



Spouse-to-Spouse Deeming

January 2020

Introduction

The general term “deeming” applies to the process Social Security uses when considering another person's income and resources to be available for meeting an SSI claimant's (or recipient's) basic needs of food and shelter. Social Security assumes that when two people are married, there is a sharing of income and resources. If one member of the couple gets SSI and the other does not, Social Security “deems” a portion of the ineligible spouse’s income and/or resources to the SSI eligible spouse. Since SSI is a means-tested program, Social Security personnel will consider deemed income and/or resources from an ineligible spouse when they determine SSI eligibility as well as the monthly payment amount. Social Security attributes deemed spousal income and resources to the eligible individual whether or not they are actually available to him/her.

When Spouse-to Spouse Deeming Applies

Spouse-to-spouse deeming applies whenever an SSI eligible individual is considered to have a marital relationship with an ineligible individual. For SSI purposes, a marital relationship is one in which members are:

- legally married under the laws of the State where they have their permanent home; or
- married for title II purposes; or
- Living together in the same household and “holding themselves out” as husband and wife to the community in which they live.

NOTE: On June 26, 2013, the Supreme Court ruled Section 3 of the Defense of Marriage Act (DOMA) unconstitutional. Therefore, Social Security no longer is prevented from recognizing same-sex marriages to determine entitlement or payment amount.

Social Security has published new instructions that allow the agency to process more claims in which entitlement or eligibility is affected by a same-sex relationship. This latest policy development lets the agency recognize some non-marital legal relationships as marriages for determining entitlement to benefits. These instructions also allow Social Security to begin processing many claims in states that do not recognize same-sex marriages or non-marital legal relationships. Social Security consulted with the Department of Justice and determined that

the Social Security Act requires the agency to follow state law in Social Security cases. The new policy also addresses SSI claims based on same-sex relationships. Same-sex marriage may affect SSI eligibility or payment amount.

For more information refer to POMS SI 00501.150 Determining Whether a Marital Relationship Exists found online at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500501150>

What Social Security means by “Holding Out”

Social Security may consider a couple to be in a marital relationship even if they are not legally married under certain prescribed circumstances. When two people present themselves to others or “hold themselves out” to the local community as if they were a married couple, Social Security may determine that they are married for the purposes of SSI.

Social Security determines whether or not a couple is holding out by asking both members of the couple certain questions about the relationship using the Marital Relationship Questionnaire (SSA Form SSA-4178). These questions include:

- By what name or names are you known?
- How do you introduce the other person to friends, relatives, or others?
- How is mail addressed to you and to the other person?
- Are there any bills, installment contracts, tax returns, or other papers showing the two of you as husband and wife?
- In what name or names are you renting or buying the place where you live?

If all the answers of both parties show that neither presents the relationship as a marital one, then Social Security determines that a marital relationship does NOT exist and spousal deeming would NOT apply. If the answers indicate that the couple is “holding out”, then spouse-to-spouse deeming would apply.

Social Security doesn’t develop “holding out” if the file shows that a couple who lives in the same household are related by blood or marriage; or have an obvious reason for living in the same household other than as a couple (such as an individual who lives in the home to provide care for a disabled individual).

Holding out determinations are complex and only Social Security personnel may perform them. Whenever there is doubt about a marital relationship, seek a formal determination from the local field office.

How Social Security Deems Spousal Income

When an ineligible spouse lives in the same household as the SSI eligible individual, Social Security applies these deeming rules in the following order:

1. The amount of countable earned and unearned income of the ineligible spouse is determined. Remember that not all money a person receives may count as income under the SSI rules. Income exclusions that Social Security applies during spouse-to-spouse deeming are discussed in the next section of this paper.
2. Social Security subtracts a standard “allocation” from any income the ineligible spouse has for each ineligible child in the household (some exceptions apply). The allocation is simply the couple FBR less the individual FBR which for 2020 would be \$1,175 - \$783 = \$392. Social Security reduces each allocation by the amount of that child’s income. Not all money an ineligible child receives would count as income. If there are ineligible children in the household spousal deeming can get very complicated. In these cases, CWICs should stop and get help from Social Security personnel.
3. If the remaining income of the ineligible spouse is less than the 2020 standard allocation amount of \$392 after all applicable allocations have been deducted, NO income is deemed to the eligible spouse and Social Security stops right here. If the remaining income is more than \$392, then spouse-to-spouse deeming does apply and Social Security moves on to the next step to determine both eligibility and how to adjust the eligible person’s SSI check.
4. If the remaining income of the ineligible person (both earned & unearned) is more than \$392, the eligible individual and the ineligible spouse are treated as if they were an eligible couple from this point forward. Use the [eligible couple SSI calculation sheet](#) to determine countable income. A copy of that form is provided on the VCU NTDC web site (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=3>).
5. Social Security combines the remainder of the unearned income of the ineligible spouse (after ineligible child allocations are applied) with that of the eligible individual and one \$20 General Income Exclusion (GIE) is applied.
6. Social Security combines the remainder of the earned income of the ineligible spouse (less ineligible child allocations if not already taken from unearned income) with any earned income from the eligible individual. If Social Security did not already apply the GIE to unearned income, Social Security applies it to any earned income the couple has. In addition, Social Security applies one \$65 Earned Income Exclusion (EIE) to the earned income.
7. Social Security divides the remaining earned income of the couple by two to determine countable earned income.

8. Social Security applies work incentives for the eligible individual as appropriate within the SSI calculation chart. Most work incentives don't apply to the ineligible spouse with the exception of the Student Earned Income Exclusion (SEIE). As long as the ineligible spouse meets the requirements for use of the SEIE, Social Security will apply it to that person's earnings.
9. Social Security adds the countable earned income to the countable unearned income to determine total countable income for the couple. Total countable income is subtracted from the couple FBR (\$1,175 in 2020) to determine both SSI eligibility as well as the adjusted SSI for the eligible individual.
10. If the remaining figure is zero, no SSI check is due and Social Security will find the spouse to be ineligible. If the figure is more than zero, this is what the adjusted SSI payment for the eligible person will be. The payment can never be more than the individual FBR (\$783 in 2020).

Events that Cause Spousal Deeming Changes

There are several events that can change spousal deeming status. All such changes affect deeming the month after the month the change occurs, except as described below. The most common changes of status are described below, although this list is by no means all-inclusive. Other changes in status could also have an effect on spouse-to-spouse deeming.

1. Ineligible Spouse Becomes Eligible

If an ineligible spouse becomes eligible, Social Security treats the individual and spouse as an eligible couple effective with the month the spouse becomes eligible. Social Security will base both eligibility and payment amount on the couple's income for that month. In the second month, Social Security will base the payment amount on the couple's income in the first month of eligibility.

2. Spouses Separate or Divorce

If an ineligible spouse and eligible spouse separate, or their marriage ends in divorce, Social Security will no longer deem the ineligible spouse's income to determine eligibility effective with the month after the month of separation or divorce. If an initial SSI application is filed in the month of separation or divorce, deeming applies that month even if the application is filed on or after the date of separation or divorce.

3. Eligible Individual Begins Living with an Ineligible Spouse

If an eligible individual begins living with an ineligible spouse, deeming of the ineligible spouse's income begins effective with the month after the month they begin living together.

4. Ineligible Spouse Dies

If an ineligible spouse dies, deeming stops for purposes of determining eligibility effective with the month following the month of death. The payment amount beginning with the

month following the month of death is determined using only the eligible individual's own income from the budget month. Social Security excludes any income deemed from the ineligible spouse that month.

5. Eligible Individual Becomes Subject to \$30 Payment Limit

If an eligible individual moves into a medical care facility and Social Security applies the \$30 payment limit, deeming stops for purposes of determining eligibility effective with the first month for which the \$30 payment limit applies. The payment amount beginning with the first month for which the \$30 payment limit applies is determined using only the eligible individual's own income from the budget month. Social Security excludes any income deemed from the ineligible spouse that month. For more information, refer to [POMS SI 01320.450](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320450) (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320450>).

Income Excluded from Spouse-to-Spouse Deeming

It's essential to understand that receipts that are not income to an eligible individual for SSI purposes also are not income to an ineligible spouse. This means that all of the income exclusions that Social Security applies to eligible individuals also apply to the ineligible spouse during deeming determinations.

Social Security excludes the following types of income by Federal regulation when determining countable income of an ineligible spouse subject to deeming. Social Security also excludes these types of income from the income of an ineligible child in a household for purposes of reducing the ineligible child and alien allocations.

1. Income excluded by Federal laws other than the Social Security Act ([SI 00830.055](#)); such income is also excluded from the income of an essential person; such income may be excluded when determining countable income of the sponsor of an alien, but see [SI 01320.105](#) for exceptions in sponsor-to-alien deeming;
2. Any public income maintenance payments ([SI 01320.141](#)), and any income which was counted or excluded in figuring the amount of that payment;
3. Any of the income of an ineligible spouse, parent, or ineligible child that is used by a public income-maintenance program ([SI 01320.141](#)) to determine the amount of that program's benefit to someone else;
4. Any portion of a grant, scholarship, or fellowship used to pay tuition or fees ([SI 01320.115](#));
5. Money received for providing foster care to an ineligible child ([SI 01320.120](#));
6. The value of food stamps and the value of Department of Agriculture donated foods ([SI 01320.125](#)); these are also excluded from the income of an essential person or the sponsor of an alien;
7. Home produce grown for personal consumption ([SI 01320.130](#));
8. Tax refunds on real property or food purchased by the family ([SI 01320.135](#));
9. Income used to fulfill an approved Plan to Achieve Self-Support ([SI 01320.140](#));
10. Any income that is used to comply with the terms of court ordered support or support payments enforced under title IV-D of the Social Security Act ([SI 01320.145](#));

11. The value of in-kind support and maintenance (ISM) ([SI 01320.150](#));
12. Periodic payments made by a State under a program established before July 1, 1973 and based solely on duration of residence and attainment of age 65 ([SI 01320.155](#));
13. Disaster assistance ([SI 01320.160](#)); some types of disaster assistance may also be excluded from the income of an essential person or the sponsor of an alien.
14. Infrequent or irregular income ([SI 01320.165](#));
15. Work expenses of the blind ([SI 01320.170](#));
16. Income paid under a Federal, State, or local government program (e.g., payments under title XX of the Social Security Act) to provide chore, attendant, or homemaker services to the eligible individual ([SI 01320.175](#));
17. Certain home energy assistance and support and maintenance assistance ([SI 01320.180](#)); such assistance is also excluded from the income of an essential person or the sponsor of an alien;
18. Any child's earned income up to a monthly and yearly maximum determined by cost-of-living indicators ([SI 00820.510](#)), provided that the child is a student ([SI 01320.185](#)), is excluded from the income of an ineligible child or an eligible alien (who is a student child) sponsored by an ineligible spouse or ineligible parent, for purposes of reducing the ineligible child or eligible alien allocation.

See POMS SI 00810.005 for the definition of income for SSI purposes and examples of items that are not income.

EXAMPLE 1: No Deemed Income after Allocation for Ineligible Child

Mrs. Anne Wilson, a disabled individual, lives with her ineligible spouse and their ineligible child, Mike. She is eligible for SSI based on her own income. Mr. Wilson receives \$600 unearned income per month. He has no earned income and Mike has no income at all.

First, allocate to Mike \$392 (the difference between the 2020 FBR for a couple and the 2020 FBR for an individual). Then subtract the \$392 allocation from Mr. Wilson's \$600 unearned income, leaving \$214. Since the \$208 remaining income less than \$392, which is the difference between the FBR for a couple and the FBR for an individual in 2020, no income is deemed to Mrs. Wilson. Instead, compare only her own countable income with the FBR for an eligible individual (\$783 in 2020) to determine whether she is eligible. If Mrs. Wilson's own countable income is less than or equal to the FBR, she is eligible.

EXAMPLE 2: Spouse has both Earned and Unearned Income after Allocation for Ineligible Child

Mr. Jack Ingalls, a disabled individual, lives with his ineligible spouse and ineligible child, Cathy. Mr. Ingalls and Cathy have no income. Mrs. Ingalls has earned income of \$450 a month and unearned income of \$485 a month. First, \$392 is allocated to Cathy. Subtract the \$392 allocation from Mrs. Ingalls' \$485 unearned income, leaving \$93 in unearned income. Since the total remaining income (\$93 unearned plus \$450 earned) is more than \$392, which is the difference between the FBR for a couple and the FBR for an individual in 2020, combine Mr. and Mrs. Ingalls' income and compute countable income the same as for an eligible couple as follows:

Unearned income 93.00
General income exclusion- 20.00
Countable unearned income 73.00

Earned income 450.00
Earned income exclusion - 65.00
Remainder 385.00
Divide by 2192.50

Countable unearned 73.00
Countable earned 192.50
Total countable income 265.50

Couple FBR 1,175.00
Total countable income 265.50
Adjusted SSI 909.50*

** The SSI check can never be more than \$783 (the individual FBR for 2020), so Mr. Ingalls' check would be \$783/month.

EXAMPLE 3: Both Eligible Individual and Ineligible Spouse have Income

In 2020 Harold Bergman, a disabled individual, lives with his ineligible spouse, who earns \$659 per month. Mr. Bergman receives a pension (unearned income) of \$400 a month. Since Mrs. Bergman's income is greater than \$392, which is the difference between the FBR for a couple and the FBR for an individual in 2020, deeming will apply and Social Security computes the combined countable income for the couple.

Unearned income 400.00
General income exclusion - 20.00
Countable unearned income 380.00
Earned income 659.00

Earned income exclusion - 65.00

Remainder 594.00

Divide by 2297.00

Countable unearned 380.00

Countable earned 297.00

Total countable income 677.00

Couple FBR 1,175.00

Total countable income -677.00

Adjusted SSI 498.00

How Social Security Deems Spousal Resources

During spousal resource deeming determinations, Social Security considers the total countable resources of the couple. Total countable resources are the combination of the resources of the eligible individual and the ineligible spouse after all applicable resource exclusions are applied. Social Security then compares the total countable resources with the resource limitation for a couple, which is currently \$3,000. If the amount of the resources does not exceed the limit, the applicant /recipient meets the resource eligibility requirement. If countable resources exceed the limit, the applicant/recipient is ineligible. The resources of an individual who is living with an ineligible spouse include the resources of the spouse, whether or not they are available to the applicant.

All resource exclusions that apply to an eligible couple's resources apply to the combined resources of an eligible individual and an ineligible spouse who lives with him or her. In addition to the standard resource exclusions, Social Security disregards certain other items when making spousal deeming determinations. These additional exclusions include:

- **Pension Funds** – Social Security excludes pension funds owned by an ineligible spouse from resources for deeming purposes. “Pension funds” are funds held in individual retirement accounts (IRA's), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans).
- **Burial Fund Exclusion** - A burial fund is a specifically designated fund of up to \$1,500 in value set aside to pay for funeral expenses. Each eligible individual and their spouse may have their own burial fund. Social Security personnel must know this fund exists before they can exclude them, so SSI recipients must let

the agency know as soon as they plan to set money aside. SSI recipients must keep burial funds separate from all non-burial related resources. If the funds are commingled, the burial exclusion will not apply.

- **Burial Space Exclusion** - The burial space exclusion applies to burial spaces for use by the eligible individual, spouse, and members of his/her immediate family. Burial plots, crypts, caskets, urns, etc., may be purchased in advance and are completely excluded up to an unlimited value. The only exception to this is if there is more than one of a particular item for one individual. For example, if a person owns a collection of urns or caskets, only one item is excludable.

WARNING! While the ineligible spouse is permitted to have his or her own burial fund and burial space in addition to the eligible individual, Social Security does NOT exclude more than one vehicle that is used for transportation. Social Security disregards the vehicle of highest value. The equity value of second and any additional vehicles will be a countable resource for spousal deeming purposes.

EXAMPLE: No Resources Excluded — Individual Meets the Resource Eligibility Requirement

Mr. and Mrs. Daley are married and live together. Mr. Daley is disabled and applies for SSI payments. His wife is under age 65 and is neither blind nor disabled. Mr. Daley has no resources of his own. However, Mrs. Daley has \$1,900 in a savings account and owns a vacant lot valued at \$500. The couple's resources are as follows:

Excluded Resources – NONE

Countable Resources:

\$1,900 - Mrs. Daley's savings account

+ 500 - Mrs. Daley's lot

\$2,400 - couple's combined resources

- 0 - applicable exclusions

\$2,400 - couple's countable resources

The resource computation is as follows:

\$2,400 - couple's countable resources

-\$3,000 - couple's resource limit

0

Mr. Daley meets the resource eligibility requirement for SSI.

EXAMPLE: Some Resources Excluded — Individual Meets the Eligibility Requirement

Mr. and Mrs. Sands are married and live together. Mr. Sands, who is disabled, applies for SSI. Mrs. Sands works for a company with a pension plan and states she has accumulated \$5,000 in her pension fund which she can withdraw at any time. Mr. and Mrs. Sands jointly own two grave sites worth \$500 each and have a joint bank account with a balance of \$1,000. The couple's resources are as follows:

Excluded Resources

\$5,000 - pension fund

+1,000 - grave sites

\$6,000 - excluded resources

Countable Resources

\$1,000 - joint bank account

The resource computation is as follows:

\$1,000 - couple's countable resources

-3,000 - couple's resource limit

0

Mr. Sands meets the resource eligibility requirement for SSI.

EXAMPLE: Some Resources Excluded — Individual is Ineligible

Mr. and Mrs. Smith are married and live together. They have the following resources: a joint checking account of \$250; United States savings bonds (in both their names) worth \$400; and two automobiles — one used for transportation and valued at \$6,000, and the other with a current market value and equity value of \$3,000. In addition, Mrs. Smith owns a plot of land

which produces no income and has an equity value of \$2,000. Mr. Smith owns a life insurance policy on his own life with a face value of \$2,000 and a cash surrender value (CSV) of \$897. Mrs. Smith owns a life insurance policy on her life with a face value of \$1,000 and a CSV of \$900.

Excluded Resources

\$6,000 - automobile used for transportation

900 - life insurance of Mrs. Smith with face value not over \$1,500

+1,000 - household goods and personal effects

\$7,900 - excluded resources

Countable Resources

\$250 - joint checking account

400 - savings bonds

3,000 - second automobile

2,000 - Mrs. Smith's real estate

+897 - CSV of Mr. Smith's life insurance

\$6,547 - couple's countable resources

The couple's computation is as follows:

\$6,547 - couple's countable resources

-3,000 - couple's resource limit

\$3,697 - excess resources

Mr. Smith is ineligible for SSI at this time

What CWICs Need to Know about Deemed Spousal Income and Resources

Although deeming of spousal income and/or resources is complicated, it's important for CWICs to gain a basic understanding of how this process works. While deemed income from an ineligible spouse may cause a reduction in SSI cash payment or even ineligibility in some cases, there is one advantage to deemed spousal income which CWICs need to be aware of. Like any other form of countable income, deemed spousal income can be used to fund a Plan to Achieve Self-Support or PASS. In some cases, this deemed income will offer the only way a beneficiary has to purchase the items of services needed to achieve an occupational goal. From a work incentives perspective, this deemed income can create opportunities for paid employment that might not otherwise have been possible.

In many of the simpler cases, CWICs can independently apply the spouse-to-spouse deeming rules by using the Couples Calculation Sheet and accurately estimate how much income Social Security will deem. When this is possible, the CWIC should perform this service so the beneficiary can see how much income Social Security will count and how the SSI cash payment will be affected. In other cases, particularly when there are numerous ineligible children with various forms of income present in the household, it will be necessary to seek assistance from the local field office. If the CWIC knows the exact amount of deemed income, the CWIC can help the beneficiary determine how the SSI cash payment will be impacted and can assist with developing a PASS (when applicable). In addition, CWICs can educate beneficiaries about what information they need to report to Social Security so that accurate spousal deeming determinations can be made. This will help avoid unnecessary over or underpayments.

EXAMPLE: Spousal Deeming when an Eligible Individual Works

In 2020, Harold Bergman, a disabled individual, lives with his ineligible spouse, who earns \$659 per month. Mr. Bergman receives a pension (unearned income) of \$400 a month, and is considering a job offer that would pay him \$452 per month. Since we previously determined that Mrs. Bergman's income is greater than \$392, which is the difference between the FBR for a couple and the FBR for an individual in 2020, spousal deeming will apply and the anticipated combined countable income for the couple is as follows:

Unearned income	400.00	
General income exclusion		<u>- 20.00</u>
Countable unearned income	380.00	
Earned income	1,111.00	(659.00 + 452.00)
Earned income exclusion		<u>- 65.00</u>

Remainder 1046.00

Divide by 2523.00

Countable unearned 380.00

Countable earned 523.00

Total Countable 903.00

Couple FBR 1,175.00

Total countable income - 903.00

Adjusted SSI 272.00

Conclusion

Spousal deeming is one of the most complex aspects of working with SSI recipients. Social Security does not expect CWICs to determine exactly how much income from an ineligible spouse the agency will deem against an eligible individual. However, CWICs do need to be able to explain how the spousal deeming process works in general terms and should be competent in establishing a working estimate of deemed income, especially when the eligible individual is considering employment. Keep in mind that while deemed income from a spouse may cause an individual to be found ineligible for SSI, the deemed income may also present opportunities for use of a PASS to help achieve an occupational goal.

Conducting Independent Research

[POMS SI 01320.400 -- Deeming of Income from an Ineligible Spouse](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320400)

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320400>)

[POMS SI 01320.100 -- Items Not Included in Deeming – General](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320100)

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320100>)

[POMS SI 00501.152 -- Determining Whether a Man and Woman Are Holding Themselves Out as Husband and Wife](https://secure.ssa.gov/apps10/poms.nsf/lnx/0500501152) (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500501152>)

[POMS SI 01330.400 -- Deeming of Resources](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501330400)

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501330400>)

[POMS SI 01330.420 - Exclusions from Resources](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501330420)

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501330420>)

[POMS SI 01320.450 -- Deeming - Change of Status – Couples](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320450)

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320450>)

This document produced at U.S. taxpayer expense.