



## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Part 416**

**[Docket No. SSA-2021-0014]**

**RIN 0960-AI60**

### **Omitting Food from In-Kind Support and Maintenance Calculations**

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

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

**DATES:** This final rule will be effective September 30, 2024.

**FOR FURTHER INFORMATION CONTACT:** Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd, Robert M. Ball Building, Suite 2512B, Woodlawn, MD 21235, 410-966-7384. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <https://www.socialsecurity.gov/>.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The SSI program provides monthly payments to adults and children with a disability or blindness, and to adults aged 65 and older. These individuals must meet

multiple eligibility requirements, including having resources and income below specified amounts.<sup>1</sup> Resources are cash or other liquid assets or any real or personal property that individuals (or their spouses, if any) own and could convert to cash to be used for their support and maintenance.<sup>2</sup> Income is anything individuals receive in cash or in-kind that they can use to meet their food and shelter needs.<sup>3</sup> Individuals' resources may affect their SSI eligibility, while their income may affect both their eligibility and payment amounts.

Both earned income and unearned income include items received in-kind.<sup>4</sup>

Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income.<sup>5</sup> However, we have special rules for valuing in-kind support and maintenance (ISM) that is received as unearned income.<sup>6</sup> On February 15, 2023, we published a Notice of Proposed Rulemaking (NPRM), *Omitting Food From In-Kind Support and Maintenance Calculations*,<sup>7</sup> which proposed updating our regulations to exclude food from the ISM calculations and adding conforming language to our definition of income.

We are making these changes based on the Commissioner of Social Security's rulemaking authority specified in sections 205(a), 702(a)(5), 1631(d)(1), 1631(e)(1)(A), and 1633(a) of the Social Security Act. These sections of the Act give the Commissioner the authority to adopt rules relating to, among other things, what data the Commissioner determines is necessary for the agency to collect for the effective and efficient administration of the SSI program, as well as the nature and extent of the evidence applicants and recipients need to provide to establish benefit eligibility. The

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<sup>1</sup> See 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 CFR Part 416.

<sup>2</sup> 20 CFR 416.1201(a).

<sup>3</sup> 20 CFR 416.1102. See also 20 CFR 416.1103 for examples of items that are not considered income.

<sup>4</sup> See 20 CFR 416.1110 and 20 CFR 416.1120.

<sup>5</sup> See 20 CFR 416.1111(d), 416.1112, 416.1123(c), and 416.1124.

<sup>6</sup> See 20 CFR 416.1123(c) and 416.1131-1147.

<sup>7</sup> 88 FR 9779.

modifications to our policy regarding how we will calculate ISM are a proper exercise of the Commissioner's rulemaking authority under the Act. The NPRM includes a full discussion of the ISM policy as well as the rationale for and analysis of this policy change, which we adopt in this final rule except as indicated in the following modifications.

Under this final rule, we no longer consider food expenses in our ISM calculations. Instead, we will consider only shelter expenses (i.e., room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services). We will continue to use the Value of the One-Third Reduction (VTR) rule<sup>8</sup> and the Presumed Maximum Value (PMV) rule in determining the value of ISM to an SSI applicant or recipient.<sup>9</sup>

Though we are omitting food expenses from our ISM calculations, we will still ask a question about food for the narrow purpose of determining whether to use the VTR rule or the PMV rule. Food expenses would not be included in the actual calculation; they will only be considered in determining whether to apply the VTR or PMV rule. When an applicant or recipient<sup>10</sup> tells us that they live in another person's household, we will ask if others within the household pay for or provide them with all their meals. If the applicant or recipient answers "no," we will value the shelter using the PMV rule. If the applicant or recipient answers "yes," we will then evaluate the applicant's or recipient's shelter contribution to determine if the PMV rule or the VTR rule applies. If the VTR rule does not apply, then we will evaluate any ISM under the PMV rule. Asking only the one

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<sup>8</sup> When we apply the VTR rule, we count one-third of the Federal Benefit Rate (FBR) as unearned income. See 42 U.S.C. 1382a(a)(2)(A); 20 CFR 416.1131(a). For information on the FBR, see 20 CFR 416.405 through 416.415. Some States supplement the FBR amount.

<sup>9</sup> When we apply the PMV rule, we count the set maximum value as unearned income, unless the applicant or recipient rebuts this presumption. See 20 CFR 416.1140. The set maximum value is one-third of the FBR, plus the amount of the general income exclusion, see *id.*, which is currently \$20, see 20 CFR 416.1124(c)(12).

<sup>10</sup> We refer to "applicant or recipient" here and throughout this final rule when we mean "applicant, recipient, or couple" for ease of reference, except where reference to the couple is specifically relevant.

question is a change from what we proposed. In the NPRM, we proposed asking three questions to assess whether an applicant or recipient purchased food separately from the household. These were: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive Supplemental Nutrition Assistance Program (SNAP) benefits?<sup>11</sup> In this final rule, we revised these three questions into one single question to better enable us to identify applicants and recipients who should have their shelter valued under the PMV rule because they obtain food outside of their household. Our original three questions might have disadvantaged some applicants and recipients because they would not have identified all potential circumstances in which the PMV rule currently applies (and because the PMV rule can be rebutted, it is more advantageous in some circumstances). For example, our original three questions would not have identified situations where: applicants and recipients receive benefits from food-assistance programs other than SNAP; people outside of the household pay for or provide food or meals; or applicants or recipients earmark contributions for a pro rata share of the household's food expenses under the previous process.

We will apply the VTR rule when applicants or recipients (1) live in another person's household throughout a month; (2) receive shelter from others living in the household; and (3) others within the household pay for or provide all the applicant's or recipient's meals. By definition, claimants who live in their own households will not be assessed under VTR. Alternatively, we will apply the PMV rule when an applicant or recipient receives ISM, but the VTR rule does not apply. This means we will apply the PMV rule when applicants or recipients: 1) live in another person's household and receive shelter from others living in the household, but others within the household do not pay for or provide all the applicant's or recipient's meals; 2) live in their own household, but someone helps provide them with shelter; or 3) live in a non-medical

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<sup>11</sup> See 88 FR 9785.

institution as described in 20 CFR 416.1141(c). Under the PMV rule, applicants and recipients may rebut the presumption that shelter is worth the set maximum value by showing the actual value is lower than the set maximum value.<sup>12</sup>

In addition, we are updating our regulations with clarifying language. Our previous regulations stated that for the VTR rule to apply, applicants or recipients must receive both food and shelter from the person in whose household they are living. In practice, when determining whether to apply the VTR rule, we consider others in the household as well. We are clarifying this longstanding practice in our regulations. Specifically, in 20 CFR 416.1131(a)(2) and (3), we have changed the language to indicate that we will consider food and shelter received “from others living in the household”—not just from the person in whose household the applicant or recipient is living.

This final rule also clarifies that income may be received “constructively.” For purposes of the definition of income in 20 CFR 416.1102, income may be received “actually” or “constructively.” As we explained in our NPRM, income is received constructively if it is under the applicant’s or recipient’s control, or the applicant or recipient can use it despite not actually receiving it, unless there are significant restrictions on the applicant’s or recipient’s ability to receive it.<sup>13</sup> Constructive receipt of income is part of our current policy, and this change makes it clearer.

### **Severability**

In the event of an invalidation of any part of this rule, our intent is to preserve the remaining portions of the rule to the fullest possible extent. In particular, we intend the clarification of consideration of others in the household in 20 CFR 416.1131 to be severable, as it better explains our current policy and functions independently of the other

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<sup>12</sup> If applicants or recipients successfully rebut that presumption, we reduce their benefits by a smaller amount or not at all. See 20 CFR 416.1140(2)(ii).

<sup>13</sup> 88 FR 9784 (Feb. 15, 2023).

changes reflected in this final rule. We also intend the clarification of constructive receipt of income in 20 CFR 416.1102 to be severable, as it better explains our current policy and functions independently of the other changes reflected in this final rule.

### **Justification for Change**

We historically included in-kind receipt of food in our ISM calculations because food assistance helps people meet their basic needs. However, the complexities of our current food ISM policies outweigh their utility. As discussed in the NPRM in much greater detail, we are revising our policy for several purposes, including to make our policies simpler (and thus easier to comprehend and use), and to promote equity both by treating food assistance equally regardless of the source and by not disadvantaging an already vulnerable population when they receive food assistance.<sup>14</sup> First, this final rule simplifies SSI policy because it removes a variable from our ISM calculations, which, in turn, will: reduce the amount of program rules an applicant or recipient needs to understand; reduce the amount of information that applicants or recipients must report; simplify and shorten processing; and lead to fewer benefit recalculations and payment errors. Second, this final rule promotes equity. SSI recipients, by definition, have low income and resources. Because low-income people disproportionately encounter barriers across a range of social, health, and economic outcomes, our goal is to improve their circumstances, thus improving equity. As we discussed in our NPRM, disabled individuals are more likely to be food insecure, and this policy change will remove critical barriers to receiving informal food assistance from friends, family, and community networks of support.<sup>15</sup> Under our current policy, this type of food assistance from family and friends is treated differently than food support from charitable or government sources.<sup>16</sup> Thus, excluding food from the calculation of ISM ensures that

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 9786-87.

<sup>16</sup> *Id.* at 9787.

food assistance from public and private sources is treated uniformly under our ISM rules.<sup>17</sup> Overall, this final rule promotes equity by: providing increased financial security to affected beneficiaries; providing consistent treatment of food support regardless of source; reducing reporting requirements and the effects of reporting on applicants and recipients; and facilitating improved food security among certain beneficiaries.<sup>18</sup>

In addition, as we discussed in the NPRM, food costs are quite variable and valuing food is inherently challenging because it is difficult to accurately estimate food expenses.<sup>19</sup> Individuals receive food at different intervals, in different amounts, and from different sources, and the price of food can fluctuate significantly over a relatively short period of time. When any of these food-related factors changes, under our current policy, applicants and recipients must immediately report the change or else risk a potential over- or underpayment.<sup>20</sup> This creates significant burdens for the SSI applicants and recipients and also for the agency to process frequent changes related to food ISM and ensure that payments are accurate. As we noted in the NPRM, our ISM calculations have historically been a significant cause of payment errors.<sup>21</sup> We anticipate that eliminating a highly variable expense, such as food, from our ISM calculations will help us achieve greater program efficiency and payment accuracy.

For a more detailed explanation of how we expect the final rule to function in these ways, we refer to Justification for Change section of the NPRM.<sup>22</sup>

### **Modifications from NPRM**

In several places, this final rule differs slightly from the CFR text we set out in the NPRM. As discussed earlier, we revised the language because our original three

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 9786-88.

<sup>19</sup> *Id.* at 9785.

<sup>20</sup> *Id.* at 9785-86.

<sup>21</sup> *Id.* at 9786-88.

<sup>22</sup> *Id.* at 9784-9788.

questions might have disadvantaged applicants and recipients who obtain food outside of their household. We anticipate that the revised question will be more comprehensive than the original three questions we proposed in the NPRM. In addition, we eliminated the phrase we proposed related to receiving shelter from a “combination of others living inside the household and others living outside the household.” In these instances, this final rule retains existing CFR language, which references only receipt of shelter from “others living in the household.” We detail these changes below.

- We revised paragraph (h) of 20 CFR 416.1121. In the NPRM, we stated that one rule (the VTR rule) applies if “you are living throughout a month in another person's household receiving all your shelter from others living in the household.”<sup>23</sup> This final rule revises this to “you are living in another person’s household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals.”
- We revised paragraph (c) of 20 CFR 416.1130 and redesignated it as paragraph (b)(2). In the NPRM, we stated that the VTR rule applies if you (applicants or recipients) are living in the household of a person who provides you with shelter, “unless we determine that you buy your food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits.”<sup>24</sup> This final rule revises this to “and others within the household pay for or provide you with all of your meals.”
- We revised paragraph (a)(2) of 20 CFR 416.1131 to eliminate the phrase, “combination of others living inside the household and others living outside the household.”<sup>25</sup> We also revised paragraph (a)(3) of 20 CFR 416.1131. In the NPRM, we stated that the VTR rule applies when you (applicants or recipients),

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<sup>23</sup> 88 FR 9794 (Feb. 15, 2023).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

“[d]o not buy food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits.” This final rule revises this to when “[o]thers within the household pay for or provide you with all of your meals.”

- We revised paragraph (a) of 20 CFR 416.1141. In the NPRM, we did not propose changes to this section. The previous regulatory text stated that the PMV rule applies if applicants or recipients are living in another person's household “but not receiving both food and shelter from that person.” The final rule revises this to “you receive shelter from others living in the household; and others within the household do not pay for or provide you with all of your meals.”
- We revised paragraphs (a) and (b) of 20 CFR 416.1147 to eliminate the phrase, “combination of others living inside the household and others living outside the household.”<sup>26</sup> We further revised paragraph (a) of 20 CFR 416.1147. In the NPRM, we stated, “When both of you live in another person's household throughout a month and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household,” then the VTR rule applies to the couple. The final rule revises this to “When both of you live in another person's household throughout a month, receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals....” We further revised paragraph (b) of 20 CFR 416.1147. In the NPRM we stated, “If one of you is living in the household of another person who provides you with shelter” and the other person is temporarily absent and ineligible, then we compute benefits as if the two are separately eligible individuals. The final rule revises this to “If one of

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<sup>26</sup> 88 FR 9795 (Feb. 15, 2023).

you is living in the household of another person and receives shelter from others living in the household, and others within the household pay for or provide you with all of your meals....”

### **Listening Sessions**

During the public comment period, we held two listening sessions, as described in Executive Order (E.O.) 12866, at the request of advocacy groups. Notes from those sessions are available at <https://www.regulations.gov/document/SSA-2021-0014-0003> under the “Supporting & Related Material” tab. The issues raised during those sessions are also addressed in the “Comments Summary” section of this final rule.

### **Comments Summary**

We received 4,386 public comments on our NPRM from February 15 through April 17, 2023. Of the total comments, 4,320 are available for public viewing at <https://www.regulations.gov/docket/SSA-2021-0014>.<sup>27</sup> These comments were from:

- Individuals;
- Advocacy groups for claimant representatives, such as the National Organization of Social Security Claimants' Representatives and the National Association of Disability Representatives; and
- Other advocacy groups.

We carefully considered the public comments we received. More than 95% of commenters supported the proposals in the NPRM. Some commenters agreed with the overarching proposal but recommended amendments to it. Other commenters asked questions and offered opinions on the potential financial and legal implications of the proposal. A few commenters disagreed with the proposal altogether.

We received some comments that were outside the scope of this rule because they

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<sup>27</sup> We excluded comments that were unrelated to the proposal or were exact duplicates submitted by the same commenter. Because of the nature of sorting and processing comments, some exact duplicates may have been posted publicly.

did not relate to our proposal to remove food from the ISM calculations. Even though outside the scope, we address some of these comments where they related to ISM more generally and a response might help the public understand our programs better.

The next section summarizes and responds to the public comments.

### **Comments and Responses:**

#### **Requests to Modify the New Policy Outlined in the NPRM**

*Comment:* A commenter suggested we should no longer apply ISM retroactively, and that we should provide advance notice of ISM reduction. The commenter expressed that applicants and recipients should have the opportunity to understand the effects of ISM and to begin contributing a fair share towards the household expenses before ISM reduction is applied. The commenter asserted that by ceasing the retroactive application of the ISM rule for SSI applicants, SSA would greatly reduce “negative effects” and “stop penalizing recipients for the long wait time it takes for applications and appeals processing.”

*Response:* In general, we determine an individual’s eligibility for SSI payments for a month based on the individual’s (and eligible spouse’s, if any) income, resources, and other relevant characteristics in that month.<sup>28</sup> But, for a variety of reasons, we may have to calculate payments for a particular month after the fact (for example, because it takes time to process a new claim, or we did not receive timely information about a change in circumstances). Doing so does not make our application of ISM “retroactive.”

Additionally, we provide written advance notice of a planned adverse action, where SSI payments would be reduced, suspended, or terminated.<sup>29</sup>

We agree that individuals should have the opportunity to understand ISM and its potential effects. Individuals may contact us directly to ask questions, and we provide a

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<sup>28</sup> See 42 U.S.C. 1382(c)(1).

<sup>29</sup> See 20 CFR 416.1336.

variety of resources to explain our rules in plain language, like instructions on our forms and reader-friendly publications we make available online, by mail, and in our offices.

*Comment:* Several commenters suggested that we change ISM rules to reflect a rebuttable presumption that the SSI recipient has no countable ISM, because “only rarely” is the ISM received of “true market value.”

*Response:* It is not clear to us what the legal and policy basis would be to presume that the individual has no countable ISM. The Social Security Act states “that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that . . . benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.”<sup>30</sup> Further, it is not clear to us who would rebut the presumption. Nor is it clear to us what is meant by the statement that the ISM received rarely is of “true market value.”

*Comment:* One commenter recommended that we create a PMV rebuttal form and make changes to the Rebuttal Rights Notice. The commenter stated that such a form should plainly advise recipients that they have a right to rebut PMV, clearly explain what kinds of evidence recipients could submit and how to do so and provide space for recipients to provide further information to the agency. The commenter expressed that many SSI recipients are “unaware of the PMV rebuttal procedures” and are “denied crucial additional benefits to which they are entitled because they fail to rightfully rebut the PMV’s maximum one-third reduction.”

*Response:* Generally, our technicians discuss the PMV rebuttal process with applicants and recipients when they assist them by phone or in person at the time of the application or post-eligibility event.<sup>31</sup> Sometimes, our technicians are unable to discuss the PMV rebuttal process upfront, such as when an applicant applies electronically or by mail.

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<sup>30</sup> 42 U.S.C. 1383(e)(1)(B)(i).

<sup>31</sup> See Program Operations Manual System (POMS) SI 00835.320.

Under those circumstances, we send them the Rebuttal Rights Notification. This letter serves as a prompt for applicants and recipients to contact us directly to ensure they understand PMV rebuttal rights and how to rebut the PMV. While we appreciate this commenter's feedback, we need to conduct additional analysis prior to determining if a form would improve certain applicants' and recipients' ability to understand and utilize the PMV rebuttal process, or if people would find it more burdensome. As a result, while this final rule does not include the adoption of a new form, in FY 2024 we intend to initiate a separate Paperwork Reduction Act (PRA) process. As part of this PRA process, we would propose the Rebuttal Rights Notification Form, and would solicit feedback on the proposed form.

*Comment:* One commenter expressed that the SSI program would be better served by eliminating the VTR framework altogether and instead assessing all recipients under the PMV framework.

*Response:* We are unable to eliminate the VTR because it is required by the Social Security Act in 42 U.S.C. 1382a(a)(2)(A), which states: "in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in-kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) ... shall be reduced by 33 1/3 percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse)..."

*Comment:* A commenter suggested there is an alternative simplification: assigning a set value to food received with a possibility of rebuttal.

*Response:* The commenter's suggestion would be difficult to implement, as it is not clear how we would fairly assign a set value to food received, particularly since food prices can be volatile. Additionally, because rebutting the presumption would require evidence of food costs, it would present the same challenges and burdens that currently exist.

## Miscellaneous Comments Regarding Various Aspects of the New Rule

*Comment:* A commenter expressed that it may be efficient to use data matches with State agencies to establish SNAP receipt, and to allow applicants and recipients the opportunity to rebut the results of the match.

*Response:* The commenter’s suggested use of a data match with State agencies for SNAP benefits related to our original proposal to ask three food-related questions—one of which asked directly about SNAP receipt. However, as noted above, instead of the three food-related questions we proposed in the NPRM, we will ask only one food-related question, for the limited purpose of determining whether ISM should be valued under the VTR or PMV rule: do others within the household pay for or provide you with all of your meals? We separately ask about an applicant’s or recipient’s receipt of food-assistance benefits for purposes other than determining their living arrangement and will continue to do so. We will work to add appropriate internal guidance to the question “Do others within the household pay for or provide you with all of your meals?” to direct technicians to review whether the applicant or recipient has separately indicated they receive food-assistance benefits. This will ensure that when an individual has indicated they receive food-assistance benefits they are treated under PMV. Further, the receipt of SNAP benefits will also continue to be relevant to our proposed rulemaking: *Expand the Definition of a Public Assistance Household*,<sup>32</sup> which proposes to expand our definition of a public assistance household to include SNAP as an additional means-tested public income-maintenance (PIM) program under 20 CFR 416.1142(a). The agency will use data matches with State agencies if appropriate for these other purposes.

*Comment:* One commenter noted that the Medicare Part D Extra Help program does not count ISM in determining eligibility, and the commenter expressed that the “incentive structure of the Extra Help subsidy could ultimately decrease the same individual’s SSI

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<sup>32</sup> See 88 FR 67148.

assistance” when individuals are eligible under both programs. Further, the commenter expressed that removing shelter inputs from ISM entirely would make SSI and the Extra Help program eligibility methodologies more uniform. The commenter stated that, in an ideal system, eligibility criteria for low-income assistance programs would be consistent.

*Response:* The Social Security Act requires that we treat ISM differently for SSI than for Extra Help. While the Act specifies that income for Extra Help is generally calculated the same way as for SSI, it also says that for Extra Help “support and maintenance furnished in-kind shall not be counted as income.”<sup>33</sup> We do not anticipate changes in our ISM calculations will impact the Extra Help program.

*Comment:* One commenter recommended simplifying our ISM regulations for increased readability and digestibility. The commenter expressed that SSI recipients and applicants typically require “extensive and time-consuming client counseling to translate dense terminology and complex rule structure into plain language.” For example, the commenter said that the language in 20 CFR 416.1102 is challenging because it presents “in-kind support and maintenance” as an exception to a general rule. The commenter expressed there is also a broader readability problem with “in-kind income,” because it is an “uncommon and unfamiliar term that confuses most people and prevents them from understanding their reporting requirements.” In addition, they suggested the possibility of renaming ISM with a term like “value of free shelter” or “free shelter reduction.”

*Response:* Although we appreciate the suggestion to simplify and improve the readability and digestibility of our regulations, it is not possible to eliminate all technical language. Sometimes it is necessary for us to use terms that may be technical, unique to the SSI program, or both because they reflect complex statutory requirements and other unique aspects of the SSI program. The use of such terms is often because the requirements and language are set by statute.

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<sup>33</sup> See 42 U.S.C. 1395w-114(a)(3)(C)(i); POMS HI 03020.045.

In addition, the terms “value of free shelter” or “free shelter reduction” might not be accurate and might be confused with other policies in our program, such as “rent-free shelter.”<sup>34</sup> Further, it is important to keep our terms consistent throughout our policies, forms, publications, and outreach efforts. Revising a widely used term like “ISM” would be a significant undertaking and would likely lead to confusion for the people who receive benefits from, or work with recipients of, our program currently and are already familiar with the terms we use now.

However, we acknowledge that our regulations are complex. For that reason, we provide a variety of resources to explain our rules in plain language, like instructions on our forms and reader-friendly publications we make available online, by mail, and in our offices. Individuals may also contact us directly to ask questions.

*Comment:* Multiple commenters expressed concerns about, or advised against, continuing to ask applicants and recipients the three questions about food<sup>35</sup> to determine whether to use the VTR or PMV rule. They said asking these questions and continuing to consider food, even in this limited way, would result in complexity and confusion for applicants, recipients, and SSA staff.

Conversely, another commenter supported our proposal to continue asking the food questions. The commenter said, “While we acknowledge that asking these three questions of all SSI recipients does not streamline the ISM process for applicants and recipients, that is clearly outweighed by the fact that this approach will enable more applicants and recipients to be assessed under the PMV rule, thereby avoiding a potential ISM reduction that is greater than the actual value of the ISM received.” Another commenter similarly supported continuing to ask the food questions by urging us to “take care not to inadvertently penalize recipients using their monthly benefits to contribute to

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<sup>34</sup> See POMS SI 00835.370.

<sup>35</sup> As mentioned above, the questions we proposed in the NPRM were: 1) do you buy food separately from the household? 2) do you eat all meals out? and 3) do you receive SNAP benefits?

their household's food expenses" and provided an example of a former client who was "eligible to receive her maximum FBR because she paid for her household's food, though she was allowed to live in that household rent-free."

*Response:* We acknowledge that it would simplify our process further if we stopped asking SSI applicants and recipients questions about food. Instead of asking three questions as proposed in the NPRM, we will instead ask one question to make the process simpler. Receipt of food from outside the household can determine whether the PMV rule applies, and the PMV can be advantageous in some circumstances because it provides an opportunity for applicants and recipients to rebut the value of ISM provided. Therefore, we think it is important to continue to ask about food in this limited way.

*Comment:* A commenter asserted that support and maintenance means room and board as evidenced by the context of the law,<sup>36</sup> where the "exclusion of a residence in a nonprofit retirement home is given, and room and board is clearly understood, as in [Program Operations Manual System (POMS)] SI 00830.605." In addition, the commenter mentioned a 2008 Bulletin article cited in the NPRM.<sup>37</sup> The commenter added that PMV must emulate VTR, and therefore that removal of food from ISM is not to be considered as within the law.

*Response:* We are removing food from the calculations of ISM. Regarding the statute's provision on residing in a nonprofit retirement home or similar nonprofit institution,<sup>38</sup> we did not change the regulations that apply when someone lives in a nonprofit retirement home or similar institution.<sup>39</sup> Regarding the comments on POMS SI 00830.605 (Home

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<sup>36</sup> The commenter cited "1612a(2)(A)." We believe the intended reference was to section 1612(a)(2)(A) of the Social Security Act (42 U.S.C. 1382a(a)(2)(A)).

<sup>37</sup> See Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance." Social Security Bulletin, vol. 68, no. 4, 2008, [www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html](http://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html).

<sup>38</sup> Section 1612(a)(2)(A) of the Social Security Act, as amended (42 U.S.C. 1382a(a)(2)(A)).

<sup>39</sup> 20 CFR 416.1144.

Energy Assistance and Support and Maintenance Assistance (HEA/SMA)),<sup>40</sup> we did not change the regulations on support and maintenance assistance.<sup>41</sup>

The 2008 Bulletin referenced by the commenter generally supports simplification such as removing food from the ISM calculations: “One of the founding principles of SSI is that, as a program that is national in scope, it should be based on a ‘flat grant’ approach that does not involve program administrators in the detailed household budgets of millions of recipients. The law creating the SSI program included the one-third reduction provision so that SSA would not have to determine the actual value of room and board when a recipient lived with a friend or relative. . . . SSA created the PMV rule and the pro rata share concept through regulations in an attempt to better address equity among recipients. However, these regulations compromised the simplification objective of the ‘flat grant’ approach[.]”

Finally, it is not clear what it would mean for the PMV rule to emulate the VTR rule with respect to removal of food from the calculation of ISM. The changes here will remove food from the calculation of ISM under both rules.

*Comment:* A commenter asserted that the 2005 precedent of the removal of clothing, used to support the proposal, actually achieves the opposite. The commenter said that clothing is a “semi-durable” good and may be thought to be unlike consumption goods and services like food and shelter. The commenter pointed to text from the 2005 rule which says: “unlike food and shelter, clothing generally is not received every month. Items of clothing are more likely to be received infrequently and sporadically, and they generally have no substantial value.” The commenter asked if the same could be said for food.

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<sup>40</sup> We note also that our sub-regulatory guidance, including our POMS, does not carry the weight of regulations.

<sup>41</sup> 20 CFR 416.1157.

*Response:* We did not make the same simplification for food that we did for clothing. In 2005, we removed clothing from the definition of income and the definition of ISM.<sup>42</sup> Here, we are removing food from the calculations of ISM. The comparison that we drew in the NPRM — “Like the 2005 simplification, this proposal would simplify the ISM calculations with respect to a factor for which it is difficult to obtain accurate, verifiable estimates. Like clothing, food is an expense that fluctuates from month to month and may be provided from different sources at different intervals.” — is accurate. Furthermore, while the 2005 rule included specific rationale justifying why it was appropriate to treat clothing differently than food or shelter, including the argument the commenter raised, in developing this rulemaking we presented specific rationale as to why it is appropriate to remove food from the calculation of ISM.<sup>43</sup>

#### **Comments Regarding Potential Financial Effects of this Policy**

*Comment:* A commenter asked how much of the estimated SSI program cost of \$1.5 billion is due to an estimated increase in the number of applications that might result following publication of this rule.

*Response:* The Office of the Chief Actuary (OCACT) estimated that roughly \$0.2 billion of the estimated total increase in Federal SSI payments, from fiscal years (FY) 2024 through 2033, is due to applications that would not be filed under current rules but are expected to be filed under the new rules. This is equivalent to an increase of 26,000 Federal SSI recipients in FY 2033.

*Comment:* A commenter asserted that the administrative burden reduction and cost savings to the agency and the public are small, while many beneficiaries will be “harmed” by the consequences of the change. The commenter said the “entire regime of reporting and investigations is still needed for housing support and indeed several food

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<sup>42</sup> 70 FR 6340.

<sup>43</sup> 88 FR 9785 (Feb. 15, 2023).

questions are still going to be asked.” The commenter also stated that, because SSI is considered in decisions regarding SNAP (and housing assistance), some recipients could see reductions in these food (and housing) benefits. Further, the commenter suggested that we should use the Financial Eligibility Model (FEM) to model and consider these effects. In addition, the commenter expressed that this rule will “encourage the migration of beneficiaries from living in their family’s home and receiving ample food support to either staying in their family’s home with no food support or moving on their own.”

*Response:* Though removing food from the calculations of ISM is limited, we anticipate that removing even just this one variable from our calculations will simplify the process. When we use this final rule, we will ask fewer questions, not require details about food expenses and costs, and not require verification of food-related amounts. This reduces burdens for applicants and recipients. As noted in our NPRM, we expect time-savings related to this rule to have associated cost-savings for applicants, recipients, and our agency.

Regarding the comment on potential reductions in SNAP or other benefits, though we cannot speak fully to the rule change's effects on programs that we do not administer, we note that when SNAP benefits are affected by increased income, such as an SSI payment, they are generally reduced by 30% of the increase, up to the point of ineligibility.<sup>44</sup>

The FEM is an internal tool developed by SSA that we have used historically to match survey data with administrative records to evaluate financial eligibility for SSI and other programs. The FEM is not capable of estimating the impact of SSI changes on other

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<sup>44</sup> See the Food and Nutrition Services, U.S. Department of Agriculture's SNAP Eligibility page available at: <https://www.fns.usda.gov/snap/recipient/eligibility>. The SNAP program has an exception to the 30% reduction, which applies in some circumstances to one- or two- person households that would still receive the minimum benefit (i.e., would have benefits reduced by less than 30% of the increases in income). See the Congressional Research Service's *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility*, summary, available at <https://sgp.fas.org/crs/misc/R42054.pdf>.

programs, nor was it designed for that purpose.

Lastly, we have not made this rule change to provide incentives for people to change their living arrangements or the way they obtain food, including food assistance. For the reasons stated in the NPRM, we anticipate this regulation will improve the administration of our program.

*Comment:* One commenter said, “Medicaid impacts do not appear to be discussed,” and opined that there could be a substantial effect on Medicaid expenditures. The commenter asked if a discussion of Medicaid impacts will be included with the final rule.

*Response:* As a matter of protocol, the estimates prepared by SSA’s OCACT focus on the impact on SSA.

*Comment:* A commenter expressed that States may be harmed by the proposed change because some individuals currently not receiving benefits will become eligible and State expenses for supplemental benefits will increase.

*Response:* We did not calculate the effect on State supplemental payments as this is outside the scope of our standard actuarial work. State supplements are relatively small compared to the Federal Benefit Rate (FBR) and payments depend on living arrangements defined by each State. We anticipate that some individuals will become eligible for Federal SSI payments under this rule change, but a small number of those who remain ineligible for a Federal payment could become eligible for a State payment as well.<sup>45</sup> We are unable to speak to State-administered SSI supplement effects.

### **Comments on the Rulemaking Process and Associated Legal Issues**

*Comment:* One commenter stated that the regulation will cost taxpayers \$1.5 billion over ten years<sup>46</sup> and asserted (without further explanation) that the regulation violates the

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<sup>45</sup> State eligibility requirements vary by State, and State and Federal income requirements may be different. In some instances, an applicant’s or recipient’s income may make them ineligible for Federal SSI payments but they may still qualify for State SSI payments.

<sup>46</sup> The commenter referred to figures provided in the NPRM. In the NPRM, we estimated that the transfer

major questions doctrine of the United States Supreme Court. Further, the commenter expressed that we gave no justification for the timing of the proposal.

*Response:* The Commissioner of Social Security has “full power and authority to make rules and regulations to establish procedures” that are “not inconsistent with the provisions of” the Social Security Act and are “necessary or appropriate to carry out such provisions.”<sup>47</sup> The Supreme Court has described this particular Congressional grant of authority as “exceptionally broad.”<sup>48</sup> In addition, the Commissioner has authority to prescribe the requirements for filing applications, data to be furnished, and the reporting of events and changes in circumstances “as may be necessary for the effective and efficient administration” of the SSI program.<sup>49</sup> The commenter did not articulate why, in their view, there is any “reason to hesitate before concluding that Congress meant to confer” authority to adopt this rule.<sup>50</sup>

Regarding timing, we are always looking for ways to improve and simplify our program rules and policies.

*Comment:* A commenter expressed that there are technical inadequacies in the NPRM, such as “no evidence” that the estimated 16 percent of recipients currently evaluated under the VTR rule would now be evaluated under the PMV rule, and that the Consumer Price Index (CPI), which excludes food from its assessment, is irrelevant to the analysis.

*Response:* SSA’s OCACT used information about whether recipients receive SNAP benefits, which is collected during the initial claim and redetermination processes, among

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from the government to SSI recipients, for the period of FYs2023 through 2032, represents an increase in Federal SSI payments of 0.2%.

<sup>47</sup> 42 U.S.C. 405(a); *see also* 42 U.S.C. 1383(d)(1) (stating that the provisions of 42 U.S.C. 405(a) shall apply for relevant title XVI purposes “to the same extent as they apply in the case of title II”); 42 U.S.C. 902(a)(5) (“The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration.”).

<sup>48</sup> *Heckler v. Campbell*, 461 U.S. 458, 466 (1983) (“Congress has conferred on the [Commissioner] exceptionally broad authority to prescribe standards for applying certain sections of the Social Security Act.”) (cleaned up, citations omitted).

<sup>49</sup> 42 U.S.C. 1383(e)(1)(A); *see also* 42 U.S.C. 1383b(a).

<sup>50</sup> *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022) (quotation omitted).

other administrative data, to estimate that roughly 16% of recipients who are evaluated under the VTR according to current rules would be evaluated under the PMV according to the rules as stated in the NPRM. As discussed above, we have revised the questions we ask about food, and will instead ask a single question that does not directly address SNAP. However, we assume that recipients who receive SNAP do not have all their meals provided by others within their household and, thus, would also be evaluated under the PMV rule. OCACT estimates that additional recipients who would have been evaluated under the VTR rule under the NPRM will now be evaluated under the PMV rule. However, OCACT estimates that very few such recipients would have a change in SSI payment. Further, our reference to certain types of CPI measures that exclude food was meant to illustrate that many economic analysts consider food prices to be significantly more volatile than the prices of most other types of goods and services. We did not use these types of CPI measures in our quantitative analysis of the rule.

*Comment:* One commenter asked us to post separately all the citations they provided in their comments as part of our formal administrative record for purposes of the Administrative Procedure Act.

*Response:* Consistent with our standard procedures, we posted publicly all relevant comments<sup>51</sup> and made them available within docket SSA-2021-0014 on [www.regulations.gov](http://www.regulations.gov). We consider public comments as part of the rulemaking record. Any citations commenters provided within public comment submissions are viewable by the public within the comment submissions.

### **Request for Further Policy Changes in the Overall Area of ISM**

*Comment:* Some commenters expressed that this proposal was a good “first step,” but advised that we should make additional reforms, such as omitting ISM from our program entirely, revising calculations for married recipients, raising benefit amounts, and raising

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<sup>51</sup> We excluded comments that were exact duplicates submitted by the same commenter.

savings limits.

*Response:* We are unable to consider eliminating ISM entirely, because it is required by the Social Security Act.<sup>52</sup> We acknowledge the commenters' suggestions regarding revising calculations for married recipients, raising payment amounts, and raising savings limits. However, such suggestions unrelated to the consideration of food in the ISM calculations are outside the scope of this rulemaking. Similarly, the additional ISM-related rules that commenters suggested are outside the scope of this rulemaking.

*Comment:* Multiple commenters suggested changes related to how we consider shelter expenses and contributions in our ISM calculations. For example, one commenter suggested that ISM based on shelter costs should apply only when the shelter is fixed and stable, and should not apply for recipients who are transient with no fixed abode. Other commenters suggested that we redefine how we count shelter assistance and minimize housing expenses in the calculations of ISM. They expressed that we could more narrowly define shelter to include assistance with utilities or omit utilities from shelter expenses—because rent and mortgage payments pay for access to shelter—and utilities could be seen as amenities in some cases.

Another commenter suggested that we accept self-verification of housing costs and contributions, because it can be difficult for SSI recipients to obtain statements from their landlords or friends with whom they are staying and to confirm their precise living arrangement because many living arrangements are verbal. According to the commenter, people who themselves do not receive SSI, but who rent a room to an SSI recipient, may be reluctant to provide information about their mortgage, utility costs, or property tax payments to an agency from which they receive no direct support.

*Response:* We acknowledge the suggestions related to the consideration of shelter expenses and contributions. However, these suggestions are outside the scope of this

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<sup>52</sup> See 42 U.S.C. 1382a(a)(2)(A).

rulemaking.

*Comment:* One commenter recommended changing the way we treat cash gifts received directly by an SSI applicant or recipient. The commenter asserted that, in the context of “rent help” from a family member or friend, the distinction we make between third-party payments (ISM) and cash gifts has material consequences, because the SSI reduction from third-party payments (ISM) is capped at the one-third ISM limit, while there is no cap for cash gift income. The commenter characterized this distinction as “arbitrary and meaningless for SSI recipients because the intent and effect in both instances is identical (i.e. covering rent).”

*Response:* This suggestion is not related to removing food from the ISM calculations and is outside the scope of this rulemaking.

*Comment:* Some commenters suggested publishing regulations to expand the definition of “public assistance household,” to expand the applicability of a rental subsidy policy, and to exclude from the definition of ISM items with no current market value.

*Response:* Our Regulatory Agenda includes two proposed rules similar to these suggestions: *Expand the Definition of a Public Assistance (PA) Household*, RIN 0960-AI81; and *Nationwide Expansion of the Rental Subsidy Policy for SSI Recipients*, 0960-AI82. We listed these proposed rules in the *Spring 2023 Unified Agenda (Agenda) of Regulatory and Deregulatory Actions*. The *Agenda* comprises regulatory items we are actively pursuing and is available at <https://www.reginfo.gov/public/do/eAgendaMain>. On August 24, 2023, we published an NPRM, *Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients*, which proposes to revise our regulations by applying nationwide the ISM rental subsidy exception, currently in place for SSI applicants and recipients residing in seven States, that recognizes a “business arrangement” exists when the amount of required monthly rent equals or

exceeds the PMV.<sup>53</sup> Likewise, on September 29, 2023, we published another NPRM, *Expand the Definition of a Public Assistance Household*,<sup>54</sup> which proposes to expand our definition of a public assistance household to include SNAP as an additional means-tested public income-maintenance (PIM) program under 20 CFR 416.1142(a).

### **Opposition to the New Policy**

*Comment:* One commenter maintained that ISM should continue and said that because SSI is a “needs-based” program, if someone is receiving food assistance, their “needs-based” benefit should be reduced. Further, the commenter stated that if the change is implemented, we should revise POMS to include SNAP as income and eliminate the earned and unearned income exclusion(s). The commenter also asserted that the proposal is just a way for us to address insufficient staffing by making SSI program administration easier by “passing on the burden to the taxpayers.” According to the commenter, our proposal was “speculative” when we assumed that individuals will, for example, pay more for shelter if they no longer have to pay food expenses. Further, the commenter stated that recipients are “receiving welfare from U.S. taxpayers without contributing to the system” and should therefore be subjected to “additional scrutiny for each benefit” they receive, and that such benefits should reduce recipients’ monthly payments.

*Response:* We will continue to consider ISM in our payment calculations. Although we are removing a variable from the ISM calculations, we will still require applicants and recipients to establish that their income and resources are below existing limits to receive payments.

Regarding the suggestion to revise POMS to include SNAP as income and eliminate the earned and unearned income exclusion(s), changes to the way we consider

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<sup>53</sup> See 88 FR 57910.

<sup>54</sup> See 88 FR 67148. We note that as part of this NPRM we are seeking public comment on expanding the definition of a public assistance household to include households in which *any other* (as opposed to *every other*) member receives public assistance.

SNAP benefits and changes to the earned and unearned income exclusion(s) are outside the scope of this rulemaking. Further, income exclusions are provided by Federal statute, whether the Social Security Act<sup>55</sup> or another Federal statute,<sup>56</sup> meaning that we could not eliminate them through administrative action.

Lastly, we carefully review the details of each case to ensure we pay the correct benefits to the correct individual at the correct time.

*Comment:* Several commenters expressed concerns based on misunderstandings about the perceived effects or consequences of our proposal. For example, commenters asserted that the rule would: require recipients to work; cut benefits for recipients; have negative consequences for recipients in light of rising housing costs across the country; and motivate people to falsify information to receive the maximum benefit possible.

Additional commenters expressed concerns that the only benefit of the proposal is simplifying the SSI application process; the money received from SSI might not be enough to keep up with increasing food costs; and we should keep the current rules because there are people outside of the U.S. that need help, too.

*Response:* This final rule does not require applicants and recipients to work; is anticipated to be advantageous to many applicants and recipients; and is not projected to have consequences related to housing costs. Regarding motivating people to falsify information, we remain committed to preventing, detecting, and eliminating fraud in our programs and encourage anyone with concerns about fraud to visit

<https://www.ssa.gov/fraud>.<sup>57</sup> In addition, while removing food from the ISM calculation may help ease the burden of rising food costs for some recipients, increasing SSI

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<sup>55</sup> See 42 U.S.C. 1382a(b).

<sup>56</sup> For example, the income exclusion for SNAP benefits is provided by the Food and Nutrition Act, at 7 U.S.C. 2017(b).

<sup>57</sup> In addition, we are required to verify information. 42 U.S.C. 1383(e)(1)(B) requires, “that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.”

payments is not within the scope of this rulemaking. Regarding assisting people outside the U.S., the scope of this rulemaking is limited to SSI applicants and recipients. Because SSI payments are available to eligible individuals who live in the 50 States, Washington, D.C., and the Northern Mariana Islands, the geographic scope of this rule is limited to residents of these places.<sup>58</sup>

### **Comments in Support of the Policy**

*Comment:* The majority of the comments were supportive of the new policy. Many commenters cited a family member or friend they thought might be helped by this regulation. Others expressed that people should be able to accept meals without considering if their payments would be reduced. Some advocacy groups expressed the opinion that calculating SSI payments using a food cost estimate can be “arbitrary” and “inaccurate,” and so they were supportive of removing that requirement. Yet others asserted that the proposed changes would simplify our rules and reduce burdens on SSI recipients. Additional commenters said the rule would promote equity by not disadvantaging an already vulnerable population, and that the rule would incentivize SSI recipients to use their community support with “less anxiety” about negative impacts that could result from this support. Another commenter stated that the proposed rule might facilitate increased food security, which could lead to a “greater sense of well-being and better health outcomes.”

*Response:* We acknowledge the comments submitted in support of this rulemaking.

### **Regulatory Procedures**

#### E.O. 12866, as Supplemented by E.O.s 13563 and Amended by 14094

We have consulted with the Office of Management and Budget (OMB) and OMB has determined that this final rule meets the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563 and amended by E.O. 14094, and is

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<sup>58</sup> 20 CFR 416.215.

subject to OMB review.

#### Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this final rule for all eligibility and payment determinations effective April 1, 2024, and later will result in an increase in Federal SSI payments of a total of about \$1.6 billion over the period of FYs 2024 through 2033. We refer the reader to the NPRM for our detailed analysis.

#### Anticipated Administrative Costs and Cost-Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this regulation will result in a total net administrative savings of \$26 million for the 10-year period from fiscal year (FY) 2024 to FY 2033. This estimate includes processing time savings as field office employees will not have to spend time explaining and developing food as part of ISM during initial claims, pre-effectuation reviews, redeterminations, and post-eligibility actions. The aforementioned savings are partially offset by costs to update our systems to remove food from the ISM calculations, to send notices to inform current recipients of the policy changes, and to address inquiries from the notices. Under the final rule, more individuals will be eligible for SSI payments than under the current regulation, resulting in costs to process additional claims, reconsiderations, appeals, continuing disability reviews, redeterminations, and post-eligibility actions.

#### Anticipated Time-Savings and Qualitative Benefits

As discussed in the NPRM, we anticipate qualitative benefits from this final rule because it will simplify our policy and make the SSI claims process easier for applicants and recipients. The public benefits from simplifications to our program because it may take less time and effort to understand our program and its requirements and may make it easier to comply with the program's requirements. Also, because SSI applicants and recipients will not need to report as much information related to food expenses, they may save time that they otherwise would have spent gathering information and contacting us

to report this information. See the Paperwork Reduction Act section of the NPRM's preamble for more details on the burden reduction associated with this rule.

The time we save on processing SSI applications is only a limited component of the overall time-savings to the public. Recipients will no longer need to report monthly changes in the value of food support they receive. Additionally, reporting food support, whether on the initial application or at a later point during post-award eligibility review, oftentimes requires us to further develop this support, which may require completion of a variety of information collections and forms as discussed in the Paperwork Reduction Act section of the NPRM's preamble. Time savings in completing these forms not only benefits applicants and recipients, but also third parties. While we do not maintain administrative data on the volume of post-award information collections pertaining to food-support reporting, we anticipate administrative time savings.

In many situations, recipients fail to timely report receiving food support. This requires us to develop the issue after a recipient's monthly payment amount has been paid. This, in turn, may create an overpayment, which would require us to develop the issue further and contact the recipient for an interview. As discussed in the NPRM, we expect that simplifying the ISM calculation may reduce improper payments. The overpayment recovery process can be a time-intensive process to navigate, particularly for recipients seeking to have their overpayment waived or reconsidered. While we have not quantified the amount of time recipients spend working to resolve overpayments related to food ISM, we anticipate that this final rule may result in time savings associated with reduced improper payments.

Further, as discussed in the NPRM, there are potential qualitative benefits to this final rule such as reduced food insecurity, enhanced social support networks, reduced frustration and anxiety among the SSI population associated with understanding and complying with complicated food-support ISM policies, potentially enhanced dignity

with elimination of the need to report receipt of food to the government (which may appear intrusive to some applicants and recipients), and more consistent and equitable treatment of applicants' and recipients' various sources of food assistance.

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as meeting the criteria in 5 U.S.C. 804(2).

#### E.O. 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by E.O. 13132, and determined that the final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

#### Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities, as it affects individuals or States only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

#### Paperwork Reduction Act (PRA)

Since under this final rule we will no longer need to consider food expenses for in-kind support and maintenance calculations, we are making minor changes to Forms SSA-8202-BK, Statement for Determining Continuing Eligibility for Supplemental Security Income Payment (OMB Control No. 0960-0145); SSA-8006, Statement of Living Arrangements, In-Kind Support and Maintenance (OMB Control No. 0960-0174); SSA-8000-BK, Application for Supplemental Security Income (OMB Control No. 0960-0229); SSA-8203-BK, Statement for Determining Continuing Eligibility for

Supplemental Security Income Payment (OMB Control No. 0960-0416); SSA-8011, Statement of Household Expenses and Contributions (OMB Control No. 0960-0456); and SSA-5062 & SSA-L5063, Claimant Statement about Loan of Food or Shelter and Statement about Food or Shelter Provided to Another (OMB Control No. 0960-0529).

The form changes will result in a burden reduction of one minute per response, for a total burden savings of 95,668 hours. This figure represents the difference between the previous and new total estimated annual burden (as shown in the chart below).

Below are charts showing the revised burden estimates that will be effective upon the effective date of the final rule.

The following chart shows the time burden information associated with the final rule:

<b>OMB #; Form #; CFR Citations</b>	<b>Number of Respondents</b>	<b>Frequency of Response</b>	<b>Current Average Burden Per Response (minutes)</b>	<b>Current Estimated Total Burden (hours)</b>	<b>Anticipated New Burden Per Response Under Regulation (minutes)</b>	<b>Anticipated Estimated Total Burden Under Regulation (hours)</b>	<b>Estimated Burden Savings (hours)</b>
0960-0145 SSA-8202 (Paper Form)	67,698	1	21	23,694	20	22,566	1,128
0960-0145 SSA-8202 Claims System)	1,764,207	1	20	588,069	19	558,666	29,403

0960-0174 SSA-8006 (Paper Form)	12,160	1	7	1,419	6	1,216	203
0960-0174 SSA-8006 (SSI Claims System)	109,436	1	7	12,768	6	10,944	1,824
0960-0229 SSA-8000 (Paper Form)	705	1	40	470	39	458	12
0960-0229 SSA-8000 (SSI Claims System)	1,646,520	1	35	960,470	34	933,028	27,442
0960-0416 SSA-8203 (Paper Form)	135,357	1	20	45,119	19	42,863	2,256
0960-0416 SSA-8203 (SSI Claims System)	1,468,220	1	19	464,936	18	440,466	24,470

0960-0456 SSA-8011 (Paper Form)	21,000	1	15	5,250	14	4,900	350
0960-0456 SSA-8011 (SSI Claims System)	398,759	1	15	99,690	14	93,044	6,646
0960-0529 SSA-5062 (Paper Forms)	29,026	1	30	14,513	29	14,029	484
0960-0529 SSA-5062 (SSI Claims System)	29,026	1	20	9,675	19	9,192	483
0960-0529 SSA-L5063 (Paper Forms)	29,026	1	30	14,513	29	14,029	484
0960-0529 SSA-L5063 (SSI Claims System)	29,026	1	20	9,675	19	9,192	483
<b>Totals</b>	<b>5,740,116</b>			<b>2,250,261</b>		<b>2,154,593</b>	<b>95,668</b>

The following chart shows the theoretical cost burdens associated with the final rule:

<b>OMB #; Form #</b>	<b>Number of Respondents</b>	<b>Anticipated Estimated Total Burden Under Regulation from Chart Above (hours)</b>	<b>Average Theoretical Hourly Cost Amount (dollars)*</b>	<b>Average Combined Wait Time in Field Office and/or Teleservice Centers (minutes)**</b>	<b>Total Annual Opportunity Cost (dollars)***</b>
0960-0145 SSA-8202 (Paper Form)	67,698	22,566	\$12.81*	24**	\$635,952***
0960-0145 SSA-8202 Claims System)	1,764,207	558,666	\$12.81*	21**	\$15,066,328***
0960-0174 SSA-8006 (Paper Form)	12,160	1,216	\$12.81*	24**	\$77,885***
0960-0174 SSA-8006 (SSI Claims System)	109,436	10,944	\$12.81*	21**	\$630,854***
0960-0229 SSA-8000 (Paper Form)	705	458	\$21.29*	21**	\$15,009***
0960-0229 SSA-8000 (SSI Claims System)	1,646,520	933,028	\$21.29*	21**	\$32,133,210***
0960-0416 SSA-8203 (Paper Form)	135,357	42,863	\$21.29*	21**	\$1,921,167***
0960-0416 SSA-8203 (SSI Claims System)	1,468,220	440,466	\$21.29*	21**	\$20,317,962***
0960-0456 SSA-8011 (Paper Form)	21,000	4,900	\$29.76*	21**	\$364,560***
0960-0456 SSA-8011 (SSI Claims System)	398,759	93,044	\$29.76*	21**	\$6,922,474***

0960-0529 SSA-5062 (Paper Forms)	29,026	14,029	\$21.29*	24**	\$545,854***
0960-0529 SSA-5062 (SSI Claims System)	29,026	9,192	\$21.29*	21**	\$411,983***
0960-0529 SSA-L5063 (Paper Forms)	29,026	14,029	\$21.29*	24**	\$545,854***
0960-0529 SSA- L5063 (SSI Claims System)	29,026	9,192	\$21.29*	21**	\$411,983***
<b>Totals</b>	<b>5,740,116</b>	<b>2,154,593</b>			<b>\$80,001,075***</b>

\* We based these figures on the average Disability Insurance (DI) payments based on SSA's current FY 2023 data (<https://www.ssa.gov/legislation/2023factsheet.pdf>); on the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data ([https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)); and the average of both DI payments and the average U.S. citizen's hourly salary.

\*\* We based these figures on the average FY 2024 wait times for field offices and hearings office, as well as by averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

\*\*\* This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

SSA is submitting a single new Information Collection Request (ICR) which encompasses the revisions to above listed information collections (currently under OMB Numbers 0960-0145, 0960-0174, 0960-0229, 0960-0416, 0960-0454, and 0960-0529) to OMB for the approval of the changes due to the final rule. After approval of this combined

ICR, we will adjust the figures associated with the current OMB numbers for these forms to reflect the new burden via Change Request.

We published a notice of proposed rulemaking on February 15, 2023, at 88 FR 9779. In response to that NPRM, individual submitted comments on PRA-related issues such as the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Please see the Comments section of the preamble for PRA-related comments and SSA's response.

Since the publication of the NPRM, we removed language and requirements, which reduces the burden on the public. Accordingly, we are currently soliciting comment on these changes and their associated burden reductions. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget

Attn: Desk Officer for SSA

Fax Number: 202-395-6974

Social Security Administration, OLCA

Attn: Reports Clearance Director

3100 West High Rise

6401 Security Blvd.

Baltimore, MD 21235

Fax: 410-966-2830

Email address: [OR.Reports.Clearance@ssa.gov](mailto:OR.Reports.Clearance@ssa.gov)

You can submit comments until **<INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER>**, which is 30 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the

SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

### **List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Commissioner of Social Security, Martin O'Malley, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the Federal Register.

**Faye I. Lipsky,**

*Federal Register Liaison,*

*Office of Legislation and Congressional Affairs,*

*Social Security Administration.*

For the reasons set out in the preamble, we amend 20 CFR chapter III, part(s) 416, as set forth below:

### **PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

#### **Subpart K—Income**

1. The authority citation for subpart K of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Revise § 416.1102 to read as follows:

#### **§ 416.1102 What is income?**

Income is anything that you receive in cash or in-kind that you can use to meet your needs for food or shelter. For purposes of this definition, income may be received actually or constructively. Income is received constructively, unless there are significant restrictions on your ability to receive it, if it is under your control or you can use it despite not actually receiving it. Sometimes income also includes more or less than you actually receive (see §§ 416.1110 and 416.1123(b)). In-kind income is not cash but is something else that you can use to meet your needs for food or shelter. Exception: Food is not included in the calculations of in-kind support and maintenance, which is a type of unearned income that we have special rules for valuing (see §§ 416.1130 through 416.1148).

3. Amend § 416.1103 by revising paragraphs (a)(4), (b)(2), the example in paragraph (g) and paragraph (j) to read as follows:

**§ 416.1103 What is not income?**

(a) \* \* \*

(4) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

\* \* \*

(b) \* \* \*

(2) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide social services; or \* \* \*

\* \* \* \* \*

(g) \* \* \*

*Examples:* If your daughter uses her own money to pay your mortgage payment directly to the mortgage lender, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the transaction provides you with shelter; the mortgage payment is in-kind income for shelter to you. Similarly, if you book

a hotel room on credit and your son later pays the bill, the payment to the hotel is not income to you, but the payment of the bill is in-kind income for shelter to you. In this example, if your son pays for the hotel bill in a month after the month of the hotel stay, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, the payment for the lawn service is not in-kind income as defined in § 416.1102.

\* \* \* \* \*

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

*Example 1:* A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift is not income because the van does not provide you with food or shelter and will become an excluded nonliquid resource under § 416.1218 in the month following the month of receipt.

*Example 2:* You inherit a house which is your principal place of residence. The value of this inheritance is income because the house provides you with shelter and shelter is income. However, we value the house under the rule in § 416.1140.

4. Amend § 416.1104 by revising the fourth sentence and removing the fifth sentence in the paragraph to read as follows:

**§ 416.1104 Income we count.**

\* \* \* One type of unearned income is in-kind support and maintenance (shelter), which we value depending on your living arrangement.

\* \* \*

5. Amend § 416.1121 by revising paragraph (h) to read as follows:

## **§ 416.1121 Types of unearned income.**

\* \* \* \* \*

(h) *Support and maintenance in-kind.* This is shelter furnished to you that we value depending on your living arrangement. (Food is not included in the calculations of in-kind support and maintenance.) We use one rule if you are living in another person's household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals. We use different rules for other situations in which you receive shelter. We discuss all of the rules in §§ 416.1130 through 416.1148.

6. Revise § 416.1130 to read as follows:

### **§ 416.1130 Introduction.**

(a) *General.* Both earned income and unearned income include items received in-kind (see § 416.1102). Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing shelter that is received as in-kind support and maintenance (a type of unearned income). This section and the ones that follow discuss these rules. In these sections (i.e., §§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones resides in his son's house and receives all of his meals from his son. Mr. Jones receives a monthly SSI Federal benefit rate that is reduced by one-third. This one-third represents the value of the in-kind support and

maintenance he receives because he lives, throughout a month, in the household of his son, who provides all of his food and shelter. In January, we increase his SSI benefit because of a cost-of-living adjustment. For that month, we determine that the VTR rule applies by considering the food and shelter he received from his son two months earlier in November, and we calculate the SSI payment using the Federal benefit rate for January.

(b) *How we calculate in-kind support and maintenance.* (1) We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly rent required to be paid equals the current market rental value (see § 416.1101). Exception: In the States in the Seventh Circuit (Illinois, Indiana, and Wisconsin), a business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1). In those States, if the required amount of rent is less than the presumed maximum value, we will consider as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market value, whichever is less. In addition, cash payments made to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

(2) We have two rules for valuing the in-kind support and maintenance that we count. The one-third reduction rule applies if you are living in another person's household, you receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals (see §§ 416.1131 through 416.1133). The

presumed value rule applies in all other situations in which you receive countable in-kind support and maintenance (see §§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These conditions are discussed in §§ 416.1141 through 416.1145.

7. Amend § 416.1131 by revising paragraphs (a)(1) and (2) and adding paragraph (a)(3) to read as follows:

**§ 416.1131 The one-third reduction rule.**

(a) \* \* \*

(1) Live in another person's household (see § 416.1132) for a full calendar month except for temporary absences (see § 416.1149); and

(2) Receive shelter from others living in the household. (If you do not receive shelter from others living in the household, see § 416.1140); and

(3) Others within the household pay for or provide you with all of your meals. If others within the household do not pay for or provide you with all of your meals, any ISM received for shelter will be calculated under the PMV rule (see § 416.1140).

\* \* \* \* \*

8. Amend § 416.1133 by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

**§ 416.1133 What is a pro rata share of household operating expenses.**

(a) \* \* \* (If you are receiving shelter from someone outside the household, we value it under the rule in § 416.1140.)

\* \* \* \* \*

(c) Household operating expenses are the household's total monthly expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. \* \* \*

9. Revise § 416.1140 to read as follows:

**§ 416.1140 The presumed value rule.**

(a) *How we apply the presumed value rule.* (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).

(2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—

(i) The current market value of any shelter you receive, minus any payment you make for it, is lower than the presumed value; or

(ii) The actual amount someone else pays for your shelter is lower than the presumed value.

(b) *How we determine the amount of your ISM under the presumed value rule.* (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the shelter you receive, we use the presumed value to figure your ISM.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the shelter you receive, we use the actual amount to figure your ISM.

10. Amend § 416.1141 by revising the introductory paragraph and paragraphs (a) and (b) to read as follows:

**§ 416.1141 When the presumed value rule applies.**

The presumed value rule applies whenever we count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the

presumed value rule applies if you are living —

(a) In another person's household (as described in § 416.1132(b)); you receive shelter from others living in the household; and others within the household do not pay for or provide you with all of your meals;

(b) In your own household (as described in § 416.1132(c)). For exceptions, see § 416.1142 if you are in a public assistance household and § 416.1143 if you are in a noninstitutional case situation; or

\* \* \* \* \*

11. Amend § 416.1147 by revising paragraph (a), the paragraph heading in paragraph (b), the first sentence in paragraph (b)(1), paragraph (c), and the third sentence in paragraph (d)(1) to read as follows:

**§ 416.1147 How we value in-kind support and maintenance for a couple.**

(a) *Both members of a couple live in another person's household and receive shelter and all of their meals from others living in the household. When both of you live in another person's household throughout a month, receive shelter from others living in the household, and others within the household pay for or provide you with all of your meals, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).*

(b) *One member of a couple is in a medical institution and the other member of the couple lives in another person's household and receives shelter and all of their meals from others living in the household. (1) If one of you is living in the household of another person and receives shelter from others living in the household, and others within the household pay for or provide you with all of your meals, and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives substantial Medicaid payments for their care (§ 416.211(b))), and is ineligible in the month for either benefit payable under § 416.212, we compute your benefits as if you*

were separately eligible individuals (see § 416.414(b)(3)). \* \* \*

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2).

(d) \* \* \*

(1) \* \* \* We value any shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2). \* \* \*

\* \* \* \* \*

12. Amend § 416.1148 by revising paragraph (b) to read as follows:

**§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.**

\* \* \* \* \*

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§ 416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of § 416.1165(i), any shelter that person provides is not income to you. However, if you receive any shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this

income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

13. Amend § 416.1149 by revising paragraph (c)(1) to read as follows:

**§ 416.1149 What is a temporary absence from your living arrangement.**

\* \* \* \* \*

(c) \* \* \*

(1)(i) If you enter a medical treatment facility where you are eligible for the reduced benefits payable under § 416.414 for full months in the facility, and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month (for which reduced benefits under § 416.414 are not payable) you enter or leave the facility. During any full calendar month you are in the medical treatment facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider shelter provided during a medical confinement to be income.

(ii) If you enter a medical treatment facility and you are eligible for either benefit payable under § 416.212, we also consider this a temporary absence from your permanent living arrangement. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month you enter the facility and throughout the period you are eligible for these benefits. We consider your absence to be temporary through the last month benefits under § 416.212 are paid unless you are discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

\* \* \* \* \*

