

Social Security Retirement Insurance (RSI) and Supplemental Security Income (SSI) Benefits for Low-Income People Age 65 and Older

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February 2012**

Table of Contents

§ 1.1.....	Introduction	1
§ 1.2.....	Overview of SSI	1
§ 1.2.1.....	SSI	1
§ 1.2.2.....	Medicaid	2
§ 1.3.....	Social Security Insurance Benefits	4
§ 1.3.1.....	Wage Earner Eligibility	4
§ 1.3.2.....	Benefits for Dependents and Survivors of Wage Earners	5
§ 1.3.3.....	Immigration Eligibility Criteria for Social Security Insurance Benefits	6
§ 1.3.4.....	Medicare	7
§ 1.4.....	Administration of the SSI and SSDI Programs	7
§ 1.4.1.....	Offices and Responsibilities	7
§ 1.4.2.....	Sources of Law and Policy	8
§ 1.5.....	SSI Eligibility	9
§ 1.5.1.....	Categorical Eligibility for SSI	9
§ 1.5.2.....	Residence	9
§ 1.5.3.....	Citizenship and Alien Status	10
§ 1.5.4.....	Citizenship	10
§ 1.5.5.....	SSI Eligibility for Noncitizens Prior to 8/22/96	10
§ 1.5.6.....	SSI Eligibility for Noncitizens After the PRWORA,8/22/96	11
§ 1.5.7.....	SSI Alien Status Eligibility Criteria Now in Effect	13
§ 1.5.8.....	Verification	15
§ 1.5.9.....	Reporting Requirement	15
§ 1.5.10.....	Public Charge	16
§ 1.5.11.....	Notes About Social Security Numbers	17
§ 1.5.12.....	SSI Financial Eligibility – Resources	17
§ 1.5.13.....	SSI Transfer of Asset Penalty	22
§ 1.5.14.....	Transfers and Trusts	24
§ 1.5.15.....	SSI Eligibility – Income	24
§ 1.6.....	Applications and Appeals	29
§ 1.6.1.....	Applications	29
§ 1.6.2.....	Appeals Process Overview	32
§ 1.6.3.....	Initial Determinations	34
§ 1.6.4.....	Reconsideration and Federal Reviewing Official	35
§ 1.6.5.....	Administrative Law Judge Hearing	36
§ 1.6.6.....	Appeals Council and Decision Review Board	38
§ 1.6.7.....	Federal Court Review	39
§ 1.7.....	Disability Standard for Adults	40
§ 1.7.1.....	Blindness	40

§ 1.7.2.....	Definition of Disability for Adults	41
§ 1.8.....	Posteligibility Issues	42
§ 1.8.1.....	Retroactive Benefits	42
§ 1.8.2.....	Installment Payments for Large Retroactive SSI Awards.....	43
§ 1.8.3.....	SSI and SSDI Reporting Responsibilities	43
§ 1.8.5.....	Effect of Residence in an Institution.....	45
§ 1.8.6.....	Ineligibility for Fugitive Felons and Probation and Parole Violators	45
§ 1.8.7.....	Representative Payment.....	49
§ 1.9.....	Eligibility Redeterminations	52
§ 1.9.1.....	SSI Non Disability Criteria.....	
§ 1.9.2.....	Continuing Disability Reviews (CDR).....	52
§ 1.9.3.....	CDR Standard for Adults	52
§ 1.9.4.....	Exceptions to the Medical Improvement Standard.....	53
§ 1.9.5.....	Effect of Fraud or Similar Fault in Disability Determinations (SSR 00-2p)	57
§ 1.10.....	Work Incentive Programs	58
§ 1.10.1.....	SSDI Work Incentives	58
§ 1.10.2.....	SSI Work Incentive Program.....	60
§ 1.10.3.....	Plans to Achieve Self-Support (PASS)	62
§ 1.10.4.....	Overview of the Ticket to Work and Work Incentives Improvement Act of 1999	65
§ 1.11.....	Overpayments	70
§ 1.11.1.....	Notice of Overpayment	170
§ 1.11.2.....	Overpayment Appeal Rights	70
§ 1.11.3.....	Request for Waiver of Overpayment.....	70
§ 1.11.4.....	Overpayment Recovery	71
EXHIBIT 1A—	Massachusetts SSI Payment Levels for 2011	78
EXHIBIT 1B—	SSI and SSDI Thresholds for 2011	
EXHIBIT 1C—	Sources of Law and Information	82
EXHIBIT 1D—	Spousal Deeming Worksheet (2011)	85
EXHIBIT 1E—	Full Retirement Age Chart	87

§ 1.1 INTRODUCTION

The Social Security Administration (SSA) administers two federal benefit programs that provide monthly cash benefits to those who qualify.

The Old Age, Survivor and Disability Insurance program provides benefits based on retirement (Retirement Insurance Benefits (RIB)), disability, and blindness (Social Security Disability Insurance (SSDI)) to those who have worked and paid into the Social Security insurance system and to their dependents/survivors.

The Supplemental Security Income (SSI) program is a needs-based benefit available to low-income individuals who are 65 or older or who meet the disability or blindness standard.

Although this outline will focus on benefits based on age, I will point out that low income elderly under age 65 may qualify for SSI disability benefit and elders under full retirement age for Social Security Insurance may qualify for Social Security Disability Insurance (SSDI) benefits. The qualifying standard for disability or blindness is the same in both the SSDI and the SSI programs. The disability must be severe enough to prevent most work and must be permanent, which means lasting for a year or more or resulting in death. Both programs also include work-incentive provisions that allow recipients to test their ability to work without immediate loss of benefits and related health insurance. Although both programs share disability and blindness standard, applicants and recipients have different rights and responsibilities depending on whether the benefit is an SSDI or SSI benefit.

§ 1.2 OVERVIEW OF SSI

§ 1.2.1 SSI

Supplemental Security Income (SSI) is a federally financed, needs-based benefit program, enacted under Title XVI of the Social Security Act and administered by the SSA. SSI guarantees a national income level through the Federal Benefit Rate (FBR) for individuals with low income and resources on the basis of age, blindness, and disability. Each January, the SSI FBR receives the same cost-of-living increase applied to Social Security Insurance benefit recipients.

Many states, including Massachusetts, supplement the FBR with state money. When the program was enacted and implemented in the early 1970s, states were entitled to choose whether and how to supplement the FBR. Massachusetts chose to supplement based on categorical eligibility, i.e., age, disability, or blindness, and living arrangement, i.e., full cost, shared living, or living in the household of another. An explanation of state supplementation and the maximum payment amounts can be found in the SSA Programs Operational Manual System (POMS). See POMS at [SI 01415.024](#). See also **Exhibit 1A** for

the SSI benefits rates in Massachusetts for 2012. The FBR plus the applicable state supplement is the maximum monthly amount of SSI that an eligible individual can receive.

Insert info on SSP

Practice Note

The SSA POMS are searchable free of charge on the SSA website at <http://policy.ssa.gov/poms.nsf/aboutpoms>.

In order to qualify for SSI, an individual must be eligible in each of the following five qualifying areas:

- categorical, i.e., age, disability, or blindness;
- income;
- resources;
- residence; and
- alien status.

Generally, the individual bears the responsibility of providing evidence of eligibility in all five qualifying areas. The SSA must provide written notice and appeals rights for eligibility determinations in each qualifying area. Each of these areas is governed by complex rules and will be discussed in detail later in this chapter.

§ 1.2.2 Medicaid

In Massachusetts, SSI recipients are automatically eligible for Medicaid. The Medicaid program is a federal and state partnership; federal regulations describe mandatory procedures and services, as well as optional services. The federal government reimburses the states at least half of their Medicaid expenditures. Federal Medicaid law is at [42 U.S.C. §§ 1396](#) et seq. and [42 C.F.R. Parts 430-456](#).

The Massachusetts Medicaid program is called MassHealth and is run by the Office of Medicaid (formerly the Division of Medical Assistance). MassHealth includes several categories of Medicaid coverage and Medicaid buy-in programs. This overview is limited to the SSI connection with the Medicaid program. The MassHealth regulations are at [130 C.M.R. §§ 401 - 522](#). The Massachusetts statute is at [M.G.L. c. 118E](#).

The Medicaid program was created at the same time as the SSI program, and states chose whether to provide Medicaid to SSI recipients or to make their own Medicaid eligibility determinations using different eligibility criteria. Most states provide Medicaid to individuals who qualify for SSI. These states are known as § 1634 states for the section of the Social Security Act governing the relationship of their Medicaid programs and the SSI program. They accept the SSA eligibility determinations for SSI as eligibility determinations for Medicaid. This means that SSI eligible individuals do not need to file a separate Medicaid application with the state Medicaid agency. See [42 C.F.R. § 435.909](#). When SSI eligibility is determined, the SSA shares this information electronically with [the Office of Medicaid](#), which issues a [MassHealth card](#) to the recipient. Medicaid eligibility is also retroactive with retroactive SSI eligibility. Although recipients do not receive good notice of this, they can have their providers submit bills for covered services for the retroactive period.

Automatic eligibility for Medicaid does not mean automatic ineligibility when SSI eligibility ends. Instead, the state Medicaid agencies must make their own eligibility determinations for Medicaid and are responsible for Medicaid due process notice procedures. See [42 C.F.R. § 435.930](#). In Massachusetts, the SSA shares SSI eligibility information electronically with the state Medicaid agency. When an individual loses SSI eligibility and, therefore, automatic Medicaid eligibility, the Office of Medicaid must redetermine Medicaid eligibility while Medicaid coverage continues. States must also provide due process, e.g., written notice of the eligibility determination, appeal rights, and the opportunity for hearing and benefits pending appeal. See, e.g., [Mass. Assn of Older Americans v. Sharp](#), 700 F.2d 749, 753 (1st Cir. 1983), *appeal after remand* [803 F.2d 35](#) (1st Cir. 1986) (court required issuance of preliminary injunction until compliance with provisions requiring redetermination of eligibility prior to termination of benefits); see also HCFA, 45-3 *State Medicaid Manual*, § 3207 (Feb. 1997). For information about these issues from the SSA point of view, see [Medicaid and the SSI Program, POMS SI 01715.000](#).

Practice Note

See also state Medicaid director letter, dated April 22, 1997, available on the website of the Centers for Medicare & Medicaid Services (CMS) at <http://www.cms.hhs.gov/states/letters>.

A few states, e.g., New Hampshire, continue to make their own Medicaid eligibility determinations using standards different from those contained in the SSI program. See [Medicaid and the SSI Program, POMS SI 01715.010\(A\)\(1\)](#). These states, known as § 209(b) states, require a separate Medicaid application and will have independent administrative review mechanisms in the event of a denial of eligibility.

Practice Note

Prescription drug coverage through MassHealth is no longer available for those dually eligible for MassHealth and Medicare. Medicare Part D replaces MassHealth prescription drug coverage for dual eligibles.

§ 1.3 SOCIAL SECURITY INSURANCE BENEFITS

§ 1.3.1 Wage Earner Eligibility

The Social Security Insurance programs were enacted under Title II of the Social Security Act. These Title II programs pay monthly cash benefits to workers who are eligible based on retirement age or disability. The Retirement Insurance Benefit (RIB) program is the Title II program available to retired workers. See [20 C.F.R. § 404.310](#).

Title II benefits are not needs-based and have no income or asset test. Instead, a worker must have earned insured status in order to be eligible for an RSI benefit. See 20 C.F.R. §§ [404.110](#), [404.120](#), [404.310](#). Insured status is earned by working in a covered work and earning “quarters of coverage” (QCs). Covered work is work on which the social security taxes have been paid. Workers earn insured status by earning QCs in covered work. See [20 C.F.R. § 404.146](#). In 2012, a worker must earn \$1130 gross in covered work to earn one quarter of coverage. See [Increment Amounts Exhibit, POMS RS 00301.250](#) for the QC amounts for prior years. No more than four QCs can be earned in any year. The monthly cash benefit paid by the Title II programs is essentially based on the amount of time worked and the amount of earnings in covered work. See 20 C.F.R. §§ [404.210](#)-[404.212](#). The worker’s base benefit is called the primary insurance amount (PIA). See [20 C.F.R. § 404.201](#). Each January, the SSA determines whether a cost-of-living increase should be applied to current Title II benefits. See 20 C.F.R. §§ [404.270](#)-[404.278](#).

Full Retirement Age

At Full Retirement Age (FRA), an insured individual is eligible for the full PIA. See [20 C.F.R. § 404.310\(a\)](#). FRA used to be 65 for everyone. But because of longer life expectancies, the Social Security law was changed to gradually increase the FRA until it reaches age 67. This change affects people born in 1938 and later. Now the FRA is 65 only for people born before 1938. Check the table in **Exhibit D** at the end of these materials to find the FRA for people born after 1938.

Early Retirement

Individuals can get Social Security early retirement benefits as early as age 62. But, electing early retirement benefits means that the retirement benefit is **permanently** reduced, based on the age at which it was selected. SSA will reduce the individual’s primary insurance amount by a certain amount for each month prior to the individual’s full retirement age. See [20 C.F.R. § 404.312\(c\)](#). For example, if an individual elects retirement benefits at age 62, the benefit would be about 25 percent lower than what it would be if the individual had waited until reaching full retirement age.

Deferred Retirement

In contrast, people who continue working after full retirement age can increase their future Social Security Retirement benefits in two ways. First, each

additional year worked adds another year of earnings to the individual's Social Security record. Higher lifetime earnings may mean higher retirement benefits. Second, the retirement benefit will increase automatically by a certain percentage from the time the individual reaches full retirement age until the individual starts receiving benefits, up to age 70. See 20 C.F.R. §§ [404.312\(b\)](#), [404.313](#). The percentage varies depending on the year of birth. For example, if the individual was born in 1943 or later, Social Security will add 8 percent per year to the benefit for each year that the individual delays signing up for Social Security Retirement beyond his/her full retirement age.

The Annual Earnings Test

Retirement benefit recipients can continue to work and still receive benefits, but benefits will be reduced if earnings exceed certain limits for the months prior to attainment of full retirement age. See 20 C.F.R. §§ [404.430](#) - .436.

For those under full retirement age receiving early retirement benefits, \$1 in benefits will be deducted for each \$2 in earnings over the annual earnings limit. In 2012, the annual earnings limit for this group is \$14,640.

In the year retirement benefits recipients reach full retirement age, retirement benefits will be reduced \$1 for \$3 earned over the annual earnings limit. In 2012, the annual earnings limit for this group is \$38,880.

Once full retirement age is reached, the annual earnings limit no longer applies to retirement recipients, and work will no longer result in a reduction in retirement benefits.

§ 1.3.2 Benefits for Dependents and Survivors of Wage Earners

Certain family members may be eligible for dependents or survivors benefits on the wage record of an insured worker. The wage earner must be eligible for an SSDI or RIB benefit or the insured wage earner must be deceased for the dependent to receive a benefit. See 20 C.F.R. §§ [404.330](#)-384. The individual must file an application for the dependents or survivors benefit. Generally, dependents/survivors benefits based on disability can be paid retroactively for up to one year, while other dependents/survivors benefits vary in potential retroactivity from up to nine months to none. See 20 C.F.R. § [404.621](#); [Retroactivity Title II, POMS GN 00204.030\(B\)\(1\)](#).

Eligible dependents and survivors include the following:

- Mothers or fathers caring for dependent children of the wage earner. See 20 C.F.R. §§ [404.339](#) - .349. The child must be under age 16 or disabled for the parent to qualify. See [20 C.F.R. § 404.339\(e\)](#).
- Certain spouses, divorced spouses, widows, or widowers. Generally, spouses and widows must meet certain marriage requirements, and those who are not caring for minor dependent of the wage earner must be of retirement age, e.g., age sixty or sixty-two. Certain widows can be eligible

on the basis of disability at age fifty. See 20 C.F.R. §§ [404.330](#)-338.

- Disabled adult children. Adult children of a wage earner who are age eighteen or older and who have met the adult disability standard since prior to age twenty-two qualify for the childhood disability benefit (CDB), also known as disabled adult child (DAC) benefit as either a dependent or a survivor of a wage earner. See [20 C.F.R. § 404.350\(a\)\(5\)](#). To qualify, the individual must be unmarried, unless the individual marries another individual receiving a Title II benefit. See [20 C.F.R. § 404.352\(b\)\(2\)](#).
- Unmarried dependent minor children of the wage earner. See 20 C.F.R. §§ [404.350](#)-.369. These benefits end at age eighteen, unless the individual qualifies as a CDB, as described above. Also, those who are full-time secondary education students can continue to receive the dependent minor child benefit until they graduate or attain age 19, whichever occurs first. See [20 C.F.R. § 404.352\(b\)\(1\)](#).
- Dependent parents of a deceased worker. See 20 C.F.R. §§ [404.370](#)-.374.

Receipt of dependents benefits does not affect the benefit amount of the wage earner. The SSA determines a family maximum benefit to cap the total benefit amount payable to a wage earner and the wage earners dependents. See [20 C.F.R. § 404.403](#). If the amount remaining in the family maximum after payment of the wage earners monthly benefit is not sufficient to pay all dependents their full benefits, the SSA will reduce each dependent's benefit pro rata.

§ 1.3.3 Immigration Eligibility Criteria for Social Security Insurance Benefits

Prior to the passing of the [Personal Responsibility and Work Opportunity Reconciliation Act of 1996 \(PRWORA\), Pub. L. No. 104-193, 110 Stat. 2170](#), there were no citizenship or alien status requirements for Social Security Insurance benefits. Noncitizens with work authorization could obtain a valid social security number and earn quarters of coverage. Noncitizens who earned enough quarters of coverage to have insured status could receive disability or retirement if they met the eligibility criteria.

Section 401(b)(2) of the Act provides that noncitizens must show that they are lawfully present in order to be eligible for Social Security Insurance program benefits. This provision applies only to benefits payable to wage earners and dependents/survivors on applications filed on or after **December 1, 1996**. It does not apply to those receiving benefits on applications filed prior to that date. It also does not apply to benefits paid to noncitizens who reside outside the U.S. See [U.S. Lawful Presence Provisions, POMS RS 00204.010\(B\)](#).

The SSA accepts the definition of "lawfully present" contained in regulations published by the Department of Justice, which were effective as of September 6, 1996. [8 C.F.R. § 103.12](#); [Evidence Requirements for Lawful Presence, POMS RS 00204.025\(B\)](#). The overall definition of lawfully present is an alien who has

been inspected and admitted to the United States and who has not violated the terms of the status. Specifically included are

- legal permanent resident aliens,
- refugees,
- asylees,
- certain parolees,
- certain conditional entrants,
- withholding of deportation status,
- Temporary Protected Status (TPS),
- Cuban/Haitian entrants,
- Family Unity beneficiaries,
- Deferred Enforced Departure (DED) status,
- applicants for asylum, and
- others.

See 61 Fed. Reg. 47.039 - .041 (1996); [Evidence Requirements for Lawful Presence, POMS RS 00204.025\(B\)](#).

§ 1.3.4 Medicare

Medicare benefits are first available to elders at age 65. Those who are not already getting retirement benefits should contact Social Security about three months before their 65th birthday to sign up for Medicare. People can sign up for Medicare even if they do not plan to retire at age 65. This is because a delay in signing up when first eligible may result in higher premium costs.

Those who are already getting Social Security retirement or disability benefits or railroad retirement checks will be contacted a few months before becoming eligible for Medicare and given the needed information.

Individuals who receive an SSDI or dependents or survivors benefit based on disability are eligible for Medicare. However, eligibility does not begin until the individual has received the benefit for 24 months. Retroactive periods of eligibility count toward the 24-month period. See [42 U.S.C. § 426](#); [42 C.F.R. § 406](#). No application is necessary because eligibility occurs automatically in month 25 of eligibility.

§ 1.4 ADMINISTRATION OF THE SOCIAL SECURITY AND SSI PROGRAMS

§ 1.4.1 Offices and Responsibilities

Both the SSI and the SSDI programs are administered by the SSA. District or field offices are the point of public entry to the Social Security programs for most persons. District office personnel

- take applications and appeals,
- receive and develop evidence,
- make preliminary decisions on nondisability claims, and
- offer public information.

Practice Note

There are ten Regional offices that oversee the district offices. Massachusetts is in [Region I](#). The Region I office is located at JFK Federal Building, Room 1900, Boston, MA 02203 and can be reached at (617) 565-2881.

State Disability Determination Service (DDS) agencies contract with the SSA to develop evidence of disability and make the disability determination. A team of doctors and lay disability examiners develop and review the medical and other evidence to make the disability decision. The agency in [Massachusetts is Disability Determination Services, Inc.](#), with offices in Boston and Worcester. The SSA district offices refer disability cases to the appropriate Disability Determination Services, Inc. office to make disability determinations.

§ 1.4.2 Sources of Law and Policy

The Social Security programs were created by statute, at [42 U.S.C. § 402.1206](#). The SSI program was also created by statute, [at 42 U.S.C. §§ 1381](#) - .1396.

Implementing regulations for the SSI program are found at [20 C.F.R. § 416](#) app. to subpt. K. Those for the SSDI program are found at [20 C.F.R. §§ 404.170](#) - .290.

[The Program Operations Manual System \(POMS\)](#) provides guidelines for day-to-day operations in the district offices and at DDS, although it does not have the force of law. The SSA often relies on the POMS to implement statutory changes until it goes through the formal rule making procedure for promulgating regulations. It is often helpful to request a copy of the POMS on which a decision is based. The POMS is public information and should be available for inspection and copying at each district office and at the regional office. It is also available on the SSA website at <<<http://policy.ssa.gov/poms.nsf/aboutpoms>>> Additional operating instructions in the form of [Emergency Messages \(EMs\)](#) are available online at [<<http://policy.ssa.gov/>>](http://policy.ssa.gov/).

[Social Security Rulings](#) are based on federal court and administrative decisions, policy statements, and opinions of the Office of General Counsel. They are published in the Federal Register and are binding on all components of the SSA but are primarily used by Administrative Law Judges (ALJs). The SSA publishes its rulings in the Federal Register but is not required to do so. The Rulings do not have the force of law. The Rulings are available on the SSA website at [<<http://www.socialsecurity.gov/regulations/index.htm>>](http://www.socialsecurity.gov/regulations/index.htm).

Program Circulars distributed by the SSA national and regional offices discuss district office and DDS policies. They are generally not available to the public but can be requested under the Freedom of Information Act.

Federal case law

[42 U.S.C. § 405\(g\)](#) provides for a right of review in the federal courts of final administrative decisions. There are a great many federal court decisions

interpreting the Social Security Act and regulations. Many are very fact specific and have little precedential value. Decisions interpreting the statute and regulations are often of value in federal court appeals but are generally of lesser value in the administrative appeals process. The SSA considers federal district court cases as not binding in the administrative appeals process. However, the SSA must apply U.S. Circuit Court of Appeals decisions, unless the government appeals or relitigates the issue. When the SSA disagrees with the interpretation of a court of appeals, the SSA must issue an acquiescence ruling that explains how the SSA will apply the decision. See [20 C.F.R. §§ 404.985\(b\)](#), [SSR 96-1p Policy Interpretation Ruling](#). Application by the SSA Of Federal Circuit Court and District Court Decisions. See **Exhibit 1C** for further sources of law and information.

§ 1.5 SSI ELIGIBILITY

SSI applicants and recipients must meet SSI eligibility criteria in five areas:

- categorical;
- residence;
- citizenship or alien status;
- resources; and
- income.

Failure to meet the eligibility criteria in any one area will result in ineligibility. See [20 C.F.R. § 416.202](#).

§ 1.5.1 Categorical Eligibility

SSI applicants and recipients must fit into one of the following eligibility categories:

- age, defined as age sixty-five or over;
- blind, defined as central visual acuity no better than 20/200 in the better eye with corrective lenses, or limited to a visual field of 20 degrees in the better eye. See [20 C.F.R. § 416.981](#)
- disabled adult, defined as a person age eighteen or older who is unable to engage in substantial gainful activity due to a medically determinable mental or physical impairment, which has lasted or is expected to last at least twelve months or result in death. See [20 C.F.R. § 416.905](#); or
- disabled child, defined as a person under age eighteen who has a medically determinable mental or physical impairment that has medical criteria or functional limits resulting in marked and severe functional limits and which has lasted or is expected to last at least twelve months or result in death. See [20 C.F.R. § 416.906](#).

§ 1.5.2 Residence (20 C.F.R. §§ [416.1603](#), [416.1327](#))

To be eligible for SSI, an applicant must have resided in the United States or Northern Marianas Islands for at least thirty days. A recipient who remains outside the United States for a full calendar month loses SSI eligibility and is not eligible for SSI until he or she has returned to the United States and has remained in the United States for thirty consecutive days. Regaining eligibility in these circumstances does not require a new application, because SSI eligibility is merely suspended, rather than terminated, unless the suspense status continues for twelve consecutive months. See § 1.11, Posteligibility Issues, below, for more information on suspense status.

§ 1.5.3 Citizenship and Alien Status

An SSI applicant or recipient must either be a citizen of the United States or have qualifying alien status. Federal legislation has drastically changed noncitizen eligibility for SSI. **The changes have not yet been codified in regulations**, but the SSA has developed detailed subregulatory instructions in the POMS. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), [Pub. L. No. 104-93, 110 Stat. 2170 \(1996\)](#), made the changes effective regardless of whether regulations had been published. Citations are to the PRWORA and the POMS.

§ 1.5.4 Citizenship

For SSI purposes, a citizen of the United States is a person born in the United States, Puerto Rico, Guam, or the Virgin Islands. Individuals born in American Samoa, Swains Island, and the Northern Marianas Islands are United States Nationals and are treated as United States citizens for SSI purposes. See [20 C.F.R. § 416.1610\(d\)](#). Citizenship may also be obtained through the naturalization process.

Practice Note

Immigrants who naturalize have the same rights to receive public benefits as other citizens. Many immigrants with disabilities have avoided the naturalization process for fear that they will be unable to complete certain parts. Others have tried and have not received reasonable accommodation. The Department of Homeland Security (DHS) is subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, which requires programmatic access for individuals with disabilities. In the past three years, the DHS has developed better procedures for identifying immigrants in need of reasonable accommodations and providing them. For example, an immigrant who cannot learn sufficient English to pass the interview portion of the process due to a cognitive limitation may be able to have an interpreter at the interview. The procedure requires medical documentation of a condition causing the alleged limitation. For more information contact the [Massachusetts Immigrant and Refugee Coalition \(MIRA\)](#), at (617) 350-5480.

§ 1.5.5 SSI Eligibility for Noncitizens Prior to 8/22/96

Prior to enactment of the PRWORA on August 22, 1996, a noncitizen could be eligible for SSI as

- an alien lawfully admitted in the United States for permanent residence, [20 C.F.R. § 416.1615](#); or
- an alien permanently residing in the United States under color of law (PRUCOL). See [20 C.F.R. § 416.1618](#). An alien permanently residing in the United States under color of law is not an DHS status. It means that the individual is residing in the United States with the knowledge and permission of the DHS, and that the DHS does not contemplate enforcing the departure of the individual.

This was a broad standard that allowed most noncitizens with DHS status, and even some applicants for status, to qualify for SSI.

§ 1.5.6 SSI Eligibility for Noncitizens After the PRWORA

Section 402 of the PRWORA made most noncitizens ineligible for SSI benefits. Current recipients, i.e., recipients as of **August 22, 1996**, were facing benefits termination in August and September 1997. The Balanced Budget Act (BBA) of 1997, [Pub. L. No. 105-33, 111 Stat. 678 \(1997\)](#) stopped the scheduled terminations and also reinstated eligibility for some noncitizens. After the PRWORA and the 1997 BBA, one must know both the noncitizen's alien status and the date of entry in order to determine whether the noncitizen meets the SSI alien status eligibility criteria. The following terms and definitions are crucial to understanding which noncitizens are still SSI eligible and to applying the current eligibility criteria in § 1.5.7, SSI Alien Status Eligibility Criteria Now in Effect, below.

(a) PRWORA Alien Status Eligibility Criteria

Under the provisions of the PRWORA, only the following noncitizens qualify for SSI:

- refugees, asylees, and persons granted withholding of deportation, but only for seven years (increased from five to seven years by Balanced Budget Act) after obtaining these statuses. See [Basic SSI Eligibility and Development Requirements, POMS SI 00502.100](#), [Documentary Evidence of Qualified Alien Status, POMS SI 00502.130](#). (Note that those who adjust to legal permanent resident status before the seven years is up may remain eligible for the remainder of the period, and that Amerasians and Cuban/Haitian entrants are treated as refugees for the purpose of determining eligibility for time-limited benefits.);
- qualified aliens who are honorably discharged veterans or active duty armed services personnel, their spouses, and unmarried dependent children. See [Veteran or Active Duty Member of the Armed Forces, a](#)

[Spouse or Dependent Child, POMS SI 00502.140](#);

- legal permanent resident aliens who have earned forty qualifying quarters as defined by Title II of the Social Security Act (as of January 1, 1997, no quarter qualified in which the wage earner was also receiving a Federal means-tested benefit). See [LAPR with 40 Qualifying Quarters of Earnings, POMS SI 00502.135](#); and
- legal permanent resident aliens who may be credited with forty qualifying quarters from one or both parents, if the quarters were earned before the individual turned age eighteen, or from their current spouse (the federal mean-tested benefit exception described above applies for quarters earned after January 1, 1997). See [LAPR with 40 Qualifying Quarters of Earnings, POMS SI 00502.135\(B\)](#). Note that legal permanent residents who enter the United States on or after August 22, 1996, also face a five-year bar on SSI eligibility. See [LAPR with 40 Qualifying Quarters of Earnings, POMS SI 00502.135\(B\)\(1\)](#). The five-year bar does not apply to those eligible for time-limited benefits or to the veterans and armed service personnel described above, even if their qualified alien status is that of a legal permanent resident.

(b) Definition of a Qualified Alien

The term qualified alien was first created and defined in Section 431 of the PRWORA. It was expanded by subsequent laws, including the 1997 Balanced Budget Act. With some exceptions, a noncitizen must have a status within the definition of qualified alien to qualify for SSI. The definition of qualified alien now includes:

- legal permanent residents,
- asylees,
- refugees,
- persons granted withholding of deportation,
- Cuban /Haitian entrants,
- persons paroled into the United States for a period of at least one year, and
- certain spouses and children affected by domestic violence.

See [Basic SSI Alien Eligibility Requirements, POMS SI 00502.100](#); see also [Qualified Alien Status Based on Battery or Extreme Cruelty by a Family Member, POMS SI 00502.116](#), for the domestic violence criteria.

(c) Definition of Current Recipient (Grandfathered)

A current recipient is a noncitizen who was receiving SSI on August 22, 1996, the date of enactment of the PRWORA, or who was in a non-pay status, like suspense status, on that date, or who had received at least a partially favorable disability decision prior to August 21, 1996. See [Qualified Aliens Receiving Benefits on 8/22/96 \(Balanced Budget Act of 1997, P.L. 105-33\), POMS SI](#)

[00502.150\(B\)\(2\)\(6\)](#). The importance of being a current recipient is that most current recipients are grandfathered into the SSI program.

(d) Definition of Lawfully Residing

An alien is lawfully residing in the U.S. if he/she is a resident of the U.S. **and** is "lawfully present" as defined by the U.S. Attorney General in regulations published on 9/6/96. Lawfully present is a fairly broad term defined by the Department of Justice and includes more types of alien status than the definition of qualified alien. See § 1.3.3, Immigration Eligibility Criteria for Social Security Insurance Benefits, above.

§ 1.5.7 SSI Alien Status Eligibility Criteria Now in Effect

Some noncitizens are SSI eligible on the basis of meeting the definition of qualified alien, while others must still meet the more restrictive PRWORA alien status criteria. The following are the SSI eligibility categories for noncitizens now in effect. See § 1.3.3, Immigration Eligibility Criteria for Social Security Benefits, above.

(a) Current Recipients (Grandfatherees)

Current recipients who are qualified aliens are SSI eligible, if otherwise eligible. See [Qualified Aliens Receiving Benefits on 8/22/96 \(Balanced Budget Act of 1997, P.L. 105-33\)](#), POMS SI 00502.150(A).

Those who are not qualified aliens will also continue, as a result of the [Noncitizen Benefit Clarification Act of 1998](#), Pub. L. No. 105-368, 112 Stat. 338 (1998). These recipients had been scheduled to lose SSI eligibility effective October 1998. The effect of the new law is to grandfather all current recipients into the SSI program, as long as they are at least PRUCOL. See [SSI Eligibility of Nonqualified Aliens Who Were Receiving SSI on 8/22/96](#) 1998 Grandfathering Legislation, POMS SI 00502.153(B)(1).

Note that the SSA decided to apply the prior eligibility rules to the pre-August 22, 1996 portion of applications pending on that date. Individuals found eligible under those rules who were eligible on August 22, 1996, were then eligible for grandfathering. See [Basic SSI Alien Eligibility Requirements, POMS SI 00502.100\(A\)\(4\)](#).

Current recipients retain their grandfathered status, even if they lose eligibility for another reason and later become eligible again. For example, a current recipient who loses disability eligibility and later applies for age-based benefits at age 65 retains his or her grandfathered status as to alien status eligibility. See [Basic SSI Alien Eligibility Requirements, POMS SI 00502.100\(B\)](#). Without grandfathered status, as an applicant based on age, he or she would have to meet the restrictive PRWORA alien status to be eligible, or, if he or she has status meeting

the definition of qualified alien, he or she could try, as an alien lawfully present on August 22, 1996, try to prove disability eligibility.

In addition, individuals who are long-term SSI recipients (since prior to January 1, 1979) will continue to be eligible in the absence of clear and convincing evidence of ineligibility on the basis of alien status. See [Eligibility on the Basis of Receiving SSI Benefits on an Application Filed Before January 1, 1979, POMS SI 00502.120\(B\)](#).

(b) Qualified Aliens Who Were Lawfully Residing in the United States on August 22, 1996

Qualified aliens who were lawfully residing in the United States on August 22, 1996 are SSI eligible if they meet the SSI disability standard, regardless of their age. This means that legal permanent residents who were lawfully residing in the U.S. on August 22, 1996 and who meet the disability standard are SSI eligible without having earned forty quarters of coverage. It also means that asylees and refugees lawfully present on August 22, 1996, who are disabled are SSI eligible without the seven-year eligibility limit. The SSA will be performing disability determinations for elders (age sixty-five and over) who are qualified aliens and who were lawfully residing on August 22, 1996. See [Qualified Aliens Who Are Blind or Disabled and Lawfully Residing in the U.S. on 8/22/96, POMS SI 00502.142\(E\)](#).

Practice Note

[Social Security Ruling 03-03p](#): *Titles II and XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older*, 68 Fed. Reg. 63833 (11/10/03) (which supercedes SSR 99-3p) describes the disability review process for noncitizens aged sixty-five and older. Note that conditions often found in older individuals, i.e., arthritis, can be the basis of a disability finding if medically determinable, i.e., diagnosed by a doctor. Evidence from many other sources can then be used to show the severity of resulting functional limitations. The Social Security Administration will use the rules for individuals aged sixty to sixty-five, which generally require less severe functional limitations than those for younger individuals to meet the severity standard. In addition, the Social Security Ruling includes two special rules for older noncitizens:

- individuals aged seventy-two and older who have a medical determinable impairment will be deemed to have a severe impairment as defined in Step 2 of sequential analysis of disability and the evaluation will proceed to Step 3; and
- for individuals aged sixty-five or older who retain the capacity to perform medium work and who are further limited by illiteracy in English or the inability to communicate in English, a finding of disabled is warranted, unless the individual's past relevant work was skilled or semiskilled and resulted in transferable skills.

(c) All Other Noncitizens

Noncitizens who do not fit any of the above categories must meet the restrictive PRWORA SSI alien status eligibility criteria described above in § 1.5.6(a) to be SSI eligible. Examples include the following:

- noncitizens who immigrated to the United States after August 22, 1996; and
- noncitizens aged sixty-five or older who immigrated prior to August 22, 1996, but who do not meet the SSI disability standard.

(d) Exceptions

Two groups of American Indians are exempt from all SSI noncitizen provisions, as follows:

- individuals born in Canada who establish one-half American Indian blood; and
- foreign-born members of federally recognized United States Indian tribes.

See [Exemption from Alien Provisions for Certain Noncitizen Indians, POMS SI 00502.105](#).

§ 1.5.8 Verification

Generally, the SSA will verify alien status with the Department of Homeland Security ([DHS](#), formerly the Immigration and Naturalization Service) if there is any reason to question the authenticity of the documents presented or if the information on the documents presented is insufficient to determine alien status eligibility. See [Basic SSI Alien Eligibility Requirements, POMS SI 00502.100](#); [Verification of Alien Eligibility With the Department of Homeland Security \(DHS\), POMS SI 00502.115](#). Many SSA offices now have the capacity to verify status for noncitizens through SAVE, a computerized systems link with DHS.

§ 1.5.9 Reporting Requirement

Section 404 of the PRWORA requires certain federal agencies, including the SSA, to furnish the DHS with identifying information on persons whom the commissioner knows to be unlawfully present in the United States. The extent of this reporting requirement was unknown until publication of notice in the [Federal Register, 65 Fed. Reg. 58,301 \(Sept. 28, 2000\)](#). The notice explains that the reporting requirement applies to the SSA with respect to the SSI program only. The notice provides that affected agencies are not required to file reports unless they have something to report. The trigger for filing a report, knowing that a noncitizen is not lawfully present, is narrowly defined. An agency knows that an individual is not lawfully present only when the unlawful presence is a finding of fact or conclusion of law made by the agency as part of a formal determination that is subject to the administrative appeal process. A finding of fact or conclusion of law must be supported by a determination by DHS or the Executive

Office of Immigration Review, such as a Final Order of Deportation. A SAVE response showing no DHS record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is unlawfully present.

Practice Note

It is important to consider whether the need for a public benefit like SSI outweighs any risk that receipt of the public benefits will harm the immigrant's ability to better his or her status. As the "public charge" issue requires consideration of all the circumstances, the immigrant should consult an immigration specialist for advice.

§ 1.5.10 Public Charge

By law, most noncitizens who want to get a green card or visa to the United States must show that they are not likely to become dependent upon government benefits for support, i.e., a public charge. DHS implementation of the public charge policy had been confusing and inconsistent. As a result, many immigrants have avoided seeking basic benefits and services for fear that use of such government programs would lead to denial of a green card or deportation. In May 1999, the Department of Justice (DOJ) published proposed regulations at [64 Fed. Reg. 28676](#). The DOJ also published a Field Guidance at [64 Fed. Reg. 28689](#), which was immediately effective, pending publication of final regulations. The new guidance provides much needed standardization and clarification of the DHS public charge policy. See [Alien Requests for Information About Possible Deportation for Receiving SSI, POMS SI 00501.450](#) for the SSA policy statement on the Field Guidance. Highlights of the public charge clarification include the following:

- Use of cash welfare benefits, including SSI, does not require but might result in a public charge finding, depending on the situation. [64 Fed. Reg. 28676](#), 28,683. The DHS adjudicator must consider the totality of the circumstances, including whether receipt of the benefit is temporary. See [64 Fed. Reg. 28676](#); 28683. Also, published as an appendix to the proposed regulations is a letter from former SSA deputy commissioner, Susan Daniels, which sets out limitations on application of the public charge policy to SSI recipients. For example, aged, blind, and disabled refugees and asylees, Amerasian immigrants, and certain Cuban/Haitian entrants are exempt from the public charge provisions by law or under the proposed regulations. See [64 Fed. Reg. 28687](#). In addition, the circumstances under which a permanent resident can be deported on public charge grounds are very limited. See [64 Fed. Reg. 28685](#); 28687.
- Benefits that are earned, such as Title II Social Security benefits, unemployment compensation benefits, and veterans' benefits, will not be considered for public charge purposes. See [64 Fed. Reg. 28682](#); 28684.
- Receipt of cash welfare benefits, including SSI, by immigrant children or other family members will not make the immigrant a public charge, unless these benefits are the family's only income. See [64 Fed. Reg. 28683](#);

28685; 28,686.

- Use of food stamps, Women, Infants, and Children (WIC), public housing, or other noncash programs by immigrants and their families will not make the immigrants public charges. See 64 Fed. Reg. 28682; 28684; 28685.
- Use of MassHealth or other public health services by immigrants or their family members will not make the immigrants public charges, unless these or other government funds are used to pay for long-term care. See 64 Fed. Reg. 28682; 28684; 28685. This clarification is not expected to significantly change the number of noncitizens who will be found inadmissible or deportable on public charge grounds. It is expected to result in less confusion on the public charge issue and more confident use of basic public services by noncitizens.

§ 1.5.11 Notes About Social Security Numbers

The SSA may issue social security numbers (SSNs) to lawfully present noncitizens who have work authorization. Nonwork SSNs may be issued in limited circumstances to noncitizens who do not meet this standard but who need a SSN for a valid nonwork reason. Valid nonwork reasons include a federal statute requiring a SSN to receive a benefit or a state statute requiring a SSN to receive a public assistance benefit. As of October 2003, SSNs are no longer assigned for the sole purpose of getting a drivers license.

Practice Note

A child who does not have an SSN must apply for one when he or she applies for SSI. If the child meets the citizenship or immigrant status standards for SSI, the child will be eligible for an SSN. As of February 9, 1998, the SSN application for a child requires the SSA to request the parents SSNs, unless the parents cannot be assigned SSNs.

Regulations issued in 1996 provide that based on a person's immigration status, a restrictive legend may appear on the face on an SSN card to indicate that work is either not authorized or that work may be performed only with DHS authorization. See [20 C.F.R. § 422.103](#).

In addition, SSA is setting a limit on the number of replacement SSN cards. Unless the individual provides evidence establishing significant hardship if a replacement card is not issued, SSA will limit individuals to 3 replacement cards per year and 10 per lifetime. See [20 C.F.R. § 422.103](#).

§ 1.5.12 SSI Financial Eligibility - Resources

Eligibility for SSI is dependent upon the financial position of the applicant and, in some cases, on that of other members of the applicant's household. One consideration of financial eligibility is that given to the resources of the applicant. The SSI resource limit is \$2,000 in countable resources for an individual, and \$3,000 for a couple. Certain resources are excluded. The following information

can be used to determine if an applicant/recipient is eligible to receive SSI benefits. See [20 C.F.R. § 416.1200](#) et seq.

(a) Definition of a Resource

A resource is cash on hand, other personal property, or real property that an individual

- owns or in which an individual has an ownership interest;
- has the legal right, authority, or power to dispose of the resource or to liquidate it and convert it to cash; and
- is not legally restricted from using for support and maintenance.

See [20 C.F.R. § 416.1201](#).

(b) Valuation of Resources

The value of a resource is generally the amount of the individual's equity in the property. Equity value is defined as the price at which the item can be reasonable be expected to sell on the open market in the particular geographic area, minus any encumbrances (e.g., loans, liens). See [20 C.F.R. § 416.1201\(c\)\(2\)](#).

(c) Resource Limit

The SSI resource limit is \$2,000 in countable resources for an individual and \$3,000 for an eligible couple. See [20 C.F.R. § 416.1205](#). If countable resources exceed the SSI resource limit, the SSI applicant or recipient is financially ineligible for SSI. SSI eligibility may be reestablished once the excess resources have been spent down below the resource limit. See § 1.5.11(f), Excluded (Noncountable) Resources, below, for resources that are not countable.

(d) Timing

Money received by an individual is income in the month received and a resource in the first moment of the following month, if retained by the individual. See [20 C.F.R. §§ 416.1100, 416.1207\(d\)](#).

Example

Maria, an SSI recipient, receives \$800 in wages in January 2012. These funds will be counted under the income rules to determine her SSI eligibility in January. Any remaining funds retained on February 1, 2012, count toward the countable resource limit for February 2012.

Resource determinations for SSI eligibility purposes are based on the resources an individual has at the first moment of the first of the month for which the eligibility determination is made. See [20 C.F.R. § 416.1207\(d\)](#).

Example

Joe, an SSI recipient, has \$2,500 in countable resources on January 1, 2012. He is not eligible for SSI for the month of January, even if he reduces his countable resources below \$2,000 before the end of the month.

(e) Countable Resources

Countable resources are those that are considered toward the SSI resource limitation. Examples of countable resources include the following:

- cash on hand that is not current month's income;
- money in savings, checking, or credit union accounts that is not current month's income;
- stocks and bonds;
- certificates of deposit;
- U.S. savings bonds;
- land or property on which the person does not reside;
- life insurance policies with a face value of over \$1,500; and
- certain trusts created to benefit the recipient.

See [20 C.F.R. § 416.1205](#)

- **Note that a resource may be countable even if there is a financial penalty for accessing it**, e.g., early cashing of a certificate of deposit. The amount that is countable is the amount that can be accessed at the time under consideration, less any penalty imposed for early withdrawal or access. See, e.g., [Retirement Funds, POMS SI 01120.210\(A\)\(3\)](#).

(f) SSA Access to Financial Institution Information

On October 14, 2003, new regulations went into effect requiring SSI applicants and recipients, as a condition of eligibility, to authorize SSA to contact any financial institution and request any financial records that financial institution may have. The new provision also requires such authorization from anyone whose income and resources are considered as being available to the applicant or recipient, unless there is good cause why the permission cannot be obtained. Failure to give permission to contact financial institutions may result in suspension of SSI benefits.

There is a "limited good cause exception..... consistent with our current policy regarding a third party's failure to cooperate." Under the regulations:

- Good cause exists if permission cannot be obtained from the individual and there is evidence that the individual is harassing you, abusing you, or endangering your life.
- Good cause may exist if an individual other than one listed in paragraph (h)(3) of this section refuses to provide permission and: you acted in good faith to obtain permission from the individual but were unable to do so through no fault of your own, or you cooperated with us in our efforts to obtain permission.

- Good cause does not apply if the individual is your representative payee and your legal guardian, if you are a minor child and the individual is your representative payee and your custodial parent, or if you are an alien and the individual is your sponsor or the sponsor's living-with spouse.

See 20 C.F.R. §§ [416.207](#) and [416.1321](#).

(g) Excluded (Noncountable) Resources

Examples of excluded resources include the following:

- The home in which the person lives and the contiguous land on which it stands. See [20 C.F.R. § 416.1212](#).
- One car, regardless of value, if used for transportation for the SSI recipient or a member of the recipient's household. This rule is effective as of 3/9/05. (The prior rule excluded one car, regardless of value, if necessary for work or to get to medical services and appointments, or if specially modified to transport a person with disabilities.) If a car cannot be excluded for these reasons, SSA will exclude its current market value up to \$4,500, and any excess will count toward the applicable resource limit. Only one car per SSI recipient may receive the benefit of the full exclusion or the \$4500 exclusion. The equity value of all additional vehicles is countable. See [20 C.F.R. § 416.1218](#).
- Prior to 3/9/05, personal or household goods were excluded if total equity value was under \$2,000. Effective 3/9/05, personal effects are considered separately from household goods. Amended rule [20 C.F.R. § 416.1216](#), excludes household goods if found in or near the home and used on a regular basis or if needed for maintenance, use and occupancy. Personal effects would be excluded if ordinarily worn or carried by the individual or otherwise intimately related to the individual.
- Life insurance policies with a face value under \$1,500. See [20 C.F.R. § 416.1230](#).
- Burial funds of \$1,500, or less if the person owns any excluded life insurance (see above). These funds must be specifically identified as burial funds and set aside in a separate account. See [20 C.F.R. § 416.1231\(b\)\(1\)](#). The value of this exemption must be reduced by certain other burial funds excluded from countable resources. See [20 C.F.R. § 416.1231\(b\)\(5\)](#).
- Burial plots or spaces. An individual may exclude both burial spaces and burial funds. See [20 C.F.R. § 416.1231\(b\)\(1\)](#).
- Property used for self-support. Effective May 1990, all property used in a trade or business or property used by an employee for work is excluded regardless of its value. See [Property Essential to Self-Support—Overview](#),

[POMS SI 01130.500\(B\)\(1\)\(a\)](#). This includes up to \$6,000 equity in non-business property used to produce goods or services essential to daily activities. See [Property Essential to Self-Support— Overview, POMS SI 01130.500\(B\)\(1\)\(b\)](#); [Essential Property Excluded Regardless of Value or Rate of Return, POMS SI 01130.501](#) and the examples included therein.

- The proceeds from the sale of a home, if the proceeds are used within three months to purchase another primary residence. See [20 C.F.R. § 416.1212\(d\)](#).
- Effective for payments received on or after 3/2/04, underpayments of SSI and Social Security benefits for nine months from the date of receipt. See [20 C.F.R. § 416.1233](#), as amended by [§ 431, Pub.L.No.108-203](#) (3/2/04). The exclusion period prior to 3/2/04 was six months. See § 1.12, Eligibility Redeterminations, below, for the rules on certain retroactive awards of SSI for children.
- Resources identified as necessary to fulfill a Plan to Achieve Self-Support (PASS). See [20 C.F.R. § 416.1210\(f\)](#); § 1.14.3, Plans to Achieve Self-Support (PASS), below.
- Real property, for up to nine months, pending efforts to sell. Conditional benefits are paid during this time and are recoverable as overpayments upon sale of the property. See [20 C.F.R. § 416.1245](#).
- Real property, the sale of which would cause undue hardship, for example, if upon sale a co-owner of the property would be rendered homeless. See [20 C.F.R. § 416.1245](#).
- Effective with benefits payable in July 2004, any grant scholarship, fellowship, or gift for the cost of tuition or fees, for nine months. [20 C.F.R. §§ 416.1210 \(u\)](#); [Deeming - Grants, Scholarships, Fellowships, or Gifts POMS SI 01320.115](#).
- All federal student financial assistance received under Title IV of the Higher Education Act, including federal work study, or under BIA student assistance programs, is excluded from income and resources, regardless of use. See [Grants, Scholarships, Fellowships, and Gifts POMS SI 00830.455B](#).

The SSA may determine that other resources are noncountable (excluded) if the resource is **inaccessible**. See [20 C.F.R. § 416.1201](#); [Factors That Make Property a Resource, POMS SI 01120.010](#). For example, real estate owned by four siblings, one of whom is the SSI applicant, cannot be sold without the approval of all co-owners. Should one sibling refuse permission to sell, the SSA should determine that the real estate is a noncountable resource to the SSI applicant. The SSA will not force the applicant to bring legal action to have the property partitioned. See [20 C.F.R. § 416.1210](#).

(h) Jointly Held Accounts at Financial Institutions

Joint bank accounts cause problems for SSI recipients and should be avoided (except for SSI couples). Nor should SSI recipients hold money for someone else. In addition to the problems indicated below, an SSI recipient who has been holding money for someone else may face transfer of asset penalty problems if he or she cannot prove the money was not his or hers. See [20 C.F.R. § 416.1208\(b\),\(c\)](#).

- If an SSI applicant or recipient is the only named holder, the SSA presumes sole ownership in the holder and does not allow the holder to rebut the presumption. Note that this rule may be amenable to challenge in the appropriate circumstances.
- If there are joint holders and only one holder is an SSI applicant or recipient, the SSA presumes sole ownership in the SSI applicant or recipient. If more than one joint holder is an SSI applicant or recipient, the SSA presumes equal shares ownership in the SSI applicants or recipients. However, the SSA allows rebuttal of both of these presumptions. See [Checking and Savings Accounts, POMS SI 01140.200](#).

(i) Resource Deeming

In resource deeming, the SSA “deems” or treats the countable resources of SSI ineligible parents, spouses, or alien sponsors, whether or not the sponsor lives with the alien SSI recipient, as if they were available to the SSI recipient, even if they are not actually available. For specific spouse-to-spouse resource deeming rules, see [20 C.F.R. § 416.1202\(a\)](#). For specific sponsor-to-alien resource deeming rules, see [20 C.F.R. § 416.1204](#).

Resource Exclusions

All the usual resource exclusions noted above apply in determining countable resources for deeming purposes. Additionally, **funds in an IRA or other work-related pension plan of an SSI ineligible parent or spouse are excluded from countable resources for parent-to-child and spouse-to-spouse deeming purposes.** See [20 C.F.R. § 416.1202\(b\)\(1\)](#).

§ 1.5.13 Transfer of Asset Penalty

Federal legislation reestablished the transfer of asset penalty in the SSI program as of December 14, 1999. The transfer of asset penalty is triggered by a transfer of countable assets for less than fair market value. The purpose of the penalty is to prevent people from giving away assets to make themselves eligible for SSI. The transfer of asset penalty does not prevent SSI recipients from spending down excess assets, and, of course, it does not apply to any individual receiving only SSDI benefits.

Prior to July 1, 1988, a 24-month transfer of asset penalty existed. This penalty provision was eliminated on July 1, 1988, by the Medicare Catastrophic Coverage Act. Between July 1, 1988 and December 14, 1999, SSI recipients

could transfer, or give away, countable resources without affecting their SSI eligibility. The SSA was required to report any transfers made during this period of time to the state Medicaid administering agency in order to assist the implementation of Medicaid transfer laws.

The new transfer of asset penalty, effective for transfers made on or after December 14, 1999, was created by the Foster Care Improvements Act of 1999, [Pub. L. No. 106-169, § 206](#) (Dec. 14, 1999) (amending 42 U.S.C. § 1382b(c)). The new transfer penalty will penalize an individual who disposes of assets for less than fair market value within a 36-month “look back” period. The penalty for such a transfer is SSI ineligibility for the number of months equal to the amount of the uncompensated value of the transferred asset, divided by the maximum monthly SSI benefit payable to that individual after considering the individual’s living arrangement and eligibility category (aged, blind, or disabled).

Example

Tom is a Massachusetts recipient of SSI and SSDI benefits who inherited \$5,000 from his deceased uncle. In 2006, he receives \$467 in SSDI and \$250.39 in SSI. Knowing he can keep \$2,000 and maintain his SSI eligibility, he disposed of the remaining \$3,000. He purchased new furniture, paid some overdue debts, and gave his brother \$2,000 so that he could pay his college tuition. When he reported to the SSA, Tom was informed that the \$2,000 gift to his brother was subject to the transfer of asset penalty because Tom received no value for the gift of \$2,000. Tom will face a transfer penalty for a period of three months as a result of the penalized transfer, unless an exception to the penalty application applies. The penalty period is calculated by dividing \$2,000 by \$717.39 (the Massachusetts SSI payment rate for which Tom was eligible in 2006) and rounding down to the nearest whole number. See [Computing the Period of Ineligibility for Resources Transferred on or After 12/14/99, POMS SI 01150.111](#)

There are important exceptions to the application of the penalty. These exceptions are similar to those that apply to the Medicaid transfer of asset penalty rule. The penalty period does not apply in the following circumstances:

- the individual (or spouse) disposed of the resource exclusively for a purpose other than qualifying for benefits;
- the individual (or spouse) intended to dispose of the asset for fair market value;
- the transferred assets have all been returned to the individual; or
- denial of SSI eligibility would result in “undue hardship to the individual, according to the rules to be established by the commissioner of the SSA.

See [20 C.F.R. § 416.1246](#).

§ 1.5.14 Transfers and Trusts

The transfer of asset issue is raised when an SSI recipient (or spouse) uses resources to create a trust. Between July 1, 1988 and December 14, 1999, SSI recipients could transfer assets (retroactive awards, personal injury settlements, etc.) to a trust without incurring a transfer penalty. As long as the trust satisfied the SSI resource rules for noncountability, SSI eligibility was not affected. Only Medicaid eligibility for long-term care or other institutional coverage was affected by such a transfer during that period of time.

As of December 14, 1999, SSI recipients face transfer of asset penalties when they (or their spouses) transfer assets to a trust. There are exceptions to the rule, which are similar to the exceptions in the Medicaid program. These include transfers to a pooled trust or to a Medicaid payback trust for the benefit of a disabled individual under age sixty-five. See [42 U.S.C. § 1382b\(c\)\(1\)\(B\)](#). A hardship waiver will also be available. As of this writing, the SSA had issued only subregulatory instructions to implement these changes. See Other Resources Provisions, POMS [SI 01150.001](#) –SI 01150.210.

In addition to the transfer of asset provision, the [Foster Care Independence Act of 1999, § 205](#), also contained a trust restricting provision effective for any trust created on or after January 1, 2000. See 42 U.S.C. § 1382b. The new trust provisions adopt resource-counting rules for trusts that mirror those currently existing in the Medicaid program and make most trusts countable resources, without regard to whether they are revocable or irrevocable. The exceptions to countability are similar to those in the Medicaid program. Trusts established as described in the Medicaid statute at [42 U.S.C. § 1396p\(d\)](#) will not be counted as a resource in the SSI program, e.g., certain special-needs trusts established for disabled persons under age sixty-five, pooled trusts, and trusts established with assets transferred by will. Other irrevocable trusts established with the assets of an individual (or spouse) will be considered as a resource available to the individual to the extent of the portion of the corpus of the trust from which payment can be made to or for the benefit of the individual (or spouse). If the trust contains assets of an individual (or spouse) and the assets of another person, the portion of the trust attributable to the assets of the SSI eligible individual (or spouse) will be countable to the individual, regardless of the purpose of the trust and whether the trustee has discretion under the trust. See [Trusts Established Prior To 1/1/00, Trusts Established by Third Parties and Trusts Not Subject to Section 1613\(e\) of the Social Security Act, POMS SI 01120.200](#).

Creating a trust must be done very carefully and, preferably, with the assistance of an expert in estate planning and needs-based benefits. Improper creation of a trust can cause a loss of both cash and healthcare benefits.

§ 1.5.15 SSI Eligibility—Income

(a) Definition of Income

Income is anything an individual receives in cash or in kind that could be used either directly, or by conversion, to meet one's basic needs for food, clothing, or shelter. See [20 C.F.R. § 416.1102](#). Almost all income is countable, although there are certain income deductions and exclusions. Countable income reduces the maximum monthly benefit amount to which an SSI recipient would otherwise be entitled. If large enough, countable income can reduce the benefit amount to \$0, making the individual financially ineligible for SSI. See [20 C.F.R. §§ 416.1100 et seq.](#)

(b) Types of Income

Unearned Income

Unearned income consists of income from non-work sources, including

- alimony,
- child support,
- pensions,
- annuities,
- rents,
- interest from bank accounts,
- Social Security benefits,
- VA benefits,
- Worker's compensation benefits,
- unemployment benefits, prizes,
- awards,
- gifts, and
- inheritances.

See [20 C.F.R. § 416.1121](#).

Earned Income

Earned income is income from work, including

- wages,
- salary,
- tips,
- commissions, and
- bonuses paid through employment or self-employment.

See [20 C.F.R. § 416.1110](#).

In-Kind Income

When an SSI recipient receives food, clothing, or shelter for free or at a reduced charge, SSA counts the value of the item received as in-kind income. See [20 C.F.R. § 416.1130](#). SSA does not count the value of free or low-cost goods or services that are not food, clothing, or shelter, e.g., entertainment, car maintenance, medical supplies, etc. **Note: effective 3/5/05, gifts of clothing to SSI recipients no longer count as in-kind income.**

Garnished Income

Garnished income is counted as available to an SSI recipient, even though it is not. See [20 C.F.R. § 416.1123\(b\)\(2\)](#).

Overpayment Recovery

Money withheld as a result of recovery of an overpayment from other benefits (Social Security, VA, Railroad Retirement, Worker's Compensation, etc.) is counted as if the individual actually received it. See [20 C.F.R. § 416.1123\(b\)\(1\)](#).

(c) Basic Income Rules

Income is counted on a monthly basis, and is income in the month received. If retained, it is counted as a resource in the following month. See 20 C.F.R. §§ [416.1100](#), [416.1207\(d\)](#); [Relationship of Income Sources, POMS SI 00810.010](#).

(d) Income Exclusions

Certain types of income received by an SSI applicant or recipient are excluded in determining financial eligibility for SSI benefits. See 20 C.F.R. §§ [416.1112](#), [416.1124](#). Examples of excluded income include:

- income tax refunds;
- proceeds of a loan (however, if the proceeds are not spent in the month received, they will be counted as a resource in the following month);
- bills paid by others for goods or services that are not food, clothing, or shelter (Note: effective 3/5/05 clothing paid for by others will not as income to the SSI recipient;
- weatherization assistance;
- any portion of a grant, scholarship, or fellowship used for paying tuition, fees, or other necessary education expenses (Note that all student financial assistance received under Title IV of the Higher Education Act of 1965, or under BIA Student Assistance Programs, is excluded from income and resources, regardless of use. Title IV programs include: Pell Grants; federal work study programs; Upward Bound, and others specified in [POMS SI 00830.455](#).);
- one-third of child support paid by an absent parent;
- assistance based on need from a state or local government, including rent subsidies;

- in-kind income based on need provided by nonprofit organizations;
- impairment-related work expenses;
- domestic commercial airline tickets received as gifts, as long as not cashed in;
- income earned by a blind or disabled student under age 22 regularly attending school, consisting of \$1640 per month up to \$6600 per calendar in 2011.
- Food stamps;
- effective July 2004, all interest and dividend income earned on countable resources, see § [430, Pub.L.No.108-203](#)(3/2/04);
- effective 7/04, the amount excluded for infrequent or irregular earned income increased to \$30 per quarter, pursuant to § [430, Pub.L.No. 108-203](#) (3/2/04), [Infrequent or Irregular Income Exclusion POMS SI 00810.410](#); and
- effective 7/04, the amount excluded for infrequent or irregular unearned income increased to \$60 per quarter, pursuant to § [430, Pub.L.No. 108-203](#) (3/2/04), [Infrequent or Irregular Income Exclusions POMS SI 00810.410](#).

(e) Income Deductions

After the application of all appropriate income exclusions, the SSA will apply the relevant income deductions to determine the individual’s countable monthly income for SSI financial eligibility purposes. Countable monthly income is then deducted from the maximum benefit amount to which the individual is entitled. This result is the monthly SSI benefit payable to the individual. The available income deductions follow.

General/Unearned Income Deduction

Twenty dollars of unearned income is deducted per month. If this deduction is not used fully on unearned income, any remaining exclusion may be deducted from earned income. [20 C.F.R. § 416.1124\(12\)](#).

Earned Income Deduction

Exclude \$65 plus one-half the remainder of gross monthly earned income. For example, earned income in the amount of \$585 results in \$250 in countable monthly income.

$$\begin{array}{r}
 \$585.00 \\
 - \underline{20.00} \text{ (if unused on unearned income)} \\
 \hline
 \$565.00
 \end{array}$$

- 65.00
\$500.00
divided by 2 = \$250.00 (countable income)

See 20 C.F.R. § 416.1112(c)(5),(7).

(f) Income Deeming

Income deeming is the process of considering a portion of another person's income as the unearned income of an SSI recipient. The deemed income is considered available to the SSI recipient, whether or not it is actually available. The deemed income will be deducted from the maximum SSI benefit to which the recipient is entitled, along with the recipient's own countable income, if any. 20 C.F.R. § 416.1160.

Deeming Circumstances

Deeming applies only in the following situations:

- from SSI-ineligible spouse to SSI-recipient spouse in the same household;
- from SSI-ineligible parent to SSI-eligible child in the same household;
- from sponsor to SSI-eligible alien (see § 1.5.11, Financial Eligibility—Resources, above, for PRWORA changes); and
- from SSI-ineligible essential person. (See [20 C.F.R. § 416.1160\(d\)](#) for the definition of essential person. Since essential persons had to be identified prior to 1974, there are few left.)

Deeming Process—Spouse-to-Spouse Income Deeming

Spousal deeming causes a portion of the ineligible spouse's income to be considered available to the SSI spouse, whether or not such income is actually available. Spousal deeming will occur only if the ineligible spouse lives in the same household as the SSI spouse. See [20 C.F.R. § 416.1160\(a\)\(1\)](#). The term ineligible spouse is defined for SSI purposes as someone who lives with an SSI recipient as husband or wife and is not eligible for SSI. See [20 C.F.R. § 416.1160\(d\)](#). The regulations give several specific rules for couples who face a change in circumstances. Some of these circumstances include the following:

- when the ineligible spouse becomes eligible, [20 C.F.R. § 416.1163\(d\)\(1\)](#);
- when spouses separate or divorce, [20 C.F.R. § 416.1163\(d\)\(2\)](#);
- when an eligible individual begins living with an ineligible spouse, [20 C.F.R. § 416.1163\(d\)\(3\)](#);
- when an ineligible spouse dies, [20 C.F.R. § 416.1163\(d\)\(4\)](#); and
when an eligible spouse becomes subject to the \$30 federal benefit rate (FBR), [20 C.F.R. § 416.1163\(d\)\(5\)](#).

(g) Counting In-Kind Income

In-kind income is considered by the SSA when determining monthly SSI awards. In-kind income may come in the form of gifts or allowances that are used by the individual to meet basic needs for food, clothing, and shelter (Note that effective 3/5/05, clothing is no longer included in in-kind income.). For example, if an SSI recipient lives in an in-law's apartment and pays less than market value for rent, the difference between the market rental rate and the actual rent will be considered in-kind income to the SSI recipient.

Two rules are used to determine the amount of in-kind support and maintenance that must be counted:

- **One-third reduction rule**

When an SSI applicant or recipient lives in the household of a person who supplies both food and shelter without charge, the SSI benefit amount will be reduced by one-third of the FBR. See [20 C.F.R. § 416.1131](#). In Massachusetts, this puts the SSI recipient in the lowest SSI payment category, Living in the Household of Another.

- **Presumed maximum value rule**

This rule applies when the One-third reduction rule does not apply, i.e., only shelter is provided or the SSI recipient makes partial payment for food or shelter. Under this rule, the SSA reduces the SSI recipient's benefit by the actual value of the in-kind income or one-third the FBR plus \$20 (the presumed maximum value), whichever is less. See [20 C.F.R. § 416.1140](#). This rule does not apply if every member of the household receives public income-maintenance payments.

Practice Note

Loans of in-kind income—Legal obligations to repay loans of food and shelter are not income for SSI purposes, e.g., when an SSI applicant receives food and shelter from relatives while waiting for benefits. See Introduction to Living Arrangements and In-kind Support and Maintenance, POMS SI 00835.001(b) (1995) and [Social Security Ruling 92-8p](#) for the documentation requirements of a legal obligation to repay.

(h) Retrospective Monthly Accounting ([20 C.F.R. § 416.410](#))

The SSA uses a monthly system of calculating both the eligibility of SSI recipients and the amount of benefit due. Determinations of eligibility are based on the current month income. Payment amount determinations are based on the monthly income received two months prior to the payment month. During the first two months of entitlement, special rules apply.

Effective with benefits payable beginning April 1, 2005, one-time, nonrecurring income for new SSI recipients will not be subject to RMA. See § 433, Social Security Protection Act of 2004, [P.L. No. 108-203](#). This change will eliminate the

triple counting of one-time income for new SSI recipients by counting that nonrecurring income only for the month of receipt.

§ 1.6 APPLICATIONS AND APPEALS

§ 1.6.1 Applications

The first step in the SSI eligibility determination process is to complete and file an application.

(a) Who Can Apply?

An application may be filed by any aged, blind, or disabled person or by an authorized representative acting on his or her behalf. See 20 C.F.R. §§ [404.612](#), [416.315](#).

(b) How to Apply

The application must be in writing on an SSA form and can be filed in any SSA district office. It may be also be possible to complete some of the application by telephone. The telephonic application will be forwarded to the applicant's home for completion and signature. See 20 C.F.R. §§ [404.610](#), [416.310](#). Applications for Title II benefits (not SSI) and the [Adult Disability Report](#) form (SSA 3368) for both SSI and SSDI applications may be completed online through SSA's website, www.socialsecurity.gov. Individuals who need help completing the forms online may call SSA to schedule an appointment and SSA will provide help in person on by phone. Also note that helpful application starter kits are available on SSA's website.

(c) When to Apply

Prior to the PRWORA, [Pub. L. No. 104-193](#) (Aug. 22, 1996), SSI payments could be retroactive to the date of application or the date all eligibility requirements were met, whichever was later—benefit payments were prorated for a partial month of eligibility. 20 C.F.R. §§ [404.620](#), [416.330](#). Section 204 of the PRWORA changed the effective date of an SSI application to the first day of the month after the month in which the application is filed and the individual becomes eligible. For example, the first possible payment month for an SSI application filed on September 9, 1996, would be October 1996.

(d) Social Security Application as Application for SSI

The SSA will treat the filing of an application for a Social Security benefit as an oral inquiry about SSI and will utilize that date if an SSI application is filed within sixty days. See [20 C.F.R. § 416.350](#).

(e) Oral or Letter Application (20 C.F.R. §§ [404.630](#), [416.325](#))

If an applicant writes or inquires orally about SSI, the SSA will mail a notice explaining the right to apply, and, if an application is completed within sixty days,

the date of the initial inquiry is considered the application date. This is known as a “protective filing date.

(f) Failure to Cooperate

If an applicant refuses permission to verify the contents of the application, the SSA can withhold further action for “failure to cooperate. See Failure to Cooperate, POMS DI 40105.040.

(g) Misinformation by the SSA (20 C.F.R. §§ [404.633](#), [416.325\(b\)\(3\)](#))

If a claimant can show that misinformation from the SSA resulted in late filing, the claimant may be considered to have applied on the date of the misinformation or the date all eligibility criteria are met, whichever is later. It is important that the claimant have the name of the SSA worker and the date of contact with the SSA in order to prove a misinformation allegation. In fact, it is always good practice to keep a log of with whom and when the applicant spoke during an SSA contact.

(h) Necessary Documents

The SSA will request various documents to verify evidence of eligibility. These documents include the following:

- an SSN;
- proof of age;
- proof of citizenship or alien status;
- wage stubs or other evidence of the source and amount of earned income;
- proof of resources, such as bank statements or car registration; and
- names and addresses of doctors, hospitals, or clinics where treatments were received.

However, it is important to apply as soon as possible to protect the filing date. Any missing documentation can be supplied later.

(i) Applicant’s Rights

SSI applicants have the right to apply for SSI benefits regardless of whether the SSA believes they will be found eligible. See 20 C.F.R. §§ [416.305](#), [404.603](#). They also have the right to be informed of all SSA-administered benefits they might eligible for and to be assisted in developing evidence to meet the eligibility criteria.

If the applicant is unable to effectively communicate in English, the SSA is required to provide an interpreter at no expense to the applicant in order to assist the applicant in completing business transactions with the SSA. See Special Interviewing Situations (Non-English Speaking or Limited English Proficiency), POMS GN 00203.011; Special Interviewing Situations (Deaf and Hard-of-Hearing

Individuals), POMS GN 00203.012. Interpreters can be provided for all SSA interactions and at all levels of administrative appeal upon request by the applicant. **See the immigrant section of SSA’s website for more information on SSA’s interpreter policy and information in languages other than English.** www.socialsecurity.gov/immigration/

(j) Other Benefits ([20 C.F.R. § 416.210](#))

As noted above, SSI is a needs-based federal welfare program. As such, an applicant or recipient must seek assistance from any other program for which the applicant may be eligible before seeking assistance from the SSI program. For instance, a disabled worker must seek workers compensation benefits, SSDI benefits, or any other non-needs-based benefit, if potential eligibility exists, prior to applying for SSI. The SSA will inform the SSI applicant of all other benefits that could potentially assist the applicant. Applicants (or recipients) who fail, without good cause, to apply for any and all other benefits for which they may be eligible will be denied SSI.

(k) Quick Disability Determination (QDD)

The Quick Disability Determination process began as part of the Disability Service Improvement (DSI) initiative in the Boston region but has been expanded nationwide. See [72 Fed. Reg. 51173](#) (9/6/07). The purpose of QDD is to make a quick decision in obvious cases. SSA uses criteria ‘highly predictive’ of disability to determine which cases are selected for QDD consideration. Criteria may include medical history, treatment, and the availability of medical evidence - not necessarily specific impairments. Selection for QDD processing is done by SSA, based on the information in the application. SSA will not entertain requests from advocates and claimants to have claims designated as QDD.

Note that QDD does not replace other mechanisms for expedited claim processing such as presumptive disability (see §1.10 in this outline) and the provisions for terminal illness (TERI) cases (see POMS DI 23020.045).

§ 1.6.2 Appeals Process Overview

The SSA has developed a three-step administrative determination and appeal process. 20 C.F.R. §§ [404.900](#), [416.1400](#). This process applies to most determinations, e.g., decisions about eligibility, benefit amounts, overpayments, disability determinations, etc. There must be an application before appeal rights attach. In other cases, there must be an “initial determination” before appeals rights attach. 20 C.F.R. §§ [404.902](#) - .903, [416.1402](#) - .1403.

NOTE: A different appeals process is in effect for disability cases based on applications filed in an SSA Region 1 state (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) on or after 8/1/06. The new process, known as Disability Service Improvements (DSI), applies only to initial disability cases. It does not apply to CDRs or age-18 reviews. It also does not apply to any type of non-disability case.

In December 2009 SSA published proposed regulations that would eliminate DSI and return to the prior administrative process (still used in all but the New England states). The notice and comment period has passed. The next steps are for SSA to review the comments, decide whether to revise its proposal, and then publish final regulations. Until then, the DSI pilot will continue in the New England states.

(a) Time

All appeals must be filed within sixty days from the date of receipt of the notice of the decision. The SSA presumes that notices are received within five days of the date of the notice. See 20 C.F.R. §§ [404.901](#), [416.1401](#). This means that appeals must be filed with sixty-five days of the date of the notice. However, the five-day mailing presumption can be overcome by proof that the notice was received later (this only works if the appeal is filed within sixty days of the actual receipt of the notice).

Otherwise, failure to file an appeal within sixty-five days of the date of the notice prohibits further review of the case, unless the SSA determines that there is “good cause” for failing to appeal on time. Good cause is generally a reason that would prevent a person from attending to important business, e.g., serious illness or death in the family. See 20 C.F.R. §§ [404.911](#), [416.1411](#). The SSA must also consider the effect of any mental, physical, educational, or linguistic limitations on the individual’s ability to timely file and find good cause in situations where an individual’s ability to comply with the appeal process has been compromised by any of these, or similar, factors. 20 C.F.R. §§ [404.911\(a\)\(4\)](#), [416.1411\(a\)\(4\)](#). [SSR 91-5p—Policy Interpretation Ruling—Titles II and XVI—Mental Incapacity and Good Cause for Missing the Deadline to Request Review](#), [SSR 95-1p—Policy Interpretation Ruling—Titles II and XVI—Finding Good Cause for Missing the Deadline to Request Administrative Review Due to Statements in the Notice of Initial or Reconsideration Determination Concerning the Right to Request Administrative Review and the Option to File a New Application](#).

(b) Appeal Form

The SSA provides specific forms for each level of appeal. These forms are available at the SSA district offices. The forms are:

- [Request for Reconsideration](#) - used to appeal an initial determination.
- *Federal Reviewing Official* – Used until 3/23/08 to appeal an initial disability determination in SSA Region 1 states (Mass, Maine, N.H., R.I., Conn. VT) for applications filed on or after 8/1/2006. After 3/23/08, the SSA Region 1 states reverted to Reconsideration, except in New Hampshire, where initial disability denials go to the ALJ level of appeal.
- [Request for Hearing](#) - Used to appeal a reconsidered determination and bring the issue before an administrative law judge (ALJ). **Note that, in the SSA Region 1 states, there are restrictive evidence submission**

rules in place for disability cases for applications filed on or after 8/1/2006. See [20 CFR 405.331](#).

- [Request for Review of the Hearing Decision](#)-Used to appeal an ALJ's decision and bring the issue before the appeals council. **Note that, the Appeal Council is not used in the SSA Region 1 states, for disability applications filed on or after 8/1/2006.** See 20 CFR § 405.401 et seq, and the separate memo on Disability Service Improvements (DSI).

Practice Note

These, and many other SSA forms, are available on the SSA's website at www.ssa.gov/online/forms.html.

Each form is a one-page, multicopy document that is very simple to complete. However, a timely appeal can be made with any clear written request before the appeal time runs. A letter indicating that a claimant wishes to appeal the denial of benefits received by the SSA during the appeal period will suffice to protect the claimant's appeal rights. The Social Security Act requires the claimant to complete the appropriate form. However, appeal rights will already have been preserved.

§ 1.6.3 Initial Determinations

(a) Disability Determinations

Disability determinations are made by the state Disability Determination Services (DDS). Once the application is complete, the district office mails the entire file to the DDS for evidence development, evidence review, and a decision. The DDS may contact the applicant and the applicant's doctors or lay sources of evidence for more information. The applicant may also be scheduled for consultative examinations to provide missing medical evidence or to resolve conflicts in the evidence. It is in the best interest of the claimant to attempt to provide all available medical and lay evidence as early in the determination process as possible. Advocates and claimants should make efforts to collect existing medical evidence from treating sources, emergency rooms, clinics, etc., and to provide this information to the DDS claims examiner for consideration.

Massachusetts law requires that existing medical evidence be provided to a claimant or claimant's advocate free of charge when requested in conjunction with an application for SSDI, SSI, or other needs-based benefit. See [G.L. c. 111, § 70 \(hospitals, clinics\); G.L. c. 112, § 12CC \(physicians\)](#).

Existing medical evidence includes doctor's notes, nurse's notes, hospital charts, and anything else that was in existence at the time of the request for medical information and was not prepared specifically in response to that request. The law does not require medical providers to write letters or fill out forms for no charge, although many will do so.

Once a decision has been made, DDS mails the entire file back to the district office. The applicant receives a notice explaining the decision and appeal rights. If the applicant is not satisfied with the decision, he or she may file an appeal

called a [Request for Reconsideration](#). This form asks for a reason for the claimant's appeal. A simple statement indicating that the claimant is disabled or that he or she disagrees with the decision will be sufficient for purposes of completing the form.

(b) Other SSI Eligibility Determinations

Nondisability determinations (e.g., financial, residence, citizenship, overpayments) are made at the district office. District office staff develops the evidence, make the decision, and send the notice explaining the decision and the applicant's right to file a request for reconsideration.

(c) Termination of Benefits and Benefits Pending Appeal

If the initial decision concerns the termination, reduction, or suspension of SSI benefits, the recipient shall receive continuing benefits pending the reconsideration decision if he or she files the appeal within ten days of receipt of the notice. See [20 C.F.R. § 416.1336\(b\)](#).

If the initial decision concerns the termination of SSI or SSDI for medical reasons after a continuing disability review, the recipient may elect continuing benefits pending the reconsideration decision if he or she files the appeal within ten days of receipt of the termination notice. 20 C.F.R. §§ [404.1597a](#), [416.996](#).

The five-day mailing rule and the good cause for late filing rules apply to both of these ten-day rules. See Due Process Requirements—Title XVI, POMS DI 40515.010 (1992); Time Limit for Electing Benefit Continuation—Title II/Title XVI, POMS DI 12027.010 (1995).

§ 1.6.4 Reconsideration and Federal Reviewing Official

Reconsideration is the first step in the administrative appeal process. The format of the appeal varies with the type of decision.

(a) Disability Determination for applications filed prior to 8/1/06

If the decision concerns whether or not the applicant meets the disability or blindness criteria, the applicant will be asked to file new information about his or her disability along with the appeal. The entire file will then be sent back to DDS, where different staff will take another look at the case and develop and evaluate any new information supplied by the applicant. It is likely that a consultative examination will be scheduled at this stage of the appeal process should the file evidence be lacking or contradictory. Once new evidence has been gathered and developed DDS will make a new decision and return the file to the district office. A new notice will be sent to the applicant explaining the decision and the appeal rights. If the applicant is not satisfied with decision, he or she may file a [Request for Hearing](#).

(b) Disability Determinations for applications filed on or after 8/1/06. **Note that this is no longer relevant because the SSA Commissioner suspended

use of the FedRO after 3/08 in favor of reinstating Reconsideration.

For SSI disability and SSDI benefit applications filed on or after 8/1/06, the appeal after an initial denial is to the Federal Reviewing Officer. The appeal period is 60 days from the date of receipt of the initial denial notice. The appeal form is SSA-61, available on SSA's website in Forms or at district offices. Federal Reviewing Officers are attorneys and are located in Falls Church Virginia. Their role is to review the DDS determination, ensure that the record is developed for decision, and make a new decision. If the Federal Reviewing Officer denies the

(c) Other SSI Eligibility Determinations

When the decision involves SSI nondisability eligibility criteria, the appeal stays in the district office. The applicant may supply new evidence and may request a formal or informal conference at the district office. 20 C.F.R. § 416.1413. The conferences are opportunities to have the SSA explain the decision in person and to present opposing views. The difference between formal and informal conferences is basically that subpoenas may be used in formal conferences. If a conference is not requested, the district office staff will review the decision and all the evidence, including any new evidence. After the district office makes a decision, a new notice will be sent to the applicant explaining the decision and the right to file a *Request for Hearing*.

(d) Special Appeals Process for Disability Terminations

If the initial decision concerns a termination of disability or blindness benefits for medical reasons (i.e., a decision finding the recipient no longer disabled because the medical evidence shows that he or she has medically improved to the point where he or she can work), the recipient has a right to a face-to-face hearing at the reconsideration level. See 20 C.F.R. §§ [404.914](#), [416.1414](#). The hearing will be automatically scheduled if the case cannot be allowed on file review only. It is important to attend these hearings because testimony from the individual is important to many types of cases and many recipients win at these hearings.

These hearings are conducted by DDS hearing officers. The DDS will issue a reconsidered decision explaining the decision and the recipient's right to request a further appeal. If the DDS hearing decision upholds the termination, the recipient is still entitled to a de novo hearing before an ALJ. The recipients may also request continuing benefits pending appeal if they file the next appeal with ten days of the date of receipt of the DSS hearing notice and request continuing benefits. See 20 C.F.R. §§ [404.1597a](#), [416.996](#).

§ 1.6.5 Administrative Law Judge Hearing (20 C.F.R. §§ [404.929](#) - .961, [416.1429](#) - .1442).

The ALJ hearing step of the administrative appeal process is probably the most important appeal stage in that the highest reversal of unfavorable decisions occurs here. This is the only step in the administrative review process where the

decision maker sees and speaks with the applicant. Well over 50 percent of the cases appealed to this stage will be reversed. The hearings are de novo and are conducted by independent ALJs at the Office Disability Adjudication and Review (ODAR). The ALJ will review all the evidence, including any new evidence submitted, and take testimony from the applicant or recipient and any witnesses called by the applicant or recipient. See 20 C.F.R. §§ [404.929](#), [416.1429](#).

The ALJ may schedule a medical expert or vocational expert to provide opinions on medical or vocational issues. If present at the hearing, they will review the record, listen to testimony, and respond to the ALJ's questions. The ALJ will pose hypothetical questions to the vocational expert concerning the claimant's capacity for work. The claimant's advocate has the right to cross-examine the medical expert and the vocational expert. When the record is closed, the ALJ will then make a new decision and issue a notice explaining the decision and the right to appeal to the appeals council.

Depending upon the location, it can take twelve months or more to get an ALJ hearing date scheduled (from the date a request is filed). The SSI applicant or recipient will be notified at least twenty days prior to hearing of the date of the time and location of the scheduled hearing. See 20 C.F.R. §§ [404.938](#), [416.1438](#). The notice will also indicate whether experts will be in attendance and will include a general statement of the issue to be decided. If additional evidence is to be submitted, it is best to submit it as far in advance of the hearing as possible. As always, it is wise to keep copies of everything submitted to the SSA.

Memoranda outlining a claimant's case and providing relevant regulations and SSA policies may assist in explaining a claim to the ALJ. Memos should be submitted at, or prior to, the hearing. However, when experts are involved, it may be impossible to address all issues prior to the hearing. In this event, a request for time to provide a memo, or supplemental memo, will generally be granted.

Remember that the SSA must provide interpreters at hearings for individuals who do not speak English or who have limited English proficiency.

DSI Case Issues at the ALJ Level

Where DSI applies, the following are among the differences at the ALJ level.

* The *DSI advance notice requirement* is 75 days. 20 C.F.R §§ 405.315(a), 405.316.

* *DSI Objections as to time and place of hearing* must be made within 30 days after receipt of the hearing notice. 20 C.F.R. § 405.317(a).

* *DSI Objections to issues in the hearing notice* must be made at least 5 business days in advance of the hearing. 20 C.F.R. § 405.317(b). Note that the issues before the ALJ include all issues raised by the claim, regardless of whether the issues have already been decided in the claimants favor. ALJs may consider new issues at any time after sending out the notice of hearing and before sending out the notice of decision - as long as the ALJ provides the

claimant with an opportunity to address it. 20 C.F.R. § 405.325.

* *DSI ALJ Evidence submission* - 20 C.F.R. § 405.331.

- a. Evidence must be filed at least 5 business days prior to the hearing.
- b. ALJs may accept and consider new evidence filed less than 5 days prior to the hearing or at the hearing if:
 - i. SSA action mislead the claimant, or
 - ii. Claimant has physical, mental, educational or linguistic limitations, or
 - iii. Some other unusual, unexpected or unavoidable circumstance beyond the claimants control prevented earlier filing.
- c. The ALJ will accept and consider new evidence after the hearing but before the hearing decision if:
 - i. One of the three exceptions in 5.b. above applies, and
 - ii. There is a reasonable probability that the evidence, when considered alone or with the other evidence would affect the outcome.
- d. The ALJ will consider new evidence after the ALJ decision if:
 - i. One of the three exceptions in 5.b. above applies, and
 - ii. There is a reasonable probability that the evidence, when considered alone or with the other evidence of record would change the outcome, and
 - iii. If submitted within 30 days of receiving the ALJ decision.
- e. The claimant may ask the ALJ to hold the record open at the hearing. The ALJ may hold the record open if
 - i. the claimant is aware of additional evidence which she has been unable to obtain prior to the hearing, or
 - ii. the claimant is scheduled to undergo medical evaluation.
- f. Adverse Evidence - 20 C.F.R. §§ 405.1512(2), 416.912(c)

The final regulations did not include the requirement that appeared in the proposed regulations requiring submission of adverse evidence. The final regulations require the claimant to produce evidence, without redaction, showing the affect of their impairments. Note, however, other regulations that provide for penalties for failure to disclose material evidence.

* *DSI Pre and post Hearing conferences* - 20 C.F.R. §§ 405.330, .366.

ALJs may hold, at the claimants request or on the ALJs own initiative, pre or post hearing conferences. Such conferences will usually be held by telephone and a record will be made.

* *DSI Reopening*. 20 C.F.R. §405.601.

-Prior to the ALJ decision, these rules apply - 20 C.F.R. §§ 404.988, 416.1488.

-After the ALJ decision, reopening is limited to 6 months from the date of the final decision. SSA will not use new and material evidence as a good

cause reason after the ALJ decision has been made.

Video Teleconferencing of Hearings Video Teleconferencing of Hearings

On March 5, 2003, regulations went into effect authorizing SSA to conduct hearings before ALJs at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by video teleconferencing (VTC). Under the new rules, claimants may veto the use of VTC for their own testimony. Claimants may object to, but not veto, the use of VTC for the testimony of vocational experts or medical experts. SSA notes that 40% of hearings are held at remote sites. SSA expects these revisions to permit greater flexibility in scheduling and holding hearings, improve hearing process efficiency, and extend another service delivery option to individuals requesting a hearing. See 20 C.F.R. §§ [404.936](#), [416.1436](#). For DSI cases, see 20 C.F.R. § 405.315.

Representation

While there is no requirement that a claimant be represented before the SSA, it is most beneficial to seek the assistance of an advocate or attorney when a case reaches the administrative hearing level. The assistance of a knowledgeable advocate can greatly enhance the chances of success.

Representation is regulated by the SSA. Attorneys are allowed to charge a fee for services; however, all fees must first be approved by the SSA. See 20 C.F.R. §§ [404.1728](#), [416.1520](#). Fees are generally limited to 25 percent of the retroactive benefit. There is no provision for withholding attorney fees from retroactive SSI awards for direct payment to the attorney. It is the responsibility of the represented individual to then pay the fee. Fees for nonattorney representation also can be approved by the SSA.

Any award of fees to an attorney or advocate will come with notice to the representative and claimant. Both parties can appeal awards using the SSA administrative process. See 20 C.F.R. §§ [404.1720\(d\)](#), [416.1520\(d\)](#).

Practice Note

The SSA website at www.ssa.gov/representation includes a gateway page called "Representing Clients," which includes information about the attorney fee rules.

§ 1.6.6 Appeals Council and Disability Review Board.

(a) Appeals Council

Note: Appeals Council level of appeal does not apply to disability applications filed on or after 8/1/06 in the Region 1 states (MA, RI, CT, VT, ME, NH).

The SSI applicant or recipient may request that the appeals council review an ALJ's decision, and new evidence related to the period considered by the ALJ may be submitted. This is last step in the administrative appeal process. Most requests for review are denied. If review is granted, the appeals council may uphold the decision, reverse the decision, or remand the case to the ALJ for further proceedings. See 20 C.F.R. §§ [404.969](#), [416.1467](#). To make these decisions, the appeals council will review the ALJ decision and the evidence of record. After making a decision, the appeals council will issue a notice explaining the decision and the right to appeal to federal court.

It is also possible for the appeals council to take its own motion review of an ALJ decision within sixty days of the date of the decision. See 20 C.F.R. §§ [404.969](#), [416.1469](#). Should this occur, the applicant will be provided with notice and an opportunity to submit further information for the appeals council's consideration. Interim benefits are available to the claimant, if the appeals council takes its "own motion" review and if a final decision has not been made within 110 days of the date of the decision that is being reviewed. See 20 C.F.R. §§ [404.969\(d\)](#), [416.1469\(d\)](#).

The appeals council takes the position that a claimant's request for review opens the entire ALJ decision to review and not only those issues challenged by the claimant. For example, should an ALJ award benefits but with an unfavorable onset date, the appeal filed by the claimant will be viewed by the appeals council as giving that body the ability to review the entire decision.

Further, the appeals council also takes the position that it can access the reopening regulations to the same extent as can a claimant. This means that if the appeals council disagrees with an ALJ decision but fails to take own motion review within the required number of days, it will try to apply the reopening rules at 20 C.F.R. §§ [404.987](#)-.989 and [416.1487](#)-.1489 to reopen and revise the decision. This may conflict with First Circuit law and remains something of an open question. See *McCuin v. Secretary*, [817F.2d 161](#) (1st Cir. 1987).

(b) Disability Review Board

Appeals Council review is not available for disability benefit applications filed on or after 8/1/06. Claimants cannot file appeals to the DRB (except on an ALJ dismissal); instead, the DRB will review selected favorable and unfavorable ALJ decisions. If the DRB decides to review a decision, it will send notice of the review along with the ALJ decision. A favorable ALJ decision will not be implemented until this review is complete. IF the DRB does not make a decision

within 90 days, the individual has the right to file an appeal in Federal District court. See the separate set of materials on DSI for more information on the DRB.

§ 1.6.7 Federal Court Review

The appeals council decision is the final administrative decision of the SSA. Claimants may file a complaint for judicial review with the United States District Court within sixty days of the receipt of the denial notice from the appeals council. See [42 U.S.C. § 405\(g\)](#); 20 C.F.R. §§ [404.981](#), [416.1481](#).

The federal courts' jurisdiction is limited to reviewing the decision and the record developed in the administrative appeals process to determine whether the decision is based on errors of law or is contrary to substantial evidence of record. The court will not take testimony and will consider new evidence only in very limited circumstances. See *Evangelista v. Secretary HHS*, [826 F.2d 136](#) (1st Cir. 1987).

The court may, but rarely does, hear oral argument on the parties' motions for judgment. The court may uphold the decision of the SSA or reverse it, with or without remanding the case to the SSA for further administrative proceedings.

The Equal Access to Justice Act (EAJA), [42 U.S.C. § 2412](#), provides for attorney fees in cases in which the plaintiff is the "prevailing party" and in which the SSA was not "substantially justified" in defending the earlier decision. Awards of fees are not uncommon.

Practice Note

Despite the holding in *Sims v. Apfel*, [520 U.S. 103](#) (2000), finding that issue preclusion does not apply to issues not raised by claimants at the Appeals Council, the First Circuit Court of Appeals has held that issue preclusion does apply to issues not raised before the ALJ. See *Mills v. Apfel*, [244 F.3d 1](#) (1st Cir. 2001), *cert. denied*, 122 S. Ct. 822. *Mills* involves three issues of first impression in the First Circuit Court of Appeals that all advocates need to be aware of, and need to be prepared to address, in the administrative appeals process or in federal court. In *Mills*, the First Circuit held that:

- when the appeals council refuses review, a reviewing court must review the ALJ decision solely on the evidence presented to the ALJ;
- appeals council refusals to review are reviewable by the federal courts on the grounds of "egregious error/explicit mistake"; and
- issues not raised before the ALJ, at least where the appeals council refuses review the ALJ decision, are waived and may not be considered by the reviewing court.

§ 1.7 DISABILITY STANDARD FOR ADULTS

The SSA uses the same adult disability standard for SSI and the SSDI programs. The standard for eligibility based on blindness is also the same in both programs.

§ 1.7.1 Blindness

Blindness has been specifically defined as central visual acuity of 20/200 or less in the better eye with corrective lenses, or a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty degrees. 20 C.F.R. §§ [404.1581](#), [416.981](#). Individuals with vision impairments who do not meet the specific blindness standard can be considered for eligibility based on disability.

Practice Note

It is important to consider eligibility based on blindness for individuals with vision impairments because there are several advantages to establishing eligibility on this basis. SSI recipients who are eligible on the basis of blindness have a higher maximum benefit rate than individuals eligible on the basis of disability and are eligible for a wider range of earned income deductions. Also, for both SSI and SSDI benefits recipients, the level of income that constitutes substantial gainful activity is much higher for individuals eligible on the basis of blindness than for those eligible on the basis of disability. This is especially important for those eligible for SSDI benefits. See the discussion on Work Incentive Programs in § 1.11, Posteligibility Issues, below.

**** Note that, SSA must provide notices in alternative formats to individuals who are blind, pursuant to a decision on 10/20/09 in American Council of the Blind v. SSA. The case is a nation wide class action brought under Section 504 of the Rehab Act and decided by the Federal District Court for Northern California. Although there a number of different implementation timelines, generally, SSA must provide notice in alternative formats beginning 4.15.10.**

§ 1.7.2 Definition of Disability for Adults

The definition of disability is the inability to engage in any substantial gainful activity by reason of medically determinable physical or mental impairments that can be expected to last for a continuous period of not less than twelve months or result in death. The medically determinable impairment or combination of impairments must result in functional limitations of a severity that prevent work. See 20 C.F.R. §§ [404.1505](#), [416.905](#).

The SSA has developed a five-step sequential analysis to determine disability under this standard. See 20 C.F.R. §§ [404.1520](#), [416.920](#):

- **Step 1:** Is the individual engaging in substantial gainful activity (SGA)? If

yes, the claim is denied. If no, the claim proceeds to Step 2.

- **Step 2:** Does the individual have a severe impairment? If no, the claim is denied. If yes, the claim proceeds to Step 3.
- **Step 3:** Does the individual have an impairment that meets or equals the severity of a listed impairment? If yes, the claim is allowed. If no, the claim proceeds to Step 4.
- **Step 4:** Does the individual have the residual functional capacity (RFC) to perform his or her past relevant work, generally, work performed in the last fifteen years? If yes, the claim is denied. If no, the claim proceeds to Step 5.
- **Step 5:** Does the individual have the RFC to perform any other work that exists in significant numbers in the regional or national economy? The SSA considers factors such as the applicant's age, education, work history (skilled or unskilled), and ability to communicate in English when determining if there is other work the claimant can perform. If no, the claim is allowed. If yes, the claim is denied.

Each step in the sequential analysis of disability is explained in more detail below. Some of the most important regulations, social security rulings, and federal case citations are included. However, additional research, as well as extensive fact development, will be needed in every individual case. The sequential analysis provides a road map to the factual and legal argument development needed.

§ 1.8 POSTELIGIBILITY ISSUES

§ 1.8.1 Retroactive Benefits

Individuals determined concurrently eligible for SSI and RSI benefits will not receive full retroactive awards of both benefits. Instead, the SSA will use the "windfall offset" provisions to reduce the retroactive award of the benefit paid last by the amount of the benefit paid first. See 20 C.F.R. §§ [404.408b](#), [416.1123\(d\)](#); The Windfall Offset Provision, POMS SI 02006.001.

(a) Retroactive RSI Benefits

RSI benefits may be paid retroactively for a period of up to 6 months prior to the date of application. See 20 C.F.R. § [404.621](#).

SSDI benefits are payable up to one year prior to the date of application. 20 C.F.R. § [404.621\(a\)](#). Benefits are not payable for five full calendar months after the onset of disability, unless the individual is applying for a second period of eligibility within sixty months of the ending of a prior period of eligibility. This is called the five-month waiting period. See [42 U.S.C. § 423\(a\)](#); 20 C.F.R. § [404.320](#); Waiting Period for DIB, POMS DI 10105.070-.075(A) (1990). When determining disability in these cases, the SSA will determine the actual date of

disability onset. When the five-month waiting period applies, the earliest possible payment month is the sixth full month following disability onset, but only if that month is within one year of the date of application.

(b) Retroactive SSI Benefits

SSI benefits are payable back to the month after the month of application. See [20 C.F.R. § 416.335](#).

In Massachusetts, SSI applicants who received the state benefit, Emergency Aid to Elders, Disabled and Children ([EAEDC](#)), may see their retroactive award of SSI reduced by the amount of “interim assistance,” i.e., EAEDC, received while the SSI application was pending. This is because the SSA and Massachusetts have entered into an “interim assistance reimbursement agreement, which permits, under certain conditions, the SSA to reimburse the state for interim assistance from an individual’s retroactive SSI award. See 20 C.F.R. §§ [416.1901](#) - .1922. EAEDC recipients who appear to meet the SSI disability definition must apply for SSI as a condition of eligibility. See [106 C.M.R. § 320.200\(B\)](#).

The state welfare agency, the Department of Transitional Assistance ([DTA](#)), must obtain the recipient’s signature on an interim assistance reimbursement (IAR) form (AP-SSI-1), which permits the SSA to reimburse the state. IAR cannot occur unless a current and valid IAR authorization form covers the application period. See Interim Assistance (IA), POMS SI 02003.001(3)(c). Individuals are entitled to notice from the SSA that their retroactive SSI check was sent to the state and a notice from DTA that includes a month-by-month accounting of the amount of the reimbursement. Recipients should file an appeal with the SSA if the SSA did not follow correct procedures and with the DTA if the reimbursement amount is incorrect. See IA Appeals, POMS SI 02003.045.

SSI recipients have nine months, effective for payments received on or after 3/2/04 (20 C.F.R. [§ 416.1235](#), as amended by § 431, Pub.L.No.108-203 (3/2/04)) to spend down retroactive awards of SSI or SSDI benefits before those benefits count toward countable resources. The exclusion period for underpayments received prior to 3/2/04 was six months. However, for the exclusion to apply, **the retroactive funds must be identifiable from other funds**. Generally, this will mean that the retroactive funds must be held in a separate account until spent down. See [20 C.F.R. § 416.1233](#). Recipients should keep receipts to verify that the funds have been spent and on what, i.e., not on countable resources.

§ 1.8.2 Installment Payments for Large SSI Retroactive Awards ([20 C.F.R. § 416.545](#))

Effective for past-due benefits paid on or after May 22, 2006, or later, § 7502 of the Deficit Reduction Act of 2005, ([P.L. 109-171](#)), enacted February 8, 2006, changes the installment formula for SSI past due benefits. The new law requires that past-due SSI benefits that exceed three times the maximum monthly SSI benefit (federal benefit plus state Supplement, if any) be paid in up to three installments, six months apart. The amount of the first two installments is limited

to three times the maximum monthly SSI benefit. All remaining benefits will be paid in the third installment. There are hardship provisions allowing for an increase in the installment payments if the recipient has debts or current or anticipated expenses related to food, shelter, or medically necessary services, supplies, equipment or medicine. See POMS SI 02101.020.

The original installment formula, created by Section 221 of the PRWORA (1996), required that retroactive SSI benefits exceeding twelve times the maximum benefit payable be paid in up to three installments at six-month intervals.

Each installment payment is exempt from SSI resource counting for nine months, pursuant to [20 C.F.R. § 416.1210](#), as long as the rules in [20 C.F.R. § 416.1233](#) are followed. See Installment Payments of Large Past-Due Benefits Individual Alive, POMS SI 02101.020(C)(2) .

§ 1.8.4 SSI and SSDI Recipient Reporting Responsibilities

Benefit recipients must report to the SSA any change that may affect benefit eligibility and payment amount. SSI recipients have the greater reporting burden because there are more eligibility criteria and many circumstances that affect payment amount. At this writing, the SSA, spurred by Congress, is focusing on fraud, making reporting an especially important issue for recipients. Do not assume that benefit recipients understand the rules and their responsibilities for their benefits. Many have had a lot of information thrown at them during the application process a very stressful time for most—and may not even be aware that they missed something or do not understand. Due to the SSA staff reductions, most will have had little or no opportunity for further meaningful contact with the SSA about their rights and responsibilities. People with cognitive limits, mental impairments, or limited proficiency in English are especially vulnerable.

(a) *What to Report*

All benefit recipients must report any change in circumstances that may affect their eligibility. SSI recipients have the most to report. The required reports for SSI recipients include, but are not limited to:

- changes in address or living arrangements;
- changes in income or resources;
- changes in marital status;
- admission to or discharge from an institution, jail, prison, or health-care facility;
- eligibility for other benefits;
- death of a spouse or anyone in household; and

- departure from the U.S.

See 20 C.F.R. §§ [416.704](#), [416.708](#).

These reporting duties also apply to representative payees. See 20 C.F.R. §§ [416.635](#), [404.2035](#). See Reporting Instructions Title II Claims, POMS GN 00203.005 for SSDI reporting issues.

Practice Note

Recipients should endeavor to ensure that there is a record of any reports they make. The best way to do this is to make each report in writing and either mail it certified mail, return receipt requested or bring the writing to a SSA District Office and request a receipt. The SSA can easily provide a receipt by using the SSA Report of Contact form. This is a blank form on which the SSA employee taking the report can note what has been reported and the date and provide a copy to the recipient. Recipients should always keep copies of anything submitted to the SSA and file the copies in a place where they can be retrieved. If information is received over the telephone, the recipient should keep a written record of the date and time of the conversation, the name of the SSA employee, the phone number used, and what was said.

(b) When to Report

Changes in circumstances must be reported within ten days after the end of the month in which the event happens. See [20 C.F.R. § 416.714](#). Failure to report correct information may lead to an overpayment of benefits.

§ 1.8.5 Effect of Residence in an Institution

(a) SSI Benefits

Generally, an SSI recipient who enters any public institution or facility that provides food, shelter, and treatment or services and who remains for a full calendar month is ineligible for SSI. See [20 C.F.R. § 416.1325](#). However, recipients who enter medical institutions may continue to receive their full benefits for up to three months if a doctor certifies that the stay is not likely to exceed three months, and if the recipient needs the money to maintain a living arrangement outside the hospital. See Temporary Institutionalization (TI) Benefits, POMS SI 00520.140(B)(5), (6). When living in an institution results in SSI ineligibility, benefits are suspended, rather than terminated. See [20 C.F.R. § 416.1325](#). Unless suspense status continues for twelve continuous months, benefits may be reinstated when the claimant shows that he or she has left the institution. See [20 C.F.R. § 416.1335](#).

(c) SSDI

SSDI benefit recipients can continue to receive their benefits while in a public institution, unless they are confined by court order in connection with a crime punishable by a sentence of one year or more. See Title II Prisoner and Other

Inmate Suspension Provisions, POMS GN 02607.001. This rule took effect as of March 1995. The effect is to create ineligibility for SSDI beneficiaries for any month in which they are confined at public expense to a correctional facility for conviction of a crime punishable by imprisonment for more than one year or to a mental health facility by reason of a verdict of not guilty by reason of insanity or a finding that the individual is incompetent to stand trial in connection with such a crime. See [42 U.S.C. § 402\(x\)](#).

Dependents of the confined wage earner may continue to receive their benefits. Once the individual is no longer confined at public expense, benefits may be reinstated. This includes individuals released to spend the duration of their sentence in the community, e.g., with electronic monitoring. See Title II Prisoner and Other Inmate Suspension Provisions, POMS GN 02607.001 .

§ 1.8.6 SSI and SSDI Ineligibility for “Fugitive Felons and Probation and Parole Violators

****Note that [a settlement](#) in *Martinez v. Astrue*, a nationwide class action challenging SSA’s policies of suspending SSI and Social Security Insurance because of outstanding warrants without a finding of intent to flee, has made some changes in how these policies apply, as follows:**

- 1. SSA stopped, effective 4/1/09, suspending benefits for other than a) warrants for probation or parole violations, and b) warrants with code 4901, 4902, 4999, which are issued for flight or escape. See [EM 09025](#), 4/1/09.**
- 2. The Martinez settlement does not apply to warrants for probation and parole violations because the statute clearly does not require intent for benefit suspensions for those warrants.**
- 3. Those whose benefits were suspended or denied on or after January 1, 2007, or who received an administrative appeal decision after January 1, 2007, and those with a live administrative claim on 8/11/08, who continue to be otherwise eligible, will receive be reinstated with retroactive benefits without having to reapply or undergo a continuing disability review.**
- 4. Those whose benefits were suspended or denied between 2000 and 2006 will be notified and given a chance to re-establish eligibility with a protective filing date of April 1, 2009, if they contact SSA within 6 months of receiving the notice. Any overpayments currently being collected from this group will be forgiven.**
- 5. The settlement did not take full effect until 11/30/09.**

The rules below continue to apply to suspensions based on a) warrants for probation or parole violations, and b) warrant codes 4901, 4902, and 4999.

Section 202(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 140.193 (Aug. 22, 1996), precludes SSI eligibility for applicants and recipients who are

- fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony;
- fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony; or
- violating a condition of probation or parole imposed under federal or state law.

See [42 USC § 1382\(e\)\(4\)](#); 20 C.F.R. §§ [416.202\(f\)](#); [416.708\(o\)](#) and (l), [416.1339](#); Denial of SSI Benefits for Fugitive Felons and Probation and Parole Violators, POMS SI 00501.050 .

An individual who is found ineligible for SSI and benefits may not be suspended for these reasons for any month prior to August 1996. Although individuals are required to report these matters, the SSA will also obtain this information, generally in electronic format, from law enforcement.

Section 203 of the Social Security Protection Act of 2004 (SSPA), Pub.L. No. 108-203 (3/2/04) extended the so-called fleeing felon provisions to Title II benefits, effective January 1, 2005. See [42 USC § 402\(x\)\(1\)\(A\)](#); POMS GN 02613.000 et seq. An individual who is found ineligible for SSDI or another Title II benefit and benefits may not be suspended for these reasons for any month prior to January 2005.

The SSPA also added two categories of **good cause exceptions**, mandatory and discretionary, which apply to both Title XVI & Title II. See [42 USC §§ 1382\(e\)\(4\)](#) and [402\(x\)\(1\)\(B\)](#); Emergency Message (EM) 04080: *Titles II/XVI Fugitive Felon and Probation and Parole Violators Suspension Provisions* (12/28/2004); POMS SI 00530.000 et seq. (SSI), GN 02613.000 et seq. (Title II).

Mandatory Good Cause

The mandatory good cause exception provides that SSA **shall**, for good cause shown, pay the individual benefits that have been withheld or would otherwise be withheld if:

- a court of competent jurisdiction has:
 - (1) found the individual not guilty of criminal offense,
 - (2) dismissed the charges,
 - (3) vacated the warrant for arrest, or
 - (4) issued any similar exonerating order (or taken similar exonerating action); or
- the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud.

Mandatory good cause may be raised at any time.

Discretionary Good Cause

The discretionary good cause exceptions provide that SSA may, for good cause based on mitigating factors, pay the individual benefits if all of the conditions under either of the options below are met:

Option 1:

- The offense or parole or probation violation was nonviolent AND not drug-related; AND
- The claimant attests that s/he was not convicted of or did not plead guilty to another felony since date of warrant; AND
- The law enforcement agency reports it will not extradite or is unwilling to act on warrant.

Option 2:

- The offense or parole or probation violation was nonviolent AND not drug-related; AND
- The claimant attests that s/he was not convicted of or did not plead guilty to another felony since date of warrant; AND
- The warrant is the only existing warrant and is 10 or more years old; AND
- One of following applies:
 - claimant's medical condition impairs his/her mental capacity to resolve warrant; or
 - claimant is "incapable" or "legally incompetent;" or
 - claimant has a rep payee.

Note: To determine whether a crime is violent, SSA uses the criminal justice codes. See POMS GN 02613.900. SSA uses diagnostic codes to determine whether claimant's mental capacity is impaired. See POMS GN 02613.910 for a non-inclusive list.

Good Cause Procedures

Notices. Prior to implementing a fleeing felon suspension of benefits or denial of eligibility, SSA screens fleeing felon cases for good cause criteria. If SSA can establish good cause based on the information it has, then no notice of suspension goes out and benefits continue. If good cause cannot be established, then SSA sends out an advance notice. For Title II beneficiaries, the notice is called Advance Notice of Suspension, GN 02613.960; for SSI recipients, it's a Notice of Planned Action, SI 00530.017. These notices list the good cause criteria that are met and the criteria that need additional documentation.

Keeping Aid Pending Good Cause Determination. To prevent suspension of benefits, SSI recipients must file a Request for Reconsideration appealing the planned suspension, request continued benefits, and request good cause within 10 days of receiving the Notice of Planned Action (5 days for mailing is presumed). SSDI and other Title II beneficiaries must protest within 30 days of receiving the Advance Notice of Suspension. Both SSI and SSDI recipients have 90 days from the date of requesting good cause to provide evidence of good cause. If protests were filed within the specified time periods, benefits will continue during this 90-day period.

Recipients may request good cause after the “aid pending” deadlines, but benefits will be suspended while the determination is being made. While mandatory good cause may be raised at any time, claimants must request discretionary good cause within 12 months of receipt of the Advance Notice of Suspension or Notice of Planned Action.

Practice Note

These benefit suspensions are appealable through the appeals process laid out in 20 C.F.R. sec. [416.1400](#) *et seq.* See POMS 00501.005. In addition, recipients can request appeals and/or waivers of any resulting overpayments. Potential issues for appeal may include factual as well as legal issues. The information SSA receives from law enforcement may be out of date or incorrect, e.g., the matter was resolved but the resolution was not entered into the appropriate database. The information from law enforcement may also not indicate whether the warrant issued on the basis of an appropriate finding that the claimant was fleeing to avoid prosecution, etc., as required by 20 C.F.R. sec. [416.1339\(b\)\(i\)](#). The basis on which warrants issue will vary from state to state. Finally, although the SSA has taken the position that it does not consider intent to flee in determining whether an individual with an outstanding felony-related warrant is a fleeing felon, as would seem to be required in the choice of the words fleeing or fugitive, a number of courts have endorsed the intent requirement. See, e.g., *Fowlkes v. Adamec*, [432 F.3d 90](#) (2nd Cir. 2005); *Hull v. Barnhart*, [336 F.Supp.2d 1113](#) (D.Or. 2004); *Thomas v. Barnhart, No. 03-182-B-W* (D. Me. August 4, 2004); *Blakely v. Commr. Social Security*, [330 F.Supp.2d 910](#) (W.D. Mich. 2004); *Garnes v. Barnhart*, [352 F.Supp.2d 1059](#) (N.D.Cal. 2004).

§ 1.8.7 Representative Payment

Generally, the SSA recognizes that benefit recipients have the right to receive and use their benefits on their own behalf. However, in certain circumstances, the SSA will appoint a representative payee to receive the benefits on behalf of the recipient and to use them in the recipient’s best interest. See 20 C.F.R. §§ [404.2001](#), [416.601](#).

(a) Individuals Who Must Receive Benefits Through a Representative Payee

The following recipients must receive their benefits through a representative payee. Their benefits eligibility will be put in suspense status, and they will not be

paid until a payee is in place. See 20 C.F.R. §§ [404.2010](#), [416.610](#). The SSA is obligated to assist these persons in finding a suitable payee:

- persons adjudicated legally incompetent; and
- minor children under eighteen, although older children may be paid directly if they can show they are capable of handling their benefits in their own best interest.

See 20 C.F.R. §§ [404.2010](#), [416.610](#).

(b) Individuals Whom the SSA May Determine to Require a Representative Payee

The SSA may also individually determine that it is in a recipient's best interest to receive benefits through a payee. See 20 C.F.R. §§ 404.2001(b), 404.2010(a), 404.2015, 416.601(b), 416.610(a), 416.615. These recipients may appeal the determination that they need a payee by presenting evidence that they are mentally or physically capable of managing their own benefits. See 20 C.F.R. §§ 404.902(o), 416.1402(d). Also, if no suitable payee is available, the SSA must pay the recipient directly while continuing to assist the recipient to look for a payee. The SSA may not suspend the benefits of these recipients because they do not have a payee, unless the SSA determines that direct payment would result in substantial harm to the recipient. Even then, the SSA can only suspend payment for thirty days. See *When the Suspension of Benefits is Permitted*, POMS GN 00504.110(D).

Prior to the enactment of the 1994 Reform Act, P. L. No.104-21, individuals whose alcoholism or drug addiction (DAA) was material to the disability determination were required to receive their benefits through a payee. The 1994 Reform Act eliminated benefits eligibility for DAA beneficiaries and created a new class of beneficiaries—those with DAA conditions. A DAA condition exists when a beneficiary has a medically determined substance use disorder that is not material to the disability determination. There is no mandatory payee requirement for DAA condition beneficiaries. Instead, the SSA must determine, on a case-by-case basis, the capability of these beneficiaries, as described above. See POMS GN 00502.020A.4.

(c) Representative Payee Responsibilities (20 C.F.R. §§ 404.2035, 404.2040, 416.635, 416.640)

The obligation of representative payees is to use SSI or Social Security benefits in the best interest of the recipient. This means that a payee must first ensure that basic needs for food, clothing, shelter, medical care, and personal comfort items are met. Payees must also maintain records of their use of the benefits. If funds are held in a bank, they must be kept in a separate account. Payees must also take care that conserved benefit amounts do not result in resource ineligibility for SSI recipients. The SSA requires payees to submit periodic written reports. 20 C.F.R. §§ 404.2035, 416.635; POMS GN 00605.000, et seq.

(d) The SSA Responsibilities (20 C.F.R. §§ 404.2020, et seq.; 20 C.F.R §§ 416.620 et seq.)

Potential payees must file an application to be a payee for a specific recipient. The SSA must investigate potential payees to determine who is best situated to use a recipient's benefits in the recipient's best interest. The SSA considers the relationship of the payee to the recipient, the amount of interest in the beneficiary, and the potential payee's ability to identify the recipient's needs. 20 C.F.R. §§ 404.2020, 416.620. Generally, the SSA may not appoint payees who are creditors of recipients or who have misused benefits in the past. POMS GN 502.001, 502.133, 502.135, 502.136.

If the SSA becomes aware that a payee may be misusing a recipient's benefits, the SSA must investigate the complaint and remove the payee if necessary. Under old regulations, in all cases, the SSA was only required to repay misused benefits if the SSA was negligent in appointing the payee, in failing to respond to complaints of misuse, or in monitoring the payee. 20 C.F.R. §§ 404.204, 416.641; POMS GN 00604.001, 00604.060. The Social Security Protection Act of 2004 has expanded the SSA obligation to repay benefits misused by organizational payees and individual payees serving 15 or more beneficiaries (see (e) below)

(e) Representative Payee Provisions in the Social Security Protection Act of 2004

The Social Security Protection Act of 2004, Pub.L. No. 108-203 (3/2/04), created several important new protections for individuals receiving their benefits through representative payees, including:

- SSA must re-issue Title XVI or Title II benefits determined to have been misused by an organizational representative payee or by an individual payee serving 15 or more beneficiaries. Misuse is defined as conversion of benefits for use by other than the beneficiary. This provision is effective for determinations of misuse made on or after 1/1/95. § 101, Pub.L.No. 108-203. See *Final Rule: Representative Payment Under Titles II, VIII and XVI of the Social Security Act*. 69 Fed. Reg. 60224 (10/7/04) and POMS sections GN 00604.070 and GN 00604.065 (10/04).
- Re-issued benefits will be excluded from countable resources for 9 months. *Id.*
- Non-governmental organizational representative payees must be both licensed and bonded under state law, effective 4/1/05. § 102, Pub.L.No. 108-203.
- SSA must monitor organizational representative payees, including periodic onsite reviews, and report annually to Congress on the results of onsite reviews. *Id.*

- Individuals who have been convicted of an offense resulting in imprisonment of more than one year, or who are fleeing prosecution, custody or confinement are disqualified from serving as representative payees, unless SSA determines otherwise in individual cases. This provision is effective beginning 4/1/05. § 103, Pub.L.No. 108-203.
- Representative payees forfeit their fees for any months during which they are determined to have misused beneficiaries' benefits. This provision is effective for misuse determinations made on or after 8/30/04. § 105, Pub.L.No. 108-203.
- Benefits misused by a nongovernmental representative payee will be treated as overpayments to the representative payee, subject to all SSA's recovery authorities. *Id.* Any misused benefits recovered that had not already been reissued to the beneficiary would returned to the beneficiary, up to the amount misused. This provision is effective for misuse determinations made on or after 8/30/04.
- SSA may redirect benefits to local Social Security offices when representative payees fail to provide annual accountings, effective 8/30/04. § 111, Pub.L. No. 108-203.
- SSA may impose a civil monetary penalty for offenses involving representative payee misuse of Social Security or SSI benefits, effective for violations committed after 3/2/04. § 106, Pub.L. No. 108-203
- SSA must report to Congress on the effectiveness on the representative payee selection criteria and on how benefits are used by representative payees. §§ 103, 107, Pub.L. No. 108-203.

§ 1.9 ELIGIBILITY REDETERMINATIONS

The SSA must periodically redetermine both disability and nondisability eligibility criteria. The fact that the SSA reviews eligibility periodically does not relieve recipients of their reporting responsibilities, as described above.

§ 1.9.1 SSI Nondisability Eligibility Criteria

Depending on the stability of the recipient's situation, nondisability eligibility (income, resources, citizenship, etc.) should be reviewed annually or at least once every three years. 20 C.F.R. § 416.204. Individuals found ineligible due to one of the nondisability criteria are generally put into suspense status rather than terminated. See 20 C.F.R. §§ 416.1321 et seq. When benefit payment is suspended, payments can be resumed when the individual shows that he or she is again eligible, as long as eligibility is regained within twelve months. When suspense status continues for twelve consecutive months, eligibility terminates. 20 C.F.R. § 416.1335. When benefit eligibility terminates, the individual must reapply to regain eligibility.

§ 1.9.2 Continuing Disability Reviews (CDRs)

The SSA must redetermine the disability eligibility of most SSI and SSDI benefit recipients at least every three years. Recipients deemed likely to medically improve may be reviewed more frequently. Recipients deemed permanently disabled will be reviewed less frequently, usually every seven years. For children under age eighteen 42 U.S.C. 421(a)(3)(C)(i)(1) requires a CDR every three years, unless medical improvement is not expected; and by the child's first birthday if SSI eligibility was based on low birth weight. 20 C.F.R. § 416.990. Children turning age eighteen will receive a redetermination of eligibility under the adult disability standard. See § 1.12.7, CDR Review Standard for Children Under Age Eighteen, below.

§ 1.9.3 CDR Standard for Adults

(a) Medical Improvement

The SSA regulations define "medical improvement" as any decrease in the current medical severity of any of the claimant's impairments that were present at the time of the most recent favorable medical decision. 20 C.F.R. §§ 404.1594(b)(1), 416.994(b)(1)(i). To determine whether there has been any decrease in the medical severity of the claimant's impairments, the SSA looks for changes (improvements) in the medical findings (signs, symptoms, and laboratory findings) since the last favorable medical decision. 20 C.F.R. §§ 404.1594(b)(1), 416.994(b)(1)(i). The earlier decision, which can be either an initial disability determination or a continuing disability determination, is known as the comparison point decision (CPD). Unless temporary or truly minor, any favorable change in the medical findings for an impairment present at the time of the CPD will result in a decision that medical improvement has occurred. Nature and Quantity of Change Needed to Find MI, POMS DI 28010.020(A)(1). Medical improvement may be found where one impairment has improved while another has worsened. Comparison of Symptoms, Signs and Laboratory Findings, POMS DI 28010.015.

(b) Medical Improvement Related to the Ability to Work

If the SSA determines that medical improvement has not occurred, the claimant's disability benefits will be continued. If the decision is that medical improvement has occurred, the SSA must then determine whether the medical improvement is related to the claimant's ability to work. 20 C.F.R. §§ 404.1594(c)(4), 416.994(b)(1)(ii). To make this determination, the SSA will consider the claimant's residual functional capacity (RFC).

(c) Medical Improvement Does Not Necessarily Mean Cessation: Current Disability Determination Requirement

A finding of medical improvement related to the ability to work does not necessarily mean the beneficiary's benefits will terminate. In most cases,

unless an exception applies, the SSA must go on to determine whether the claimant is currently disabled using the sequential evaluation of disability. 20 C.F.R. §§ 404.1594(b)(5), 416.994(b)(5). See also § 1.12.8, CDR Sequence of Review for Children, below. In making this determination, the SSA must consider all the claimant's impairments, not just those present at the time of the CPD. 20 C.F.R. §§ 404.1594(b)(5), 416.994(b)(5). The SSA must also develop a complete medical history for at least the preceding twelve months before determining that a disability has ceased. 20 C.F.R. §§ 404.1589, 416.989. Further, claimants whose current impairments prevent them from performing their prior work will receive the benefit of the vocational considerations (age, education, and work experience) when the SSA determines whether they have the functional capacity for other work that exists in significant numbers in the regional or national economy.

§ 1.9.4 Exceptions to the Medical Improvement Standard

The Social Security Act and regulations provide for a number of exceptions to the medical improvement standard. When an exception applies, the SSA may terminate the claimant's disability benefits while skipping portions or all of the medical improvement standard. 42 U.S.C. § 423(f)(2)(A). 20 C.F.R. §§ 404.1594(d), 416.994(b)(3) and (4).

(a) *The First Group of Exceptions*

This is the more important of the two groups of exceptions. These exceptions allow the SSA to skip only the medical improvement portion to the CDR process, i.e., whether there has been any decrease in the medical severity of the impairments. If one of these exceptions applies, the SSA must still show, considering all the claimant's current impairments, that the claimant is now able to perform substantial gainful activity before terminating benefits. 20 C.F.R. §§ 404.1594(d), 416.994(b)(3). These exceptions have been seldom applied.

Substantial Gainful Activity

This exception applies when the claimant is currently engaging in substantial gainful activity (SGA). Whenever the SSA applies this exception, advocates should carefully check whether the SSA has correctly determined that the claimant's work activity meets the definition of SGA. See § 1.8.3, Step 1: Is the Individual Performing Substantial Gainful Activity (SGA)? above.

The SGA exception does not apply at all to SSI recipients. 20 C.F.R. § 416.994(b)(3)(v). An SSI recipient determined to be performing SGA is entitled to benefits under Section 1619(a), the SSI work incentive program, as long as he or she continues to have a disabling impairment. This means that the disability eligibility of SSI recipients cannot be terminated merely for performing SGA, regardless of their earnings. They may be terminated, however, for medical reasons, as the result of a CDR, and they may lose financial eligibility for cash benefits as a result of their earnings.

The SGA exception to the medical improvement standard does apply to SSDI recipients. However, the normal trial work period (TWP) and reentitlement period rules, as well as the SGA rules noted above, apply in these circumstances. 20 C.F.R. § 404.1594(d)(5). In order to be eligible for a TWP and reentitlement period, the claimant must continue to meet the disability standard. Therefore, benefits may be terminated prior to completion of a TWP and reentitlement period only if the claimant is found no longer medically disabled after a CDR.

Practice Note

An SGA termination of SSDI benefits does not affect the Section 1619 eligibility for concurrently eligible SSDI and SSI recipients. Rehabilitation Incentive Provisions, POMS DI 40520.010(B)(3) (1990). Many claimants receive both SSDI and SSI benefits and will have to consider the effect of work activity on each of their benefits separately under the rules outlined above.

Advances in Medical or Vocational Technology or Therapy

This exception applies when there is substantial evidence that shows that the individual has benefited from advances in treatment or rehabilitative methods. Substantial evidence means new medical evidence and a new individualized assessment of RFC. The evidence must show that these advances have favorably affected either the severity of the individual's impairments or the claimant's ability to do basic work activities. 20 C.F.R. §§ 404.1594(d)(1), 416.994(b)(3)(i).

This exception does not apply in SSI cases where the claimant is eligible for special cash benefits under the Section 1619(a) work incentive program. For concurrent recipients, an SSDI benefit cessation on this ground does not preclude Section 1619 eligibility. SSA Program Circular 07-87-OD.

Vocational Therapy

This exception applies when there is substantial evidence that shows that the claimant has undergone vocational therapy that improves the claimant's ability to meet the vocational requirements of more jobs. The evidence considered must include new medical evidence and a new RFC assessment. Vocational therapy can include education, training, or work experience. 20 C.F.R. §§ 404.1594(d)(2), 416.994(b)(3)(ii). This exception also does not apply in SSI cases where the claimant is eligible for the Section 1619(a) work incentive program.

New or Improved Diagnostic Techniques or Evaluations

This exception applies when there is substantial evidence, based on new or improved diagnostic techniques or evaluations, that the claimant's impairment is not as disabling as it was considered at the time of the CPD. The new or improved diagnostic technique must have been generally available after the date of the CPD. 20 C.F.R. §§ 404.1594(d)(3), 416.994(b)(3)(iii). The SSA must

publish notice when it determines that a new or improved diagnostic is generally available. 20 C.F.R. §§ 404.1594(d)(3)(ii), 416.994(b)(3)(iii)(B)(1) and (2). For a list of these techniques, see Scope of the Subchapter—Cumulative List of Medical Diagnostic or Evaluative Techniques, POMS DI 33535.001 and POMS DI 33535.005–.035.

The Prior Disability Decision Was in Error

This exception applies when there is substantial evidence that any prior disability determination was in error. 20 C.F.R. §§ 404.1594(d)(4), 416.994(b)(3)(iv). The key point here for advocates is that this exception is not intended to substitute current judgment for that used in the prior favorable decision, e.g., the SSA cannot simply rereview the same evidence and make a different decision. There are only three circumstances that will meet the error test:

- substantial evidence, on its face, shows that the prior decision was wrong, i.e., test results were misread and a correct reading would result in a different decision;
- required and material evidence, which was missing at the time of the last review, becomes available and substantial evidence shows that it would have resulted in a different decision; or
- substantial new evidence, which relates to the earlier decision, shows that the earlier decision was wrong, i.e., a tumor thought to be malignant was actually benign.

20 C.F.R. §§ 404.1594(d)(4)(i)–(iii), 416.994(b)(3)(iv)(A)–(C).

(b) The Second Group of Exceptions

This group of exceptions allows the SSA to terminate a claimant's disability benefits without finding medical improvement or the ability to engage in substantial gainful activity. 42 U.S.C. § 423(f); 20 C.F.R. §§ 404.1594(e), 416.994(b)(4). The SSA may consider this group of exceptions at any point in the review process. This group essentially codifies the SSA current administrative practices.

Fraud

The prior decision was fraudulently obtained. 20 C.F.R. §§ 404.1594(e)(1), 416.994(b)(4)(i). The SSA may also apply the reopening rules at 20 C.F.R. §§ 404.988, 416.1488 to the prior claim.

Noncooperation

This exception applies when the individual fails to cooperate, without good cause, after the SSA has made all reasonable attempts to resolve the matter. 20 C.F.R. §§ 404.1594(e)(2), 416.994(b)(4)(ii). The usual good cause rules at 20 C.F.R. §§ 404.911, 416.1411 apply. See, e.g., *Odorizzi v. Sullivan*, 841 F. Supp.

72 (E.D.NY 1993), in which the court found that the ALJ was not excused from applying the medical improvement standard because the claimant's failure to cooperate was, at worst, the result of a misunderstanding.

Practice Note

Note that for good cause determinations made after July 1, 1990, the SSA is required to specifically take into account any physical, mental, educational, or linguistic limitations that the person may have. 20 C.F.R. Sec. 404.1511(a)(4), 416.911(a)(4).

Under the noncooperation exception, benefits end with the first month in which the claimant fails to cooperate. A claimant's later decision to cooperate will be considered a request for reconsideration. If the claimant is found disabled, the termination will be revised to a continuance. Failure to Cooperate (FTC) and Whereabouts Unknown (WU) Cases—General, POMS DI 13015.001.

Inability to Locate

This exception applies when the SSA cannot locate the claimant after every reasonable effort. 20 C.F.R. §§ 404.1594(e)(3), 416.994(b)(4)(iii). "Every reasonable effort" includes contacts with the post office, former landlords, and medical institutions. Failure Issues, POMS DI 25205.020 . Under this exception, benefits end with the first month in which a question arose and the claimant could not be located. In SSI cases, payments will be suspended, rather than terminated. See 20 C.F.R. § 416.1321–30 for the SSI rules on suspension.

Failure to Follow Prescribed Treatment

This exception applies when the claimant fails, without good cause, to follow prescribed treatment, which is expected to restore the ability to work. 20 C.F.R. §§ 404.1594(e)(4), 416.994(b)(4)(iv). See *Pancheco v. Sullivan*, 931 F.2d 695 (10th Cir, 1991) (Statement by recipient's doctor that he needed knee surgery before he could work was insufficient for application of this exception, because there was no evidence that the recipient had refused prescribed treatment). See 20 C.F.R. §§ 404.1530, 416.930, and Social Security Ruling 82-59 for examples of good cause. Social Security Ruling 82-59 includes inability to afford the prescribed treatment among its examples of good cause. Under this exception, benefits end with the first month the claimant failed to follow prescribed treatment.

Practice Note

The SSA stores many files, especially "inactive files," in several large storage areas around the country. Sometimes files or complete files cannot be located at CDR time. When the SSA cannot find a file in a CDR case, it will continue benefits if it determines that the claimant is currently eligible and if none of the medical improvement exceptions apply. 20 C.F.R. Sec. 404.1594(c)(3)(v), 416.994(b)(2)(iv)(E). Even where the claimant is determined currently able to perform SGA, benefits will be continued if relevant portions of the file cannot be reconstructed. The

evidence of claimant's current impairments will then be the basis for any future review. The POMS sets out the rules for reconstructing files. Lost Folders/Medical Evidence—Background, POMS DI 28035.01; see *also Fleming v. Sullivan*, 806 F. Supp. 13 (E.D. NY 1992) (court overturned a termination because evidence from the last favorable medical decision was not available so that there could be no medical improvement determination); *Dicus v. Sullivan*, 1990 WL 24796 (E.D. Wash. 1990), (court discussed the missing file rules and remanded the case for consideration of these and other medical improvement standard rules).

§ 1.9.5 The Effect of Fraud or Similar Fault in Disability Determinations (Social Security Ruling 00-2p)

The SSA published Social Security Ruling (Social Security Ruling) 00-2p to implement provisions imposed by the Social Security Independence and Program Improvement Act of 1994, Pub. L. No. 103-296, amending 42 U.S.C. §§ 405(u), 1383(e)(6). The amendments require the SSA to

- redetermine benefit eligibility if there is reason to believe that fraud or similar fault was involved in the application; and
- to disregard evidence if there is reason to believe that fraud or similar fault was involved in its providing. Similar fault is defined to include knowingly making incorrect or incomplete statements or knowingly concealing material evidence.

§ 1.10 WORK INCENTIVE PROGRAMS

Both the SSDI and SSI programs contain “work incentive” programs for recipients who want to test their ability to work without immediate loss of monthly cash and health benefits. The work incentive programs for SSDI and SSI recipients are different and will be covered separately in this chapter. Both work incentive programs apply to persons who receive both SSDI and SSI benefits.

Practice Note

The SSA publication, *A Summary Guide To Employment Support For People With Disabilities Under The Social Security Disability Insurance And Supplemental Security Income Programs*, also known as the Red Book, contains a good overview of the SSI and SSDI work incentives. It is available online at <http://www.socialsecurity.gov/redbook/eng/main.htm>

§ 1.10.1 SSDI Work Incentive Programs

These rules apply to benefits based on disability. They do not apply to retirement benefits (RSI).

(a) Trial Work Period

SSDI recipients are entitled to a nine-month trial work period. 20 C.F.R. § 404.1592. A trial work month is a month in which the recipient earns more than

\$720 in gross wages (in 2012) in work that is not training or therapy. (See POMS DI 1301.050 for a table of trial work period trigger amounts for prior years.) Recipients continue to receive their full SSDI benefits during the trial work months, no matter how much they earn. The nine months do not have to be consecutive. Beneficiaries only get one trial work period for each period of disability.

The trial work period is completed when the recipient has had nine trial work months in a rolling sixty-month period. When the nine-month trial work period is complete, the SSA will review the work to determine whether the recipient is performing substantial gainful activity. The SSA should also conduct a continuing disability review to see whether the recipient remains medically disabled.

Note that the trial work month earnings amount increased and indexed to allow for annual increases, effective January 1, 2001. Prior to January 1, 2001, lower earnings levels were used to define trial work. Be sure to review the trial work regulations in order to apply the appropriate trial work earnings amount to the time period involved in the recipient's trial work period. An earnings level explanation can be found at 20 C.F.R. § 404.1592(b).

If the individual is no longer medically disabled, benefits will cease. Recipients who remain medically disabled begin the extended period of eligibility (EPE). 20 C.F.R. § 404.1592a.

(b) Extended Period of Eligibility

The Extended Period of Eligibility (EPE), also called the Reentitlement Period, is a consecutive thirty-six-month period that begins the month following the end of the trial work period. During the EPE, recipients are not eligible for a cash benefit for months in which they work at or above the Substantial Gainful Activity (SGA) level, but they are eligible in months in which they work below the SGA level. 20 C.F.R. § 404.1592a.

Determining SGA. See § [1.8.3](#) above for more information about SGA. In 2012, SSA presumes that gross wages of \$1010 per month or more show the ability to perform SGA. (\$1690 in 2012 for those eligible on the basis of blindness). This SGA threshold became subject to annual cost of living adjustments in 2001 and was lower in earlier years (see § 1.8.3 for SGA levels for earlier years). In determining whether work during the EPE constitutes SGA, it is important to consider the following:

- **Impairment Related Work Expenses (IRWEs)** may be used to reduce monthly earnings below the SGA level. An IRWE is a cost of employment borne by the claimant. The cost of an IRWE must be paid by the recipient and without reimbursement from any source. 20 C.F.R. §§ 404.1576(b)(3), 416.976(b)(3). IRWE costs documented by the claimant will be deducted from monthly gross earnings before the SSA is allowed to make an SGA determination. IRWE deductions may include the unreimbursable claimant- paid costs of items or services necessary to the claimant's ability to work, including medications, wheelchairs, counseling services, specially

adapted vehicles, etc.

- The value of any **subsidies**, 20 C.F.R. § 404.1574(a)(2), **special conditions**, 20 C.F.R. § 404.1573(c), should be deducted from monthly gross wages before deciding whether the wages show SGA. POMS DI 10505.010.
- Wages count when they are earned, not when they are paid (note that this is different in the SSI program in which wages are counted when paid). Earnings put into pre-tax retirement plans count toward SGA. POMS DI 10505.005 and DI 10505.010.
- Only pay for work activity counts in determining SGA. Pay for time not worked, such as paid sick or vacation time, should not be included. POMS DI 10505.010.
- For self-employed beneficiaries, SSA counts net income less the reasonable value of any significant unpaid help from family members. 20 C.F.R. §§ 404.1575(c), 416.975(c). In addition to counting actual earnings, SSA also considers the comparable worth of the self-employment activity. 20 C.F.R. §§ 404.1575(a). See § 1.8.3 (e) above for more on self-employment.

The Cessation Month. The first month in which the beneficiary performs SGA after the end of the trial work period is called the **cessation** month. In determining whether a beneficiary has performed SGA for the first time, SSA considers unsuccessful work attempts, 20 C.F.R. § 404.1574(c), and average earnings, 20 C.F.R. § 404.1574a, in addition to IRWEs, subsidies, and special conditions. 20 C.F.R. § 404.1592a(a)(1). After the cessation month, unsuccessful work attempts and averaging do not apply in determining SGA. Benefits are payable in the cessation month and the following two months, regardless of the level of earnings. 20 C.F.R. § 404.1592a(a)(2)(i). The cessation month may occur during the EPE or after.

Averaging Earnings. In determining whether work is SGA, SSA may average earnings until the cessation month. Earnings may be averaged for periods in which the work or self-employment was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels. 20 C.F.R. § 404.1574a. If there is a significant change in work pattern or earnings during the period of work requiring evaluation, SSA will average earnings over each separate period of work. 20 C.F.R. § 404.1574a(c). POMS DI 10505.015 Averaging Countable Earnings.

As long as the beneficiary remains medically disabled, benefits can be reinstated during the EPE without a new application for any month in which the person does not work at the SGA level. Medicare benefits continue during the EPE, regardless of whether the recipient is eligible for a cash benefit.

(c) Termination of Benefits After the EPE

Eligibility will terminate at the end of the thirty-six months if the recipient is performing work at the SGA level. If the recipient is not working at the SGA level, eligibility will cease with first month the recipient does perform SGA after the end of the EPE. 20 C.F.R. § 404.1592a(a)(3).

§ 1.10.2 SSI Work Incentive Programs

These work incentives apply to SSI benefits based on age and disability.

(a) Earned Income Exclusion

The favorable treatment of earned income in the SSI program is a significant work incentive for SSI recipients. Using an income exclusion formula, Social Security counts and reduces SSI payments by less than half of the recipient's earned income. The formula subtracts \$65 from gross monthly earnings and excludes one-half the remainder. See 20 CFR § 416.1112. For example, earned income in the amount of \$585 results in \$250 in countable monthly income.

$$\begin{array}{r} \$585.00 \text{ gross earnings} \\ - \underline{20.00} \text{ (if unused on unearned income)} \\ \$565.00 \\ - \underline{65.00} \\ \$500.00 \\ \$500 \text{ divided by } 2 = \$250 \text{ (countable income)} \end{array}$$

SSI benefit is reduced by \$250.

(b) Impairment Related Work Expenses (IRWEs)

IRWEs are deducted from gross monthly income before applying the earned income exclusion to determine the monthly SSI benefit. See 20 CFR §416.976. Using the example above with \$100 in IRWEs:

$$\begin{array}{r} \$585.00 \text{ gross earnings} \\ - \underline{20.00} \text{ (if unused on unearned income)} \\ \$565.00 \\ - \underline{65.00} \\ \$500.00 \\ - \underline{100.00} \text{ (IRWEs)} \\ \$400.00 \\ \$400 \text{ divided by } 2 = \$200 \text{ (countable income)} \end{array}$$

SSI benefit is reduced by \$200.

(c) Blind Work Expenses (BWEs)

There are additional work expense deductions available to people who receive SSI on the basis of blindness. See POMS SI 00820.535. Some examples of BWE items are:

- Service animal expenses,
- Transportation to and from work,
- Federal, state, and local income taxes,
- Social Security taxes,
- Attendant care services,
- Visual and sensory aids,
- Translation of materials into Braille,
- Professional association fees, and
- Union dues.

Any Item that would count as an IRWEs is also a BWE, and should be treated as a BWE because it is more advantageous to the SSI recipient because BWEs are deducted after application of the earned income exclusion. Using the above example with \$100 in BWEs instead of IRWEs demonstrates this point:

\$585.00 gross earnings
 - 20.00 (if unused on unearned income)
 \$565.00
 - 65.00
 \$500.00
 \$500 divided by 2 = \$250

\$250.00
 - 100.00 (BWEs)
 \$150.00 countable income

SSI benefit is reduced by \$150.

(d) Special Cash Benefits and Medicaid under 1619a and 1619b

Supplemental Security Income recipients who work at the SGA level are eligible for the 1619 program. 42 U.S.C. § 1382h; 20 C.F.R. §§ 416.260–.267; POMS SI 02302.000 et seq. Recipients who have earnings above the SGA level can continue to receive cash payments under the 1619(a) program (special SSI payments for people who work) as long they remain medically disabled and meet all other SSI financial and categorical eligibility requirements. The recipient’s financial eligibility and payment amount will be calculated in the same way as for someone who is not working at the SGA level. Medicaid eligibility also continues with 1619(a) eligibility. When earnings become too high to allow for a cash payment, the recipient may be eligible for 1619(b) (continued Medicaid eligibility). 42 U.S.C. § 1382h(b); 20 C.F.R. §§ 416.268–.269; POMS SI 02300.000 et seq.

In order to qualify, the recipient must

- have been eligible for an SSI cash payment for at least one month,
- still meet the disability definition,
- still meet other nondisability requirements,

- need Medicaid in order to work, and
- have gross earned income insufficient to replace SSI and Medicaid.

Persons who remain medically disabled can move between SSI, 1619(a), and 1619(b) without a new application as their circumstances change. However, changes in circumstances will not be known to the SSA without timely reports of changes made by the recipient.

§ 1.10.3 Plans to Achieve Self-Support (PASS)

PASS is a little-used SSI program that allows SSI blind and disabled applicants and recipients to save income and resources, which would otherwise be countable under SSI, for a vocationally feasible goal. Examples of income that may be sheltered in a PASS include the following:

- earned income,
- SSDI benefits,
- veterans' benefits, and
- private pension benefits.

20 C.F.R. § 416.1226.

Excess resources, including property, may also be used in a PASS and sheltered from the usual SSI resource limitations.

Under the Social Security Act and regulations, an individual can enter into a written plan with SSA to save and expend funds to achieve a vocational goal and, as a result, gradually achieve financial independence. 42 U.S.C. §§ 1382a(b)(4)(A)(iii) and (B)(iv), 1382b(a)(4); 20 C.F.R. § 416.1226; POMS SI 00870.000 et seq. All funds saved in a PASS are excluded from countable income and resources, IF the individual follows the written plan in expending the PASS funds. The legislative history shows that Congress expressed “a desire to provide every opportunity and encouragement to the blind and disabled to return to gainful employment.” Plans for Achieving Self-Support—Overview, POMS SI 00870.001(A).

In a reviewing a PASS, SSA will focus significant attention on the plan's feasibility in terms of costs and vocational goals desired. Compliance reviews will be reinforced and scheduled as a part of the plan's terms.

The following is a partial list of potential PASS goals:

- tuition at a trade school or college;
- support for living expenses, away from home, while receiving training;

- tools and equipment used on the job;
- startup costs of a business;
- child care;
- adaptive devices at home, work, or in a vehicle to make the workplace accessible to the person with disabilities;
- job coaching or counseling services; and
- purchase of a vehicle necessary to achieve the vocational goal.

A PASS must meet the following requirements, as laid out in Elements of a PASS, at POMS SI 00870.006 and 71 Fed. Reg. 28262 (5/16/06):

- be designed especially for the individual;
- be in writing;
- be approved by the SSA (a change of plan must also be approved);
- be designed for an initial period of not more than eighteen months. (The period may be extended for an indefinite number of 6 month extensions. POMS SI 00870.001) There is no time limit placed on PASS plans and, in fact a federal court struck down a 48 month time limit that existed in the prior version of the PASS regulations, *see Panzarino v. Heckler*, 624 F. Supp. 350 (S.D.N.Y. 1985). On May 16, 2006, SSA issued final regulations, published at 71 Fed. Reg. 28262 (5/16/06), establishing individualized time limits for Plans to Achieve Self-Support. These regulations implement Section 203 of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103-296;
- show the individual's specific occupational goal;
- show what resources the individual has or will receive for purposes of the plan and how he or she will use them to attain his or her occupational goal;
- show how the resources the individual set aside under the plan will be kept identifiable from his or her other funds;
- show a list of current earnings, if any, and estimated earnings when the vocational goal is obtained;
- show a detailed business plan, when self-employment is a goal, addressing each item set forth in Elements of a PASS, POMS SI 00870.006(A)(10) ; and

- show a list of milestones and interim steps to be achieved during the life of the PASS and an estimated time frame for the achievement of each milestone.

All expenses involved with a PASS are subject to a reasonable and necessary test. For example, if the PASS includes the purchase of a vehicle, it may be necessary to explain in the PASS why leasing a vehicle will not satisfy the vocational goal. Any SSA challenge to a “reasonable and necessary expense must contain local office documentation as to what less expensive options are available. Leveraging other sources of services and funding may add to the likelihood that a particular plan will be approved. For instance, a recipient could use tuition grants, state rehabilitation services, or Medicaid to provide some of the services or funding needed for items included in the plan. This may make the overall plan more financially feasible.

An individual may develop a plan on his or her own initiative, and any employer, social agency, the SSA employee, or other person can assist in setting up the plan and its goals. If appropriate, an individual may also be referred to a state rehabilitation agency or an agency for the blind for assistance. Any fee for the preparation of a PASS is an allowable expense and can be included in the PASS. Fees must be reasonable, and no fees for private PASS monitoring will be allowed.

SSA may reject the plan if, for instance, it concludes that the goals of the plan are not realistic for the particular individual or the funds available will not be adequate to meet the plan’s goals. The POMS and emergency instructions encourage SSA to consider vocational information in order to determine if a PASS applicant’s goal is feasible in light of that individual’s disabling impairments. Vocational information can include the applicant’s prior work history and education. PASS denials are appealable through SSA’s regular administrative appeals process (Reconsideration, ALJ hearing, Appeals Council).

SSA regularly monitors PASS compliance and will begin to count the recipient’s earned and unearned income and resources excluded under the PASS at the point that

- the recipient reaches the goal or completes the time schedule set forth in the plan, or
- abandons or fails to follow the conditions of the plan. A PASS may be suspended, then reinstated and modified, with the written approval of the SSA, upon the recipient’s request.

Practice Note

Free work incentive planning assistance is available for SSI/SSDI recipients through two programs in Massachusetts. Benefits specialists from Project Impact and BenePLAN provide clients with individualized analyses of the effect of work on SSI, SSDI, government assisted housing, food stamps, and other benefits. They also assist clients with PASS.

Project IMPACT:

Voice: 617-204-3854; 800-734-7475 (Toll Free). TTY: 617-204-3834
Serving Barnstable, Bristol, Dukes, Essex, Norfolk, Nantucket, Plymouth
and Suffolk Counties

BenePLAN:

Voice: 508-647-1722; 877-937-9675 (Toll Free).
Serving Berkshire, Franklin, Hampshire, Hampden, Worcester, and
Middlesex Counties

§ 1.10.4 The Ticket to Work and Work Incentives Improvement Act of 1999

On December 17, 1999, the Ticket to Work and Work Incentives Improvement Act was signed into law. Pub. L. No. 106-170 (Dec. 17, 1999). This act represents the most significant return-to-work development since the implementation of the SSI Section 1619 program. The express purposes of the act are:

- to provide health care and employment preparation and placement services to individuals with disabilities,
- to encourage states to adopt an expansion of Medicaid availability,
- to expand Medicare availability to disabled workers, and
- to establish a ticket to work that will allow an individual with a disability to obtain necessary services and supports to obtain and retain employment and reduce dependency on cash benefits.

Current work incentive programs, such as the Trial Work Period, Extended Period of Eligibility and the Section 1619 programs, are not affected by the new act and continue to be available to disabled SSDI recipients who wish to return to work.

(a) *The Ticket to Work*

A disabled beneficiary will be provided a Ticket to Work which will allow that individual to obtain employment services, vocational rehabilitation services, or other support services from any provider (public or private) that is willing to provide services to that individual. The Ticket will explain the SSA commitment to pay for all services provided in order to assist in the return to work effort. Each participating individual will develop an individual work plan with the provider that will set forth the planned employment goal as well as the services and supports necessary to attain that goal. Pub. L. No. 106-170, § 101. Ticket distribution in Massachusetts began in early 2002. Tickets will be mailed to newly eligible recipients on a monthly basis. Current statistics indicate that about 1000 tickets are mailed to Massachusetts recipients each month. Nearly 7,000,000 Tickets have been sent out nationwide.

(b) Expanded Medicare Benefits

SSA published final regulations at 69 Fed. Reg. 57, 224 (Sept. 24, 2004) to implement the Ticket to Work and Work Incentives Improvement Act of 1999 provision establishing additional Medicare coverage for disabled beneficiaries who lose Title II disability benefits due to SGA. (SSA began implementing this provision on October 1, 2000 using subregulatory instructions.)

Prior to this change, Medicare entitlement ended with performance of SGA after the 36th Extended Period of Eligibility (EPE) month. Effective October 1, 2000, Medicare entitlement can continue for up to 78 months after the 15th EPE month. Those who have lost entitlement to Title II disability cash benefits due to SGA, must continue to meet the disability standard to be eligible for continued Medicare.

(c) Expanded Medicaid Benefits

States will have the option of expanding Medicaid coverage to allow for buy-in programs for disabled beneficiaries who return to work. Options to cover up to 450 percent of the poverty level exist for each state. Disabled workers must work at least forty hours per month and continue to suffer from a severe impairment. Pub. L. No. 106-179, § 201.

(d) Elimination of Work Disincentives – Two Types of CDR Protection

Section 101C Protection. Under Section 101C of The Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), effective January 1, 2001, SSA will not initiate a Continuing Disability Review (CDR) for beneficiaries who are “using” a Ticket to Work. Section 101C protection applies to both work-triggered and regularly scheduled CDRs. To determine whether a Ticket is “in use,” the Vocational Rehabilitation agency or Employment Network to whom the Ticket is assigned has to certify that the beneficiary is making “timely progress” toward an employment outcome. This certification process has proved burdensome and confusing for VR agencies and ENs, and on December 29, 2005, SSA suspended all timely progress reviews until final regulations simplifying the process become effective. Proposed regulations amending the Ticket to Work and Self-Sufficiency Program were issued at 70 Fed. Reg. 57222 (9/30/05).

Section 111 Protection. Section 111 of TWWIIA created a new work incentive that encourages long-term disability beneficiaries to return to work by ensuring that work activity would not trigger a medical Continuing Disability Review (CDR). Effective January 1, 2002, a title II or concurrently entitled title II and title XVI disability beneficiary, who has been entitled to benefits for at least 24 months, will not have a medical CDR triggered solely as result of work activity. This new work incentive is called “Section 111 protection.” It applies whether or not the beneficiary has a Ticket to Work. Beneficiaries protected under section 111 will be subject to regularly scheduled medical CDRs unless they are using a ticket as part of the Ticket to Work program. See SSA Emergency Message (EM) - 01219 (12/20/01).

(e) Expedited Reinstatement of Benefits

The purpose of Expedited Reinstatement of Benefits (EXR) is to give people who have been terminated from SSDI or SSI benefits due to work activity a new and (theoretically) quick way to get back on benefits. Before EXR, filing a new application was the only way for a person to become eligible for benefits after termination. Here is one typical scenario: an SSDI recipient completed her trial work period and 3-year extended period of eligibility (EPE), working on and off during the EPE. After the EPE she continued to work and her earnings eventually went above the substantial gainful activity (SGA) threshold. The first month her earnings went over SGA after her EPE, her SSDI was terminated. Period. If she later became unable to work due to her disability, her only option was to file a new application for benefits.

EXR has changed all that. Now a person who has been terminated from SSI or SSDI due to work and later requires disability benefits again can choose between reinstatement of prior entitlement to benefits (EXR) and a new application for entitlement to benefits.

Proposed EXR regulations were published at 68 Fed. Reg. 61162 (10/27/03) and the final regulations were published at 70 Fed. Reg. 57133 (9/30/05). The initial set of Ticket to Work regulations, issued in January, 2002, did not include EXR regulations, although EXR POMS were issued in early 2002. See POMS DI 13050.000 and DI 28057.000. The new EXR regulations add new sections 404.1592b through 404.1592g and 416.999 through 416.999e to 20 C.F.R. Following are the key provisions of the POMS and EXR regulations:

Criteria for entitlement to EXR:

- SSDI: You were previously entitled to a disability benefit on your own record of earnings or as a disabled child or disabled widow(er), or to Medicare entitlement based on disability. SSI: You were previously eligible for a benefit based on disability or blindness.
- SSDI: Your disability entitlement was terminated because you did substantial gainful activity. SSI: Your disability or blindness eligibility was terminated because of earned income or a combination of earned and unearned income.
- In the month you file your request for reinstatement, you are not performing substantial gainful activity.
- Your current impairment must be the same as or related to your prior impairment and you must be disabled as determined under the *medical improvement review standard (MIRS)*. This is the same standard used in Continuing Disability Reviews. The advantage of using MIRS is that SSA will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the MIRS process applies.

- Your current impairment must be the same as or related to your prior impairment and you must be disabled as determined under the *medical improvement review standard (MIRS)*. This is the same standard used in Continuing Disability Reviews. The advantage of using MIRS is that SSA will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the MIRS process applies.
- SSA must receive your written request for EXR within the consecutive 60-month period that begins with the month in which your SSDI entitlement terminated due to doing substantial gainful activity or your SSI eligibility terminated due to earned income, or a combination of earned and unearned income. SSA may grant an extension for good cause.
- EXR went into effect January 1, 2001. No EXR benefits are payable prior to January 2001 for SSDI and February 2001 for SSI.

Provisional Benefits:

- You may receive up to 6 consecutive months of provisional cash benefits during the provisional benefit period, while SSA determines whether your disability benefit entitlement can be reinstated.
- The amount of the provisional benefits is equal to the last monthly benefit payable to you during your prior entitlement, increased by any cost of living increases that would have been applicable to the prior benefit amount. For SSI, provisional benefits do not include the state supplement.
- If SSA denies your request for reinstatement, it generally will not consider the provisional benefits you received as an overpayment.

24-Month Reinstatement Period:

- Your 24-month initial reinstatement period begins with the month your benefits are reinstated and ends with the 24th month that you have a benefit payable. For SSDI, a benefit is payable in a month when you do not do SGA. Averaging of earnings and unsuccessful work attempt do not apply during this period. For SSI, a benefit is payable in a month when, using normal SSI payment calculation procedures SSA determines you are due a monthly payment.
- After the 24-month initial reinstatement period is completed you are eligible for additional work incentives under SSDI (such as a trial work period and a extended period of eligibility), as well as possible future reinstatement through the expedited reinstatement provision under SSDI and SSI.

Other Provisions:

- If you are reinstated on your own earnings record, SSA will compute your primary insurance amount with the same date of onset used in your most recent period of disability on your earnings record.
- Reinstated SSDI benefits can start as early as a year before the request for reinstatement is filed. Reinstated SSI benefits start with the month after the month you filed your request for reinstatement.
- If your reinstatement request is denied, SSA will treat that request as your intent to file an initial application for benefits.

For a helpful discussion of the relative merits of filing for EXR and reapplying, see POMS DI 13050.020 Filing Considerations Expedited Reinstatement Versus Initial Claim.

(f) Removal of Sanctions for Refusal to Accept Vocational Rehabilitation

SSA regulations at 20 C.F.R. §§ 404.422, 416.213 provided for sanctions for benefit recipients who refused, without good cause, to accept rehabilitation services made available by a state vocational rehabilitation (VR) agency. The Ticket to Work and Work Incentives Improvement Act of 1999 repealed these rules, effective January 1, 2001, in favor of voluntary participation and choice in provider. The final regulations published at 68 Fed. Reg. 40119 (July 7, 2003) make the revisions required by the Ticket to Work Act.

§ 1.11 OVERPAYMENTS

Overpayments result when a recipient receives more than the maximum amount he or she was eligible to receive. Sometimes the SSA makes mistakes and issues incorrect benefit payments. Sometimes a recipient causes overpayments by failing or forgetting to report changes in circumstances affecting eligibility. Sometimes a recipient reports changes but the SSA does not correct the benefit amount in a timely manner. Regardless of the cause, the SSA may ask the recipient to repay the overpayment.

§ 1.11.1 Notice of Overpayment

The SSA must give written notice of a decision that a recipient has been overpaid that explains the reason for the overpayment, repayment options, and appeal rights. 20 C.F.R. §§ 404.502a, 416.558. Notification of Overpayment, POMS GN 02201.009 ; SSI Overpayment—Notifying the Individual, POMS SI 02220.010 . The notice must be in clear, simple language, understandable to the recipient.

§ 1.11.2 Overpayment Appeal Rights

If the recipient disagrees that he or she has been overpaid or disagrees with the amount of the overpayment, he or she may file a request for reconsideration. The appeal process applicable to overpayments is the appeal process described above in § 1.6, Applications and Appeals. The recipient has sixty days from the date of receipt of the notice of overpayment in which to file an appeal. However, if the appeal is filed within thirty days, the SSA cannot begin recovering the overpayment until a reconsidered decision has been made. 20 C.F.R. § 404.502a(h); Notification of Overpayment, POMS GN 02201.009(B)(5) (Advance Notice Requirement) .

§ 1.11.3 Request for Waiver of Overpayment

If the recipient agrees that he or she has been overpaid and agrees with the amount of the overpayment, he or she may file a request for waiver of the overpayment, asking to be relieved of the obligation to repay.

There are no time limits in which to file a waiver. Amount for Which Waiver Is Considered, POMS GN 02250.310(A); SSI Overpayment—Basic Requirements Concerning Waiver, POMS SI 02260.001 . However, if a waiver request is filed within thirty days of the receipt of the overpayment notice, the SSA may not begin recovery of the overpayment until an initial decision on the waiver has been made. Precoupment Review, POMS GN 02201.011; SSI Overpayment—Basic Requirements Concerning Waiver, POMS SI 02260.001 . Even if a waiver is not filed until recovery has begun, recovery should stop with the filing of a waiver request until an initial decision has been made on the request. Precoupment Review, POMS GN 02201.011; SSI Overpayment—Basic Requirements Concerning Waiver, POMS SI 02260.001 . If the waiver request is denied and the recipient files a request for reconsideration within thirty days, recovery should again be stayed pending the reconsidered decision. If the reconsidered decision is unfavorable, the recipient can proceed through the appeal steps in § 1.6, Applications and Appeals, above, but recovery of the overpayment may begin.

The SSA will grant a waiver of overpayment if both the following criteria are met:

- The recipient was without fault in causing the overpayment or appealed a termination of benefits with a good faith belief of continuing eligibility (The SSA will consider whether the recipient complied with reporting requirements and knew or reasonably should have known that they were not entitled to the benefit amounts received. The SSA will also consider the person's age and mental or physical capacity to understand eligibility criteria and comply with the reporting requirements.); and
- The recipient needs all or substantially all of his or her income for ordinary living expenses (i.e., he or she cannot afford to repay the overpayment). SSI recipients are assumed to be unable to afford to repay the overpayment, regardless of the amount of SSI received. SSDI recipients will need to provide monthly household budget information indicating that all of monthly income is needed to meet basic needs.

§ 1.11.4 Overpayment Recovery

The usual means of overpayment recovery is for the SSA to deduct money from the monthly benefit check until the overpayment is repaid. This is called recoupment. 20 C.F.R. § 404.515, 416.570.

In cases involving SSI benefits, recoupment is limited to the total monthly SSI benefit, or 10 percent of total monthly income, whichever is less. Where the individual cannot meet “current ordinary and necessary living expenses” recoupment may be reduced to less than 10 percent, and may be as little as \$1 per month. See 20 C.F.R. § 416.571; Collection of Title XVI Overpayments by Mandatory Cross Program Recovery, POMS SI 02220.020 . If overpayments involve SSDI benefits, 100 percent of the monthly benefit can be withheld. Reductions in withholding can be requested in cases involving financial hardship, as is the case in SSI cases. 20 C.F.R. § 404.515; Considering Different Rate of Adjustment, POMS GN 02210.030 .

(a) Administrative Offset

Since December 1997, the SSA has had final regulations, pursuant to Pub. L. 103.387, § 5 (1994) and Pub. L. 104.134, § 31001(z)(2)(1996), in place to permit reporting of Title II overpayments that are past due and legally enforceable to the Department of Treasury (“the Treasury”) for administrative offset against federal tax refunds (20 C.F.R. § 404.520) and against other federal payments due the overpaid individual (20 C.F.R. § 404.527, 422.305-.317). The SSA and other federal agencies have had the ability to certify certain overpayments to the Treasury as past due and legally enforceable for administrative offset.

Note that the first \$750 of Title II benefits are protected from offset. The offset is further limited to 15 percent of the individual’s monthly benefit. See www.fms.treas.gov/news/factsheets/benefitoffset.html.

It is important for Title II benefit recipients to pay attention to the notices federal agencies will send about the intent to certify a debt to the Treasury for administrative offset. See 31 C.F.R. § 285.4. The individual’s best bet for contesting the debt and the appropriateness of certification probably lies with the debtor agency. Once the debt is certified to Treasury, the individual will have to deal with Treasury. Collection of Title II Overpayments by Administrative Offset, POMS GN 02201.031 ; Collection of Title XVI Overpayments by Administrative Offset, POMS SI 02220.013 .

(b) Tax Refund Offset

In certain circumstances, the SSA can recover SSDI and SSI overpayments by intercepting the overpaid individual’s federal income tax refund. 20 C.F.R. §§ 404.520-.526, 416.580-.586; Collection of Title II Overpayments by Tax Refund Offset (TRO), POMS GN 02201.030-.031 ; Collection of Title XVI Overpayments by Tax Refund Offset (TRO), POMS SI 02220.012 . The SSA may not use this method of collecting an overpayment if there any appeals pending on the

overpayment or on a waiver of the overpayment. If the overpaid individual is making payments of the overpayment, the SSA may not use tax refund offset. Before intercepting the tax refund, the SSA must send the overpaid individual a sixty-day advance notice. The individual must be given those sixty days to dispute the overpayment or file a request for waiver of the overpayment.

(c) Cross-Program Recoupment

The Noncitizen Benefit Clarification and Other Technical Amendment Act of 1998, Pub. L. No. 105. 306, §1147 (Oct. 28, 1998) amending 42 U.S.C. § 1383(b), allows SSA to recover SSI overpayments from SSDI benefits. Prior to this change, SSA could not perform cross-program recoupment without the permission of the recipient. This amendment specifically waives the anti-assignment clause of 42 U.S.C. § 407 to allow for recovery of SSI overpayments from SSDI benefits where the overpaid individual no longer receives SSI. Recoupment is limited to 10 percent of the SSDI benefit payable, unless the overpayment was due to fraud. The provision applies to overpayments outstanding on the day of enactment. SSA published final regulations implementing this change on July 26, 2001. See 20 C.F.R. §§ 404.401, 416.570 (published at 66 Fed. Reg. 38,902 (July 26, 2001)).

The Social Security Protection Act of 2004, Pub.L.No. 108-203, § 201(3/2/04), expands SSA's cross-program recoupment authority to include all benefits. This means that SSA can collect overpayments in any program from benefits paid under any other program. Recovery from current recipients is limited to 10% of Title II benefits and to the lesser of the monthly SSI benefit or 10% of monthly income. However, up to 100% of any underpayment may be withheld to recover an overpayment. These new provisions apply to overpayments outstanding on March 2, 2004.

(d) Administrative Wage Garnishment

On January 22, 2004, final regulations went into effect regulations allowing SSA to require employers to garnish pay to recover SSI and SSDI benefit overpayments, after certain procedural requirements are met. SSA can bring civil actions against employers who fail to comply.

SSA will NOT apply Administrative Wage Garnishment (AWG) in the following circumstances:

- while Title II benefits are stopped during a reentitlement period (EPE)
- during the deemed Medicare entitlement period (Ticket to Work Medicare Extension);
- when the recipient is “using” a Ticket to Work.

Otherwise, AWG will be available to SSA when:

- the debt (overpayment) is past due;

- SSA has completed its billing system (initial, reminder and past-due notice);
- the individual is no longer receiving benefits;
- the individual has not made an installment payment agreement or has missed two consecutive payments;
- the individual has not requested reconsideration or reconsideration has been denied; and
- the individual has not requested waiver or waiver has been denied.

Prior to implementing AWG, SSA must send the individual 60 days advance notice. Within the 60 days, the individual may request information about and review of the debt, inspect and copy records, and request waiver. If the individual responds within 60 days, SSA will NOT begin AWG until the review is complete. Good cause applies to this 60 day period. If review is requested late with good cause, SSA will tell the employer to stop any AWG that has started. AWG applies to "disposable pay." Disposable pay is total compensation, including salary, wages, bonuses, commissions and vacation pay, after deductions for health insurance premiums and amounts withheld as required by law. SSA plans to garnish the lesser of 15% of "disposable pay" or the amount by which "disposable pay" exceeds 30 X the minimum wage provided in 15 U.S.C. 1673(a)(2).

The final regulations include a hardship provision for requesting a reduction in the garnished amount. The individual must present evidence showing that the AWG amount would deprive the individual of income necessary to meet ordinary and necessary living expenses- including basic expenses, medical & similar expenses, expenses for the support of those for the individual is legally responsible, & other reasonable expenses which are part of the individual's standard of living. However, SSA will not reduce AWG below \$10 per pay period. The final regulations were published at 68 Fed. Reg. 74177 (12/23/03), following proposed regulations published in January 2003. POMS instructions on AWG were issued in January 2005. See GN 02201.040.

(e) Additional SSI Overpayment Recovery Options

Section 203 of the Foster Care Independence Act of 1999, Pub. L. No. 106 - 169 (Dec. 14, 1999), amends 42 U.S.C. § 1383(b) to authorize the SSA to the same debt collection tools in the SSI program as are available to recover overpayments of SSDI overpayments. These are laid out in 31 U.S.C. Ch. 37, and include the use of private collection agencies, reporting delinquent accounts to consumer reporting agencies, and the use of administrative offset. The provision applies to overpayments outstanding on or after the date of enactment. The SSA published final regulations to implement this amendment at 65 Fed. Reg. 67,078 (Dec. 28, 2001). The proposed regulations would apply the collection activities in 20 C.F.R. §§ 422.301 - .317 to the SSI program. These methods can only be used for

overpayments that occurred after the individual attained age eighteen. In addition, the overpayment must be determined otherwise unrecoverable.

This means that the individual:

- has been sent a past due notice,
- has not entered into an installment payment agreement or is not complying with the agreement,
- has not requested waiver, or
- has not requested reconsideration of a waiver denial.

EXHIBIT A Massachusetts SSI Payment Levels in 2012

Living Arrangement A - FULL COST OF LIVING

	BENEFIT TYPE	FEDERAL BENEFIT	STATE SUPPLEMENT	<u>TOTAL</u>
INDIVIDUAL	Aged	\$698.00	\$128.82	\$826.82
	Disabled	\$698.00	\$114.39	\$812.39
	Blind	\$698.00	\$149.74	\$847.74
MEMBER OF A COUPLE	Aged	\$524.50	\$100.86	\$624.86
	Disabled	\$524.50	\$ 90.03	\$614.03
	Blind	\$524.50	\$323.24	\$847.74

Living Arrangement B - SHARED LIVING

	BENEFIT TYPE	FEDERAL BENEFIT	STATE SUPPLEMENT	<u>TOTAL</u>
INDIVIDUAL	Aged	\$698.00	\$ 39.26	\$737.26
	Disabled	\$698.00	\$ 30.40	\$728.40
	Blind	\$698.00	\$149.74	\$847.74
MEMBER OF A COUPLE	Aged	\$524.50	\$100.86	\$624.86
	Disabled	\$524.50	\$ 90.03	\$614.03
	Blind	\$524.50	\$323.74	\$847.74

Living Arrangement C - HOUSEHOLD OF ANOTHER

	BENEFIT TYPE	FEDERAL BENEFIT	STATE SUPPLEMENT	<u>TOTAL</u>
INDIVIDUAL	Aged	\$465.34	\$104.36	\$569.70
	Disabled	\$465.34	\$ 87.58	\$552.92
	Blind	\$465.34	\$382.40	\$847.74
MEMBER OF A COUPLE	Aged	\$349.34	\$107.90	\$457.24
	Disabled	\$349.34	\$ 97.09	\$446.43
	Blind	\$349.34	\$498.40	\$847.74

Living Arrangement E - LICENSED REST HOME

	BENEFIT TYPE	FEDERAL BENEFIT	STATE SUPPLEMENT	<u>TOTAL</u>
INDIVIDUAL	Aged	\$674.00	\$293.00	\$967.00
	Disabled	\$674.00	\$293.00	\$967.00
	Blind	\$674.00	\$149.74	\$823.74
MEMBER OF A COUPLE	Aged	\$505.50	\$461.50	\$967.00
	Disabled	\$505.50	\$461.50	\$967.00
	Blind	\$505.50	\$318.24	\$823.74

Living Arrangement F - RESIDENT OF A TITLE XIX FACILITY WHERE MEDICAID PAYS MORE THAN 50 % OF COST OF CARE

	BENEFIT TYPE	FEDERAL BENEFIT	STATE SUPPLEMENT	<u>TOTAL</u>
INDIVIDUAL	Aged	\$30.00	\$42.80	\$72.80
	Disabled	\$30.00	\$42.80	\$72.80
	Blind	\$30.00	\$42.80	\$72.80
MEMBER OF A COUPLE	Aged	\$30.00	\$42.80	\$72.80
	Disabled	\$30.00	\$42.80	\$72.80
	Blind	\$30.00	\$42.80	\$72.80

Living Arrangement G - ASSISTED LIVING

	BENEFIT TYPE	FEDERAL BENEFIT	STATE SUPPLEMENT	<u>TOTAL</u>
INDIVIDUAL	Aged	\$674.00	\$454.00	\$1128.00
	Disabled	\$674.00	\$454.00	\$1128.00
	Blind	\$674.00	\$454.00	\$1128.00
MEMBER OF A COUPLE	Aged	\$505.50	\$340.50	\$846.00
	Disabled	\$505.50	\$340.50	\$846.00
	Blind	\$505.50	\$340.50	\$846.00

**EXHIBIT B
Amounts**

2012 SSI and SSDI Threshold

SSI Resource Limit - Individual	\$2000.00
SSI Resource Limit - Couple	\$3000.00
SSI Federal Benefit Rate	\$698.00 (individual) \$1048.00 (couple)
SSI Child Allocation	\$350.00
SSI Student Earned Income Exclusion	\$1700.00/month up to \$6840.00/year
1619(b) Thresholds (individualized threshold available if actual medical expenses are higher than average Medicaid expenditure)	\$37,685 gross/yr. (disabled) \$38,187 gross/yr. (blind)
Substantial Gainful Activity - Disabled	\$1010.00/month
Substantial Gainful Activity - Blind	\$1690.00/month
SSDI Trial Work Month	\$720.00
SSDI Cost of 1 Quarter of Coverage	\$1130.00 (\$4520/year for 4 QC)
Maximum Monthly Social Security Retirement Benefit	\$2513.00
Medicare Part B Premium	\$99.90/month (higher if income > \$85,000/year (individual))

EXHIBIT C Information

Sources of Law and

Social Security Act

Title II (SSDI), 42 U.S.C. §§ 401 et seq.

Title XVI (SSI), 42 U.S.C. §§ 1381 et seq.

Online at http://www.ssa.gov/OP_Home/ssact/comp-ssa.htm.

Regulations

20 C.F.R. §§ 404 et seq. (SSDI)

20 C.F.R. §§ 416 et seq. (SSI)

Online at http://www.ssa.gov/OP_Home/cfr20/cfrdoc.htm (revised through April 1, 2004).

Regulatory Changes—Federal Register

Federal Register published daily. Online at

<http://www.gpoaccess.gov/fr/index.html>.

Social Security Rulings available on the SSA website, at

http://www.ssa.gov/OP_Home/rulings/rulings.html.

Program Operations Manual System (POMS). Available free on the SSA website at <http://policy.ssa.gov/poms.nsf/poms?OpenView>. Easily browsable and searchable. Additional operating instructions in the form of **Emergency Messages (EMs)** are available online at <http://policy.ssa.gov/>.

Hearings, Appeals and Litigation Law Manual (HALLEX) available on the SSA's website at www.ssa.gov/OP_Home/hallex/hallex.html.

National Organization of Social Securities Claimants Representatives (NOSSCR) Social Security Practice Guide 1-5 Matthew Bender, Inc., *National Organization of Social Securities Claimants' Representatives Social Security Practice Guide*. Five-volume, loose-leaf service by Matthew Bender, Inc. Available by subscription from Lexis Publishing, New York and San Francisco. See <http://www.bookstore.lexis.com> or call 1-800-223-1940.

Commerce Clearing House Social Security Reporter 1, 1A & 1B, Commerce Clearing House, Inc., *Social Security Reporter*. Loose-leaf updates. Available by subscription from Commerce Clearing House, Inc., Chicago, Ill. See <http://www.cctt.com> or call 1-800-449-9525.

West Social Security Reporting Service Available by subscription from West Publishing Company. For more information about this service, see <http://www.westgroup.com> or call 1-800-733-2889.

Social Security Disability Practice

C. Hall, *Social Security Disability Practice*, West's Handbook Series, republished yearly.

Dictionary of Occupational Titles I–II, U.S. Department of Labor, Employment & Training Admin., *Dictionary of Occupational Titles* (4th ed.1991). Online at <http://www.oalj.dol.gov/libdot.htm>.

Newsletters

NOSSCR, *Social Security Forum*. Published monthly. Available by subscription from NOSSCR, 6 Prospect Street, Midland, NJ 07432. NOSSCR website: <http://www.nosscr.org>.

National Senior Citizens Law Center, *NSCLC Social Security/SSI Advocates Informational Mailing*. Published monthly. Available by subscription from NSCLC, 1101 14th Street, Suite 400, Washington, D.C. 20005. NSCLC website: <http://www.nsclc.org>.

Disability Benefits Project at the Disability Law Center (DLC), *SSI Coalition Newsletter*. Published bimonthly. Also available at www.masslegalservices.org, Disability Section.

Basic Medical References

Merck, Sharpe & Dohme Research Laboratories, *The Merck Manual of Diagnosis and Therapy* (17th ed. 1999). Online at <http://www.merck.com/pubs/mmanual>.
Medical Economics Co., *Physician's Desk Reference (Medications)* (56th ed. 2002).

F.A. Davis Co., *Tabers Cyclopedic Medical Dictionary* (19th ed.)

American Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders, DSM-IV* (4th ed. 1994).

Centers for Disease Control website: <http://www.cdc.gov>.

Massachusetts Board of Registration in Medicine website: <http://www.massmedboard.org>.

National Library of Medicine website: <http://www.nlm.nih.gov>.

Websites

Social Security Online: www.socialsecurity.gov.

Massachusetts Legal Services: www.masslegalservices.org (Disability section)

Disability Law Center: www.dlc-ma.org.

Massachusetts Office of Medicaid (MassHealth): <http://www.state.ma.us/dma/>

NOSSCR Online: www.nosscr.org.

Social Security Advisory Service: <http://www.ssas.com>.

Bazelon Center for Mental Health Law: <http://www.bazelon.org/>

THOMAS, for tracking federal legislation: <http://thomas.loc.gov>.

Government Printing Office (Federal Register): www.gpoaccess.gov

EXHIBIT 1D Spousal Deeming Worksheet (2012)

Step 1 Children's Allocations¹ \$ _____

Step 2 Unearned Income Treatment

Spouse's Unearned Income \$ _____
Subtract Children's Allocations \$ _____
TOTAL UNEARNED INCOME \$ _____

Step 3 Earned Income Treatment

Spouse's Earned Income \$ _____
Subtract Children's Allocations² \$ _____
TOTAL EARNED INCOME \$ _____

Step 4 Total countable income

Unearned income (step 2) \$ _____
Add earned income (step 3) \$ _____
TOTAL COUNTABLE INCOME \$ _____

If the TOTAL COUNTABLE INCOME (step 4) is \$337, or less, no income will be deemed to the eligible spouse. If the TOTAL COUNTABLE INCOME is more than \$337, income will be deemed to eligible spouse and calculations must continue.

Step 5

Calculate SSI payable to eligible spouse by using SSI Benefit Calculation Worksheet (2012).

1. First determine SSI benefit payable without deeming application; as if the ineligible spouse did not exist.
2. Compute an SSI payment level with deeming, using TOTAL COUNTABLE INCOME figures from Spousal Deeming Worksheet (2012).
3. The SSI recipient will receive the lesser of SSI payable amounts from 1 & 2 above.

1 The 2012 Child Allocation is \$350 per child, less the child's own countable income. No allocation is allowed for children receiving public benefits.

2 Children's allocation can only be taken once. At this step in the deeming process, only the amount of the children's allocation not exhausted by unearned income can be deducted.

SSI BENEFIT CALCULATION FOR DEEMED INCOME WORKSHEET (2012)

Step A: Compute Countable Unearned Income.

Total Income

ADD: Unearned Income, DIB Payments, etc. \$ _____

PLUS: Rental Income + _____

PLUS: Deemed Income+ _____

1. TOTAL UNEARNED INCOME \$ _____

Deductions

ADD: General Deductions \$20.00

PLUS: Expenses Incurred for Rental Property + _____

PLUS: 1/3 Child Support Received by SSI Child + _____

2. TOTAL DEDUCTIONS -\$ _____

3. COUNTABLE UNEARNED INCOME (Subtract Line 2 from Line 1) = \$ _____

Step B: Compute Countable Earned Income.

Total Income

ADD: Gross Wages, Workshop Income, etc. \$ _____

PLUS: Net Earnings from Self-employment + _____

4. TOTAL EARNED INCOME \$ _____

Deductions ADD: \$20 (or remainder), if not used in Step A _____

PLUS: Student Earnings (\$1,640/month up to \$6,600 annually + _____

PLUS: Earned Income Deduction + 65.00 PLUS: IRWEs (if disabled) + _____

5. TOTAL DEDUCTIONS - \$ _____ Subtract Line 5 from Line 4 = \$ _____

Divide Result by 2 _____

Subtract: Work Expenses (if blind) - _____

Subtract: PASS (if applicable) - _____

6. COUNTABLE EARNED INCOME = \$ _____

Step C: Determining the SSI Monthly Payment

ADD: Countable Earned Income (Line 6) _____

PLUS: Countable Unearned Income (Line 3) + \$ _____

7. TOTAL COUNTABLE INCOME = \$ _____

Maximum SSI Grant for Month _____

Subtract: Countable Income (Line 7) - _____

8. SSI Monthly Payment= \$ _____

Exhibit E

FULL RETIREMENT AGE FOR SOCIAL SECURITY BENEFITS	
Year of Birth	Full Retirement Age
1937 and earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67