will impore as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market rental value (see § 416.1101), whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

New SSI **Rental Subsidy Policy** to avoid ISM <u>INCOME</u> reductions

- Suppose SSI-elderly Anna inherited \$175,000. She gave it all to her wealthy daughter/landlord living in a mansion to prepay ISM, but at the end of the ISM Contract for term of years, Anna's still living with her daughter but no longer paying her fair share of the rent.
- The Rental Subsidy contract effective 9/30/24 to the rescue
 As long as she pays the PMV amount by written lease (the "business arrangement" of the new federal regulations), there is no reduction from Anna's check for ISM in any amount.
 - Anna's check for ISM in any amount. The value to Anna of the written lease is nearly \$4,000 per year additional tax-free cash SSI payments.
- ▶ Be a hero to your clients, do the lease!!

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