

# 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 POMSSI 01150.005 – titled "the definitions of Fair Market Value."

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POMS SI 01150.005

- ▶ There was no transfer of assets penalty from 1988 to 12/14/1999
- ▶ FCIA resulted in immediate issuance of **SSA POMS SI 01150.005 (1/1/2000)** titled **"Determining Fair Market Value"**
  - It defines how to determine "current market value"
  - To determine "compensated" value versus the "uncompensated" value for the resource transferred
  - Note that **"Compensation" may be in cash, real or personal property, assumption of a legal debt, services, or ISM for a term or ISM for life.**

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The Rule in two sentences:

"A transferor [SSI claimant] receives compensation when they receive something of value

- ▶ pursuant to a legally binding agreement
- ▶ (e.g., a contract, a bill of sale, a deed) that was
- ▶ in effect at the time of transfer.
- ▶ The transferor may actually receive the compensation
- ▶ before, at, or after the actual time of transfer."

POMS SI 01150.005.C.2. (Emphasis added)

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POMS-provided examples of FMV:

- ▶ **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 yearly value of the services. When determining the value of compensation for life services, **use the life expectancy table in SI 01150.005F.**"

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## 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 **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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## Life Expectancy Rule – changed from table to SSA Chief Actuary Calculator

<https://www.ssa.gov/oact/population/longevity.html> or Google "SSA Life Expectancy Calculator"

This calculator will show you the **average number** of additional years a person can expect to live, based only on the sex and date of birth you enter.

Sex

Date of Birth

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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.

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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 [SI 01150.005F](#).

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.

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ISM Contract  
– Examples  
in the POMS

POMS SI 01150.005.D.3.c  
**Example 1: Total value of ISM for life results in FMV compensation**

- ▶ “Valerie Payne transferred nonhome real property valued at \$185,000 to their sibling.
- ▶ “As compensation, their sibling agreed to provide Payne with room and board in the sibling’s home for the rest of Payne’s life. ISM development showed that their sibling’s total household expenses were \$1,500 per month.
- ▶ “The household consisted of 3 persons, including Payne who was age 53 at the time of the transfer. The CMV of the ISM was \$6,000 per year (\$1,500/3 = \$500 per month X 12 months = \$6,000).
- ▶ “Then, \$6,000 X 31.61 (average years of life remaining at age 50) = \$189,660 compensation. In this case, Payne received FMV for the transferred resource.
- ▶ “We do not count ISM because the individual prepaid for their own food and shelter with the value of the home they transferred. For procedure on determining an individual’s contribution toward household operating expenses, see SI 00835.480D.”

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## ISM Contract – the Bad Example

POMS SI 01150.005.D.3.c.

### **Example 2: Total value of ISM results in uncompensated value**

"Assume the same case facts as Example 1 except that **Payne is 80 years old** at the time of the transfer.

"As in Example 1 the ISM is worth \$6,000 per year.

"At 80 years of age the life expectancy table indicates 7.16 years. Multiplying 7.16 years times \$6,000 results in compensation of \$42,960.

"In this case **there is uncompensated value of \$142,040** (\$185,000 minus \$42,960). Therefore, Payne is subject to a period of ineligibility for SSI because they transferred the house for less than FMV."

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## ISM Contract – SSA Example:

Prepaying food  
and shelter for  
Term of Years

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 \$6,000 per year).

"Therefore, **Thomas received FMV** for the \$30,000 they transferred.

"ISM is not counted because the individual has prepaid for their food and shelter with the \$30,000 he transferred."

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## Other specific prepayment examples in the POMS

- ▶ Prepaying \$3,000 for **nursing services** by contract, and none performed to date – OK – look at terms of document – "before, at, or after" contract
- ▶ Contracting for **yard maintenance** for five years; \$150 per month (\$1,800 per year = \$9,000 lump sum payment)
- ▶ **Claimant Can no longer make payments** on real property loan with CMV of \$12,000; equity of \$2k; transferred title to brother for \$10,000 remaining payments; value of uncompensated transfer is \$2k creating a penalty of two months (\$10k divided by \$943 = 2.12 months, round DOWN to whole number = 2 months)
- ▶ **Claimant's Home for sale** on open market at asking price; **seller 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
- ▶ If individual asks and still owns the property, POMS says **inform of conditional benefits rules see SI 01150.200**

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## ISM Contract – the Mechanics

### Elements/steps:

- ▶ **Do the calculations** – total the nine “household expenses” divided by number of residents in house = transferor’s share; get and document proof of each; add in non-ISM items – lawn service, pool service, cable TV 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**

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## ISM Contract – When to Use

### David’s Rule (not in the POMS):

**YES** – when the living arrangement arises organically

**No** – when it’s a landlord not related to the SSI claimant

### My 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

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## ISM Contracts compared to SNTs, PSKs, and other planning alternatives



**Gifting the house or money** - Valerie gives the money, or the nonhome real estate to her sister - \$185k divided by \$943 = 196 months, capped at 36-month penalty; loses \$33,948 tax-free SSI dollars of income.



**Use a special needs trust** – incurs Medicaid payback; incurs trustee fees, attorney fees, and CPA fees and potential income taxes on earnings.



**Use a Personal Services Contract – Disaster!** In Orlando doctor case, the transfer of \$300,000 taxed at his already high rate of 38% = additional tax bill of \$114,000. **HUGE federal income taxes.**

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## Consequences of ISM Contract

Federal Income tax on ISM Contract = ZERO! (Assuming no profit, cost basis)	The transfer is complete; no ongoing SSI requirement for ISM accountings;	No reporting or review by SSI after initial approval;	ISM is paid in full with no 1/3 PMV deduction from future SSI benefits;
Smaller attorney fee for preparation of simple ISM Contract;	No ongoing trustee fees;	No Medicaid repayment at death!!!!!!	<b>MOST IMPORTANT:</b> It is what each of the clients wanted to do with their excess funds!!!

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## Effect of the new federal reg elimination of "food" on ISM Contracts

- ▶ **"Food" eliminated from ISM**, along with nationalization of Rental Subsidy Agreements
- ▶ **Can you still add "food"** and other non-ISM list items in the Contract?
- ▶ **Answer: Yes.** The POMS at 01150.005 is titled "Determining Fair Market Value." Lots of things can be purchased for value – see the POMS list – roof repairs, nursing services, lawn maintenance, CMV of board and room (includes food) etc.
- ▶ **Do the math,** try to stick within the examples of ISM Contracts with ISM items only, but if not, call them "room and board contracts" and apply the same principles adding in the share of food, lawn service, pool service, cable TV, internet services, etc.

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## SSA Extending Rental Subsidy Income Policy

BEFORE,  
APPLIED IN  
ONLY 7 STATES

NOW,  
REGULATION -  
APPLIES  
NATIONALLY

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## 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 In-kind 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 ISM	$\$1,500 - \$350 = \$1,150.$
Household ISM/Number of people in household = ISM/Rental Subsidy to the SSI Recipient.	$\$1,150/3 \text{ people in household} = \$383.33.$
ISM is capped at the PMV.....	$\$383.33 > \$324.66.$
SSI payment = FBR-PMV.....	$\text{SSI payment} = \$914 - \$324.66 = \$589.34.$

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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	
PMV < CHRV.....	$\$324.66 < \$1,500.$
Required Monthly Rent > PMV.....	$\$350 > \$324.66.$
Therefore, no ISM to the SSI Recipient.	$\text{SSI Payment} = \$914.$

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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-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.

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## New SSI **Rental Subsidy Policy** to avoid ISM INCOME 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.
  - ▶ 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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## Questions?

If not answered today, email  
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