STETSON LAW

National Conference on Special Needs Planning and Special Needs Trusts

2024 Supplemental Security Income (SSI) Program Update

Presented by Ken Brown
October 18, 2024

STETSON UNIVERSITY

Center for Excellence in Elder Law

ACCESS AND JUSTICE FOR ALL®

2024 Supplemental Security Income (SSI) Program Update

TABLE OF CONTENTS

The Impact of Changes to In-kind Support and Maintenance Policy in the Supplemental Security Income Program

CHANGES IN OVERPAYMENT RECOVERY POLICY

APPENDICES

The Impact of Changes to In-kind Support and Maintenance Policy in the Supplemental Security Income Program

INTRODUCTION

In-kind support and maintenance (ISM) is unearned income received by or given to an individual in the form of food (until September 30, 2024) or shelter, or both. It is considered income because someone else, either within or outside of the individual's household is paying for it. The Social Security Act (the Act) considers ISM, along with other forms of unearned income, when determining supplemental security income (SSI) eligibility and payment amounts.

In-kind support and maintenance matters in the SSI program because SSI, as a program of last resort, is intended to help pay for the basic costs of living. If someone else is helping to pay for these things, then it stands to reason that the SSI benefit would be reduced. If too much ISM is received and other forms of income are received, it may even cause a person to be ineligible for SSI benefits. For people who are determined to be eligible for SSI, in-kind support and maintenance can cause the benefit payment to be reduced. In-kind support and maintenance may be charged to an SSI eligible individual or an SSI eligible couple.

SSA is now making what I consider the biggest changes in ISM policy in 40 years.
On February 15, 2023, SSA published a Notice of Proposed Rulemaking (NPRM) titled *"Omitting Food from In-Kind Support and Maintenance Calculations,"* (88 FR 9779). The summary states, "[w]e propose to update our regulations to remove food from the calculation of In-Kind Support and Maintenance (ISM). We also propose to add conforming language to our definition of income, excluding food from the ISM calculation…." The public comment period on the first NPRM closed on April 17, 2023. SSA published a final rule on March 27, 2024, which was effective September 30, 2024.

On August 24, 2023, SSA published an NPRM titled "*Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients,"* (88 FR 57910). The summary states, "We propose to revise our regulations by applying nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States. The exception recognizes that a "business arrangement" exists when the amount of required monthly rent for a property equals or exceeds the presumed maximum value...." The comment period on the second NPRM closed on October 23, 2023. SSA published a final rule on April 11, 2024, which was effective September 30, 2024.

On September 29, 2023, SSA published an NPRM titled "*Expand the Definition of a Public-Assistance (PA) Household*" (88 FR 67148). The summary states, "We propose to expand the definition of a public assistance (PA) household for purposes of our programs, particularly the Supplemental Security Income (SSI) program, to include the Supplemental Nutrition Assistance Program (SNAP) as an additional means-tested public income maintenance (PIM) program. In addition, we seek public comment on expanding the definition to include households in which *any other* (as opposed to *every other*) member receives public assistance. We expect that the proposed rule would decrease the number of SSI applicants and recipients charged with in-kind support and maintenance (ISM). In addition, we expect that this proposal would decrease the amount of income we would deem to SSI applicants or recipients because we would no longer deem income from ineligible spouses and parents who receive SNAP benefits and live in the same household. These policy changes would reduce administrative burden for low-income households and SSA." The comment period on the third NPRM closed on November 28, 2023. SSA published a final rule on April 19, 2024, which was effective September 30, 2024.

SSA could have chosen an effective date 30 days after publication of the final regulations, however, I think SSA chose a delayed implementation date for two reasons. First, to allow time to make systems changes to the SSI system and second, to allow time to rewrite the Program Operations Manual System (POMS) instructions dealing with ISM.

THE LEGAL BASIS FOR ISM

Statutory Law – The Social Security Act

The State programs that preceded SSI often undertook detailed analysis of the household budget to establish an applicant's level of financial need. There was much debate about how to develop and value ISM. One of the founding principles of SSI is that, as a program that is national in scope, it should be based on a "flat grant" approach that does not involve program administrators in the detailed household budgets of millions of recipients. The task of gathering information and developing about all food and shelter that a recipient received each month is a formidable task. The law creating the SSI program included the one-third reduction provision so that SSA would not have to determine the actual value of room and board when a recipient lived with a friend or relative. A congressional committee report indicated that the reduction would apply regardless of whether the individual made any payment toward household expenses (*Report of the Committee on Finance*, United States Senate, to accompany H.R. 1, September 26, 1972).

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

> (a) For purposes of this title, income means both earned income and unearned income; and—
> 2) unearned income means all other income, including—
>
> (A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1611 shall be reduced by 33 1/3 percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise

> required by this subparagraph, (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief and Emergency Assistance Act, and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe;

Thus, the statute provides the basis for counting ISM and several exceptions to ISM-counting. However, the statute does not define support and maintenance. Additionally, the only enumerated method for treating ISM is for an individual living in another person's household and receiving support and maintenance in kind from such person. As part of program implementation, SSA determined that additional rules were necessary to provide needed definitions and to cover other situations where an individual received in-kind support. These situations were covered in the regulations.

Code of Federal Regulations

Regulations covering ISM are found at 20 CFR 416.1130 through 20 CFR 416.1157.

The SSI program became law on October 30, 1972 and was to take effect on January 1974. The 14 months between presidential signature and effective date of the new law left scant time for SSA to prepare, vet, and publish regulations, to build a systems infrastructure, to design policy and procedure, to train employees, and to notify the public and the approximately 4 million people who would be shifted from the old state programs to the new federal program. Congress may have intended the federal program to be simpler than the state-run programs. However, the new federal program was complex enough to motivate SSA to convene its first workgroup to address simplification shortly after SSI's first anniversary.

Although the provision was intended to be simple to administer, it did not adequately define many concepts or address differences in living arrangements among SSI recipients. During implementation of the legislation, the agency determined that the value of the one-third reduction (VTR) provision was extremely narrow and that another rule should be developed to cover other in-kind support provided that did not fit under the VTR rule, such as support from outside of the household. SSA created the PMV rule and the pro rata-share concept through regulations in an attempt to better address equity among recipients. However, these regulations compromised the simplification objective of the "flat grant" approach. Regulations on ISM were completely rewritten in 1980 (45 FR 65547, Oct. 3, 1980) to simplify and clarify what had become a confusing problem. However, "[o]ver the life of the program, those policies have become increasingly complex as a result of new legislation, court decisions, and SSA's own efforts to achieve benefit equity for all recipients" (Government Accountability Office. 2002. *Supplemental Security Income: Progress made in detecting and recovering overpayments, but management attention should continue*. Report No. GAO-02-849 (September 16, 2002.)).

Support and maintenance is not defined in the Social Security Act. SSA currently defines it at 20 CFR 416.1121 as "shelter furnished to you that we value depending on your living arrangement. (Food is not included in the calculations of in-kind support and maintenance.)." Prior to September 30, 2024, it was defined at 20 CFR 416.1130(b) as "any food or shelter that is given to you or that you receive because someone else pays for it." Prior to March 9, 2005, support and maintenance included the receipt of clothing. SSA published regulations changing that definition on that date (see, 70 FR 6340 (2005)).

Program Operations Manual System (POMS)

While the statute includes one paragraph on ISM and the regulations have 14 short sections, there are approximately 250 pages of instructions in the POMS dealing with ISM. These sections are found at POMS SI 00835.000 through SI 00835.901. There will be an extensive rewrite of the ISM POMS because of these new regulations. See Appendix E for a list of impacted POMS sections and Appendix D and E for interim instructions.

DETERMINING THE VALUE OF IN-KIND SUPPORT AND MAINTENANCE

SSA has two rules that apply to determining the value of ISM. The rules are mutually exclusive in that when one rule applies, the other does not. These two rules are the Value of the One-Third Reduction (VTR) Rule and the Presumed Maximum Value (PMV) Rule.

When it applies, the VTR is a statutory one-third reduction in the SSI payment rate. On the other hand, the PMV is a regulatory maximum cap on the amount of ISM that can be charged.

The Current Status of ISM*

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

* As of January 2022 (FBR = $841)

The Relationship Between Living Arrangements and ISM

The POMS definition of "Permanent Living Arrangement" refers you to the definition of "Residence." A residence is, for living arrangement/ISM purposes, the location of abode or dwelling place. A residence is also a place where a person makes his/her home. "Residence" is synonymous with the term "permanent living arrangement." Thus, a person's living arrangement (LA) is where they live, if they live alone or with someone else, or if they live in an institution, such as a nursing home.

Because living arrangements are a factor in determining how much SSI you can get, where a person lives can affect their SSI benefit. For example, benefits can vary depending whether they live:

- in their own place such as a house, apartment, or mobile home; or
- in someone else's household; or
- in a group care or board and care facility; or
- in an institution such as a hospital or a nursing home.

A living arrangement also depends on who pays for food and shelter. If a person lives alone SSA needs to know who pays for shelter, and utilities. If a person lives with someone else, SSA needs to know who pays for food, shelter, and utilities.

An individual currently may get a reduced SSI payment if they:

- live in another person's house, apartment, or mobile home, and they pay less than their fair share of food or housing costs;
- live in their own house, apartment, or mobile home, and someone else pays for all or part of their rent, mortgage, or other things like electricity and heating fuel;
- are in a hospital or nursing home for the whole month and Medicaid pays for over one-half of the cost of their care; or
- are a minor child in a hospital or nursing home for the whole month and private insurance and/or Medicaid together pay over one-half their cost of care; or
- are in a public or private medical treatment facility and Medicaid is paying for more than half the cost of their care. If they are in the facility for the whole month, the SSI benefit is limited to $30 (plus any supplementary State payment).

Living arrangement development focuses primarily on shelter anyway, so not considering food as ISM should have minor impact on LA development.

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

Value of the One-third Reduction (VTR) Rule

If none of the Living Arrangement situations (which are really exceptions to the application of the VTR) apply to the individual, any ISM received from the household is subject to the VTR.

SSA will reduce the applicable Federal benefit rate (FBR) by one-third when an individual or couple:

- Lives throughout a month in another person's household; and
- Receives both food and shelter from others living in that household.

The following policies apply to the VTR:

- In 2024, the VTR is equal to $314.33 for an individual and $471.66 for a couple based on an FBR of $943.00 and $1,415.00, respectively.
- When the VTR applies, it applies in full or not at all. The amount of the VTR cannot be rebutted.
- When the VTR applies, no additional ISM is countable, even if it is received from outside of the household.
- When the VTR applies, no income exclusions apply to the VTR (including the $20 general income exclusion). The VTR is a reduction in the payment rate and not a charge of unearned income.
- The VTR may apply even if the individual receives part of his or her food and shelter from inside the household and part from outside. It is not necessary that an individual receive food and shelter from inside the household on each day of the month to apply the VTR.
- The VTR (couple rate) can continue to apply to both members of an eligible couple in the month that they separate. For example, when an eligible couple subject to the VTR separates, the VTR continues to apply to the member who leaves the household, moves into the household of another, and does not contribute toward the household operating expenses. For ISM purposes, SSA treats the members of an eligible couple as individuals in the month following the separation month. For example, if a married couple separates in May, for ISM purpose, they are two eligible individuals beginning in June.
- An individual is not subject to the VTR unless he or she lives throughout the entire calendar month in the household of another.

  NOTE: If temporarily absent from the household, an individual who is not physically present in the household throughout the month may still meet the throughout a month requirement (see SI 00835.040). In addition, an individual may reside in more than one household where the VTR applies and meet the throughout a month requirement.

Under the new regulations, the VTR will continue to be calculated based on the individual receiving both food and shelter from within the household.

Presumed Maximum Value (PMV) Rule

When a beneficiary or couple receives ISM, is eligible for payment and the VTR does not apply, SSA uses the PMV rule to determine the value of ISM received.

The VTR may not apply because:

- The individual does not live in a household, e.g., they are transient, homeless or are residents of an institution.
- They do not live in the household of another, e.g., they live alone, are in non-institutional care, have an ownership interest in the home they live in, have rental liability for the residence, or are a member of a public assistance household.
- They do not receive both food and shelter from inside the household because they are separately consuming food, separately purchasing their food, earmarking their contributions for food or shelter, they are paying their pro rata share, or the household expenses do not include either food or shelter.
- They did not live throughout an entire month in the household of another.

The amount of the PMV is equal to one-third of the Federal benefit rate for an individual or couple, plus $20. In 2024 the PMV is equal to $334.33 for an individual and $$491.66 for an eligible couple, based on an FBR of $943.00 and $1,415.00, respectively.

The PMV is a regulatory cap on the amount of ISM that can be charged. The PMV is a rebuttable presumption, i.e., the regulation presumes that the value of ISM is worth one-third of the FBR plus $20. If the individual or couple successfully presents evidence that the food or shelter has a lower value or cost (rebuts the PMV), SSA values the ISM at the current market value (CMV) or the actual value (AV), whichever is less.

While the VTR is a reduced payment level, the PMV is actually considered a type of unearned income and is charged as such. The PMV amount is equal to one-third of the FBR plus $20 because, in application, the $20 is equal to the $20 general income exclusion, which when applied means that the maximum amount of the VTR and the PMV are the same.

Under the new regulations, individuals subject the PMV will only have ISM reductions calculated based on the receipt of shelter.

THE PROBLEM OF ISM

Although less than 10 percent of SSI recipients are ultimately charged with ISM, a living arrangement determination must be made for all individuals and an ISM determination must be considered any time there is a change in an individual's living arrangement, whether it be a change of address, someone moves in or out of the household, if there is change in any utility bills, the amount of a household members contribution toward expenses, if someone outside of the household makes a contribution of food or pays a bill. After SSA gathers information such as utility bills and leases, interviews the SSI applicant/recipient, and, when appropriate, the person's representative payee, legal guardian, housemates, or landlord about how the applicant/recipient lives and how the household functions, there may be no change at all in the payment amount.

Additionally, ISM is a leading cause of SSI overpayments and underpayments, according to the Government Accountability Office (GAO) and SSA's Inspector General. ISM has been identified as one of the leading causes of overpayments in the SSI program every year since at least 2002. (General Accounting Office, "Supplemental Security Income: Status of Efforts to Improve Overpayment Detection and Recovery," Testimony Before the Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives" July 25, 2002, http://www.gao.gov/products/GAO-02-962T). ISM and living arrangements have also been a leading cause of SSI underpayments for over a decade. ISM has traditionally accounted for about one-third of all improper payments.

As the Social Security Advisory Board has stated:

> Congress needs to decide whether the agency time spent on case management and oversight is a job function that should rest with SSA field office staff. Collecting and verifying information to determine whether there is in-kind support at the application stage is time- consuming and having to continue to make that assessment is burdensome, both for the agency and the SSI recipient who must maintain constant communication with the agency. A cost analysis needs to be done to determine whether the savings in ISM reductions is worth the cost of managing the improper payments that result and the cost of maintaining policies and procedures to determine ISM reductions.

Social Security Advisory Board "Statement on The Supplemental Security Income Program: The Complexity of In-Kind Support and Maintenance," 2015, https://www.ssab.gov/wp-content/uploads/2021/03/2015_-SSI_In-Kind_Support___Maintenance.pdf.

THE FUTURE OF ISM - REGULATIONS

SSA's own regulatory actions have complicated ISM development, but the agency has also used regulations to simplify policy. Prior to September 30, 2024, support and maintenance included receipt of food and prior to March 9, 2005, it included the receipt of clothing. SSA published regulations changing the definition effective on those dates.

Omitting Food from In-Kind Support and Maintenance Calculations

On February 15, 2023, SSA published a Notice of Proposed Rulemaking (NPRM) titled *"Omitting Food from In-Kind Support and Maintenance Calculations,"* (88 FR 9779). The summary stated, "[w]e propose to update our regulations to remove food from the calculation of In-Kind Support and Maintenance (ISM). We also propose to add conforming language to our definition of income, excluding food from the ISM calculation…."

The public comment period closed on April 17, 2023. SSA received 4,386 comments with more than 95% of them favorable. SSA published a final rule on March 27, 2024, which was effective September 30, 2024. See Appendix A for a copy of the NPRM and final regulations.

Justification for Change

SSA justified the removal of food from ISM counting for several reasons. First, it simplifies policy:

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

Secondly, it promotes equity:

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

Impacts of the Change

As a result of the new regulations excluding food, there are several policy impacts.

- SSA will include only shelter costs in ISM calculations.
- Additionally, there will be changes to which ISM counting rule will apply and there is the potential to increase payments.
- Trusts (or anyone) can now pay for food. Payments must still be third-party payments and not cash to the beneficiary.
- No longer have to launder payments for food through an ABLE account (but you still can use this method).
- SSI recipients can focus their contributions on shelter expenses to minimize benefit reductions.
- Debit/credit cards no longer have to be restricted for food.

When computing household operating (shelter) expenses, only the following 9 items will be used:

- Mortgage (including property insurance required by the mortgage holder)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal

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

Although SSA eliminated food expenses from ISM calculations, they will still consider food expenses to determine whether to use the VTR rule or the PMV rule in certain circumstances, but not include those expenses in the actual income calculation.
In the NPRM, SSA proposed that they would continue to ask applicants and recipients the following questions about food:

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

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

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

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

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

SSA conducted an analysis of the impact of the change on current ISM recipients (assuming no change in situation). Interestingly, 19% of current recipients would be expected to have a change in the way their ISM would be counted (VTR versus PMV, versus no ISM). However, 85% of current recipients would see no change in their SSI payment, while 11% would see an increased payment (up to $166) and 3% would see a payment reduction ($20). The payment reduction would impact individuals whose ISM would change from being counted under the VTR to PMV and who have other income so that the $20 general income exclusion would not be available to offset the additional $20 of charged income under the PMV (one-third of the FBR plus $20) versus the VTR (one-third of the FBR).

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

Fiscal Impact

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

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

Other Related Changes

The regulation contains two other changes related to income:

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

Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients

On August 24, 2023, SSA published an NPRM titled "*Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients,"* (88 FR 57910). The summary states, "We propose to revise our regulations by applying nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States. The exception recognizes that a "business arrangement" exists when the amount of required monthly rent for a property equals or exceeds the presumed maximum value..."

The public comment period closed on October 23, 2023. SSA received 179 comments, 170 of which supported the regulatory change. SSA published a final rule on April 11, 2024, which was effective September 30, 2024. See Appendix B for a copy of the NPRM and final regulations.

A POMS rewrite of SI 00835.380, Rental Subsidies, was issued 09/24/24. [POMS SI 00835.380, Rental Subsidies.]

Prior Regulations

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

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

Rental Subsidy Policy

Prior policy held that if an individual was charged rent at a level less than the CMRV, they were receiving a rental subsidy**.** An individual receives in-kind support and maintenance (ISM) in the form of a rental subsidy when the rent required by the landlord (including a flat fee payment) is less than the amount charged under a business arrangement.

A landlord is a party who provides living quarters in return for rent. A landlord and his or her tenant(s) cannot be members of the same household. Someone in the household has rental liability so the PMV applies. According to POMS, SSA develops subsidy when someone in the household is related as parent or child to the landlord or spouse. However, there were circumstances when rental subsidy was improperly developed in other than familial relationships.

The Basis for Change – Court Cases

In the 1980's and 1990's SSA lost a series of court cases that resulted in divergent treatment of rental subsidy depending on where the recipient lived.

Based on the ruling in *Jackson* v. *Schweiker,* 683 F.2d 1076 (7th Cir. 1982), in the States in the Seventh Circuit (Illinois, Indiana, and Wisconsin), a business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the Presumed Maximum Value (PMV). In those States, if the required amount of rent is less than the PMV, we will impute as in-kind support and maintenance, the difference between the required amount of rent and either the PMV or the current market value, whichever is less.

In response to *Ruppert* v. *Bowen,* 871 F.2d 1172 (2d Cir. 1989), SSA issued Acquiescence Ruling (AR) 90–2(2) for the States of Connecticut, New York and Vermont.
The Court directed that a determination be made as to whether an applicant or recipient received an "actual economic benefit" from a rental subsidy, before charging the applicant or recipient with in-kind support and maintenance.
SSA determined it will apply the same rule as *Jackson*.

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

The rationale of the courts that resulted in the situation currently in place in seven states, in particular in *Jackson* and in *Ruppert,* also supports extending this policy to the other states. In *Jackson,* the Seventh Circuit reasoned that it is not enough for a claimant to be provided shelter at a rate below market value for that difference to be counted as "income" for SSI purposes; rather, to be counted as "income," the difference between the market value and the actual rental payment must result in increased purchasing power to meet the claimant's basic needs.

The Seventh Circuit explained that "purchasing power grows if in-kind contributions of shelter either make cash available to purchase necessities of life other than shelter or if, and to the extent, the quality of shelter itself is enhanced to meet basic needs."

Similarly, in *Ruppert,* the Second Circuit found that the difference between the CMRV and the required monthly rent does not always constitute an actual economic benefit which should be counted as "income" for SSI purposes.

Justification for the Change

- Change promotes a uniform national policy and thus equality.
- Ensures the economic benefit to all recipients regardless of State of residence.
- Fosters efficiency in administration due to consistency.
- Reduces time for calculations of ISM.

- Implements external stakeholder suggestions.
- Rent payments will be compared to a national standard, the PMV, instead of fluctuating geographical/market differences.
- Less intrusive questioning and fewer contacts with landlords.

Example – Current Policy

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

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

Example – Proposed Policy (Same factual situation)

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

Fiscal Impact

SSA estimates that implementation of this rule would result in a total increase in Federal SSI payments of $837 million over fiscal years 2024 through 2033. These estimates reflect:

- approximately 41,000 individuals who would be eligible under current rules will have their Federal SSI payment increased by an average of $132 per month.
- an additional 14,000 individuals who are not eligible under current rules who would be newly eligible and would apply for benefits under the proposed rule.

SSA estimates that this proposal will result in net administrative savings of $10 million for the 10-year period from FY 2024 to FY 2033.

Expand the Definition of a Public-Assistance (PA) Household

On September 29, 2023, SSA published an NPRM titled "*Expand the Definition of a Public-Assistance (PA) Household*" (88 FR 67148). The summary states, "We propose to expand the definition of a public assistance (PA) household for purposes of our programs, particularly the Supplemental Security Income (SSI) program, to include the Supplemental Nutrition Assistance Program (SNAP) as an additional means-tested public income maintenance (PIM) program. In addition, we seek public comment on expanding the definition to include households in which *any other* (as opposed to *every other*) member receives public assistance. We expect that the proposed rule would decrease the number of SSI applicants and recipients charged with in-kind support and maintenance (ISM). In addition, we expect that this proposal would decrease the amount of income we would deem to SSI applicants or recipients because we would no longer deem income from ineligible spouses and parents who receive SNAP benefits and live in the same household. These policy changes would reduce administrative burden for low-income households and SSA."

The public comment period closed November 28, 2023. SSA received 221 comments, 95% supported the proposals. SSA published a final rule on April 19, 2024, which was effective September 30, 2024. See Appendix C for a copy of the NPRM and final regulations.

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

Prior Policy

Under prior policy, SSA published in regulations the definition of a public assistance (PA) household. A public assistance household is one in which every member receives some kind of public income-maintenance (PIM) payments. These are payments made under:

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

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

Final Regulation

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

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

Justification for the 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.

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 fluctuates, 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 current 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 is 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 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.

A rewrite of POMS SI 01320.141, Deeming: Public Income Maintenance Payments, was issued September 26, 2024. POMS SI 01320.141.

Fiscal Impact

SSA estimates that implementation of this proposed rule would result in a total increase in Federal SSI payments of $15 billion over fiscal years 2024 through 2033.

In FY 2033 roughly 277,000 Federal SSI recipients (4 percent of all SSI recipients) will have an increase in monthly payments compared to current rules, and an additional 109,000 individuals (1 percent increase) will receive Federal SSI payments who would not have been eligible under current rules. However, some individuals may have a decrease in SNAP benefits due to increased SSI payments.

Future Change – Adding Other PIM Programs

SSA sought public comment on adding other programs to the PA Household list. In addition to SNAP, they considered:

- Medicaid (80% of SSI households)
- the Low Income Home Energy Assistance Program (LIHEAP) (17% of SSI households)
- the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- the Housing Choice Voucher Program, Project Based Rental Assistance, and Public Housing (23% of SSI households)

At this time, they decided not to add any additional programs to the list, but will consider additional changes in the future.

<u>Shift From "Every" to "Any" Other Member of the Household</u>

In the NPRM, SSA proposed to consider an SSI applicant or recipient to be residing in a PA household if the SSI applicant or recipient and *any other* (as opposed to *every*) additional household member receives public assistance. This proposal is adopted in the final regulation. This allows SSA to rely on other agencies who already make household determinations. The current rule is detrimental when household members are ineligible due to reasons other than need (citizenship, time limits, immigration status, etc.). SSA also found it reasonable to infer that when 2 members of household qualify for PIM payments, all members of the household are low-income.

Where to From Here?

It will be interesting to see in the future if these simplification efforts actually result in fewer improper payments and produce some administrative savings, or if they simply increase program costs due to fewer ISM reductions and increased eligibility. Some of the variables that cause improper payments, fluctuating household expenses, changing household composition, variable payments and contribution rates and failure to report changes will still be present under the new regulations. However, fluctuating food costs will be removed from the equation.

THE FUTURE OF ISM – IMPLEMENTATION OF CHANGES

As previously stated, to implement the three regulatory changes, SSA will undertake an extensive rewrite of the ISM and related POMS sections. Several of these were published prior to implementation on September 30, 2024, but as a stopgap measure, SSA issued two Emergency Messages (EMs) prior to September 30. These EMs, EM-24047, "SSI Living Arrangements Regulatory Changes - Technician Instructions for Identifying and Processing Affected Cases," issued September 20 (See Appendix D), and EM-24048, "Omitting Food from In-Kind Support and Maintenance Calculations," issued September 26 (See Appendix E), provide processing instructions until the full list of rewrites has been issued. See EM-24048 Section F for a list of POMS sections to be updated.

As a basic outline for development, any cases with income Type H (ISM under the PMV) or Type J (VTR) will require development of a new Living Arrangement effective 09/30/24. SSA created a new systems page titled Household Living with Others to capture the regulatory changes. On that page, SSA will develop if anyone else in the household is receiving Public Assistance (PA), including SNAP. If no one receives PA and the recipient does not live alone, SSA will ask if "Others in the household pay for or provide all of your meals?" If the answer is yes, SSA will develop following the VTR path including development of pro rata share of shelter items. If the answer is no, the individual will be placed in FLA-A and SSA will develop for outside ISM, including pro rata share of shelter.

SSA has developed several new edits to make sure rental subsidy is developed and up to date in States other than New York, Connecticut, Indiana, Illinois, Wisconsin, Vermont, or Texas. Additionally, new LA development must take place at the beginning of each new year as the Cost of Living Adjustment (COLA) will change the amount of the PMV reduction amount, so rental subsidy must be refigured based on the new PMV amount.

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

THE FUTURE OF ISM - LEGISLATION

Most legislative options that have been considered are typically cost neutral, meaning that some SSI recipients would be better off, and others would be worse off than under current law. The President's fiscal year 2020 and 2021 budgets proposed one such option — it would have replaced ISM with a flat-rate (SSA has traditionally estimated 7 percent) benefit reduction for adult SSI recipients who are living with other adults, otherwise called benefit restructuring. The 7 percent figure generally provides revenue neutrality for program costs.

> Simplify Administration of the SSI Program. Currently, SSI recipients can receive lower benefits if they are earning, or otherwise receiving, income. Income includes non-cash income, such as assistance by a roommate or family member in paying the recipient's share of the household expenses, such as food and shelter. This type of income is called in-kind support and maintenance (ISM) and is difficult to accurately value because it can fluctuate each month as household expenses and composition and the type of assistance provided may change. This proposal would replace ISM with a flat-rate benefit reduction for adults living with other adults.

SSA website at https://www.ssa.gov/legislation/other.html

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

$70 million. (Richard Balkus, James Sears, Susan Wilschke, and Bernard Wixon, "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance," Social Security Bulletin, Vol. 68, no. 4, 2008, 15- 39: https://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.)

It is interesting to note that the unadjusted annual program cost of the three recent final regulations for the period 2024 – 2033 is $1.7 billion, more than half way to the cost of total elimination of ISM. Annual administrative costs for the same period are estimated to increase by $4.7 million.

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

Another legislative approach would be to eliminate ISM altogether. No other Federal benefit programs consider in-kind support and maintenance. Both the SSI Restoration Act (The SSI Restoration Act, H.R. 3824 and S. 2065, was introduced by Rep. Raúl Grijalva in the House and by Sen. Sherrod Brown in the Senate) in 2021 and President Biden's campaign plan (The Biden Plan for Full Participation and Equality for People with Disabilities) would eliminate ISM counting. This would simplify the program, reduce administrative costs, and allow recipients to accept help from friends and family without penalty, but at a significant increase in program costs. Neither proposal got far enough to have a hearing.

Now that SSA has gone about as far as it can go and taken a significant action regarding ISM policy, it will be interesting to see if Congress takes a wait and see approach before considering any changes. What, if anything, additional happens appears to depend on Congress.

SMART USE OF ISM PAYMENTS FROM A TRUST

Just because payment for shelter by a trust may result in counting the shelter received as income for SSI purposes, you should not be afraid to allow for discretionary payment for shelter (or food) by the trust if it may result in a better life situation for the trust beneficiary.

The first inclination may be to prohibit any distributions for shelter because it will reduce the amount of the SSI check. And by no means should the trust state that the trust will pay for shelter needs and risk the trust being considered a support trust.

However, there may be distinct benefits to allowing a trustee to make discretionary payments for shelter, as the situation may require. In fact, the way the rules function, it could be malpractice to impose too restrictive rules on a trustee.

The following chart gives four examples of how a trust may or may not pay for food and/or shelter expenses and the resulting impact on benefit amount, the SSI recipient's lifestyle and the resulting amount of discretionary funds the recipient may have to pay for other necessary items and expenses. (See key below the chart for descriptions of the trusts.)

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

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

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

- First, does the trust permit distributions for food and shelter? Revision of trusts that did not permit distributions for food may be problematic.

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

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

CHANGES IN OVERPAYMENT RECOVERY POLICY

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.

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 10% of your benefit each month or $10, whichever is more. 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, but no less than $10. You also have the option of paying back the overpayment at a rate greater than 10%.

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 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 CHANGES IN OVERPAYMENT RECOVERY POLICY

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

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

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.

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

If the overpaid individual does not:

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

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

Request for a Lower Rate

If a beneficiary requests a repayment plan with a rate lower than 10%, a representative will approve the request if it allows recovery of the overpayment within 60 months – a recent 2-year increase from the previous policy of only 36 months. If the beneficiary's

proposed rate would extend recovery of the overpayment beyond 60 months, the Social Security representative will gather a verbal income, resource, and expense summary from the beneficiary to make a determination.
(SSI recipients don't have to provide a summary.)

EM-24011 E. states in the NOTE that:

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

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

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

Increase in Title II Administrative Waiver Tolerance

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

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

- Original total must be $2,000 or less

  - Not each overpayment

  - Not if reduced by repayment to $2,000

Increase in SSI Administrative Waiver Tolerance

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

- Effective May 13, 2024, we may administratively waive recovery or adjustment, i.e., administratively discontinue waiver development, on an overpayment if the original amount (not the balance) is $2,000.00 or less.
- We do not use administrative waiver development discontinuance policy unless the recipient (or representative) makes a specific written or oral request for waiver or reconsideration.

- We administratively discontinue waiver development unless we believe there is an indication of fault on the part of the overpaid recipient. In such a case, we will conduct full waiver or reconsideration development.

The SSI waiver tolerance had been $1,000 for many years. As the Federal Benefit Rate approached $1,000, the need to increase the waiver tolerance became apparent. An additional problem results from the fact that many overpayments are not identified for many months after they occur, thus increasing the chance that they will exceed the tolerance.

Revised Waiver Process

In September 2023, SSA introduced a revised form (SSA-632) to help streamline the waiver process. In September 2024, SSA published TN 59 GN 02250.301, which consolidated the Title II and SSI overpayment waiver instructions.

They also indicated that they would be publishing proposed regulatory changes this Fall to streamline processes and reduce burden so eligible individuals can more easily seek debt relief.

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

APPENDICES

Appendices A, B and C are hyperlinked to the Notice of Proposed Rulemaking (NPRM) and Final Rule on the Federal Register website (www.federalregister.gov). If the hyperlink does not work, the Federal Register document citation is also provided.

APPENDIX A

Omitting Food from In-Kind Support and Maintenance Calculations

Notice of Proposed Rulemaking, Omitting Food From In-Kind Support and Maintenance Calculations (February 15, 2023).

https://www.federalregister.gov/documents/2023/02/15/2023-02731/omitting-food-from-in-kind-support-and-maintenance-calculations

CITATION: 88 FR 9779 (9779-9796, 18 pages)

Summary: We propose to update our regulations to remove food from the calculation of In-Kind Support and Maintenance (ISM). We also propose to add conforming language to our definition of income, excluding food from the ISM calculation. Accordingly, Supplemental Security Income (SSI) applicants and recipients would no longer need to provide information about their food expenses for us to consider in our ISM calculations. We expect that these changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow. These simplifications would make it easier for SSI applicants and recipients to comply with our program requirements, which would save time for both them and us, and improve the equitable treatment of food assistance within the SSI program. The proposed rule also includes other, minor revisions to the regulations related to income, including clarifying our longstanding position that income may be received "constructively."

Final Rule, Omitting Food from In-Kind Support and Maintenance Calculations (March 27, 2024)

https://www.federalregister.gov/documents/2024/03/27/2024-06464/omitting-food-from-in-kind-support-and-maintenance-calculations

CITATION: 89 FR 21199 (21199-21211, 13 pages)

Summary: We are updating our Supplemental Security Income (SSI) regulations to remove food from the calculations of In-Kind Support and Maintenance (ISM). We are also adding conforming language to our definition of income. These changes simplify our rules by making them less cumbersome to administer and easier for the public to understand and follow, and they improve the equitable treatment of food assistance within the SSI program. This final rule also includes other minor revisions to our regulations related to income, including clarifying our longstanding position that income may be received "constructively."

APPENDIX B

Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients

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

https://www.federalregister.gov/documents/2023/08/24/2023-18213/expansion-of-the-rental-subsidy-policy-for-supplemental-security-income-ssi-applicants-and

CITATION: 88 FR 57910 (57910-57915, 6 pages)

Summary: We propose to revise our regulations by applying nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States. The exception recognizes that a "business arrangement" exists when the amount of required monthly rent for a property equals or exceeds the presumed maximum value. This proposed rule would improve nationwide program uniformity, and, we expect, improve equality in the application of the rental subsidy policy.

Final Rule, Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients (April 11, 2024)

https://www.federalregister.gov/documents/2024/04/11/2024-07675/expansion-of-the-rental-subsidy-policy-for-supplemental-security-income-ssi-applicants-and

CITATION: 89 FR 25507 (25507-25514, 8 pages)

Summary: We are finalizing our proposed regulation to apply nationwide the In- Kind Support and Maintenance (ISM) rental subsidy exception that has until now been available only for SSI applicants and recipients residing in seven States. This final rule provides that a "business arrangement" exists, such that the SSI applicant or recipient is not considered to be receiving ISM in the form of room or rent, when the amount of monthly required rent for the property equals or exceeds the presumed maximum value (PMV).

APPENDIX C

Expand the Definition of a Public Assistance Household

Notice of Proposed Rulemaking, Expand the Definition of a Public Assistance Household (September 29, 2023)

https://www.federalregister.gov/documents/2023/09/29/2023-21550/expand-the-definition-of-a-public-assistance-household

CITATION: 88 FR 67148 (67148-67157, 10 pages)

Summary: We propose to expand the definition of a public assistance (PA) household for purposes of our programs, particularly the Supplemental Security Income (SSI) program, to include the Supplemental Nutrition Assistance Program (SNAP) as an additional means-tested public income maintenance (PIM) program. In addition, we seek public comment on expanding the definition to include households in which *any other* (as opposed to *every other*) member receives public assistance. We expect that the proposed rule would decrease the number of SSI applicants and recipients charged with in-kind support and maintenance (ISM). In addition, we expect that this proposal would decrease the amount of income we would deem to SSI applicants or recipients because we would no longer deem income from ineligible spouses and parents who receive SNAP benefits and live in the same household. These policy changes would reduce administrative burden for low-income households and SSA.

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

https://www.federalregister.gov/documents/2024/04/19/2024-08364/expand-the-definition-of-a-public-assistance-household

CITATION: 89 FR 28608 (28608-28622, 15 pages)

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

Emergency Message	**Effective Dates:** 09/20/2024 - Present
Identification Number:	EM-24047
Intended Audience:	All RCs/ARCs/ADs/FOs/WSUs
Originating Office:	DCO OPSOS
Title:	SSI Living Arrangements Regulatory Changes - Technician Instructions for Identifying and Processing Affected Cases
Type:	EM - Emergency Messages
Program:	Title XVI (SSI)
Link To Reference:	See References at the end of this EM

Retention Date: 03/20/2025

A. Purpose

The purpose of this message is to notify Regional and Field Office staff of three Supplemental Security Income (SSI) regulatory changes taking effect September 30, 2024, and how to address cases potentially impacted. These changes may affect the determination of the living arrangement (LA), in-kind support and maintenance (ISM), deeming, and rental subsidy.

B. Background

1. **Omitting Food from ISM**

Effective September 30, 2024, food is no longer part of the ISM calculations in determining when the claimant's contribution equals or exceeds their share of the household expenses. We will determine a claimant's pro rata share and if ISM applies, by only calculating shelter expenses.

NOTE: Food will remain in the definition of income, SI 00810.005; however, it will now include the exception that food is no longer used to calculate ISM.

2. **Expanding the Definition of a Public Assistance (PA) Household and Adding Supplemental Nutrition Assistance Payments (SNAP) (formerly known as Food Stamps) to PA and Public Income Maintenance (PIM) Payment Types**

Living Arrangement
This regulation expands the definition of a PA household to include any situation in which the SSI claimant or recipient resides with at least one other person who receives a PIM payment. Prior to September 30, 2024, every member of the household had to receive public assistance to be considered a PA household. For more on PA households, refer to SI 00835.130.

EXAMPLE: Mike and Sarah are married and live with their friend Carl in a household together. Mike files for SSI payments based on disability and meets the non-disability criteria. Carl receives SNAP from the State. Consider the household a PA household, as Mike, the SSI claimant, lives with Carl (one other person) who receives a PIM payment. Upon verification of Carl's SNAP benefits, development of inside ISM is no longer needed.

Deeming
In addition, SNAP benefits will be added to the list of acceptable types of PA and PIM payments. The addition of SNAP as a PIM payment will impact deeming situations where a deemor receives SNAP and has other income that may affect payment. Exclude from deemed income any PIM payment and any income used to compute such payment. This exclusion only applies to the income of an ineligible spouse or parent. For the ineligible spouse or parent who receives SNAP benefits, type F income will post to the Supplemental Security Record (SSR) with an amount of zero. This will occur unless there is another type F income amount present for the same month and that type F income is used to exclude the deemor's income. For more information on PIM payments and when the exclusion applies in other situations, refer to SI 01320.141.

EXAMPLE: Mike and Sarah are married. Mike files for SSI payments based on disability and meets the non-disability criteria. Sarah receives SNAP and has income from part-time employment. Upon verification of Sarah's SNAP benefits, Sarah's income from employment does not affect Mike's SSI payment or eligibility. The technician codes the new Non-Cash Public Assistance income page in the SSI Claims system for Sarah with the months of eligibility for SNAP. The system will exclude Sarah's income from deeming.

3. **Rental Subsidy**

Effective September 30, 2024, in rental subsidy situations where someone in the household is related to the landlord as parent or child, we consider a business arrangement exists when the verified required rent or flat fee equals or exceeds the lessor of the applicable presumed maximum value (PMV) or current market rental value (CMRV). If the required rent or flat fee equals or exceeds either the PMV or CMRV, no further development is needed, and no rental subsidy applies. If the required rent or flat fee is less than both the PMV and CMRV, complete development to determine if ISM applies following instructions in SI 00835.380.

This process currently exists in the Second and Seventh circuit states and Texas but is now being expanded nationwide. Current states include Connecticut, New York, and Vermont (Second Circuit); Illinois, Indiana, and Wisconsin (Seventh Circuit); and Texas.

EXAMPLE: Billie receives SSI and pays their mother, who is also their landlord, $350 in monthly rent. The rent exceeds the 2024 PMV of $334.33; therefore, no rental subsidy is charged even though the CMRV is $500 per month. No other development is needed.

EXAMPLE: Kelly, an SSI claimant is paying rent of $200 monthly to their father for a basement apartment. The rent is less than the 2024 PMV of $334.33; therefore, the technician must develop the CMRV to determine if ISM will apply. If the CMRV is $500 per month, the technician will use the difference between the PMV and the monthly rent to determine the countable ISM ($134.33), and not the higher CMRV amount.

Every year the system will generate a new diary, the **E2** diary in the cost-of-living adjustment (COLA) run for cases involving rental subsidy to alert technicians of the need to review the rental subsidy information. Because the cost of living typically increases annually, the PMV limit increases as well. An increase in the PMV could affect the amount of ISM being charged.

Therefore, when the claimant's rental payment amount is over, but close to the PMV amount, inform the claimant of the impact of COLA on the PMV after the first of each year and the subsequent potential impact on payment and ISM. Refer to instructions in C.5. below for steps on processing E2 diaries.

EXAMPLE: If the claimant is currently paying rent of $350 monthly and the rent exceeded the 2024 PMV of $334.33, no rental subsidy could be charged, even if the CMRV was $500 per month. However, if the PMV increases to $380 in January 2025 (estimate), there may be a rental subsidy chargeable as ISM beginning in January if the recipient's required rent did not increase to equal to or exceeding the new PMV.

C. Processing Instructions

Be alert to situations where H type income (ISM) or J type income (value of the one-third reduction for LA "B") is shown as continuing on the SSR in the Unearned Income Data (UMIH) segment, and the new regulations will either reduce or eliminate ISM.

1. **Omitting Food from ISM**

New LA development will be needed for cases where the ISM determination includes food. Refer to the chart below for processing instructions.

NOTE: For cases involving trusts, food expenses will no longer be included within ISM calculations effective September 30, 2024. For example, prior to September 30, 2024, if a trust (that is not a resource) disburses funds to pay a credit card bill for the trust beneficiary and the bill includes restaurant and shelter charges, then payment of those charges results in ISM, and they are counted in the calculation of ISM. In the same scenario on or after September 30, 2024, only the shelter charges would be used in the calculation of ISM and the restaurant charges for food would not be counted in the calculation.

2. **Expanding the Definition of a PA Household**

New LA development will be needed when a claimant lives with others. Refer to chart #1 below for processing instructions.

3. **Rental Subsidy**

New LA development will be needed when an individual's ongoing LA period involves rental subsidy, and the individual does not live in New York, Connecticut, Indiana, Illinois, Wisconsin, Vermont, or Texas. You must insert a new LA period effective September 30, 2024, to ensure proper payment due to the regulatory change period with a change date of September 29, 2024.

Refer to chart #2 below for processing instructions.

For cases that set an **E2** diary in the 2025 COLA run, you must develop the LA back to September 30, 2024, to ensure proper payment effective with the date of the regulatory change if you have not already done so.

E2 Diary Instructions

Due to the COLA which affects the PMV amount each year, the change in the PMV may affect the amount of ISM charged on cases with rental subsidy.

For these cases, the system will generate an **E2** diary with an associated limited issue or RZ for the technician to review and resolve.

The system sets the **E2** diary when:

- · the rental subsidy amount is greater than zero for the most recent LA period, and
- · the current payment status on the SSR is C01, M02, or N01.

To develop rental subsidy when you have an **E2** diary:

- · Attempt to contact the claimant to obtain information regarding the amount they pay for rent effective January 1st of the current year, and CMRV if applicable.
- · If you are unable to reach the claimant via phone or in person, obtain a signed Letter to Landlord Requesting Rental Information (SSA-L5061) to verify the rental amount and CMRV effective January 1st of the year in question.
- · If there are no other changes to the LA after the rental amount and CMRV is verified, create a new LA effective January 1st of the year in question (12/31/CCYY) and update the rental amount and CMRV if necessary.

If you are unable to obtain the information from the claimant after two attempts and 30 days have passed, document all attempts on a Report of Contact and clear the diary via the UDIA screen in the Direct SSR update prior to closing the LI/RZ.

If a claimant contacts SSA about any change in payment after clearing the diary, update the record based on the information provided at the time of contact, back to the date of their rental amount change if applicable, considering administrative finality.

4. **Systems Updates - Systems Edit**

a. PA Household Edits

There are two new PA edits.

The system will generate an edit on the Living Arrangements Edit page when there is an LA period where:

- the LA start date is prior to 9/30/2024, and
- the LA end date is later than 9/29/2024 or continuing, and
- the PA household question appears in the path and the response is “Yes,” “No,” or “Unknown.”

Edit Text: ***New LA period required for ISM regulation changes. Living arrangement period with a change date of 9/29/2024 is required***.

The system will generate an edit on the Edit and Alert Messages page when:

- CLOSE EVENT= Y on the Build SSR page and the technician submits the page, and
- there is an LA period where:
    - the LA start date is prior to 09/30/2024, and
    - the LA end date is later than 09/29/2024 or continuing, and
    - the PA household question appears in the path and the response is “Yes,” “No,” or “Unknown.”

Edit Text: ***Cannot close event. Missing 09/30/24 living arrangement period for ISM changes.***

Technicians must resolve these edits before closing an event.

NOTE: The PA question only appears in the path when the claimant lives with others.

NOTE: Beginning with LA periods with an effective date of 9/30/2024 or later, the Household of Another and Household Expenses and Contributions pages no longer come into the path. These pages are consolidated into the new Household Living with Others page.

Chart #1 How to Update the LA When PA HH Edit Appears in the Path	
Step	**Action**
1	If you receive either of the following edits during an initial claim, redeterminations (RZ), or post-eligibility event: · New LA period required for ISM regulation changes. Living arrangement period with a change date of 9/29/2024 is required.

	· Cannot close event. Missing 09/30/24 living arrangement period for ISM changes. Take the following steps: **If there is ongoing Type H or Type J type income on the SSR**, you must contact the claimant to create a new LA effective 9/30/2024 (**input with a change date of 9/29/2024**). Go to step 2. If there are undocumented LAs prior to 9/30/2024, develop and document under prior rules considering separate consumption. If there is no ongoing Type H or Type J type income, and no reason to suspect a change in household composition or residence, no re-contact is needed. Copy the prior LA and enter through the subsequent LA pages to resolve the edit.
2	Once you reach the new Household Living with Others page, if anyone who lives in the household is receiving PA (other than the SSI applicant/recipient), including SNAP, answer “**Yes”** to “The household has both the SSI claimant and one other household member who receives a public assistance benefit.” For the claimant, select the option for “Receives SSI” or “Filing for SSI,” whichever applies. From the drop down, select the other household member who receives PA, and then select their assistance type and verify receipt. Note: Development of inside ISM is not required; however, development of outside ISM is required. If no one in the household receives PA and the claimant does not live alone, you will continue with the Household Living with Others page. The following question will be presented: “Others within the household pay for or provide all of your meals” If they answer yes, go to step 3. If they answer no, go to step 4. Note: If the individual receives *some* meals from the household, or if they receive SNAP, the answer will be “**No**” because they are not receiving ALL meals from within the household. This will cover current earmark sharing cases.
3	The individual is now in the VTR path for ISM development. Evaluate their shelter contribution to determine if ISM applies. If the claimant is not contributing their pro rata share to shelter items, they are placed in a FLA/B LA and charged ISM under the VTR rules. STOP.

	If the claimant contributes their pro rate share to shelter items, go to step 4.
4	The claimant is placed in a FLA/A LA with the possibility of ISM calculated under PMV rules. Develop the shelter items to determine if the claimant is contributing their pro rata share. If yes, no inside ISM will be applied. NOTE: Development of outside ISM is needed.

NOTE: Please refer to SI 00835.005 for a flowchart illustrating the process in determining LA and ISM.

b. Rental Subsidy Edits

There are two new rental subsidy edits and one revised rental subsidy edit.

The first new rental subsidy edit is to ensure the technician creates a new LA as of the regulation effective date for rental subsidy situations. The system will generate this edit on the Living Arrangement Change page when:

- · the LA Change on the Living Arrangement Change page is “No,” and
- · there is an LA period where:
  - · the LA start date is earlier than 09/30/2024, and
  - · the LA end date is later than 9/29/2024 or continuing, and
  - · the address state on the Residence Address and Jurisdiction page is not NY, CT, IN, IL, TX, WI or VT, and
  - · the rental subsidy amount on the Home Ownership and Rental Liability page is greater than $0.00.

<u>Edit Text</u>: ***Review rental subsidy. Living arrangement period with a change date of 09/29/2024 is required.***

There is a revised edit to ensure the technician creates a new LA each January for rental subsidy situations. The system will generate this edit on the Living Arrangement Change page when:

- · the LA change on the Living Arrangement Change page is “No,” and
- · there is an LA period where:
  - · the LA start date is less than or equal to 24 months prior to the current date, and
  - · the address state on the Residence Address and Jurisdiction page is New York, Connecticut, Indiana, Illinois, Wisconsin, Vermont, Texas (eff. 5/96), or any of the remaining states, District of Columbia, or Northern Mariana Islands (eff. 09/30/2024), and
  - · the rental subsidy amount on the Home Ownership and Rental Liability page is greater than $0.00, and
- · a COLA change occurred and there is no change date equal to 01/01/<CCYY> where CCYY is the LA start date year plus 1.

<u>Edit Text:</u> ***New living arrangement period required for January <CCYY> for COLA update***.

The second new rental subsidy edit is a close event edit and is to ensure the technician creates a new LA as of the regulation effective date for rental subsidy situations. The system will generate an edit on the Edit and Alert Messages page when:

· CLOSE EVENT= Y on the Build SSR page and the technician submits the page, and
· there is an LA period where:
  · the LA start date earlier than 09/30/2024, and
  · the LA end date is later than 09/29/2024 or continuing, and
  · the address state on the Residence Address and Jurisdiction page is not equal to *New York, Connecticut, Indiana, Illinois, Wisconsin, Vermont, Texas*, and
  · the rental subsidy amount on the Home Ownership and Rental Liability page is greater than $0.00.

Edit Text: ***Cannot close event. Missing 09/30/24 living arrangement period for rental subsidy rule change.***

Technicians must resolve these edits before closing an event.

Chart #2 How to Update the Living Arrangement When You Receive a Rental Subsidy Edit	
Step	**Action**
1	During all initial claims, RZs, and post-eligibility events if you receive either of the following edits: · Review Rental Subsidy. Living arrangement period with a change date of 09/29/2024 is required. · Cannot close event. Missing 09/30/24 living arrangement period for rental subsidy rule change. Take the following steps: You must contact the claimant to create a new living arrangement effective 9/30/2024 (**using a change date of 9/29/2024**). Verify the rental amount and CMRV and update as needed. The system will compute the rental subsidy using both the PMV and CMRV and will revise the rental subsidy amount as needed.
2	During all initial claims, RZs, and post-eligibility events if you receive the following edit: New living arrangement period required for January <CCYY> for COLA update. Take the following steps: You must contact the claimant to create a new living arrangement effective 01/01/CCYY (using a change date of 12/31/CCYY). Verify the rental amount and CMRV and update as needed.

	The system will compute the rental subsidy using both the PMV and CMRV and will revise the rental subsidy amount as needed.

5. **Impact on Deeming**

The addition of SNAP to the list of PA and PIM payments may affect the deeming computation. There is a new income type available for selection within the SSI claims path called "Non-Cash Public Assistance." If an ineligible spouse or parent (and ineligible children, if any) receives SNAP benefits, you must select "Yes" to this question on the Income Menu page.

Within the Non-Cash Public Assistance page, key in the source of the assistance, the address, and the months of eligibility. You must verify receipt of the PIM payment; however, you do not need to verify the amount.

NOTE: If available, use any existing data exchanges with your local SNAP agency to verify receipt of SNAP.

SSI PIF.pdf

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

D. References
SI 00810.005 What is Income
SI 00835.130 Public Assistance Households
SI 00835.160 Sharing
SI 00835.340 Computation of In-Kind Support and Maintenance from Within a Household
SI 00835.380 Rental Subsidies
SI 01320.141 Deeming: Public Income Maintenance Payments

APPENDIX E

Emergency Message	**Effective Dates: 09/26/2024 - Present**
Identification Number:	EM-24048
Intended Audience:	All RCs/ARCs/ADs/FOs/TSCs/PSCs/OCO/ODARHQ
Originating Office:	ORDP OISP
Title:	Omitting Food from In-Kind Support and Maintenance Calculations
Type:	EM - Emergency Messages
Program:	Title XVI (SSI)
Link To Reference:	See References at the end of this EM

Retention Date: 3/26/2025

A. **Purpose**

This emergency message (EM) is to inform Regional and Field Office staff that we are omitting food from our calculations of in-kind support and maintenance (ISM) as of 09/30/2024. This means that food is no longer part of the pro rata share calculation on the household contribution screen located within the SSI Claims System path. We will determine ISM and a claimant's pro rata share by only calculating a claimant's shelter expenses and contributions. The definition of in-kind income now notes the exception that we are eliminating food from our calculations of ISM.

B. **Calculation of In-Kind Support and Maintenance beginning 09/30/2024**

Under our new rule, we will no longer include food in our calculations of ISM.

The following changes apply to the SSI program as of 09/30/2024:

1. Calculations of in-kind support and maintenance only include shelter.
2. Food is removed from both the inside and outside ISM calculations. This includes removing food from the household operating expenses on the *Household Expenses and Contribution* page within the SSI Claims System.
3. We are removing "food" from the ISM calculation, and we will remove the following food questions from the SSI Claims Systems path for living arrangements effective 09/30/2024:

    · Eat all meals out?

    · Buys food separately from household?

   After the new rule is implemented and to avoid disadvantaging claimants who are currently in a Federal Living Arrangement (FLA)/A based on paying for their own food, the following food question will be added within the SSI Claim System:

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

4. For periods after implementation of the regulatory change, food will no longer be part of the ISM calculation. This will eliminate the need for questions regarding Earmark Sharing and Token Contribution within the SSI Claims System path. The food questions will still appear in the path for living arrangements input prior to this change.
Workaround: The Token Contribution question has not yet been removed from the SSI Claims System path: "CLAIMANT MAKES TOKEN CONTRIBUTION Y/N". Do not ask the applicant or recipient this question. If it appears in the claims path, answer 'NO' to bypass.
5. Outside ISM development will be needed. However, as of 09/30/2024 food will no longer be included in outside ISM calculations.

6. Updates to applicable POMS, publications, notices, and forms will follow the release of this EM.

C. **Processing Instructions**

How to Update Cases with H Type Income to Omit Food from ISM Calculation	
Step	**Action**
1	During all initial claims, RZs, and post-eligibility events, if there is H type income on the SSR and the claimant has not had a change to their residence address, create a new living arrangement effective 09/30/2024 and go to step 2. If there are undocumented living arrangements prior to 09/30/2024, develop and document under prior rules considering separate consumption. If there is **no** ongoing H type income, no further development is needed. **If there is ongoing H type income**, create a new living arrangement effective 09/30/2024 go to step 2.
2	Once you reach the Household of Another screen within the living arrangement effective 09/30/2024, the following question will be presented: “Do others within the household pay for or provide you with all your meals?” If they answer yes, go to step 3. If they answer no, go to step 4. **NOTE:** If they receive SNAP benefits (formerly known as food stamps), the answer will be no because they are not receiving **ALL** meals from within the household.
3	The individual is now in the VTR path for ISM development. Evaluate their shelter contribution to determine if ISM applies. If the claimant is not contributing their pro rata share to shelter items, they are placed in a FLA/B living arrangement and charged ISM under the VTR rules. If the claimant contributes their pro rata share to shelter items, go to step 4.
4	The claimant is placed in a FLA/A living arrangement with the possibility of ISM calculated under PMV rules. Develop the shelter items to determine if the claimant is contributing their pro rata share. If yes, no inside ISM will be applied. **NOTE:** Development of outside ISM is needed.

NOTE: For non-MSSICS cases with H type income, document the household expenses and contributions using the following forms prior to 09/30/2024, SSA-8011-F3, *Statement of Household Expenses and Contributions*; or on or after 09/30/2024 use the SSA-8012, *Statement of Household Expenses and Contributions.* Forms will be available shortly after release.

E. Definition of in-kind income beginning 09/30/2024

In-kind income is not cash but is something else that the individual can use to meet the individual's needs for food or shelter.

EXCEPTION: Food is not included in the calculations of ISM, which is a type of unearned income that we have special rules for valuing.

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

F. Impacted POMS sections

This EM impacts the following POMS sections. These sections will be updated based on the regulatory change of omitting food from ISM calculations:

SI 01120.200 Information on Trusts, Including Trusts Established Prior to January 01, 2000, Trusts Established with the Assets of Third Parties, and Trusts Not Subject to Section 1613(e) of the Social Security Act
SI 01120.201 Trusts Established with the Assets of an Individual on or after 01/01/00
SI 00810.005 What is Income
SI 00810.020 Forms and Amounts of Income
SI 00810.410 Infrequent or Irregular Income Exclusion
SI 00810.700 Income of Members of Religious Orders – General
SI 00815.050 Medical and Social Services, Related Cash, and In-Kind Items
SI 00815.350 Proceeds of a Loan
SI 00815.400 Bills Paid by a Third Party
SI 00815.550 Receipt of Certain Noncash Items
SI 00820.010 In-Kind Items Provided as Remuneration for Employment
SI 00820.545 Work Expenses – Interaction with Other Policies
SI 00830.099 Guide to Unearned Income Exclusions
SI 00830.420 Child Support Payments
SI 00830.455 Grants, Scholarships, Fellowships, and Gifts
SI 00830.536 Job Corps
SI 00830.537 AmeriCorps and National Civilian Community Corps (NCCC) Payments
SI 00830.605 Home Energy Assistance and Support and Maintenance Assistance (HEA/SMA)
SI 00835.001: Introduction to Living Arrangements and In-Kind Support and Maintenance
SI 00835.005: Flowchart for Sequential Development of Living Arrangement (LA) and In-Kind Support and Maintenance (ISM)
SI 00835.020: Definitions of Terms Used in Living Arrangements (LA) and In-Kind Support and Maintenance (ISM) Instructions

SI 00835.120: Rental Liability as LA Basis
SI 00835.140: Separate Consumption
SI 00835.150: Separate Purchase of Food
SI 00835.160: Sharing
SI 00835.170: Earmarked Sharing

SI 00835.200: The One-Third Reduction Provision
SI 00835.300: Presumed Maximum Value (PMV) Rule
SI 00835.310: Distinguishing Between In-Kind Support and Maintenance (ISM) and Other Unearned In-Kind Income
SI 00835.320: Rebuttal Procedures and Presumed Maximum Value (PMV) Rule
SI 00835.331: Treatment of Home Energy Assistance (HEA) and Support and Maintenance Assistance (SMA) in Determinations of Inside In-kind Support and Maintenance (ISM) and Cash from Within a Household
SI 00835.340: Computation of In-Kind Support and Maintenance from Within a Household
SI 00835.350: Computation of In-Kind Support and Maintenance (ISM) from Outside a Household (Including Vendor Payments by a Third Party Outside the Household)
SI 00835.382: Form SSA-L5061 (Letter to Landlord
SI 00835.390: Food, or Shelter That is Remuneration for Work But is not Wages
SI 00835.400: In-Kind Support and Maintenance (ISM) only to the Claimant
SI 00835.450: Cash Income from Within and from Outside Households
SI 00835.465: ISM and Households - Household Costs
SI 00835.470: ISM and Households - Conversions
SI 00835.473: Conversions — Arrearages
SI 00835.474: Conversions — Converting to Monthly Amounts
SI 00835.475: Averaging
SI 00835.480: Contributions Toward Household Operating Expenses
SI 00835.481: Policy Effective Dates for Loans of Food and Shelter
SI 00835.482: Loans of In-Kind Support and Maintenance
SI 00835.485: Household Composition
SI 00835.500: First-of-the-Month (FOM) Residence and ISM Determinations
SI 00835.510: Breakpoints
SI 00835.515: Gradual Changes in ISM
SI 00835.520: Redetermination Guidelines for LA and ISM
SI 00835.600: SSA-8006-F4 — Statement of Living Arrangements, In-Kind Support and Maintenance
SI 00835.625: SSA-8011 — Statement of Household Expenses and Contributions
SI 00835.630: Use of Form SSA-8008, Living Arrangements/In-Kind Support and Maintenance Development Guide and Summary
SI 00835.640: Exhibit of Form SSA-8008
SI 00835.704: In-Kind Support and Maintenance Provided Residents of Institutions
SI 00835.706: In-Kind Support and Maintenance Provided Residents of Institutions
SI 00835.707: Procedures For Determining ISM Provided To Residents of Institutions
SI 00835.708: In-Kind Support and Maintenance Provided Residents of Private For-Profit Residential Care Institutions
SI 00835.710: In-Kind Support and Maintenance Provided Residents of Private Nonprofit Residential Care Institutions
SI 00835.712: Exclusion of In-Kind Support and Maintenance for Residents in Private Nonprofit Residential Care Institutions
SI 00835.713: Determining In-Kind Support and Maintenance for a Member of a Religious Order Who Moves into a Private Nonprofit Residential Care Institution
SI 00835.714: In-Kind Support and Maintenance Provided Residents of Educational or Vocational Training Institutions
SI 00835.716: In-Kind Support and Maintenance Provided Residents of Public

Institutions
SI 00835.790: Non-institutional Care Situations

APPENDIX F

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:	ORDP 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)