



NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS'
REPRESENTATIVES
ESTABLISHED 1979

March 14, 2023

Faye Lipsky, Director
Office of Regulations and Reports Clearance
Social Security Administration
6401 Security Boulevard
3rd Floor (East) Altmeyer Building
Baltimore, Maryland 21235-6401

Submitted via Regulations.gov

RE: Omitting Food From In-Kind Support and Maintenance Calculations (Docket No. SSA-2021-0014)

Dear Director Lipsky:

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR), a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants throughout the adjudication process and in federal court.

We support SSA's proposal to remove food from the calculation of in-kind support and maintenance (ISM). However, NOSSCR has concerns over SSA's proposal to still consider food expenses for the purpose of determining whether to use the value of the one-third reduction (VTR) rule or the presumed maximum value (PMV) rule and to still ask questions about food. This change, as proposed, would not actually simplify the ISM rules, or promote clarity for either SSI claimants/recipients or SSA staff. NOSSCR believes this proposal to eliminate food expenses from the ISM calculations, but to still consider food expenses for determining which ISM value rule to apply, would only cause more complexity and confusion. Administrative simplification must be the priority for claimants to understand the rules and for SSA staff to properly apply them.

In order to truly simplify the ISM rules and promote clarity, administrative efficiency, and equity, countable ISM should only include shelter and living arrangements that have real market value. NOSSCR believes this would be best accomplished by changing the ISM rules to a rebuttable presumption that the SSI claimant/recipient has no countable ISM, because only rarely is the ISM received of true market value. Although ISM is included in the statutory definition of "unearned income," we do not believe a rebuttable presumption of no ISM conflicts with Title XVI of the Social Security Act. For example, while the Act contemplates a one-third payment reduction when the SSI claimant/recipient is living in another person's household and receiving ISM, it does not dictate how to determine whether the claimant/recipient is receiving countable ISM.

In addition to removing the consideration of food expenses altogether, changing the presumption to no countable ISM would provide simplification and clarity to both SSI claimants/recipients and SSA staff in understanding and applying the rules. This change would also promote efficiency by reducing the amount of time SSA staff must spend on making complex and fact-specific ISM calculations and the amount of information SSI claimants/recipients must report to SSA. Most importantly, this change would promote equity by not punishing the vulnerable and struggling population of SSI claimants/recipients when receiving help to obtain basic life necessities such as food and shelter.

NOSSCR urges SSA to make these meaningful changes to the ISM rules to better serve those receiving SSI payments, who are, by definition, the most needy of the disabled and aged population. The same justifications for removing food from the ISM calculations also support revising how living arrangements are considered for the calculation of ISM. For example, under SSA's rules, a transient or homeless SSI recipient will have their monthly payment reduced for ISM under the PMV rule when staying on a family member or friend's couch. See [POMS SI 00835.060](#). Sleeping on someone else's couch has no marketable value and should be treated the same as sleeping in an abandoned building, in a park, or in a vehicle, which are considered "ISM of no value." See [POMS SI 00835.060B.2](#). NOSSCR does not believe this rule change would even require a regulatory change; however, we emphasize this as an example of a rule/policy that only serves to disadvantage the most disadvantaged and must be changed to truly simplify the ISM rules and promote the agency's goals of equity and efficiency in the SSI program.

The Social Security Advisory Board's 2015 [statement on the SSI program](#), which SSA cited to in this Notice of Proposed Rulemaking, accurately describes the complexity of the ISM rules and demonstrates the immediate need for major changes, specifically to the ISM rules on living arrangements:

The need to perform [ISM] computations vastly complicates administration of [SSI] cases, as the analysis is ongoing. The Social Security Advisory Board noted in its 2005 SSI Statement that the agency POMS contains the equivalent of 250 single-spaced typed pages of instructions on living arrangements and in-kind support. The POMS Table of Contents for SSI is 80 pages, which does not include any of the substantive disability related processes--just program requirements. The application for disability under SSI is 23 pages; by contrast the disability application under the disability insurance program is seven pages, even though the disability analysis both programs mirror each other. Much of the complexity of the SSI program results from the effort to describe how to handle ISM calculations for diverse living arrangements and circumstances... To appreciate the complexity of the POMS, one need only page through all of the different circumstances and scenarios which the field staff considers in its evaluation. For each new requirement in the program, or change in rules, several POMS sections will be created to explain issues and anticipate different scenarios and unique situations in an effort to create national consistency. Even with and, perhaps because of, all the detail, it is virtually impossible to attain consistency in ISM analyses.


Accordingly, eliminating food from the ISM calculations is but one minor change that is required to simplify the ISM rules and promote uniformity in the SSI program nationwide. For these reasons, NOSSCR has concerns about SSA's proposal to clarify that income may be received "constructively." This seems like an unnecessary change that will only result in more work and confusion for SSA staff to accurately understand and apply the ISM rules.

SSI payments are the sole means of survival for millions of low-income individuals with disabilities, which are used to meet their basic needs. As such, it is crucial that the ISM rules only account for shelter that has actual, marketable value, because any reduction to the already modest SSI payments has a significant and potentially detrimental impact on the SSI recipient and could mean the difference between having money to pay essential household bills or for necessary medical care.

In addition to making meaningful changes to the SSI ISM rules, NOSSCR urges SSA to modernize the processes and systems used to make ISM determinations and calculations. We note that SSA has yet to release an online SSI application, which NOSSCR and the advocacy community have been urging the agency to do for years. SSA's failure to modernize SSI processes results in increased delays, errors, and wasted budget, which harms SSI claimants/recipients who are reliant on timely and accurate SSI payments and frustrates the ability of agency staff to serve these claimants/recipients efficiently and effectively.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Camp', with a stylized flourish at the end.

David Camp
Chief Policy Officer