

# SSI Deeming Basics

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# Housekeeping

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- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

# Key Lessons

- Income and resources belonging to persons who do not qualify for SSI may be considered available to the person applying for or receiving SSI.
- Each relationship category for deeming has somewhat different rules.
- Understanding the basics is an important first step.

# What is Deeming?

# What does “deeming” mean?

- Deeming is when the income or resources of someone not eligible for SSI is considered available to someone applying for SSI benefits.
- Reminder of SSI income and resource limits
  - Maximum Federal SSI Benefit: \$750 for an individual; \$1125 for a couple
  - SSI Resource Limit: \$2,000 for an individual; \$3,000 for a couple

# POMS = Program Operations Manual System



# Relationships where Deeming Applies

- Deeming only applies to three relationships
  1. An ineligible spouse living in the same household as an SSI-eligible spouse
  2. A parent living in the same household as an SSI-eligible child
  3. Immigrant sponsors for SSI immigrants whose sponsors signed affidavits of support on or after December 1997

# Spouse to Spouse Deeming

# Spousal Deeming

- Income and Resources
  - Income and resources of an ineligible spouse count toward eligibility for the SSI eligible spouse (unless an income or resource exclusion applies).
    - Maximum Federal SSI Benefit: \$750 for an individual; \$1125 for a couple
    - SSI Resource Limit: \$2,000 for an individual; \$3,000 for a couple

# Spousal Deeming—Resources

- All of the resources of an ineligible spouse count toward eligibility for the SSI eligible spouse, unless a specific resource exclusion applies. [20 C.F.R. § 416.1202\(a\)](#)
  - Remember: SSI Resource Limit is \$2,000 for an individual; \$3,000 for a couple
- Combine total countable resources for both spouses, then compare to the \$3,000 resource limit

[POMS SI 01330.120 Deeming: Spouse-to-Spouse Exclusions from Resources](#)

# Spousal Deeming—Resources Example

- Carla's only income is SSI and only resource is \$500 in a bank account.
- Carla marries Jamie, who has no income, but does have a bank account containing \$3,000. What effect does this have on Carla's SSI benefit?
- The combined \$3,500 in both of their bank accounts would make Carla ineligible for SSI going forward, due to exceeding the resource limit.

# Spousal Deeming—Resources

## Example 2

- Carla's only income is SSI and only resource is \$500 in a bank account.
- What if Jamie only has \$500 in resources? What effect does this have on Carla's SSI benefit?
- Carla + Jamie's resources = **\$1,000**, which is under the resource limit for SSI eligibility (Carla can still receive SSI benefits).

# Spousal Deeming - Income

- Income
  - Determine the ineligible spouse's income, both earned and unearned.
  - If there are children living in the household who do not qualify for SSI, it may be possible to subtract an allocation for each child to reduce the ineligible spouse's income.
  - The spouse's countable income is then compared to an allocation for the ineligible spouse to determine if income from the spouse will be deemed.
  - If income will be deemed, then the deductions for an eligible couple will be applied to determine the final amount to deem from the ineligible spouse.

[20 C.F.R. § 416.1163;](#)

[POMS SI 01320.100 - Items Not Included in Deeming - General](#)

# Spousal Deeming – Income Example

- Joe is eligible for SSI, has no other income or resources, and receives the maximum federal benefit (\$750).
- Joe's wife Karen does not qualify for SSI.
- Karen has countable income of \$200.
- Spousal allocation: In 2018, the difference between the federal benefit rate for an eligible couple and the federal benefit rate for an individual is \$375 ( $\$1125 - \$750 = \$375$ ).



Question – How much of Karen’s income is deemed to Joe?

# Spousal Deeming – Income Example (continued)

Answer: None

Because Karen only has \$200 in countable income, which is less than the difference between the 2018 federal benefit rate for a couple and an individual, none of her income is deemed to Joe.

# Spousal Deeming – Income Example #2

- Carla's only income is SSI and only resource is \$500 in a bank account.
- Carla marries Jamie, who earns \$1,500 per month from work, has no resources, and does not qualify for SSI.
- How would deeming affect Carla's SSI benefit?
- Under rules for counting earned income, part of Jamie's earnings would be deemed to Carla and would offset Carla's SSI benefit.

[POMS - SI 00820.500 Earned Income Exclusions - General](#)

# Spousal Deeming – Same Household

- If the spouse is living in a different household, then deeming does not apply. However, if the spouse is temporarily absent from the household, then deeming continues to apply.

[20 C.F.R. § 416.1160\(a\)\(1\)](#)

[POMS SI 01310.165](#)

# Parent-to-Child Deeming

# Parent-to-Child Deeming:

- Applies when a parent who is not eligible for SSI is living with a child under age 18 who is eligible for SSI.

# Parent-to-Child Deeming Cont.

- Waiver of Deeming: Limited circumstance where SSA will waive parent to child deeming.
  - [POMS SI 01310.201](#)
- Follows a similar process to spouse-to-spouse deeming.
- However there are differences and it is important to review the rules and apply the deeming formulas accordingly.
  - POMS SI 01320.500-1320.550, 01330.200-01330.280

# Sponsor-to-Immigrant Deeming



# Sponsor-to-Immigrant Deeming:

- Not all immigrants are sponsored.
- If sponsor to immigrant deeming applies, it applies whether the immigrant is living with the sponsor or not.
- Follows a generally similar process to-spouse-to-spouse deeming.
- However there are differences and it is important to review the rules and apply the deeming formulas accordingly.

# Exceptions to Sponsor-to-Immigrant Deeming

- Several major exceptions:
  - Immigrants who do not have sponsors, such as most refugees and asylees;
  - Immigrants who have been battered or subjected to extreme cruelty in the U.S.
  - Immigrants who have 40 qualifying quarters of work.
  - Immigrants who would be unable to obtain food and shelter in the absence of the SSI payment (“indigence exception”).
    - Note: sponsor deeming also ends when the sponsored immigrant becomes a naturalized citizen.

[SI 00502.240 New Version Affidavit of Support](#)

# Exclusions from Deeming

# Deeming Exclusions

- Income: If something is not counted as income for the person applying for or receiving SSI, then it similarly will not count as income for the deemor spouse, parent, or sponsor.

[20 C.F.R. § 416.1161](#), [POMS SI 01320.100](#)

- Some principal income exclusions (but not in all cases):
  - Value of in-kind support and maintenance
  - Public income payments (e.g., TANF, disaster assistance)
  - Payments for in-home supportive services

# Deeming Exclusions Cont.

- Resources: The same resources that are excluded for the person applying for or receiving SSI are also excluded for deemors and will not count toward the resource limit for the person applying for or receiving SSI.

[20 C.F.R. § 416.1210](#), POMS SI  
01130.050–01130.740

# Principal Resource Exclusions

- The home in which the SSI recipient resides
- One automobile
- Burial funds up to \$1,500
- Burial plot regardless of value
- Jointly owned property where the sale would cause undue hardship to the co-owner
- Back SSI/Social Security payments (excluded from resource calculation for 9 months)

# Pension Funds: Specific Deeming Exclusion

- Pension funds owned by an ineligible spouse or ineligible parent are excluded from resources for deeming purposes.

[POMS SI 01330.001](#), [SI 01330.120](#) and [SI 01330.220](#)

- Remember to review the POMS!

# Example – What is counted?

- Jeremy applies for SSI based on age. Jeremy's spouse is under 65 and not disabled or blind, and therefore does not qualify for SSI. Jeremy's spouse works and has a retirement pension that spouse has not begun to draw from yet.
- Question: Will the spouse's retirement pension and wages affect Jeremy's eligibility for SSI?
- Answer: The spouse's retirement pension should be excluded as a resource and should not affect Jeremy's eligibility. The spouse's wages may affect the SSI monthly benefit amount for Jeremy.



# Appeals

- Appeal an incorrect deeming decision promptly.
- Incorrect deeming can result in improper termination or reduction.
- *Goldberg v. Kelly* protections apply, so the individual will continue receiving benefits until a decision on the first appeal is issued if the individual files within 10 days of receiving the initial notice.

[20 C.F.R. § 416.1336](#), [POMS SI 02301.300](#)

# Additional Resources and Citations

- [Program Operations Manual System \(POMS\)](#)
  - [SI 01310.000](#) et seq. (general)
  - SI 00502.200-00502.280 (sponsor deeming)
- [Understanding Supplemental Security Income Guide](#)
- [SSI 101: A Guide for Advocates](#)

## NCLER SSI Resources

- [Legal Basics: Supplemental Security Income \(SSI\)](#)
- [Legal Basics: Supplemental Security Income \(SSI\) Resources](#)

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# Case Consultations

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