

Module 3 – Understanding Social Security Disability Benefits and Associated Work Incentives

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Module 3 – Understanding Social Security Disability Benefits and Associated Work Incentives

Introduction

Many Social Security disability beneficiaries hesitate to participate in return-to-work efforts because they fear paid employment will cause them to lose critical cash benefits and health insurance. In most cases, this fear is unjustified, as the Social Security disability programs include many work incentives designed to encourage and facilitate employment. The WIPA services that Community Work Incentive Coordinators (CWICs) provide are the single most effective method for communicating correct information to help beneficiaries overcome these fears. However, to be effective in this counseling, CWICs must completely understand Social Security disability programs, their various eligibility requirements, their operational details, and all associated work incentive rules or provisions.

Content in this area will focus on the Title II and Supplemental Security Income (SSI) disability programs and how wage employment affects eligibility for benefits and cash payment amounts. This module will discuss in detail and provide examples of all work incentives associated with the disability programs. This module will also include a separate unit on how beneficiaries can use Plan to Achieve Self-Support (PASS) as an employment support tool and how Net Earnings from Self-Employment (NESE) affect Title II disability and SSI benefits. A separate unit on the Ticket to Work program provides CWICs with comprehensive information about how beneficiaries may get help with achieving their career goals. Finally, this module will cover rights and protections provided to beneficiaries under the Social Security disability rules and regulations, including Expedited Reinstatement (EXR), Section 301 payments, and appeals.

CWIC Core Competencies

- Demonstrates knowledge of the Social Security disability evaluation and continuing disability review (CDR) process, including eligibility criteria for Title II disability and SSI programs and other non-disability programs administered by Social Security.
- Demonstrates the ability to analyze the effects of wage employment on Title II and SSI disability benefits including eligibility and cash payment status.
- Demonstrates the ability to individualize and apply the relevant work incentives using complex, multi-phase case scenarios involving Title II disability benefits, SSI, and concurrent beneficiary examples (e.g., PASS, Student Earned Income Exclusion (SEIE), Blind Work Expenses (BWE), Trial Work Period (TWP)/Extended Period of Eligibility (EPE), Subsidy & Special Conditions, Impairment Related Work Expenses (IRWE), etc.)
- Demonstrates the ability to analyze the effects of self-employment on Title II and SSI disability benefits, including knowledge of Social Security and IRS regulations that define self-employment, the manner in which business structures affect Social Security benefits, methods for determining earnings from self-employment, and the application of work incentives that may assist beneficiaries to achieve or maintain a self-employment goal.
- Demonstrates the ability to advise beneficiaries regarding their rights and protections under the Social Security disability rules and regulations, including Expedited Reinstatement (EXR), Section 301 payments, and appeals.
- Assists beneficiaries to participate in the Ticket to Work program by providing counseling on Ticket eligibility, assignment and unassignment procedures, reporting requirements, timely progress requirements, and making referrals to Employment Networks (ENs) and state Vocational Rehabilitation (VR) Agencies.

Competency Unit 1 – Disability Evaluation and Determination

Understanding Eligibility for Social Security Disability Benefits

Introduction

This unit provides the reader a broad understanding of how Social Security defines disability and gives an overview of the initial application and disability adjudication process. Social Security restricts Work Incentives Planning and Assistance (WIPA) services to beneficiaries already entitled to Social Security disability benefits based on the person's own disability. It's important for CWICs to understand the eligibility determination process, as some concepts remain relevant after Social Security establishes entitlement.

Some Social Security disability beneficiaries receiving WIPA services may be eligible for additional benefits. Part of a CWIC's job is to screen for potential eligibility for additional benefits or services and make referrals to other agencies or programs as needed.

It's essential to understand that CWICs have a limited role in establishing eligibility for Social Security benefits. While it's important that CWICs gain a basic understanding of the eligibility determination process, Social Security does not expect CWICs to develop expertise in this area. In fact, Social Security prohibits CWICs from assisting with initial applications for Social Security benefits.

Disability Defined

To meet the definition of disability under the Social Security Act, an individual must be unable to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months. SGA means "the performance of significant physical and/or mental activities in work for pay or profit, or in work of a type generally performed for pay or profit, regardless of the legality of the work". For

more information about SGA, refer to **POMS DI 10105.065 - Disability Requirement** (<https://secure.ssa.gov/poms.nsf/lnx/0410105065>).

NOTE: The definition of disability under the Social Security Act quoted in the section above has three criteria:

1. The person must have a medically determinable impairment;
2. The person must be unable to perform SGA because of that impairment; and
3. The condition must meet the duration requirement.

To receive benefits, the person must meet all three of these criteria.

Childhood Definition of Disability for the SSI Program

In the SSI program, the definition of disability for children (anyone under the age of 18) is different from the definition applicable to adults. Social Security considers an SSI claimant under age 18 disabled if he or she has a medically determinable physical or mental impairment or a combination of impairments that causes marked and severe functional limitations. In addition, Social Security must expect the impairment or combination of impairments to result in death or last for a continuous period of not less than 12 months. This childhood definition of disability **ONLY** applies in the SSI program. The adult standard of disability applies to all claimants in the Title II disability program regardless of age. More information about the definition of disability for children in the SSI program is available in **POMS DI 25201.001 Childhood Disability – Introduction** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0425201001>).

A Word about Social Security’s Program Operations

Manual System or “POMS”: This manual is a valuable resource, but it’s essential that CWICs learn where to find information as close to the original source as possible. Laws and rules change, so learning how to search for and find references will keep the information you have at hand from becoming obsolete. For the remainder of the units in this module that discuss Social Security benefits, references will appear in this manner: DI 13010.060. These refer to the Program Operations Manual Systems (POMS) sections where you can find specific information.

The POMS is an enormous online reference that outlines all of the operational instructions that Social Security personnel use as guidance for all technical activities. The POMS is difficult to read because Social Security designed it for agency employees who have gone through extensive training. It's also full of Social Security-specific acronyms unfamiliar to CWICs. It's important that CWICs learn to navigate the POMS because it contains Social Security's rules that affect the beneficiaries with whom CWICs work. Understanding the language and the rules will help CWICs provide accurate information. The glossary at the end of this module may help you understand POMS references more easily.

Social Security maintains a **public version of the POMS** online, and you can access the table of contents by going to [ssa.gov](https://secure.ssa.gov) (<https://secure.ssa.gov/poms.nsf/home!readform>).

How Social Security Determines Disability

When an adult individual initially applies for disability benefits, he or she must have a severe disability that prevents them from performing SGA. Social Security must expect the disability to last at least 12 months, or end in the claimant's death. To establish that a disability exists, Social Security looks closely at the claimant's medical records.

During initial disability claims, the burden of proof lies with the person filing the claim, not with Social Security.

State Disability Determination Services (DDS)

The State Disability Determination Services (commonly referred to as simply DDS) are state agencies responsible for developing medical evidence and determining whether the claimant is or isn't disabled or blind under Social Security law. Many people mistakenly believe that Social Security makes all medical determinations of disability. In fact, Social Security contracts with DDS agencies to perform this function.

The DDS tries to obtain evidence from the claimant's own medical sources first. If that evidence is unavailable or insufficient, the DDS may arrange

for a consultative examination (CE) to obtain the additional information needed. The claimant's own medical source generally is the preferred source for the CE; however, the DDS may also obtain the CE from an independent source.

After completing its initial development, the DDS makes the disability determination using, at minimum, an adjudicative team that includes a medical and/or psychological consultant and a disability examiner. If the adjudicative team finds that it needs additional evidence, the consultant or examiner may re-contact a medical source(s) and request supplemental information.

After the DDS makes the disability determination, the case either returns to the Social Security field office for appropriate action or it's reviewed by quality review analysts at the state DDS office or at a federal Social Security branch. After quality review, cases are returned to the Social Security field office for final processing. If the DDS finds the claimant disabled, Social Security will complete any remaining non-disability development, compute the benefit amount, and begin paying benefits. If DDS finds the claimant not disabled, the field office retains the file in case the claimant decides to appeal the determination.

If the claimant files an appeal of a denial, Social Security usually handles the appeal much the same as the initial claim, except that an adjudicative team in the DDS different from the one that handled the original case will make the disability determination.

The Sequential Evaluation Process

Social Security uses a five-step process for initial and reconsideration level decisions known as the sequential evaluation process to make disability determinations.

1. Is the claimant performing SGA?

Social Security personnel conduct this first step of the sequential evaluation process. After considering any applicable work incentives, if the claimant is working and performing SGA, Social Security will decide that the individual doesn't meet the disability standard. If the claimant isn't working, or the average countable monthly earnings are less than the current SGA guideline, Social Security sends the file to the DDS for the medical review.

NOTE: SSI claimants who meet Social Security’s definition of statutory blindness are not subject to the first step of the sequential evaluation – the SGA test. Statutorily blind SSI claimants are eligible for SSI payments even if they are performing SGA, provided the claimant meets the other requirements for eligibility, such as income and resources.

2. Are the claimant’s impairments “severe?”

For the DDS to decide that an applicant is disabled, a medically determinable impairment or combination of medically determinable impairments must significantly limit the claimant’s ability to do basic work activities (such as walking, sitting, carrying, seeing, hearing, remembering simple instructions, and responding appropriately to the public and usual work situations) for at least one year. If the medically determinable impairment(s) has no more than a minimal effect on his/her ability to perform basic work activities, the DDS will determine that the individual doesn’t meet the disability standard. If the impairment(s) is severe, the DDS continues to Step 3.

3. Is the claimant’s impairment on the Listing of Impairments?

To make medical disability determinations, the DDS uses the “Listing of Impairments”. This describes impairments that are severe enough to prevent a person from doing any gainful activity. If a claimant has an impairment that is listed, the DDS will find the claimant disabled at Step 3. If the impairment (or combination of medical impairments) isn’t on this list, the DDS looks to see if the condition is as severe as a listed impairment. If the severity of the claimant’s impairment(s) meets or medically equals that of a listed impairment, the DDS will decide that the claimant is disabled. If the medically determinable impairment does not meet, or medically equal a listed impairment, the DDS goes to Step 4.

The Listing of Impairments

The Listing of Impairments describes, for each major body system, impairments that are considered severe enough to prevent a person from doing any gainful activity (or in the case of children under age 18 applying for SSI, cause marked and severe functional limitations). Most of the listed impairments are either permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last

for a continuous period of at least 12 months. The criteria in the Listing of Impairments are applicable to the evaluation of claims for disability benefits or payments under both the Social Security disability insurance and SSI programs.

The **Listing of Impairments** is available at Social Security's website (<https://www.ssa.gov/disability/professionals/bluebook/general-info.htm>).

The criteria in the Listing of Impairments apply only to one step of the multi-step sequential evaluation process at the initial and reconsideration level. At that step, the presence of an impairment that meets the criteria in the Listing of Impairments (or medically equals the severity) is usually sufficient to establish that an individual who is not performing SGA meets the definition of disability.

If the impairment does not meet a listing, the adjudicator moves on to the next step of the process and applies other rules in order to resolve the issue of disability.

4. Can the claimant do the work that he or she did before?

At this step, the DDS decides if the impairment(s) prevents the claimant from doing his or her past work as he or she performed it before, or as generally performed in the national economy. If past work is not precluded, the DDS will decide that the claimant does not meet Social Security's definition of disability. If past work is precluded, the DDS goes on to Step 5.

5. Can the claimant make an adjustment to any other type of work?

If the claimant cannot do the work he or she did in the past, the DDS looks to see if the claimant would be able to make an adjustment to other work. The DDS evaluates the individual's medical condition, age, education, past work experience, and any skills the claimant may have that he or she could use to do other work. If the claimant can't do other work, the DDS will decide that the claimant's impairment meets the Social Security definition of disability. If the claimant can make an adjustment to other work in the economy, the DDS will decide that the beneficiary is not entitled to benefits based on disability.

To learn more about the sequential evaluation process, refer to **POMS DI 22001.001 - Sequential Evaluation of Title II and Title XVI Adult**

Disability Claims found online

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0422001001>).

Continuing Disability Reviews (CDRs)

Once Social Security entitles individuals to benefits, beneficiaries must periodically prove that their disability continues to be severe to retain eligibility. In some situations, Social Security will simply review the folder and determine that the impairment could not have improved. In other cases, the beneficiary will receive a questionnaire in the mail, and the information he or she provides on the questionnaire will be sufficient for Social Security to determine continued eligibility. Sometimes, however, Social Security will need to gather medical evidence and interview the beneficiary to determine if the disability continues to meet Social Security's definition. Social Security calls these periodic reviews of a beneficiary's condition "Medical Continuing Disability Reviews" (CDRs).

As with initial disability determinations, the local Social Security field office gathers the medical information and sends it to the DDS. For medical CDRs, the DDS uses a different standard from the one it uses for initial applications. Once individuals are entitled to benefits, the DDS doesn't look for medical evidence to re-establish existing and documented impairments, because this was already completed when the beneficiary was first determined to be disabled. Instead, the DDS considers evidence to determine if the medical impairment(s) has improved. If there's sufficient medical improvement, Social Security terminates the person's benefits. The Medical Improvement Review Standard (MIRS) is the legal standard used by Social Security for determining if disability continues in a CDR. Under the MIRS standard, DDS considers current signs, symptoms, and laboratory findings related to the impairment(s) documented at the time of the last favorable decision to determine if there has been any changes or improvement as the basis for finding medical improvement (MI).

Medical Improvement Review Standard (MIRS)

Social Security will determine that an adult beneficiary of Social Security disability benefits is no longer disabled if the evidence demonstrates that the person has:

- Medical Improvement (MI) related to the ability to work, and

- The ability to engage in SGA.

Like the initial determination, the MIRS definition has two parts: medical improvement and the ability to perform SGA.

Medical Review Diaries

Once an individual meets the disability requirements or a medical CDR establishes that a beneficiary continues to have a disability under Social Security's definition, the DDS sets a date called a "diary" when it will review the individual's disabling condition again to see if the disability continues. There are three primary diaries: Medical Improvement Expected (MIE), Medical Improvement Possible (MIP), and Medical Improvement Not Expected (MINE).

Medical Improvement Expected (MIE)

MIE reviews apply to individuals with impairments that Social Security expects to improve sufficiently to permit the individuals to engage in SGA. A CDR diary for MIE means that Social Security will review the medical file in less than three years.

Medical Improvement Possible (MIP)

MIP reviews apply to individuals with impairments who either at the time of initial entitlement or after subsequent review, Social Security considers to have the possibility of improving. In these cases, improvement may occur to permit the individuals to perform SGA, but Social Security cannot predict improvement with accuracy based on current experience and the facts of the particular case. An MIP diary means that Social Security should review the medical file within three years.

Medical Improvement Not Expected (MINE)

MINE reviews apply to individuals with impairments that either at initial entitlement or later, after further review, Social Security does not expect to improve. These are extremely severe impairments that have shown, on the basis of administrative experience, to be at least static but more likely to be progressively disabling. Improvement to permit the individuals to engage in SGA is unlikely. Social Security may consider the interaction of the individual's age, impairment consequences, and the lack of recent attachment to the labor market in determining whether it expects the impairment to improve. A MINE diary means that Social Security should review the file within seven years but no more frequently than once every five years.

More information about the CDR process is available in the POMS starting with **DI 28005.000 - The CDR Evaluation Process**. You may access that online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0428005000>).

Protection from Medical CDRs

The Ticket to Work and Work Incentives Improvement Act of 1999 created two provisions that protect beneficiaries from medical CDRs:

- Social Security will not initiate medical CDRs for beneficiaries who are actively using their Ticket to Work. We discuss the Ticket to Work program in detail in Unit 10 of this module.
- Effective January 1, 2002, if an individual has been receiving disability benefits for at least 24 months, Social Security will not initiate a medical CDR solely because an individual goes to work. This is an essential protection for beneficiaries who decide to pursue employment. Beneficiaries who have received cash benefits for at least two years will only undergo the regularly scheduled medical CDRs based on the MIE, MIP, and MINE diaries set at the last medical determination of their benefits. A report of work activity will no longer solely “trigger” a medical review. A beneficiary does not need to have a Ticket or be using a Ticket to be afforded this second CDR protection.

Age-18 Redeterminations in the SSI Program

Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193) in 1996. The Act requires that all Social Security review the eligibility of all Supplemental Security Income (SSI) recipients who turn 18 years of age as if they were applying for adult SSI for the first time without consideration of previous disability determinations. Social Security calls this review process the “age-18 redetermination,” and the agency performs it because the childhood definition of disability varies greatly from the more comprehensive adult standard in the SSI program. Because of the more comprehensive definition of disability for adults, when Social Security conducts age-18 redeterminations, the agency may determine an individual ineligible for SSI benefits as an adult. This is true even though there has been no change in medical condition or ability to function since Social Security found the beneficiary eligible for childhood SSI benefits.

IMPORTANT NOTE: The age-18 redetermination process only applies to SSI recipients. This is because the SSI program has two different definitions of disability: one for children under age 18 and one for adults aged 18 and above. Title II disability beneficiaries aren't subject to redeterminations at the age of 18 because there is only one disability standard in the Title II program. This standard is the same as the adult standard for SSI entitlement.

The Age-18 Redetermination Process

The age-18 redetermination occurs for all childhood SSI recipients at some point after their 18th birthday. It may occur at a regularly scheduled CDR or at another point as determined by Social Security. In general practice, the age-18 redetermination usually occurs within 12 months after the 18th birthday. Social Security does not initiate the review prior to the month before the month the individual turns age 18. Social Security should never initiate an age-18 disability redetermination if the person was not eligible for SSI based on a childhood disability, in the month before the month of his or her 18th birthday.

To conduct a redetermination at age 18, Social Security gathers information on the young adult and determines eligibility under the adult criteria for SSI. The agency considers age-18 redeterminations to be initial eligibility decisions rather than CDRs. This means that the medical improvement review standard (MIRS), which Social Security uses in conducting CDRs, does not apply to the redetermination. When the agency applies the MIRS, the burden of proof falls on Social Security to document that the beneficiary has medically improved. Without the application of the MIRS, the burden of proof lies with the individual in establishing that he or she meets the adult disability criteria for SSI. Consequently, there is a heightened need for youth, their families, school personnel, and others to provide accurate and up-to-date documentation and evidence related to the disabling condition and the person's ability to function and work when the age-18 redetermination begins.

The general process is as follows:

1. Written Notification of Redetermination

The local Social Security field office begins the process by sending written notification to the individual and parents or guardians that Social Security

will review the person's medical situation to see if he or she has a disability that meets the adult standard.

2. Interview at Social Security Field Office

The young person and his or her family members, guardians, or representatives may go to the local field office to complete an initial eligibility interview. The purpose of the interview is to gather information on the severity of the disability and how it affects the person's ability to function. During the interview, Social Security personnel will complete initial disability interview forms including Form SSA-3367-F4 (Disability Report Field Office), Form SSA-3368-BK (Disability Report-Adult), and appropriate disability and functional reports. Social Security also requests permission to contact physicians, service providers, and teachers who work with the beneficiary. Social Security will ask the beneficiary to sign Form SSA-827 (Authorization for Source to Release Information to the Social Security Administration) for each source of information.

IMPORTANT NOTE: Social Security personnel must ask the claimant if he or she is receiving vocational rehabilitation, employment, training, educational, or other support services from any source during the redetermination interview. The answers provided to these questions are critically important because they indicate the potential for Section 301 continuation of benefits if an adverse determination occurs. We provide more information about Section 301 in unit 9 of this module.

3. The Disability Determination Service (DDS) Review

Social Security forwards all the information gathered at the interview to the DDS. The DDS follows a detailed process (known as the sequential evaluation process) to determine if the youth's impairment is "severe" by Social Security's criteria. Keep in mind that the criteria to receive the label of "severe impairment" are more comprehensive for adults than for children in the SSI program.

Note: Social Security bypasses the first step of the sequential evaluation (are you currently engaged in SGA?) during an age-18 redetermination.

The DDS also examines the claimant's ability to engage in SGA by reviewing information gathered from the young adult's teachers, medical sources, counselors or therapists regarding his or her abilities. If the claimant is involved in a special work program such as vocational rehabilitation, records are requested from applicable sources to assess the impact of the individual's medical condition(s) on their functional ability to engage in substantial employment opportunities in the national economy.

4. Social Security Notifies the Individual of the Determination

All individuals for whom Social Security conducts an age-18 redetermination receive a written notice. If the determination is favorable, the individual continues to receive SSI cash payments and Medicaid with no interruption.

An individual whom Social Security finds ineligible for SSI benefits as an adult will receive a written notice stating that he or she is no longer qualified to receive benefits. These individuals are entitled to receive two more months of payments after the date of this notice. Overpayment may occur if an ineligible individual continues to receive payments after the two-month grace period. Social Security will only seek to recover those payments after the agency makes its determination and the two-month grace period is over.

IMPORTANT NOTE: When conducting an age-18 disability redetermination involving a concurrent claim, the DDS may not adopt a Title II disability determination made before age 18 to an SSI age-18 disability redetermination. Social Security personnel must advise the individual that an unfavorable determination on the SSI disability redetermination will trigger a medical CDR on the Title II disability claim.

For more information about the age-18 redetermination process, refer to **POMS DI 23570.000 - Title XVI Childhood and Age 18 Disability Redetermination Cases** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0423570000>).

Applying for Social Security Disability Benefits

A network of local Social Security field offices and state Disability Determination Services (DDS) agencies process most initial Social Security disability claims. Social Security accepts applications for disability benefits in person, by telephone, by mail, or by filing online. The application and related forms ask for a description of the claimant's impairment(s), treatment sources, and other information that relates to the alleged disability. The Social Security field office is responsible for verifying non-disability eligibility requirements that may include age, employment, marital status, or Social Security coverage information. The field office then sends the case to the DDS to evaluate the alleged disability.

Individuals can apply for disability benefits in three ways. They can:

- **Apply online by going to the Social Security website**
(<http://www.socialsecurity.gov/applyfordisability/#a0=0>)
- Apply at the nearest Social Security field office;
- Call Social Security's toll-free number, 1-800-772-1213, to make an appointment to file a disability claim at the local Social Security office or to set up an appointment for someone to take the disability claim over the telephone. The disability claims interview lasts about one hour. Individuals who are deaf or hard of hearing may call Social Security's toll-free TTY number, 1-800-325-0778, between 7 a.m. and 7 p.m. on business days; or
- Claimants can use the online application to apply for disability benefits if they:
 - Are age 18 or older;
 - Aren't currently receiving benefits on their own Social Security record;
 - Are unable to work because of a medical condition that is expected to last at least 12 months or result in death; and
 - Were not denied disability benefits in the last 60 days. If Social Security denied an application for medical reasons in the last 60 days, the Internet Appeal is a starting point to request a review of the medical determination.

Social Security will request the following information during the initial interview:

- Social Security number;
- Birth or baptismal certificate;
- Names, addresses, and phone numbers of the doctors, caseworkers, hospitals, and clinics that would have information about the disability;
- Names and dosage of all medicines;
- Medical records from doctors, therapists, hospitals, clinics, and caseworkers;
- Laboratory and test results;
- A summary of work history; and
- A copy of the most recent W-2 form (Wage and Tax Statement) or, for self-employed individuals, a copy of his or her federal tax return for the past year.

In addition to the basic application for disability benefits, claimants need to complete other forms. One form collects information about the medical condition and how it affects the claimant's ability to work. Other forms give doctors, hospitals, and other health care professionals who have treated the claimant permission to send Social Security information about the claimant's medical condition.

When the DDS has made a determination on a claimant's case, Social Security notifies the individual by mail. If Social Security approves the application, the letter will show the amount of the monthly benefit and will indicate when the payments will start. If Social Security denies the application, the letter will explain why and provide information about how to appeal the decision. The Social Security appeals process is described in Unit 9 of this module.

Conclusion

CWICs may not help individuals apply for Social Security disability benefits. However, there will be instances when an individual who already receives a disability benefit from Social Security may become

eligible for another type of Social Security benefit. This possibility can have a significant effect on how paid work affects a person's benefits. CWICs should be alert to the possibility of establishing entitlement to other programs and should be aware of the events that could trigger eligibility. CWICs also need to provide information to beneficiaries about how to apply for additional Social Security benefits or other programs.

Conducting Independent Research

- **Social Security's Website:** An incredibly valuable reference is the SSA.gov website, where you can find informative and useful forms, pamphlets, and resources (<https://www.ssa.gov/>).
- **Code of Federal Regulations (CFR):** The CFR lists the regulations of the Social Security Act on which the POMS are based. The CFR is a good place to look for information to help understand complex provisions. Keep in mind, though, that Social Security uses the POMS much more than the CFR. CWICs can find the CFR online (http://www.socialsecurity.gov/OP_Home/cfr20/cfrdoc.htm)

NOTE: Future sections in this manual will have references to the POMS in the text, and in the "Conducting Independent Research" sections. CWICs should consider making these "favorites" as you will need this information at some point in the future.

- **Disability Evaluation under Social Security:** Disability Evaluation under Social Security (also known as the Blue Book) provides physicians and other health professionals with an understanding of the Social Security Administration's programs. It explains how each program works and the kinds of information health professionals can furnish to help ensure Social Security makes sound and prompt decisions on disability claims. (<https://www.ssa.gov/disability/professionals/bluebook/general-info.htm>)
- **The Adult and Childhood Listings of Impairments** are included in this online publication. These listings are just part of how Social Security decides if someone is disabled. Social Security also considers past work experience, severity of medical conditions, age, education, and work skills. The current listing of impairments is

online

(<http://www.socialsecurity.gov/disability/professionals/bluebook/general-info.htm>)

Competency Unit 2 – Understanding Social Security Title II Benefits

Introduction

Social Security benefits began during the Great Depression as a retirement program to partially replace wages lost when an individual left the workforce because of age. All of the benefits paid under Title II of the Social Security Act have grown from that historical beginning as Congress has added new categories of eligibility. Social Security benefits replace wages for workers and certain dependent family members. Social Security bases payment amounts under the Title II program upon the wages on which the worker paid Social Security taxes.

This unit will provide an overview of the different types of benefits Congress authorized under Title II of the Social Security Act, as well as the specifics of entitlement associated with each benefit type. CWICs should understand the distinguishing characteristics of each type of Title II benefit in order to accurately advise beneficiaries.

Benefits for the Number-Holder (NH) (The person who paid into Social Security)

The two types of benefits that a worker can receive under Title II of the Social Security Act are:

1. Retirement benefits paid as early as age 62, or
2. Disability benefits if the worker has a severe disability that renders the person unable to perform substantial work.

Retirement Insurance Benefits (RIB)

Social Security may pay retirement benefits as early as age 62. An individual isn't eligible for a full benefit unless he or she becomes entitled at full retirement age or later. Full retirement age (FRA) used to be 65 for everyone, but it's increasing. For people retiring at the time of this publication, FRA is age 66. The age will continue to increase until people born in 1960 will need to be 67 to attain FRA and retire without a reduction in their Social Security Retirement Insurance Benefits.

Individuals can use a **[retirement age calculator available on Social](#)**

Security's website to determine full retirement age (<https://www.ssa.gov/planners/retire/index.html>).

Reduced Retirement Insurance Benefits (RIB)

As previously stated, a person entitled to a Social Security retirement insurance benefit payment prior to full retirement age (FRA) will usually have a permanently reduced benefit, unless a situation allows Social Security to later adjust the amount of reduction. Social Security calculates the final amount of payment using a "reduction factor." The reduction factor is the number of months that the person received a benefit prior to FRA. For example: If a person applies for retirement benefits at exactly age 63, and his or her full retirement age is 66, Social Security would reduce benefits permanently by a factor of 36 months. If that same person waited to retire until the month the person turns age 65, the reduction factor would be 12 months.

Social Security determines these reductions, and the determinations are far outside the scope of the CWIC's responsibilities. It's good, however, to understand that these other benefits exist and how the non-disability benefits relate to the disability benefits that are the primary focus of this manual.

Benefits for Dependent Family Members

Dependent family members include spouses (or divorced spouses), widow(er)s, (or surviving divorced spouses), parents, and eligible children. We will discuss several categories briefly in this section. Remember that family relationships can be complicated, and only Social Security personnel make these determinations.

Spouse or Widow(er) Benefits

Social Security pays benefits to the

- Spouse;
- Divorced spouse who has been married to the worker for 10 or more years;
- Widow or Widower; or
- Surviving divorced spouse of a worker who paid into the Social Security system. As with the retirement and disability programs, there are different avenues through which an entitled spouse or

surviving spouse can access a benefit to replace some of the wages lost due to retirement, disability, or death of the Social Security worker.

Marital relationships can be complicated. Many factors can influence the relationship determination including previous marriages, the type of ceremony, or the duration of the marriage if the individuals were divorced. Determining who the spouse, widow, or widower is under state law for the purposes of Social Security benefit entitlement is solely the responsibility of Social Security.

Determining the Relationship

Social Security determines relationships when individuals apply for Social Security benefits. These determinations are important because Social Security may provide cash payments to certain eligible family members in addition to the primary claimant or number holder (NH). Family relationship determinations are far more complex than most people realize. Social Security bases them on state and federal laws. Whenever there is a possibility of entitlement, you should refer the individual to the local Social Security field office for a formal determination.

IMPORTANT NOTE: Effective June 20, 2014 Social Security published instructions that allow the agency to process claims in which same-sex relationships affect entitlement or eligibility. These instructions come in response to the Supreme Court's decision in *U.S. vs. Windsor* that found Section 3 of the Defense of Marriage Act unconstitutional. The policy also addresses **Supplemental Security Income (SSI) claims based on same-sex relationships**

(<https://www.ssa.gov/people/same-sexcouples/>).

Once Social Security establishes the marital relationship, the individual must meet additional eligibility criteria to indicate dependence on the worker. These factors are age and whether or not the spouse or surviving spouse has an entitled child of the worker in his or her care. These definitions are specific. If the person who worked and paid into the Social Security system is receiving either a retirement or disability payment, a spouse can receive benefits on the worker's record one of three ways:

- The spouse is over age 62; or

- The spouse has an entitled child of the worker who is under age 16 in his or her care; or
- The spouse has the worker's entitled disabled child in his or her care, and the child is over age 16.
- A Widow(er) may receive benefits at:
 - Age 60 or later, or
 - Any age, if the widow(er) has an entitled child in-care (mother's/father's benefits); or
 - Age 50 if he or she is disabled, called Disabled Widow(er) Benefits (DWB).

Even if a widow(er) meets the above requirements, Social Security precludes entitlement if the claimant was convicted of the felonious and intentional homicide of the worker.

Definition of Child in Care

A child in care is a child who is:

- Under age 16; or
- Age 16 or older and severely disabled (See **RS 01310.001E** <https://secure.ssa.gov/apps10/poms.nsf/lnx/0301310001>)

Independently Entitled Divorced Spouse Benefits

Independently entitled divorced spouses must be:

- The divorced spouse of a fully insured worker age 62 (worker must be 62 throughout the first month of entitlement but need not have filed a claim for benefits);
- Able to meet other entitlement requirements including having been married to the worker for at least ten years; and
- Finally divorced from the worker for at least two continuous years.

Child's Benefits

Social Security pays child's benefits to dependent children of certain insured workers. Even if the child has a disability, the child receives regular child's benefits until the age of 18. This point often confuses inexperienced CWICs. Remember, individuals can't collect a Title II

benefit based on disability until the age of 18. Only in the SSI program are benefits payable based on disability to individuals under age 18. All children under age 18 who are receiving a Title II benefit from the Social Security Administration will be receiving child's benefits, not CDB. Social Security may pay child's benefits to multiple children up to the maximum amount that family may receive, based on the worker's lifetime earnings. To be entitled to Title II child's benefits, an individual must've filed an application for child's benefits and must be:

- The child of an insured worker who is deceased, retired, and collecting Social Security retirement benefits, or disabled and collecting SSDI; and
- Dependent upon that insured worker; and
- Unmarried (with some exceptions).
- Social Security assumes dependence if the child is unmarried and:
 - Under age 18; or
 - If age 18 or over, a full-time elementary or secondary school student under age 19; or
 - Over age 18, and disabled prior to age 22, called Childhood Disability Benefits (CDB).

Eligibility for child's benefits hinges primarily on how Social Security defines the words "child" and "dependent." The regulations surrounding the Social Security Administration's definition of a child are complex and cover situations such as adoption, stepchildren, grandchildren, illegitimate children, and many other relationships. Social Security defines dependency precisely and relates it to where and with whom the child lives and how much financial support he or she receives. Only Social Security personnel have the authority to decide when an individual meets all the requirements to be eligible for a Title II child's benefit. CWICs must refer all questions on these matters to the local field office.

The Earnings Test (ET)

People who receive Title II Social Security benefits not based upon disability are subject to an Earnings Test (ET). To understand the

Earnings Test (sometimes referred to as the retirement test) it may be helpful to remember that Social Security benefits are intended to partially replace wages for workers and dependent family members when the worker stops or significantly reduces work. Each year, Social Security establishes an “exempt amount.” Only countable earnings over the exempt amount will affect the beneficiary’s Social Security payments. The ET applies to earnings within a calendar year. The exempt amount of gross earnings (or net earnings from self-employment) is fairly high when compared to earnings limits under the Title II disability programs. The ET never applies to SSI benefits.

To find the current exempt amount, go to **[RS 02501.025 - Determining Annual and Monthly Exempt Amounts](https://secure.ssa.gov/apps10/poms.nsf/lnx/0302501025#b1)** found at Social Security’s website (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0302501025#b1>).

The Social Security website also has a **[calculator to help beneficiaries find out the effect of work on benefits](https://www.ssa.gov/OACT/COLA/RTeffect.html)** not based on disability. You will find this calculator online (<https://www.ssa.gov/OACT/COLA/RTeffect.html>).

Understanding Entitlement for Social Security Benefits

Types of Benefits Provided under Title II of the Social Security Act

Social Security benefits paid under Title II partially replace income lost when a worker retires, dies, or develops a disabling condition that prevents substantial work. Social Security pays benefits to retired or disabled workers and their dependent family members, as well as the surviving spouses and children of deceased workers. The descriptions of benefit types and entitlement requirements in this unit aren’t exhaustive.

When individuals seek entitlement determinations on any Title II benefit, you should refer them to the local Social Security field office, or to Social Security’s website (**www.ssa.gov**) to apply. Here is a brief list of the types of benefits paid under Title II of the Social Security Act:

- **Retired worker:** Beneficiary who worked enough in Social Security-covered employment to be due benefits and who is at least 62 years old (Social Security reduces benefits if claimant is

under full retirement age when entitled). Social Security defines Full Retirement Age (FRA) based on the year of birth of the claimant.

- **Disabled worker:** Beneficiary who had sufficient work in Social Security-covered employment or self-employment and who had recent covered employment or self-employment prior to disability onset.
- **Spouse of retired or disabled worker:** (1) The individual is taking care of a child, entitled on the worker's record, who is under age 16 or disabled, or (2) is at least 62 years old. Entitlement applies to an unmarried, divorced spouse who is at least 62 if the marriage(s) to the worker lasted at least 10 years. In some situations, he or she may receive benefits even if the worker isn't receiving them.
- **Child of retired, disabled, or deceased worker:** Individual must be under age 18, or between 18 and 19 and in primary or secondary school.
- **Disabled child of retired, disabled or deceased worker:** Individual must be age 18 or older and experiencing a disability (as defined by Social Security) that began before the adult child turned age 22.
- **Aged widow(er):** Individual must be at least 60 years old.
- **Young widow(er):** Individual must have the worker's entitled child who is under age 16 or disabled in his or her care.
- **Surviving divorced spouse:** Individual who is at least age 60 (50-59 if disabled) if the marriage lasted at least ten years. The former spouse doesn't have to meet the age or length of marriage rule if he or she is caring for the worker's entitled child who is under age 16 or disabled.
- **Disabled widow(er):** Individual must be disabled and be at least 50 years old.
- **The deceased worker's dependent parents:** Parents can receive benefits if they are age 62 or older. For parents to qualify as dependents, the worker would've had to provide at least one-half of their support, and meet other criteria.

NOTE: A living retired or disabled worker must be due a benefit in order for Social Security to entitle the children or spouse of the worker (with some exceptions, including if Social Security suspends the worker's benefits due to incarceration).

Earning Entitlement to Social Security Benefits

Social Security taxes are somewhat like insurance premium payments. Workers earn benefits by paying Social Security taxes on wages or on the net-profit from a trade or business. All benefits stem from the work of the person who owns the Social Security number on which Social Security pays the benefits. When a worker retires and collects a Social Security benefit, dies, or becomes entitled to Social Security disability benefits, the amount of wages previously taxed determines eligibility for benefits and the amount of payments. Since 1978, Social Security gives 1 credit for payment of Social Security taxes on a minimum amount of wages to determine eligibility on a worker's history of earnings. Workers originally earned Social Security "credits" based on earnings at or above an amount earned during a certain part of the year. Social Security uses a count of QCs to measure if the claimant had enough work credits for the worker, or for dependent family members, to be due benefits. Credits or QCs only matter at the time of application for benefits.

Quarters of Coverage

Previously, Social Security QCs referred to an actual three-month period, or quarter of the calendar. The quarter was "covered" if the person worked and had earnings at or above the amount Social Security credits as a QC. Since 1978, however, Social Security bases QCs on the amount of earnings credited to a calendar year regardless of when the earnings occur in the calendar year. A beneficiary can earn a maximum of four QCs per year. Social Security also refers to QCs as earning "credits." Quarters of Coverage and credits mean the same thing.

NOTE: The amount required for a beneficiary to earn a QC changes annually. In 2022, a worker must earn \$1,510 in Social Security-covered employment to earn one QC.

Having enough QCs is a "yes" or "no" eligibility question. Social Security determines if a person is eligible or "insured" for benefits by determining when and how many QCs the person has earned. There are several types of insured statuses, and the amount of required work depends on the

type of benefits, the person's age, and the point at which the person becomes disabled. Social Security will make this determination when the person applies. CWICs aren't responsible for determining eligibility, and it's not possible for CWICs to perform this task. Only Social Security personnel have access to the information needed to make entitlement determinations.

Insured Status

There are several rules around when and how much a person has to earn for entitlement to benefits under Title II of the Social Security Act. The amount and timing of work the claimant needs to earn benefits depends on the type of benefits he or she requests.

"Fully Insured" Status

Social Security considers someone to be "fully insured" if he or she earns one credit for each year between the time the person turned 21 and the date of death, date of disability, or the date the person turns 62. Social Security uses fully insured status to entitle someone for Retirement Insurance Benefits (RIB), for survivor's benefits, and for disability benefits if the claimant is blind. A person can earn these credits any time during his or her work history. Regardless of the person's age, the person who paid into Social Security or the "Number Holder" (NH) must have earned at least six credits for anyone to receive benefits on the work record. The number of credits required for insured status will never exceed 40, or the cumulative equivalent of ten years of covered earnings. There is another type of insured status required for people who apply for disability benefits, called "disability insured" status.

Disability Insured Status

Disability insured status means that the individual meets the fully insured status test discussed above, and also meets the test for recent work. For disabilities that began when the claimant was over age 31, the claimant must have at least 20 QCs or credits during the ten-year period immediately before the date the medical evidence indicates the disability began. If the claimant is younger than 31, the number of credits for disability benefits is less than 20, and varies depending on the claimant's age. Note that people who are blind need only meet the fully insured status test. Some claimants earn insured status after the disability began. Some claimants develop a disability after insured status ends. Because of the 20-out-of-40 rule for insured status, people can be

ineligible for SSDI if the disability onset occurs after the last date they were insured. Remember, Social Security makes these decisions. If a CWIC works with someone who may be entitled to a disability payment, such as a working SSI beneficiary, have that person apply.

Insured status is a complex concept that can be difficult to understand. Social Security provides a clear explanation of it in the Social Security Handbook, found online here:
(https://www.ssa.gov/OP_Home/handbook/handbook.02/handbook-0200.html)

Calculating Benefit Amounts

Once Social Security determines that a worker has sufficient QCs to permit entitlement, it calculates the Primary Insurance Amount (PIA) and payments based on wages or self-employment income (SEI) on which the worker paid taxes. There are many different calculations, and Social Security chooses the appropriate one based on the worker's date of birth and the date the disability began, or the date the worker died or became entitled to a retirement benefit. Social Security's computer system reliably performs the complex benefit calculation when an individual applies for benefits. Re-computations occur periodically when an individual has additional earnings that positively affect the potential benefit. CWICs should never attempt to calculate benefit amounts or even offer estimates of what payment might be. Only Social Security personnel can perform this task.

Primary Insurance Amount (PIA)

The PIA is the result of a complex benefit calculation that Social Security performs to determine the amount of payments. Social Security calculates all benefits it pays on this worker's record from the PIA. For example, children receive a dependent amount equal to a percentage of the worker's PIA. The child of a living worker receives benefits of up to 50 percent of the worker's PIA, but a surviving child receives benefits of up to 75 percent of the worker's PIA.

Clarification of Terms

Social Security refers to the person who has earned the benefits as the worker, Wage-Earner (W/E), or the Number Holder (NH). Social Security refers to dependent family members as "auxiliaries" if the worker is alive or "survivors" if the worker is deceased. Auxiliary or survivor

beneficiaries receive a percentage of the amount of the worker's benefit. For example, a child of a living disabled worker would receive an amount up to one half of the PIA. The PIA is essentially the worker's highest possible benefit based on his or her work history. When the worker dies, the worker's dependent child would be due a benefit of up to 75 percent of the worker's PIA.

If the worker is alive and loses entitlement to cash benefits because Social Security decides he or she no longer has a disability under Social Security rules, dependent family members also lose their entitlement to benefits.

Family Maximum (FMAX)

The FMAX caps the amount of benefits paid to dependent or surviving family members based on a worker's earnings. If the worker is living, the worker receives his or her full benefit, and the rest of the dependent family members share what is left. If the former worker is deceased, the entitled family members each receive their full benefit, unless the total exceeds the family maximum. If it does, then family members each split a portion of the remainder of the FMAX after deducting the worker's benefit. Social Security calculates the FMAX by subjecting the PIA to a complex formula.

Example of Family Maximum:

Alexander became disabled last year and receives \$1,200 per month in SSDI beginning in January. Alexander has three children who are all under age 18. Alexander is a single parent, and no one other than Alexander and his children receives benefits based on Alexander's work.

Because Alexander is living, each child could be eligible for an amount equal to up to half of his SSDI of \$1,200, no more than \$600 per child. Alexander's FMAX, however, is \$1,800. Because there are three children, the FMAX will reduce the children's benefits. Alexander receives his full benefit of \$1,200, leaving \$600 of the FMAX for the three children to share. Each child would receive a benefit of \$200.

NOTE: We simplified these figures for this example. The FMAX depends on the amount of wages paid. It may

simply be the PIA (the worker's highest possible benefit) or it may be significantly higher than the PIA.

Beneficiaries and CWICs often misunderstand the complex family maximum concept. To find a detailed explanation of this concept, refer to Social Security's resource document titled "**Understanding the Social Security Family Maximum**" (<https://www.ssa.gov/policy/docs/ssb/v75n3/v75n3p1.html>).

Understanding Title II Disability Benefits

The previous section described the entitlement requirements for the various types of Title II benefits. An individual may establish entitlement to a Social Security benefit in numerous ways, the majority of which have nothing to do with disability. It's important to remember that the terms of the agreement programs hold with Social Security restrict WIPA programs to working with individuals who receive benefits from Social Security that are based on the beneficiary's disability. In the following section, we focus specifically on the different types of Title II disability benefits individuals may receive.

Disability Benefits

Unit 1 of this module explained the definition of disability and the process that Social Security uses to determine whether or not a claimant for benefits meets Social Security's stringent definition of disability. The definition of disability and the disability determination process are the same for both Title II and SSI benefits. The only exception to this is that Social Security evaluates SSI claimants under age 18 using a different definition of disability. Once SSI recipients turn 18, Social Security reexamines their disabilities to see if they meet the adult disability standard for entitlement. Unlike SSI, the adult definition for disability is the only one Social Security applies in the Title II disability program.

Types of Disability Benefits

Title II of the Social Security Act authorizes three types of disability benefits. For all of these benefits, the claimant must meet the disability standards discussed in Unit 1 of this module as well as other non-disability criteria including submitting an application, proving age,

relationship to the insured worker, etc. Remember, only Social Security makes these entitlement decisions. Whenever there is a possibility of entitlement, refer the individual to the local Social Security field office, to the 1-800-772-1213 call center, or to the “My Social Security” portal on the [socialsecurity.gov](https://www.socialsecurity.gov) website to apply.

- **Disability Insurance Benefits (DIB)**, also called Social Security Disability Insurance (SSDI), are payable to workers insured under the Act. To be insured, the worker must meet fully insured, and disability insured status, and must meet the other disability and non-disability requirements for entitlement.
- **Childhood Disability Benefits (CDB)**, previously called Disabled Adult Child’s benefits (DAC), are payable to a disabled adult child of an insured worker who has retired or become disabled and is collecting Social Security benefits, or who has died. The child must have a disabling condition that began prior to the time the child attained age 22. Although the disability had to begin prior to the age of 22, individuals cannot become entitled to CDB until they have turned 18. Those under age 18 may be eligible for child’s benefits not based on disability.
- **Disabled Widow(er)’s Benefits (DWB)** are payable to the widow, widower, or surviving divorced spouse of an insured worker. The widow, widower, or surviving divorced spouse must be at least age 50, be disabled before the end of a specified period of time called the “prescribed period,” and meet other requirements regarding relationship to the worker and the length of time between the worker’s death and the application.

The definition of disability is the same for all three groups, but entitlement requirements and the events that terminate cash payments differ. Because Social Security bases eligibility for DWB and CDB on the claimant’s dependency on, and relationship to the former worker, marriage may terminate a Childhood Disability benefit, or make a claimant ineligible as a Disabled Widow(er). Marriage never affects entitlement to SSDI.

Effect of Marriage on CDB and DWB

A Childhood Disability Beneficiary’s benefits will terminate when he or she marries unless the marriage is to someone entitled to a Social Security benefit authorized under Title II of the Act. The law has one exception.

If the CDB beneficiary marries someone receiving a minor child's benefit, the CDB benefits cease effective with the date of the marriage. Keep in mind, Supplemental Security Income (SSI) is not a Social Security benefit paid under Title II of the Act. Effective January 1984, re-marriage won't terminate benefits for a Disabled Widow(er) or a disabled surviving divorced spouse if the individual was already entitled as a DWB at the time of the marriage (See **POMS RS 00207.003** online at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0300207003>)

You must verify the type of disability benefits the individual receives before you advise the beneficiary about the potential effect of marriage on benefits.

Waiting Period for Title II Disability Benefits

Before entitlement to SSDI or DWB can begin, a person must wait five full calendar months. The waiting period begins the first full month the person is disabled and meets requirements for entitlement, such as having worked enough under the Social Security system. Unlike SSDI and DWB beneficiaries, CDB beneficiaries never serve a waiting period.

Example of waiting period for Title II Disability Benefits:

Renee filed for SSDI and Social Security found her to be disabled on July 17, 2021. The first month of her waiting period is August, because she wasn't disabled the entire month of July. August, September, October, November, and December are her waiting period months. The first month she is eligible for a payment is January 2022. Because Social Security pays benefits for the month that has just passed, her first check will arrive in February.

Renee isn't due SSDI payments at all for the waiting period, so the check that comes in February will be for one month's benefits.

Important Concepts Affecting Entitlement to Title II Disability Benefits

- **The "Date of Onset"** is the date that evidence demonstrates the disability is severe and prevents SGA. This is a date the DDS establishes when the individual first applies and it finds him or her eligible. The waiting period follows the Date of Onset.

- **The Filing Date, or Date of Application**, is the earlier of either the date Social Security receives a valid application or the protective filing date. Essentially, the protective filing date is when Social Security first officially knew an individual wished to file for benefits.
- **The Date of Entitlement** is the first month for which benefits are payable. Social Security may pay Title II disability benefits retroactively, which means that Social Security can pay benefits for months prior to the date of the application. The amount of retroactivity depends on numerous factors including the type of benefit, whether the worker is living, when the date the disability began to meet Social Security requirements, as well as other factors.
- **Open application:** If a beneficiary is entitled to Supplemental Security Income (SSI), and that person is working and earning QC's, he or she may earn enough QCs to become entitled to SSDI. SSI requires beneficiaries to apply for any other possible benefit, and the SSI application is considered an "open application" for all other benefits. This means that the SSI beneficiary's SSDI entitlement is retroactive to the date of entitlement to SSI, or the date the person first had enough quarters to be insured, whichever is later.

Comparison of Title II Benefits

It's important that you understand which type of Title II disability benefit a person receives in order to advise him or her properly about the effect of work, as well as other events. This chart explains some of the differences between the three disability benefits:

Issue	Childhood Disability Benefits (CDB) DI 10115.000	Disabled Widow(er)s Benefits (DWB) DI 10110.000	Disability Insurance Benefits (DIB) AKA: Social Security Disability Insurance (SSDI) DI 10105.000
Waiting Period	Never	Five full calendar months after onset at initial entitlement	Five full calendar months after onset at initial entitlement
Relationship to Worker	Disabled child 18 or older	Widow(er) or surviving divorced spouse age 50 or older	Self
Disability	Disability must be established to have occurred before age 22	Disability must be established before the end of the "prescribed period"	Disability may begin at any time
Effect of Marriage on Entitlement	Benefit terminates unless marrying someone entitled to Title II benefits other than minor child's benefits	Benefit continues as long as individual was already entitled as DWB	Marriage has no effect on DIB/SSDI

Amounts	Up to 50% of former worker's highest possible benefit if worker is living; up to 75 % if worker is deceased	% of worker's check determined by claimant's age	Highest benefit possible based on claimant's work history
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Confusing Situations

Social Security authorizes many different types of benefits under Title II of the Social Security Act. Sometimes it's difficult for CWICs to determine exactly which type of benefit a person is receiving. To further complicate matters, some beneficiaries receive more than one type of Title II benefit simultaneously. This section will describe and clarify some common situations that may confuse CWICs as they try to determine who is eligible for WIPA services and which benefits would be most advantageous for an individual.

Child's Benefits vs. Childhood Disability Benefits

Social Security child's benefits and Childhood Disability Benefits (CDB) have different requirements. Social Security pays Child's benefits up to the age of 18 (19 if in secondary school). Social Security only pays CDB benefits once the beneficiary reaches age 18. Work affects these programs differently. For youth with disabilities under the age of 18, the Earnings Test (ET) would apply if the youth received child's benefits. (We explain the ET later in this unit.) If the child becomes entitled to SSDI, the Substantial Gainful Activity (SGA) rules outlined later in this module would apply.

As the youth nears age 18, he or she should apply for CDB if he or she has a severe disability that prevents SGA. If the child becomes entitled to CDB, then the SGA rules apply. The ET would no longer apply because the benefit would be CDB, a benefit based on disability. Keep in mind that Title II child's benefits may continue up to the age of 19 years and

two months if the beneficiary fails to meet the disability criteria at 18 and is attending elementary or secondary school on a full-time basis.

Interaction between SSDI and Retirement Insurance Benefits

Social Security disability benefits and Retirement Insurance Benefits (RIB) relate to each other intimately. Essentially, disability payments a former worker receives are the retirement benefit taken early. We tend to think of these two benefits as distinctly different because the entitlement factors differ, as do the age requirements. Also, the effect of work on disability benefits is vastly different from the effect of work on retirement benefits.

One way to reconcile this relationship is to consider both benefits as two different doors through which a person who worked and paid into the Social Security system can access the payments he or she is due because of his or her work history. Workers are eligible for payments when they leave the workforce, either because of age or disability. The effect of paid employment differs, and the amounts of benefit payments may differ, but the essential fact is that both benefits are intended to partially replace wages lost because an individual left the workforce.

When many Title II disability beneficiaries reach full retirement age (FRA), their disability benefits automatically convert to Retirement Insurance Benefits (RIB). In these cases, a disability beneficiary's last month of entitlement to disability benefits is the month before his or her FRA. This conversion to RIB status only applies to SSDI and DWB beneficiaries, not to individuals receiving CDB. Individuals who receive CDB don't automatically convert to the retirement system when they reach full retirement age because most of these beneficiaries don't have sufficient work credits on their own Social Security Number (SSN) to establish eligibility for retirement. It's not possible to collect Social Security retirement benefits based on a parental work record. Many beneficiaries on CDB continue to receive this benefit into old age and until death.

When the beneficiary reaches FRA, Social Security converts him or her automatically. The beneficiary doesn't need to apply or notify Social Security. Many beneficiaries aren't even aware that they have converted to RIB, as their monthly payment remains the same and Medicare coverage continues uninterrupted.

Determining a Beneficiary's FRA

Many people think that FRA is always age 65. This was the case for many years, but starting in 2003, the FRA began to rise based on a person's year of birth. The FRA is gradually increasing for people born on or after January 2, 1938. The age at which a disabled beneficiary will attain full retirement age will depend on his or her date of birth.

Once an individual attains FRA and converts from disability benefits to retirement benefits, income from work no longer affects benefits. There is no annual earnings limit for persons of full retirement age receiving Social Security retirement benefits. Individuals can use a **retirement age calculator to determine full retirement age**, found online (<https://www.ssa.gov/benefits/retirement/estimator.html>).

Disability Benefits and Early Retirement

When a Title II disability beneficiary turns 62, it's possible to switch over to the retirement system. Unfortunately, making this change will reduce the beneficiary's monthly payment, although the beneficiary will continue to have Medicare coverage as long as he or she still has a disability under Social Security regulations. It's even possible to convert back to the disability program from early retirement in some instances. There are specific circumstances under which conversion from disability to retirement at age 62 (or back again) would be advantageous.

Beneficiaries who are approaching retirement age may ask CWICs about changes that can or will affect their benefits. CWICs aren't trained to be experts on retirement benefits, but they can provide beneficiaries with general information and explain how Social Security can help explore options in more detail. For more information on the interaction between retirement and disability benefits, refer to the VCU NTDC resource document titled **"Transition to Retirement"** found online (<http://vcu-ntdc.org/resources/viewContent.cfm?contentID=43>).

Dual Entitlement to Title II Benefits

There is a common misconception that Social Security only allows individuals to draw a Social Security benefit off of one SSN at a time. In fact, this isn't the case. Many people are "dually entitled" to Social Security benefits in which they collect a Title II benefit based on their own work record, and another payment from the work record of either a parent or spouse. Here are some important definitions of terms:

- **Dual Entitlement** exists when an individual is entitled to different types of Social Security Title II benefits on two or more earnings records. For example, a beneficiary could be entitled to SSDI on his or her own work record, but also be receiving CDB on a parent's earnings record.
- **Simultaneous Entitlement** exists when a person is entitled to the same type of Title II benefit on two or more earnings records. An example of this would be an individual who is eligible for widow(er)s benefits on more than one deceased spouse's work history. Another example would be someone who is eligible for CDB on the earnings records of both parents.

Individuals with multiple entitlements don't receive the full benefit from each work record. Social Security must pay an individual the full benefit due to him or her on his or her own work record first. Social Security will then pay additional benefits from another number holder (if the beneficiary is entitled to such payment), with the total payment being the higher of the two payment amounts. The following examples clarify this:

Example of a beneficiary with multiple entitlements:

Georgette applied for CDB payments on her deceased father's work record when she turned 18 and was awarded a monthly payment of \$900. She subsequently went to work part-time and eventually established insured status on her own work record. Social Security determined that she was entitled to SSDI payments of \$400 each month from her past work, so the agency awarded her this payment. Because Georgette was already eligible for a payment of \$900 on her father's work record, Social Security reduced this payment to \$400. Georgette still receives the same amount each month, \$900, that she received before. However, now Georgette is dually entitled because \$400 of that payment comes from her own work record and the remaining \$400 comes from her father's work record. The two payments combined are the same as the higher of the two benefits available to her.

Example of a beneficiary with multiple entitlements:

Cletus worked as a roofer until an accident disabled him. He filed for SSDI, and Social Security awarded him \$880

per month. Cletus' wife worked as a bookkeeper for many years until her death. Cletus was 52 when his wife died, at which time he applied for benefits as a disabled widower. Social Security determined he was entitled to a monthly payment of \$1,000 per month on his wife's work record. Social Security continued to pay Cletus the \$880 on his own work record, but added a DWB payment of \$120 to bring the total benefit up to the higher of the two payment amounts or \$1,000.

CWICs need to know when an individual is dually entitled because there can be some implications if the beneficiary is using work incentives. While Social Security often gives people who are dually entitled two separate payments each month, this isn't always the case. Contact Social Security to verify benefits when dual or simultaneous entitlement is possible.

For more detailed information on this subject, refer to the resource document titled **"Work Incentives Counseling for Dually Entitled Beneficiaries"** found on the VCU NTDC website (<http://vcu-ntdc.org/resources/viewContent.cfm?contentID=164>)

Title II Disability Payments

How Social Security Pays Regular Monthly Benefits

Social Security pays benefits each month. Generally, the day on which an individual receives benefit payments depends on the birth date of the person on whose work record Social Security is paying the benefits. For example, Social Security uses the birth date of individuals who receive benefits as retired or disabled workers to determine their benefit payment date. Individuals who receive benefits on a spouse's or parent's work record will have a payment date based on that person's birth date.

Social Security now requires beneficiaries to sign up for payments by direct deposit whenever possible. Beneficiaries who don't have a bank account may sign up for a Direct Express debit card. The Direct Express card is a prepaid debit card option for federal benefit recipients to receive their benefits electronically. With the Direct Express card, federal benefit payments are automatically deposited directly into the card account each month on the designated payment day. Cardholders can make purchases

at stores that accept Debit MasterCard, pay bills, purchase money orders from the U.S. Post Office and get cash from ATMs or financial institutions that display the MasterCard acceptance mark. No bank account or credit check is required to enroll. There are no sign-up fees or monthly account fees. Many card services are free. Additional information about the Direct Express® card is available at www.usdirectexpress.com.

Immediate Payment (IP)

Social Security established IPs in 1985 to allow Social Security to make expedited payments to beneficiaries in dire need of funds faster than the five-to seven-day period required to deliver Treasury-prepared payments. Immediate payments apply to both SSI and Title II payments as well as concurrent cases. For Social Security to even consider making an immediate payment, the case must meet the following criteria:

- **SSI Cases:** There is a delayed payment of an initial claim, delayed or interrupted payments, or non-receipt of an issued payment.
- **Title II Cases:** A payment is due because of a stop payment action taken, nonpayment, or a newly processed claim.

To receive an IP, the beneficiary must have an immediate financial need for payment (i.e., a need for food, shelter, medical treatment, etc.) that he or she can't reasonably meet through other resources available in the community. In Title II cases, each beneficiary who meets the requirements may receive an IP, but Social Security must make a payment to that person (or the person's representative payee) directly (e.g., a father may not receive an IP for his entitled children unless he is their payee). Each child's payment requires a separate IP. IPs are considered advances against future SSI or Title II disability payments, so Social Security must recover them at a later date.

Returning Payments

Sometimes beneficiaries receive Social Security payments they aren't due. Individuals who have direct deposit and receive a payment they shouldn't have should call or visit the local Social Security field office to find out how to return the payment. Beneficiaries who spend Social Security benefits they aren't entitled to will have to repay the funds at a future date.

Conclusion

Individuals receive Social Security benefits because someone worked and paid into the Social Security system. The benefits partially replace wages or self-employment income lost because that person died, or stopped working due to disability or age. Social Security bases benefits eligibility on the number of years a person worked and paid Social Security taxes, and the amount of earnings that the person has. Social Security bases entitlement for dependent family members on their relationship to and dependence on the person who worked and paid Social Security taxes. If a dependent family member is entitled on the work history of a living worker, the family member will usually not receive benefits if the worker isn't due benefits.

It's critical that CWICs understand that there are three types of disability benefits paid under Title II of the Social Security Act. They are:

- Social Security Disability Insurance (SSDI)
- Childhood Disability Benefits (CDB)
- Disabled Widow(er)s Benefits (DWB)

The work incentives are the same for all of these benefits, and we will describe these work incentives in great detail in the next unit of this module. Other factors such as marriage may affect entitlement. CWICs need to verify the type of benefits customers receive, and need to be aware of life events that may impact entitlement.

Conducting Independent Research

POMS Sections dealing with various types of Social Security Title II benefits unrelated to disability:

- **RS 00201: Retirement Insurance Benefits**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0300201000>)
- **RS 00202: Spouse's Benefits**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0300202000>)
- **RS 00203: Child's Benefits**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0300203000>)

- **RS 00207: Widow(er)'s Benefits**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0300207000>)
- **RS 00209: Parent's Benefits**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0300209000>)
- **RS 00208: Mother's and Father's Benefits**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0300208000>)

POMS Sections dealing with the three types of Title II disability benefits with links to Table of Contents:

- **DI 10110.000: Disabled Widow(er)'s Benefits (DWB) - Table of Contents**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0410110000>)
- **DI 10115.000: Childhood Disability Benefits (CDB) - Table of Contents**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0410115000>)
- **DI 10105.000: Disability Insurance Benefits (DIB) and Freeze - Table of Contents**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0410105000>)

Competency Unit 3 – Understanding Substantial Gainful Activity (SGA)

Introduction

Unit 1 of this module described the definition of disability and the process Social Security uses to decide if someone has a disability that meets the definition under the Social Security Act. The definition of disability has two primary requirements: Applicants must be unable to engage in any Substantial Gainful Activity AND must be disabled based on a medically determinable impairment. Unit 1 of this module discussed the medical determination of disability. This unit describes the non-medical determination about whether or not an individual's work represents SGA.

Social Security defines SGA in the following manner:

“Substantial gainful activity” means the performance of significant physical and/or mental activities in work for pay or profit, or in work of a type generally performed for pay or profit, regardless of the legality of the work. “Significant activities” are useful in the accomplishment of a job or the operation of a business and have economic value. Work may be substantial even if it is performed on a part-time basis, or even if the individual does less, is paid less, or has less responsibility than in previous work. Work activity is gainful if it is the kind of work usually done for pay, whether in cash or in kind, or for profit, whether or not a profit is realized. Activities involving self-care, household tasks, unpaid training, hobbies, therapy, school attendance, clubs, social programs, etc., are not generally considered to be SGA.”

(From DI 10501.001- Meaning of SGA and Scope of Subchapter)

Determining (SGA)

Social Security employees make SGA determinations about work performed by beneficiaries - both at the initial application (for Title II disability benefits and Supplemental Security Income (SSI) and during work continued disability reviews (CDR) (Title II disability benefits ONLY).

Social Security must decide if the “unable to perform SGA” at step 1 of the sequential evaluation of disability.

During an SGA determination, Social Security determines the value of work activity as compared to a specific dollar figure known as the SGA guideline. Once Social Security applies all applicable work incentives, the agency compares the “countable” income to the applicable SGA level for the year — different years have different SGA guideline amounts. If countable income averages above the applicable SGA guideline, the work activity generally represents SGA. If the countable income averages below the applicable SGA guideline, Social Security is unlikely to consider the work activity SGA.

Recent SGA Guidelines

Under current regulations, the SGA guidelines can change annually — this is referred to as being “annually indexed.” In addition, one SGA guideline applies to individuals who receive benefits due to statutory blindness and another SGA guideline applies to all other individuals with disabilities. The SGA guideline for Blind Individuals has been annually indexed since 1978. The SGA guidelines for non-blind disabled individuals have been indexed since 1999.

SGA guideline levels for 2004 to the present are below. For a comprehensive listing of all SGA guidelines for both Blind Individuals and Disabled Individuals, go to DI 10501.015 - SGA Guidelines:

Year	Disabled Individuals	Blind Individuals
2004	\$810	\$1,350
2005	\$830	\$1,380
2006	\$860	\$1,450
2007	\$900	\$1,500
2008	\$940	\$1,570
2009	\$980	\$1,640

Year	Disabled Individuals	Blind Individuals
2010	\$1,000	\$1,640
2011	\$1,000	\$1,640
2012	\$1,010	\$1,690
2013	\$1,040	\$1,740
2014	\$1,070	\$1,800
2015	\$1,090	\$1,820
2016	\$1,130	\$1,820
2017	\$1,170	\$1,950
2018	\$1,180	\$1,970
2019	\$1,220	\$2,040
2020	\$1,260	\$2,110
2021	\$1,310	\$2,190
2022	\$1,350	\$2,260

SGA for Blind Individuals

The Social Security Act has several special work incentives that apply to people who meet the definition of blindness called “statutory blindness.” The Social Security Act defines statutory blindness in a specific way:

“Statutory blindness is defined in the law as central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less.”

(From 20 CFR 404.1581 - Meaning of blindness as defined in the law)

Statutory blindness isn't total blindness. Individuals who meet Social Security's definition of blindness may walk without a cane or dog, may be able to read print, and, in rare circumstances that depend on special equipment and state law, may even be able to drive. Some people who don't see well, but don't consider themselves as blind, may actually meet Social Security's test for statutory blindness.

The most important work incentives affected by statutory blindness are the amount Social Security considers to be SGA under the disability programs authorized under Title II of the Act, and a more lenient deduction for work expenses under the SSI program. This manual discusses both of these later in this module.

SGA is a Decision

Many people think that SGA is simply a number — an objective concrete dollar figure that Social Security establishes each year as the upper limit that a beneficiary can earn before benefits end. In fact, SGA is far more than just a number. SGA determinations require that Social Security personnel gather the applicable facts, apply the appropriate rules and procedures, and use their best judgment to render a decision about the "value" of an individual's work. SGA determinations involve the interpretation of complex regulations as they apply to an individual beneficiary given that person's unique situation. Whenever Social Security personnel make SGA decisions, some subjectivity will be in evidence. This flexibility is necessary and positive, but can be difficult for beneficiaries and Community Work Incentives Coordinators (CWIC) to understand.

REMEMBER: SGA isn't just a number — it's a DECISION!

Overview of SGA Determinations

Social Security makes SGA determinations at the initial application for Social Security or SSI disability benefits and during work CDR performed on Title II disability beneficiaries. Social Security Claims Specialists within the local Social Security field office (FO) typically make SGA decisions, but other Social Security personnel may make these

determinations under certain circumstances. A work CDR is a specific type of review they perform when a beneficiary reports having earnings from employment or self-employment or when Social Security discovers that a beneficiary has earned income.

The first step in any work determination is the information beneficiaries report. Beneficiaries must report a change in work activity such as beginning, decreasing, or increasing work or earnings. Social Security has several avenues working beneficiaries may use to make these reports. Beneficiaries may report wages by contacting a Teleservice Contact Representative by calling 1-800-772-1314, by sending wage documentation to the local office by mail, or they may make the report in person at the local office. If the beneficiary's earnings are above the SGA guideline that applies in the year the beneficiary performed the work, the beneficiary should expect to have Social Security make contact to request the SSA-821 or 820 (Work Activity Report) along with paystubs and information about any applicable work incentives the person is using.

One of the most efficient options for reporting wages is the "My Wage Report" option via the My Social Security portal on the [Socialsecurity.gov](https://www.socialsecurity.gov) website. To report wages online, the beneficiary must have a mySSA account, be receiving Social Security Disability Insurance (SSDI) or SSI, and be employed. Representative payees of someone who is working and receiving SSDI or SSI or the spouse, parent, or sponsor of someone receiving SSI who is employed may also use the system. The beneficiary or the representative payee must have already reported the employment to SSA at least once, so that the agency has the name and Employer Identification Number in the My Wage Report system.

At the moment, My Wage Report has some limitations. For example, it is not possible to report self-employment earnings via the system. Although SSDI beneficiaries and representative payees may report wages up to two years prior to the current date, SSI recipients and concurrent beneficiaries may only report wages for the month prior to the current month. Finally, beneficiaries may not report the use of work incentives, or any special wage payments such as sick or vacation pay, via My Wage Report.

SSDI beneficiaries using work incentives who report wages using the My Wage Report system will not experience immediate changes to their payments, since Social Security must perform a work CDR before making adjustments to payments. When SSDI beneficiaries report the wages

online, they should save receipts and other evidence to provide Social Security when Social Security conducts the work CDR. During the CDR, Social Security needs the information and evidence about using work incentives in order to make an accurate determination.

Social Security uses a system to process reports of earnings for the SSDI program. When gathering information to evaluate if an individual is performing SGA, Social Security may use the SSA-821 for wage employment and the SSA-820 for self-employment to collect information about work incentives, special pay etc. These are forms that a beneficiary may complete to provide information that technicians use to make the SGA decision.

Simply reporting earnings and getting a receipt from Social Security may not initiate the work CDR. Making the report, however, causes information to be entered into SSA's systems, so that it is available later when Social Security reviews the information to decide if work activity should cause a change in benefit eligibility. When Social Security asks SSDI beneficiaries to provide information for the work activity report, beneficiaries should include any information such as receipts, pay stubs, and other evidence that help establish the use of work incentives. Module 6 discusses the CWIC's role in this process in detail.

SSI beneficiaries using work incentives should make sure they report any work incentives, and provide proof at the time the beneficiary reports earnings.

Earnings Evaluation during SGA Determinations – Important Concepts

Anything beneficiaries receive in exchange for work they perform may count as earned income during an SGA determination. In addition to cash payments, Social Security may consider "in-kind" payments. Payments in-kind would include items such as room and board in exchange for performing work. In-kind pay can be either in lieu of or in addition to cash.

Pay for Work Activity

Social Security only counts wages or self-employment income that represents the beneficiary's work effort. Because of this policy, reimbursements for travel expense and pay for vacation or sick leave generally do not count during an SGA determination. For certain types of

income, it may not be immediately obvious whether or not income represent pay for work the beneficiary performed. Examples might include training stipends, royalties, and rental income. The Social Security regulations governing earned income can be complex and confusing. For specific guidance on how Social Security treats various types of income, refer to **POMS DI 10505.010, Determining Countable Earnings**, (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0410505010>).

When in doubt, CWICs should contact their Virginia Commonwealth University (VCU) technical assistance liaison for guidance.

If an individual receives sick or vacation pay for non-work days in a particular month, Social Security will not consider that pay as countable income for that month. Rather, the question is what work activity the individual actually performed in the given month and what earnings the individual received for that work activity. Social Security looks only at a beneficiary's earnings resulting from work activity in determining if the individual has engaged in SGA in a particular month.

Example of SGA determination:

George works one week in a month but is paid sick pay for the rest of the month due to time off from work. During the SGA determination, Social Security only considers the earnings derived from George's actual work activity. If the earnings for that one week of work represent SGA, then George has engaged in SGA for that month.

If an individual takes sick or vacation pay in lieu of time off, Social Security should only use the earnings directly attributed to his or her work activity in that month in determining if the individual has engaged in SGA in that month.

Countable Earnings

For an employee, or for someone who has been self-employed for more than 24-months, Social Security begins the SGA determination process by looking at gross wages earned in the month. This means that Social Security does NOT subtract the standard payroll deductions such as federal and state withholding taxes, insurance premiums, Federal Insurance Contributions Act (FICA) taxes, or other deductions such as pension payments, union dues, garnishments, etc. These deductions represent part of the person's earnings from work activity.

Next, Social Security deducts the amount of any subsidized earnings provided by the employer, and any approved Impairment Related Work Expenses (IRWEs). These are special work incentives that allow Social Security to ignore some earnings for Title II disability beneficiaries. This means that beneficiaries who have gross earnings above the SGA threshold may be entitled to receive ongoing payments. We provide detailed information about these work incentives later in the unit.

The remaining earned income is what Social Security considers “countable” and it’s this income that Social Security considers when making SGA determinations.

Earned Income Counts when Earned not When Paid

In the Title II disability program, Social Security generally counts earned income when it was EARNED, not when it was PAID. This may seem like an obscure distinction, but it matters and it can have an effect upon SGA determinations. For example, teachers may elect to be paid on a 12-month basis, even though they only teach for 9-10 months out of the year. The teacher would earn the pay over the school year, not the calendar year. In these cases, Social Security would take the annual salary of the teacher and divide it over the number of months the teacher actually worked to determine the monthly earnings during an SGA determination.

Important note: The Bipartisan Budget Act of 2015 simplified post entitlement SGA determinations by allowing Social Security to presume earnings were earned in the month they were paid. However, prior to applying this paid versus earned assumption, program policy requires Social Security personnel to evaluate any readily available earnings verification sources and determine when the beneficiary earned the wages or self-employment income. If Social Security personnel have no other readily available evidence to determine when the beneficiary performed the work activity, they will use other sources of earnings verification even if the earnings source only documents when the employer paid the beneficiary. This new policy applies to all post entitlement determinations made after September 23, 2016.

Timing of Work Reviews

Work CDRs, may happen at various points in time, depending on the beneficiary's circumstances. In some cases, this does happen. In other cases, for a variety of reasons, the work CDR is delayed. Usually, this is a result of the beneficiary's failure to report earnings in a timely fashion, or difficulty acquiring evidence of the earnings.

When beneficiaries don't report work or Social Security isn't able to complete CDRs in a timely fashion, there is a risk that Social Security will overpay the beneficiary. Overpayments will be discussed briefly later in this module.

Conducting the Work CDR

The first step of a work CDR is to determine the gross wages earned in each month of the period under review. Once they determine the amount, Claims Specialists review the pattern of work over a period of time. In many cases, the Claims Specialist can quickly review the evidence of earnings to see that the individual's earnings clearly average UNDER the applicable SGA guideline. If that is the case, further development may not be necessary — the work is clearly not SGA.

If the gross earnings in the month are over the applicable SGA guideline, the Claims Specialist must evaluate the earnings to see if they actually represent SGA. That means Social Security may ignore earnings due to extra help a person receives, called subsidy, or expenses related both to the disability and work, called IRWE. Social Security may disregard short periods of work that do not demonstrate the ability to sustain substantial work, called Unsuccessful Work Attempts (UWA). This process is how Social Security determines countable earnings. The following sections will discuss the rules Social Security uses— the "tools" Social Security personnel have in the SGA decision-making "toolbox."

SGA Determination "Tools"

When determining if someone's work represents SGA, Social Security personnel have four basic tools at their disposal. The tools are:

- Subsidy and Special Conditions

- Impairment Related Work Expenses (IRWEs)
- Income Averaging
- Unsuccessful Work Attempt (UWA)

Remember that only Social Security personnel decide whether or not these provisions apply in any given case. However, it's essential that CWICs recognize these tools and how they work to assist Social Security in making proper SGA determinations. The CWIC can also help make sure that the beneficiary reports appropriately and saves necessary proof to help Social Security understand whether a deduction exists.

Subsidy and Special Conditions in Wage Employment

Social Security defines a "subsidy" as support a beneficiary receives on the job that could result in that beneficiary receiving more pay than the actual value of work performed. Social Security recognizes that sometimes a person's disability results in the need for extra assistance, a reduced production rate, frequent breaks, or fewer job duties than co-workers in a similar job. When that happens, the individual's wages represent not only pay for their work product or effort, but also direct help from someone else, like a supervisor, a co-worker, or job coach, or full pay for lower productivity or lower quality work than other employees. In simplest terms, this means that in some cases, a beneficiary may receive more pay than the reasonable value of their work when compared to other employees performing the same tasks.

When performing SGA determinations, Social Security is only interested in assessing earnings that they can attribute to the beneficiary. Social Security uses the process to value earnings potential if supports weren't in place. Social Security adjusts the value of the income by deducting the cost assigned to the extra help or special situation that a beneficiary experiences. Applying "subsidy" during SGA determinations is the process of performing this adjustment.

Employer Subsidy

A subsidy can occur in various ways. Employer subsidies happen when the beneficiary's employer provides extra accommodations, supervision, or other special assistance because of the beneficiary's disability. Specific subsidies are those in which employers can designate a specific dollar amount of subsidy after calculating the reasonable value of the worker's services. Employers establish non-specific subsidies when determining

the value of the subsidy by comparing the individual's work in terms of time, skills, and job responsibilities at the workplace with that of co-workers without disabilities who are performing similar work. They must then estimate the proportional value of the work according to the prevailing wage for such work.

Special Conditions

Another type of subsidy is called "special conditions." Special conditions exist when a worker receives supports or services from someone other than the employer, potentially subsidizing the worker's ability to perform SGA. Any third party may provide special conditions. Most often a State Vocational Rehabilitation (VR) agency, a community rehabilitation agency, or another service provider provides them. Strong indicators of subsidized work include employment in a sheltered workshop or job coach services provided to workers.

Job Coaching: A job coach is a person hired by an employer, a state VR agency, or an individual with a disability to provide an array of supports to assist a person with a disability in gaining and maintaining competitive employment. A job coach provides all vocational interventions, including training, counseling, and support at the job site while the individual is already competitively employed. This allows the individual to learn and retain skills and helps identify other social, behavioral, and physical problems at the worksite. Job coaches continue to monitor work performance and social adjustment after the individual reaches competence, and they make modifications if necessary. The job coach can also assist employers in identifying positions that a person with a disability could fill within the company that may enhance the company's productivity, as well as identify accommodations that may be necessary.

Social Security determines the value of a special condition subsidy by comparing the time, energies, skills, and responsibilities of the beneficiary to workers without disabilities performing similar work and then estimating the proportionate value of such services according to the beneficiary's pay scale for his or her work. Calculating the value of such a subsidy can be tricky.

Calculating the Subsidy for Job Coach Services:

When a beneficiary has a job coach, and he or she isn't paying out of pocket for the services, Social Security determines the dollar amount of the subsidy by the total number of job coaching hours per month multiplied by the disabled worker's hourly wage. This figure is subtracted from the monthly gross earnings to determine the countable earnings for the month.

Danny worked in a restaurant. He made \$12 per hour and worked 120 hours last month. Danny wasn't blind. Danny's gross earnings for the month were \$1,440, which was over the non-blind SGA guideline for 2022 (\$1,350). Did Danny's work represent SGA?

Danny has a job coach. The job coach works with him 15 hours per month. While the job coach is working with Danny, he is showing Danny his job, and Danny is observing, rather than doing the work himself. When Social Security determines the value of Danny's job coach subsidy, Social Security multiplies the number of hours Danny worked with his job coach by Danny's hourly wage.

$$\$12 \times 15 = \$180$$

Danny performed this work in 2022, when the SGA level for someone who isn't blind is \$1,350.

$\$1,440$ wages – $\$180$ in job coach subsidy = $\$1,260$ in countable wages.

$\$1,260$ in countable wages is less than the $\$1,350$ SGA guideline for 2022.

Although Danny's gross wages were over the applicable SGA guideline, the deduction of the subsidy means that the "countable" earnings are less than $\$1,350$. Danny's work doesn't represent SGA in 2022.

Identifying Subsidy

When Social Security personnel conduct a work CDR, the Work Activity Report (form SSA-821/820) asks questions that should help identify when

a subsidy exists. Social Security will investigate the possibility of subsidy if the beneficiary reports getting extra help, having lower productivity, missing more work, or being hired under a special program or by a friend or relative. To make the decision that a subsidy exists, Social Security gathers information from the beneficiary, from his or her employer, and possibly from any disability services agencies involved in providing job supports. To determine if an employer subsidy exists, Social Security mails the employer a Work Activity Questionnaire (form SSA-3033). This form asks a series of questions about the beneficiary's work performance and special accommodations the employer may provide the beneficiary. You may view form **SSA-3033** online at <https://www.ssa.gov/forms/ssa-3033.pdf>

POMS DI10505.010 contains a series of questions that Social Security can ask beneficiaries if there isn't sufficient information on the Work Activity Report to determine the time, energy, skills, and responsibility involved in the employment effort. They are as follows:

- Is there a need for extra assistance or services on the job?
- Why was the individual hired?
- What are the individual's job duties?
- How much time does the individual spend on those duties?
- Who performed the duties before the individual was hired; and how much time did that person spend on those duties?
- If the individual were separated from the job, would he or she be replaced; if so, how much time would the replacement spend on the individual's duties?
- How often is the individual absent from work?
- Does someone else do the individual's work when he or she is absent?
- How much time does the temporary replacement take to do the individual's job?
- What is the relationship of pay to services performed?
- How does the employer compute the individual's total earnings?
- Does the employer reduce proportionately the individual's pay when he or she is absent from work? (Compare the employer's

practice concerning an individual with an impairment to that of an unimpaired individual, explaining any difference.)

- Does the individual receive any unusual assistance or supervision? (Describe.)
- If the individual's pay isn't set according to normal business practices, what consideration does the employer give to the size of the individual's family, number of years of past service with the employer, previous earnings, friendship or relationship to the employer, or other factors unrelated to the performance of the work?
- Does the employer consider the individual's work to be worth substantially less than the amount the employer pays, if so, what are the employer's reasons for this view? (Give the employer's estimate of the value of the services and explain how he or she reached this estimate.)
- If the individual is still on the payroll, despite unsatisfactory work, what is the employer's reason for retaining him or her?
- If the individual is no longer employed, what led to the termination of employment?

If Social Security finds a subsidy, they will then determine the value of the subsidy and apply this to determine the actual value of the employment income — the "countable earned income." During the SGA determination Social Security only considers the countable earned income rather than the actual dollar amount the individual received in wages.

You can find detailed information about **subsidy in Social Security's POMS** (<https://secure.ssa.gov/apps10/poms.nsf/lrx/0410505010>).

Impairment Related Work Expenses (IRWE)

Another tool Social Security uses when determining countable income is called IRWE. Under this provision, Social Security subtracts from earnings the cost of certain items and services required by individuals in order to work when determining how much of the person's income is "countable." The purpose of the IRWE is to take the costs associated with the disability into account when assessing the value of the earnings.

For an IRWE deduction to be allowable, the expense must meet five criteria:

1. First, the expense must directly relate to enabling the beneficiary to work. This means that items the person needs simply to live more independently would generally not qualify as IRWEs. However, some items like out-of-pocket costs for prescription medications do qualify as IRWEs even though the individual would be taking the medication whether or not he or she worked. The person may deduct the non-reimbursed cost of the prescription because the medication helps the individual manage his or her impairment, and such management is necessary for the person to work.
2. Second, the expense has to relate to a medically determinable impairment being treated by a health care provider rather than being a cost that anybody would incur by working. This means that things like FICA deductions or health insurance premiums aren't permissible as IRWEs.
3. Third, the individual must pay the expense out of pocket and not be reimbursed from another source.
4. Fourth, in most cases, the individual must pay for the expense in a month during which the individual was working. Social Security may allow the cost of durable goods to be deducted over a 12-month period. Under some circumstances, Social Security may deduct as an IRWE any costly durable goods purchased during the 11-month period preceding the month work started. Beneficiaries may also consider expenses they incur in a month of work but pay for after work stopped.
5. Finally, the expense must be "reasonable." The amount is within reasonable limits if it's no more than the prevailing charge for the same item or service. Prevailing charges are those which fall within the range of charges that are most frequently and widely used in a community for a particular item or service. The top of this range establishes the standard or normal cost that can be accepted as within reasonable limits for a given item or service.

The range of allowable expenditures under IRWE is extensive and includes costs of adaptive equipment or specialized devices, attendant care, counseling services, special transportation costs, costs for the care of service animals, the cost of job coach services if paid by the

beneficiary, and anything else Social Security thinks is reasonable, considering the person's impairment(s) and circumstances.

Example of IRWE deduction:

Nora is working and had \$2,300 in gross wages last month. Nora is blind. She had the following expenses for the month:

- Adapted note-taker costing \$1,800
- Designer sunglasses costing \$200

Evaluating the costs: For each of these expenses, Social Security would look at each of the conditions necessary for an IRWE to be deductible during an SGA determination:

1. Are the items or services related to the disability or to an impairment for which the person is receiving treatment from a health care provider?

Yes, Nora needs the note-taker because she is blind and the sunglasses because her eye condition makes her very sensitive to light.

2. Are the items or services necessary for work?

Yes, Nora uses the note-taker to keep track of her calendar, to access email for work, to read electronic documents, and to take notes in meetings. Nora needs the sunglasses because the florescent lights in the building where she works bother her, and her eye doctor told her to wear regular sunglasses when at work.

3. Are the costs paid out of the beneficiary's pocket and not reimbursed?

Yes, Nora paid for both of these items, and she wasn't reimbursed for these expenses by any source.

4. Are the costs reasonable?

The cost of the note-taker is reasonable, because it's actually one of the less expensive note-taker models on the market. Although the doctor said Nora should wear

sunglasses, they aren't reasonable. In the town where Nora works and lives, she can purchase a reasonably professional-looking pair of sunglasses for only \$25.

5. Did the beneficiary pay the costs in the month he or she performed the work?

Nora purchased the sunglasses in October 2022, and Nora's earnings for October 2022 are part of the SGA determination in process. She purchased the note-taker, however, in August, the month before she started her job.

Decision: Social Security can pro-rate the cost of Nora's note-taker over a 12-month period because it was durable equipment. That means that Nora could've had an IRWE deduction of \$150 per month from August, when she purchased the device, through July of the following year. Social Security also might approve sunglasses as an IRWE, but might limit the deduction for the sunglasses to the reasonable amount of \$25.

Because Nora meets the definition of statutory blindness, the SGA level that applied to her in 2022 was \$2,260. If Social Security were to deduct the \$150 (1/12 of the note-taker's cost) IRWE from Nora's gross earnings of \$2,300, the result would've been \$2,150. The countable earnings would fall below the current SGA guideline. Social Security did not need to use sunglasses as a deduction in the SGA determination, regardless of their value. Nora isn't performing SGA.

There is no definitive all-inclusive list of acceptable IRWEs. What Social Security will allow as an IRWE deduction during an SGA determination depends on the beneficiary's unique situation, the impairment, and the reasonableness of the cost. If possible, the beneficiary should submit the receipt for any possible IRWE expense when he or she reports earnings. In some circumstances, a note from the treating doctor or health care provider stating that the items enable the person to work can assist Social Security in making the determination. Social Security can then decide if the beneficiary may deduct the expense.

There are no time limits on how long individuals can use IRWEs to pay for particular services or items. This is beneficial for individuals who have ongoing impairment-related work expenses such as transportation assistance or job coach follow-along services. It's not necessary that an IRWE be a monthly recurring expense. In some instances, individuals may have a one-time expense, such as the purchase of a piece of medical equipment. In this case, Social Security may choose to deduct the expense as an IRWE all in one month or to have the expense pro-rated over a period of 12 months, depending on which is better for the beneficiary. Pro-rating the expense is particularly helpful if the services or items are costly, as in the Nora example above.

Definitions Social Security Uses to Determine IRWE Deductions

- **Necessary for Work and Related to an Impairment:** An IRWE means an expense for an item or service which is directly related to enabling a person to work and which a person incurs because of a physical or mental impairment. The person must need the IRWE due to an impairment that the Disability Determination Services (DDS) established as the medical basis of disability or another impairment that a physician or health care provider is treating.
- **Health Care Provider:** A health care provider must be a licensed or registered professional. Health care providers may include, but aren't limited to: osteopaths; naturopaths; psychologists; chiropractors; audiologists; nurse practitioners; dentists; physical, occupational, and speech therapists; registered dietitians; clinical nutritionists; and licensed counselors.

Attendant care or transportation services provided by family members

If a person with a disability pays a member of his or her family to perform attendant care services, the person generally can't deduct such payment as an IRWE unless:

- The family member has been otherwise employed and suffers economic loss by reducing the number of work hours or terminating his or her other employment in order to perform such service; and

- The beneficiary can document services rendered and that the family member is receiving payment in cash (including checks or other forms of money, but not payment in-kind) from the person with a disability.

CWICs can read more detailed information about **IRWEs in Social Security's Program Operations Manual System (POMS)** (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0410520000>).

CWICs should become familiar with these references and mark these references as favorites in the online version of the POMS for use in the future. Recognizing potential IRWE deductions is critical to assisting beneficiaries to use work incentives appropriately.

Income Averaging

Social Security's regulations require the agency to determine countable earnings from work activity as SGA if they **average** more than the SGA threshold amounts. The regulations further state that Social Security will average earnings if:

- An employee or self-employed beneficiary's work was continuous; without significant change in work patterns or earnings; and
- There has not been a change in the SGA level.

Therefore, when a beneficiary:

- Has continuous work, and
- Doesn't have a significant change in work patterns, and
- Has monthly earnings fluctuating from above to below the SGA threshold,

Social Security **must** average the monthly countable earnings and compare the average monthly amount to the appropriate SGA level.

Fluctuations in wages often occur for beneficiaries who earn an hourly wage and whose work hours vary each month. Individuals employed in the service industry (restaurants, hotels, or retail stores) often experience this type of earnings variance. Averaging helps Social Security personnel identify a pattern of SGA-level work in a more accurate way than looking at month-by-month wage data. Averaging is unnecessary and Social Security doesn't apply it when work is

consistently above or below SGA, or when Social Security determines work meets Unsuccessful Work Attempt (UWA) criteria, which is covered a bit later in this unit.

Social Security doesn't average earnings over the entire period worked if there is a significant change in work patterns or earnings. Although there isn't an established monetary earnings amount that represents a significant change in earnings or work activity, Social Security personnel are instructed to consider the following work issues:

- Was there a change in job duties or hours (i.e., changing from part-time to full-time work)?
- Did the person have to change his or her position, or leave the job?
- Did the person have any months of zero earnings?

IMPORTANT: Regulations require Social Security to average fluctuating earnings if the period of work was continuous. Consequently, the agency isn't permitted to include any months with zero earnings in any period it averages. Months without earnings would represent a break in continuity, and Social Security never uses them as part of a period to be averaged.

When a beneficiary worked for a continuous period but is no longer working, Social Security personnel are instructed to average earnings over the actual period of time that he or she actively engaged in work activity if there were no significant changes in work patterns or earnings. The instructions further require that they consider all of the work activity facts, especially in the first and last months of work activity. Completed periods of work may contain partial months of work activity. When Social Security determines whether to include partial months in the averaging period, they must evaluate whether there was a significant change in either:

- The earnings; or
- The pattern of work activity in comparison to the rest of the period of employment.

If the Social Security determines that any partial months **do** represent a significant change in the work pattern or earnings, they won't include

these months in the average. If the partial months **do not** represent a significant change, they will be included in the average. By not averaging partial work months with significantly lower earnings, Social Security avoids artificially lowering the figure they determine to be the average monthly earnings. Including those months may not be representative of the rest of employment period.

Another important point to keep in mind is that Social Security is required to average “countable” earnings, not gross earnings. If vacation or sick leave or the value of IRWEs or Subsidy reduces gross wages, Social Security averages the earnings after it applies these deductions.

REMEMBER: Social Security performs averaging on “countable” earnings, not gross earnings. Countable earnings is the amount left after the agency applies all allowable deductions.

If the average amount of countable earnings exceeds the applicable SGA guideline, the entire period of months that Social Security used in the averaging period the agency would typically consider SGA. If the average countable earnings figure for the period is below the applicable SGA guideline amount, Social Security would typically determine that SGA wasn’t in evidence for any month in the averaging period.

Finally, Social Security doesn’t average income across time periods when the SGA levels changed. Social Security adjusts SGA levels each calendar year in January, but there have been years in which the SGA guideline remained the same for two years. Because of this rule, averaging periods are generally limited to no more than 12 months because the SGA guideline usually changes each year. Social Security doesn’t perform averaging on a full calendar year basis, but rather from the point at which a work effort begins to where it ends or changes. That could be a full calendar year of 12 months (or more if the SGA guideline remained the same), but it might be less than that if the work wasn’t continuous for 12 months, or substantially changed within that year.

Example of averaging:

Heather started working part-time in January 2021 and she completed the (TWP in September 2021. Her countable earned income was clearly under the SGA guideline when Social Security examined it immediately after the end of the TWP. In 2022, Heather had some health problems that

forced her to reduce her hours at work. She was hospitalized in April of 2022 and had no earnings at all that month. Beginning in June 2022 and continuing, Heather’s earnings and work activities rose to full-time work levels, with some earnings over the 2022 SGA guideline. Social Security hadn’t ceased benefits, so averaging earnings is appropriate:

Month/Year	Work Activity	Earnings
Jan 2022	Part-time	\$575
Feb 2022	Part-time	\$350
March 2022	Part-time	\$210
April 2022	None	\$0
May 2022	Part-time	\$300
June 2022	Full-time	\$1,230
July 2022	Full-time	\$1,390
Aug. 2022	Full-time	\$1,280
Sept. 2022	Full-time	\$1,290
Oct. 2022	Full-time	\$1,400
Nov. 2022	Full-time	\$1,280
Dec. 2022	Full-time	\$1,390

Evaluation: When reviewing the year 2022, you can clearly see a significant change in work patterns and earnings for the months of March through May. A month of zero earnings indicates that the work wasn’t continuous for this period of work activity. In contrast, the work effort from June through December was continuous. Consequently, averaging only applies in the months June 2022 through December 2022.

Averaging doesn’t apply during the following situations:

- Averaging doesn't determine TWP months. However, Social Security may average work performed in the Trial Work Period with work after the TWP if it's all part of the same work effort.
- Social Security doesn't use averaging during the Extended Period of Eligibility (EPE) after the agency has established the cessation month in order to determine whether a payment is due or not. The sole purpose of averaging is to determine if work effort represents SGA.
- Social Security doesn't average income when determining payment months during the initial reinstatement period (IRP) in expedited reinstatement cases (EXR).

This discussion represents a summary of averaging policies and doesn't cover every possible contingency. Determining the period over which to apply averaging can be complex and can only be performed by Social Security personnel. For more information, see **DI 10505.015** **Averaging Countable Earnings** (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0410505015>).

Unsuccessful Work Attempts (UWA)

Social Security recognizes that in some cases a beneficiary may try to return to work but may only be successful for a short period of time. Social Security doesn't want to needlessly stop payments to a beneficiary who tries to perform substantial work, only to find that he or she can't sustain that effort over time because of the disability. Because SGA is really a pattern of work behavior, it makes sense that Social Security may excuse a work effort of short duration under certain circumstances.

Like many of the disability program work incentives, the UWA provision is complex and can be difficult to understand and apply. First, there must be a significant break in the continuity of a person's work before Social Security can consider the beneficiary to have begun a work attempt that later proved unsuccessful. A significant break in the continuity of a person's work could occur if the person:

- Discontinued or reduced work activity to the non-SGA level because of the impairment, or the removal of special conditions related to the impairment that are essential to the further performance of the work;

- Discontinued or reduced work activity to the non-SGA level prior to the alleged onset date of the impairment for reasons unrelated to the impairment (e.g., retirement, or layoff); or
- Has never previously engaged in work activity.

Social Security considers work to be “discontinued” if the person:

- Was out of work for at least 30 consecutive days, or
- Was forced to change to another type of work or another employer.

NOTE: On rare occasions, a break lasting a few days fewer than 30 days may satisfy this requirement if the subsequent work episode was brief and clearly not successful because of the impairment.

After the first significant break in continuity of a person’s work, Social Security considers the ensuing period of work as continuous until another such change occurs — that is, until the impairment, or the removal of special conditions related to the impairment essential to the further performance of work, causes the beneficiary to “discontinue” the work, as defined above. Each continuous period, separated by significant breaks as described, may be UWA provided the work activity meets the criteria as to duration and conditions of work.

Duration and Conditions of Work

Social Security will consider work of 6 months or less to be an UWA if the beneficiary stopped working or reduced work and earnings below the SGA earnings level because of an impairment or because of the removal of special conditions that took into account the beneficiary’s impairment and permitted the beneficiary to work.

SGA-level work lasting more than six months can’t be a UWA regardless of why it ended or why Social Security reduced it to the non-SGA level.

Detailed information about UWA provisions are available in Social Security’s POMS at **DI 24005.001 Unsuccessful Work Attempts (UWA) for Initial Claims and Reconsiderations** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0424005001>).

Methods for Making SGA Determinations for Self-Employment

Social Security uses two different methods when making SGA determinations for self-employed beneficiaries. They apply one approach to beneficiaries who have been entitled to Social Security disability benefits for 24 months or more and a different approach to beneficiaries who have been entitled to benefits for fewer than 24 months. The following sections explain the differences between these two approaches.

Countable Income Test for SGA for Self-Employed Beneficiaries

If a Social Security disability beneficiary has received cash benefits for at least 24 months, the Social Security Administration will use the “countable income test” to determine if the individual’s disability has ceased due to SGA.

For the purposes of the countable income test, Social Security considers a beneficiary to have received Title II disability cash benefits for 24 months beginning with the first day of the first month following the 24th month for which he or she received Title II disability benefits that he or she was due. The 24 months don’t have to be consecutive. For EXR cases, the individual meets the 24-month requirement when he or she has completed the 24-month IRP (For more information on EXR, refer to unit 9 of this module). Any months for which the beneficiary was entitled to Title II disability benefits but didn’t actually receive a Title II disability cash benefit will not count for the 24-month requirement.

When the countable income test applies, Social Security will compare the beneficiary’s countable income (gross earnings minus allowable work incentives) to the earnings guidelines to determine if the beneficiary has engaged in SGA. If the monthly countable income averages more than the applicable SGA guideline for the month(s) in which the individual worked, Social Security will determine that the individual has engaged in SGA unless evidence shows the individual didn’t render significant services in the month(s). If the average monthly countable income is equal to or less than the applicable SGA guideline for the month(s) in which the individual operated his or her business, or if evidence shows the individual didn’t render significant services in the month(s), Social

Security will generally determine that the individual hasn't engaged in SGA.

Under some circumstances, Social Security will look beyond the beneficiary's countable income to determine if he or she is performing SGA. Social Security uses these tests when:

- Determining initial eligibility for disability benefits;
- Determining whether work performed by a self-employed Title II disability beneficiary before he or she has received Title II disability benefits for at least 24 months is SGA;
- Determining whether work performed in or after the EPE or re-entitlement period is SGA after Social Security has determined an SGA cessation;
- Determining SGA during the IRP for EXR cases.

You can find the guidance for Social Security personnel on when to apply these tests in POMS DI 10505.020 - "Evaluation Guides." Social Security instructs their employees that when a beneficiary's "countable earnings" don't average more than the amount shown in the Earnings Guidelines, but evidence indicates the individual may be engaging in SGA or that the individual is in a position to control when he or she receives earnings or the amount of compensation paid, Social Security personnel should evaluate the individual's work activity under the tests of comparability and worth of work to determine if the work is SGA. If the beneficiary qualifies for the exemption of work activity provision, then Social Security would use the countable income test. Consider both of the following tests before making a finding that the individual's work isn't SGA.

The additional two tests are:

1. **Comparability of Work Activity:** The individual's work activity is SGA if, in terms of all relevant factors such as hours, skills, energy output, efficiency, duties, and responsibilities, it's comparable to that of unimpaired individuals in the same community engaged in the same or similar work activity as their means of livelihood; or
2. **Worth of Work Activity:** The individual's work activity is SGA if, although not comparable to that of unimpaired individuals, it's, nevertheless, clearly worth more than the applicable SGA

Earnings Guideline when one considers the prevailing wage scale for that job in the community.

NOTE: The comparability of work and worth of work tests never apply to beneficiaries who meet the definition of statutory blindness.

An important part of the comparison: The group of unimpaired persons and the type of work activity must be the same. In addition, the unimpaired persons must maintain, on the basis of their activity, a standard of living regarded as adequate for a particular community. Well-established businesses are generally the most reasonable choice for comparison.

The comparability of work must be specific. Social Security must describe in detail each factor cited above, showing its contribution to the business operation. Social Security considers general descriptions inconclusive evidence for the point-by-point comparison the evaluator must make. Social Security instructions clearly state that if only a general description is possible or available, Social Security personnel must resolve any doubt as to the comparability of the factors in favor of the beneficiary.

Evidence of the beneficiary's activities accompanied by a statement that the work is comparable to the work of unimpaired persons is insufficient for a sound SGA decision. If necessary, Social Security personnel should obtain a description through a personal interview with an unimpaired individual from the selected group. It may be necessary to have a more comprehensive description of the impaired individual's activity than the impaired person can provide. Social Security personnel must contact people having first-hand knowledge of the beneficiary's work situation obtained through actual participation or observation.

The degree to which evidence of comparability or worth of services should contain data supplied by outside authorities will depend on the individual situation. In many instances, the local Social Security FO's familiarity with local conditions will make it unnecessary to document the file in great detail. For example, in a poor farming area Social Security personnel might find that management services on a small farm yielding a less-than-subsistence income aren't comparable to the full range of physical and mental activities performed by an able-bodied farm operator, nor would the services be clearly worth more than the applicable SGA guideline. On the other hand, where there's any doubt as

to the comparability or worth of services, Social Security personnel should obtain evidence in appropriate detail and supplement it with opinions from authoritative sources in the community.

Example of evidence used to determine SGA:

Ann works part-time in her mother’s flower shop. She works 15 hours a week and earns \$8.00 an hour, the amount usually paid for this type of work in her community. Her gross monthly earnings total \$519. In this example, Ann only works 15 hours per week, which explains her low earnings. There is no evidence to suggest that her work could be the same in quality and quantity as that done by unimpaired people as their means of livelihood; and, because all workers in her community earn \$8.00 an hour working at a flower shop, nothing suggests you can value her work any higher. Therefore, this work isn’t SGA without any further development under the comparability and worth of work tests.

Example of evidence used to determine SGA:

Bill has been receiving Title II disability benefits since November 2019. In January 2022, Bill reports he has been working full-time since December 2020 as a desk clerk in a local motel owned by his family. Bill currently earns \$1,000 a month. Bill completed his TWP in August 2021. His low earnings don’t appear to be consistent with the full-time work he is doing. Development under the comparability and worth of work tests may be required. Because Bill has not received cash benefits for 24 months in September 2021 (the first month after the TWP ended), Social Security can use the comparability and worth of work tests to determine if Bill has performed SGA.

Example of an SGA Decision:

Al became entitled to SSDI benefits in 2008. He finished his TWP in 2010. Since then, Al has been earning around \$800 a month. Al has not been performing SGA because his earnings clearly average below the SGA guidelines for 2010 through 2020).

It's now March 2022 and Al has come to the local CWIC for Work Incentives Planning and Assistance (WIPA) services. In February 2022, Al got both a raise and an increase in his hours. Al is now earning \$1,400 per month from his job.

Because Al is now earning over the 2022 SGA guideline (\$1,350), the CWIC asks Al about out-of-pocket expenses, and whether or not Al gets extra support on the job. Al pays \$50 per month in medicine co-pay amounts, and his employer pays his job coach for 20 hours a month. Al earns \$10 per hour, so his job coach increases the value of Al's work by \$10 for 20 hours, or \$200.

Because Al has an IRWE of \$50 and subsidy of \$200, the CWIC estimates that Al's countable earned income is actually \$1,150, which is below the 2022 SGA guideline of \$1,350. The CWIC helps Al document these deductions so Social Security has the information necessary to make an appropriate SGA determination when Al reports a wage increase. Because Al has received benefits for more than 24 months, he qualifies for the Exemption of Work Activity provision, and so the Countable Income test applies.

Conclusion

This unit reviewed the factors that Social Security uses to determine whether work activity performed by a Social Security disability beneficiary represents SGA. This is one of the two primary requirements that beneficiaries must meet for Social Security to consider them disabled under the Social Security Act.

SGA is a decision Social Security makes by using work incentives to trim the amount of a beneficiary's monthly earnings down to a value representing what he or she would earn if Social Security removed supports. Once Social Security determines this "countable" amount, the agency uses one of two methods to determine if work is substantial: the countable income test, or the comparability or worth of work tests. If work is substantial, Social Security either suspends or terminates benefits — concepts that we will discuss in detail in the next unit.

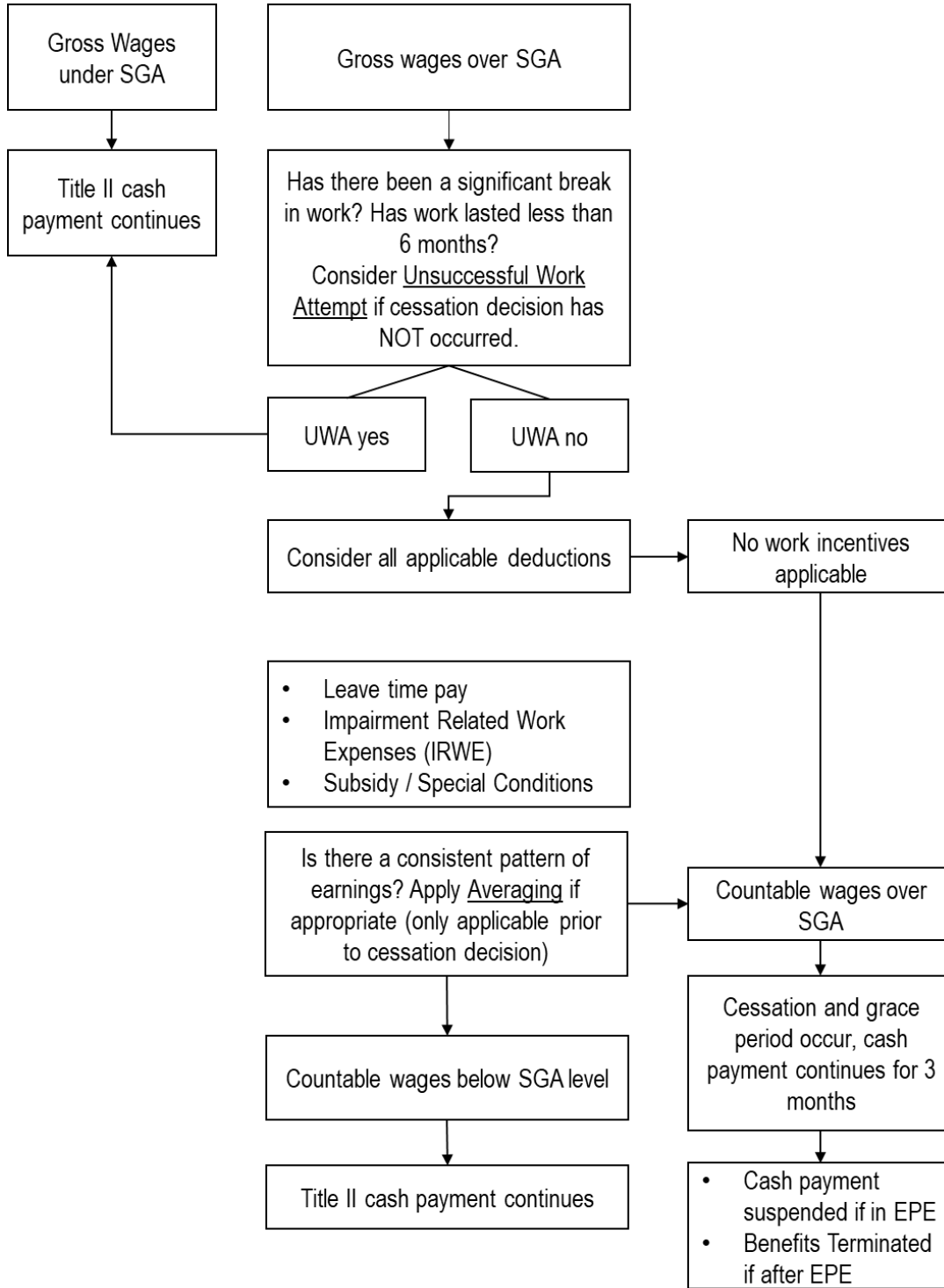
Conducting Independent Research

A resource document **entitled “Understanding Unsuccessful Work Attempts (UWA)”** is also available on the VCU NTDC website (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=31>)

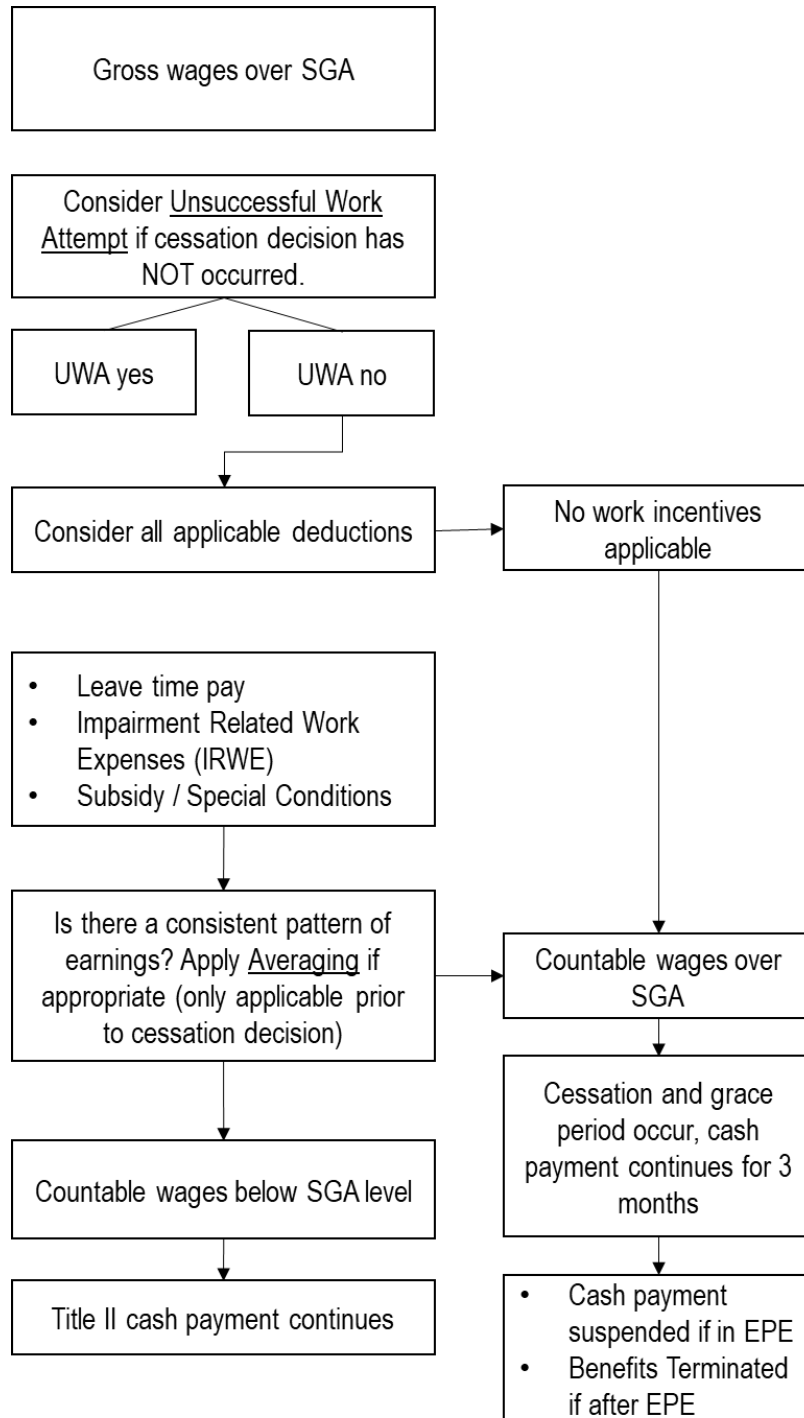
Additional Resources

Two SGA Decision Tree charts are included on the following pages. One represents the Countable Income Test, and one the Comparability/Worth of Work tests.

SGA DETERMINATION DECISION TREE (Countable Income Test)



SGA DETERMINATION DECISION TREE (Comparability/Worth of Work Test)



Competency Unit 4 – Understanding the Trial Work Period (TWP) and Extended Period of Eligibility (EPE)

Introduction

Unit 1 of this module discussed the medical part of the disability definition under the Social Security Act, and Unit 3 explained how Social Security determines whether work represents Substantial Gainful Activity (SGA). This unit will cover the work incentive provisions that help Title II disability beneficiaries retain cash benefits and health insurance once work begins in order to smooth the transition from dependence on Social Security benefits to greater self-sufficiency through employment. In addition, this unit will discuss protections that make it easier for people to return to benefit payment status if necessary after leaving the benefit rolls because of work activity.

The Trial Work Period (TWP)

The first time after entitlement that Social Security disability beneficiaries (Social Security Disability Insurance (SSDI)/Childhood Disability Benefit (CDB)/Disabled Widow(er)'s Benefit (DWB)) go to work, they may access a work incentive called TWP. The TWP effectively suspends the "able to perform SGA" part of the disability definition regardless of how high earnings might be as long as the beneficiary reports work activity and has a disabling impairment. That means beneficiaries may attempt to work without immediately losing their cash benefits during the TWP.

The TWP provides beneficiaries an opportunity to test work skills while maintaining full benefit checks, no matter how much the beneficiary earns. Each year, Social Security sets a monthly amount to use as a guideline for determining use of TWP months.

Only months that Social Security would count as TWP months (or "Trial Work Service Months") are those in which:

- An individual earns pre-tax (gross) wages of more than the guideline; or,

- Works over 80 hours in self-employment.

The TWP ends only when a beneficiary performs nine months of work over the TWP guideline within a rolling period of 60 consecutive months. The TWP months don't have to be consecutive for Social Security to count them.

TWP and Disability: To receive a TWP, a beneficiary must continue to have a disability. The TWP only protects beneficiaries from losing benefits due to work. It does NOT prevent Social Security from considering evidence of medical recovery.

Income Social Security Considers when Making TWP Service Month Determinations

When determining if work activity is "services" for TWP purposes, Social Security is only concerned with income paid for work usually performed for remuneration or profit that exceeds the applicable TWP amount. This may include sheltered workshop earnings, vocational rehabilitation (VR) program earnings, and income generated by paid internship programs or work therapy programs.

Work activity performed without remuneration, (e.g., therapy, training, or self-care) does not constitute services if the activity, although resembling services in employment for remuneration or gain, is part of a prescribed program of medical therapy or carried out in a hospital under the supervision of medical and administrative staff. Social Security determines what does and doesn't count as "services" and these determinations can get complicated. When in doubt, seek assistance from your assigned Virginia Commonwealth University (VCU) National Training and Data Center (NTDC) Technical Assistance Liaison

Determining Wages in a Month

In the Title II disability program, Social Security is interested in work ability or effort performed in a month, and thus generally counts wages when the beneficiary EARNED them, not when the beneficiary received them.

IMPORTANT NOTE: The Bipartisan Budget Act of 2015 simplifies post entitlement SGA determinations by allowing Social Security to presume earnings were earned in the

month they were paid. However, prior to applying this paid versus earned assumption, Social Security personnel will evaluate any readily available earnings verification sources and determine when the beneficiary earned the wages or self-employment income. If Social Security has no other readily available evidence to determine when the beneficiary performed the work activity, the agency will use other sources of earnings verification even if the earnings source only documents when the employer paid the beneficiary.

When Social Security personnel gather wage information to determine TWP service months, they follow certain procedures. The first step is to evaluate the beneficiary's monthly breakdown of gross earnings, and then to determine whether those earnings exceed the amount that constitutes a TWP month for that year. Social Security may send the beneficiary a Work Activity Report (SSA-820/821) in order to gather wage information, but the agency must also verify wages.

Social Security uses a variety of methods to verify gross wages or self-employment income, including participation in internet based wage verification systems such as "The Work Number. "If wage data isn't available through these systems, Social Security personnel will move through a series of wage verification methods using a standard hierarchy. This includes wage information the beneficiary provides, earnings data available in other Social Security systems, and earnings information the IRS shares with Social Security. For more information about how Social Security verifies earnings, refer to **DI 10505.005 Determining and Verifying Gross Earnings from Employment** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0410505005>).

Counting TWP Months

For beneficiaries in wage employment, Social Security credits TWP months when gross earnings exceed the monthly TWP amount applicable for that year. For individuals who are self-employed, Social Security will count any month in which net earnings from self-employment (NESE) exceed the applicable TWP amount, or any month that the beneficiary spends more than 80 hours engaged in work for profit in a business.

Since January 2001, the TWP amount is indexed annually. That means that it will go up (or at least not go down) in January of each new

calendar year. Past TWP amounts still apply to work in past years. For example, Social Security evaluates work performed in the 2001 calendar year using the TWP standard for 2001, which was \$530, not the current TWP amount.

Previous TWP amounts for each calendar year are listed below:

- Years before 1979 — \$50 or 15 hours of work in self-employment
- Years 1979-1989 — \$75 or 15 hours of work in self-employment
- Calendar years 1990-2000 — \$200 or 40 hours in self-employment
- 2001 — \$530 or 80 hours in self-employment
- 2002 — \$560 or 80 hours in self-employment
- 2003 — \$570 or 80 hours in self-employment
- 2004 — \$580 or 80 hours in self-employment
- 2005 — \$590 or 80 hours in self-employment
- 2006 — \$620 or 80 hours in self-employment
- 2007 — \$640 or 80 hours in self-employment
- 2008 — \$670 or 80 hours in self-employment
- 2009 — \$700 or 80 hours in self-employment
- 2010 — \$720 or 80 hours in self-employment
- 2011 — \$720 or 80 hours in self-employment
- 2012 — \$720 or 80 hours in self-employment
- 2013 — \$750 or 80 hours in self-employment
- 2014 — \$770 or 80 hours in self-employment
- 2015 — \$780 or 80 hours in self-employment
- 2016 — \$810 or 80 hours in self-employment
- 2017 — \$840 or 80 hours in self-employment
- 2018 — \$850 or 80 hours in self-employment
- 2019 — \$880 or 80 hours in self-employment

- 2020 — \$910 or 80 hours in self-employment
- 2021 — \$940 or 80 hours in self-employment
- 2022 — \$970 or 80 hours in self-employment

Determining the Beginning of the TWP

The TWP is a work incentive. The first possible TWP month usually occurs the first time after entitlement to Title II disability benefits that a beneficiary begins to work and has earnings over the applicable TWP guideline. Here are some limitations:

- The beneficiary must have a TWP available. Later in this unit, we will discuss situations where one may not be available.
- The TWP may not begin before the application date.
- The TWP may not occur before the first month a beneficiary becomes entitled, or re-entitled, to benefit payments.

An applicant must be eighteen in order to become entitled to CDB benefits. That means the earliest possible month for the TWP to begin is the month a CDB turns 18.

Completing the TWP

The TWP ends when an individual has completed nine service months within a rolling five-year period. To track this, Social Security marks all of the possible months that could be TWP months. It counts forward to nine, then counts back 60 consecutive months to see if the beneficiary completed all nine service months within that period. If not:

- Social Security disregards the service months that fall before the 60-month period;
- Social Security counts the service months that fall within the 60-month period; and
- The TWP continues.

Each time thereafter that a beneficiary uses a service month, Social Security uses the same procedure, counting forward until they count nine service months, and then counting back 60 months to see if the nine TWP service months all fall within five years. If at any point in time nine service months fall within a 60-month period, Social Security determines

the TWP is complete. Once the TWP ends, the protections afforded by this work incentive end. Beneficiaries have only one TWP during a period of entitlement.

A Note about the 60-month Period

Social Security determines the TWP is complete only if an individual has nine TWP service months that fall within a five-year period. The five-year (60-month) timeframe doesn't mean that a person receives a new TWP every five years. Instead, it means that Social Security may ignore months that happened a long time before the current work effort. Once the beneficiary has used nine TWP months within a 60-month period, the beneficiary has used the TWP — it's gone. The person doesn't get another TWP based on the same Social Security record unless Social Security terminates the person's benefits, and the person subsequently becomes entitled again.

Examples of TWP:

Fred: Fred became entitled to Social Security CDB in 2006. For the first time since his entitlement, Fred began to work in March 2022, and has worked steadily since then. Fred makes around \$980 per month.

2022	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Earnings	0	0	0	980	980	995	990	980	985	995	990	990
TWP service month?	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Count				1	2	3	4	5	6	7	8	9

Fred completed his TWP in December 2022, the ninth month in which he earned over the 2022 TWP amount of \$970.00.

Sandy: Fred's friend Sandy has been entitled to SSDI for six years. She started to work for the first time around the same time Fred began to work. She had a couple of breaks in her earnings, though. Sandy's earnings look like this:

	2022	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Earnings		0	0	0	700	619	0	0	980	675	995	1000	1200
TWP service month?		No	No	No	No	No	No	No	Yes	No	Yes	Yes	Yes
Count									1		2	3	4

Sandy has five TWP months left at the end of the year. She has not used her TWP.

Melissa: Fred and Sandy have a friend named Melissa. Melissa is a little older than Fred and Sandy. She was entitled to SSDI benefits in 2001 and has had sporadic work since 2008.

	2008	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Earnings		693	729	29	0	0	0	0	0	50	515	745	142
\$670 = TWP month		Yes	Yes	No	No	No	No	No	No	No	No	Yes	No
Count		*	*									1	

*Dropped

	2009	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Earnings		450	724	1042	569	442	164	0	0	0	0	0	40
\$700 = TWP month		No	Yes	Yes	No	No	No	No	No	No	No	No	No
Count			2	3									

	2010	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Earnings		450	755	215	0	16	0	0	347	201	0	561	1200

2010	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
\$720 = TWP month	No	Yes	No	No	No	No	No	No	No	No	No	Yes
Count		4										5

2011	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Earnings	170	0	0	0	0	0	0	0	0	0	0	42
\$720 = TWP month	No	No	No	No	No	No	No	No	No	No	No	No
Count												

2012	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Earnings	169	0	0	49	75	0	0	0	104	0	27	42
\$720 = TWP month	No	No	No	No	No	No	No	No	No	No	No	No
Count												

2013	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Earnings	441	0	0	6	115	760	782	800	941	45	0	0
\$750 = TWP month	No	No	No	No	No	Yes	Yes	Yes	Yes	n/a	n/a	n/a
Count						6	7	8	9 TWP ends this mth			

Melissa completed her TWP in September 2013. Social Security dropped the first months of work over the TWP limit in 2008 because Melissa wouldn't have used all nine months within a 60-month period if they included those months.

The TWP and Self-Employment

Social Security counts net earnings from self-employment (NESE) rather than gross earnings. NESE is all the money the business takes in, minus the business expenses, including the extra Social Security taxes self-employed individuals pay. During the TWP, Social Security can use monthly profit-and-loss statements to determine TWP service months. If the statements are unavailable, Social Security determines if the beneficiary used TWP months by averaging the NESE for the period the business was active during the calendar year.

In general, Social Security applies the Internal Revenue Service (IRS) rules for what constitutes approved business expenses. Work activity in self-employment will constitute "services" only when: (1) net earnings in a calendar month are more than the TWP amount; or (2) the person spends more than a specified number of hours in that month performing the work activity she or he would normally undertake for the business' profit. Under the current rules, it's possible to have NESE under the current TWP guideline and still use a service month.

Social Security determines service months on a month-by-month basis in both wage employment and self-employment situations. If the individual is both employed and self-employed, Social Security will add the wages earned to the NESE to determine if the total is over the applicable TWP amount. If the total is under the TWP amount, Social Security will examine the number of hours the beneficiary spent in the business to determine if he or she uses a TWP month.

Hours in a Business

A self-employed individual uses a TWP month if the NESE is over the TWP amount, OR if the individual works more than 80 hours in the business. Either factor will cause Social Security to count that month towards the nine months of the TWP. Beneficiaries should keep track of the hours they work in the business. Hours that they should count are hours they spent on the ongoing business duties for pay or profit. Beneficiaries shouldn't count hours they spent planning the business. You can find more detailed information about the TWP as it applies to beneficiaries engaged in self-employment in Unit 8, "Self-Employment and Social Security Disability Benefits."

When the TWP is Available

Beneficiaries are entitled to one TWP per period of disability. Social Security grants a new TWP whenever a new period of disability begins. A new period of disability begins after Social Security terminates an individual from benefits, who then re-applies and Social Security finds eligible. As of January 1992, the TWP may begin immediately upon re-entitlement, whether or not the beneficiary serves a five-month waiting period.

In addition, a new TWP is available to individuals who re-establish eligibility for benefits under Expedited Reinstatement (EXR) provisions. A new TWP is available only after Social Security has made 24 EXR payments. For more information on the EXR provision, refer to Unit 9 of this module.

Limitations to Who May Access a TWP

Social Security rules provide most beneficiaries of the Title II disability program the protections of the TWP. There are some situations, however, when beneficiaries aren't allowed to access this work incentive. Some of these are discussed below.

1. **Medical Improvement:** If Social Security decides that a beneficiary has medically improved, that person may not access the TWP.
2. **SGA Shortly After Application:** As discussed in Unit 1, the disability definition for entitlement requires that a person be disabled for at least 12 months. Because of this provision, SGA-level work within 12 months of the date of disability onset could cause beneficiaries to become ineligible for a TWP. Remember, it's the Disability Determination Service (DDS) that decides what onset date Social Security will use. SGA-level work within 12 months of that date may mean that the initial disability decision was incorrect because the individual wouldn't have met the "duration requirement." In these circumstances, Social Security may "reopen" the individual's benefits application and decide that all benefits paid to that point are an overpayment. Some protections under the law assist individuals who return to work within one year of the date the disability officially began:

- If the individual is working, but not performing SGA, the benefits shouldn't be affected.
 - If the person performs SGA shortly after the date DDS determined the disability started, but has to stop, Social Security could continue the entitlement. Social Security may either consider the work to be an Unsuccessful Work Attempt (UWA) or they may be able to establish a later date of onset.
 - If the person doesn't perform SGA until 12 months after the official disability onset date, the TWP applies.
 - If the person performs SGA after the waiting period, and after the final determination date, Social Security will afford the person a TWP. The final determination date is the date on the disability award notice.
3. **TWP and Blindness:** Beneficiaries who meet the requirements for statutory blindness are in a unique situation if they are age 55 or older. If the work they are doing differs greatly than the work they did before losing vision, or reaching age 55, Social Security rules allow them to receive benefits for any months their earnings are not SGA. People in this situation do not have a TWP.

Later sections in this module discuss some differences in work incentives for individuals who meet the standard for statutory blindness. People who receive Title II disability benefits due to blindness and who are under age 55 are entitled to a TWP like non-blind beneficiaries. Blind individuals over age 55, however, may or may not be due a TWP, depending on the situation.

If someone meets the statutory definition of blindness and receives CDB, DWB, or SSDI, access to a TWP may change when the person reaches 55. If the person is performing work that isn't comparable to work he or she did before being both age 55 and blind, Social Security will simply suspend payments if the individual performs SGA. The individual won't have a TWP, and won't risk termination of benefits. If the work is "comparable" to work the blind person did before being both age 55 and blind, then the TWP provisions apply. Comparability is a determination that Social Security, and sometimes DDS, will make.

Essentially, people who meet the statutory definition of blindness at age 55 may or may not have a TWP, depending on the nature of their work. Non-comparable SGA level work simply suspends the benefits. The blind beneficiary may become entitled to payments again whenever earnings drop. The beneficiary must simply report the change and provide evidence. The beneficiary won't need to file a new application or request Expedited Reinstatement (EXR), a work incentive we describe later in this module.

Examples of TWP:

Sam: Sam is blind and 56 years old. He is working as a receptionist in an independent living center. Sam has only met the standard for blindness for about five years. In fact, Sam's last work was as a truck driver. Sam is working full-time and, in 2022, has \$2,500 in countable earned income per month. The SGA level for blindness in 2022 is \$2,260, so Sam is performing SGA. The skills Sam used as a truck driver aren't comparable to those he is using as a receptionist. Social Security suspends Sam's benefits when he reaches countable SGA. They remain suspended until Sam's work again falls below the SGA level. Unlike entitlement prior to age 55, if Sam's work ceases to be SGA, Sam doesn't need to reapply for benefits. He simply informs Social Security of his changed work situation.

If Sam had started his receptionist job prior to age 55, the Trial Work rules would apply. However, because he started the job after age 55, Sam doesn't have a TWP unless he engages in work comparable to that which he performed prior to age 55. Instead, as soon as Sam reports Social Security determines that Sam's work is SGA, Social Security suspends Sam's benefits. Social Security should continue his entitlement until he reaches full retirement age and earnings no longer affect his benefits. Sam would be due cash payments for any months during the period that his countable earnings were under the SGA level.

Lloyd: Sam's brother Lloyd was an attorney throughout his work life. Lloyd also lost his vision when he was in his early 50s. Lloyd received SSDI for several years, until he was 57. Lloyd returned to private practice as an attorney

and used all of the skills he used prior to attaining age 55. He also made a significant net profit from his business, even after considering all work incentives for self-employed individuals such as unpaid help and unincurred business expenses. When Lloyd returned to work, Social Security determined that he was engaging in comparable SGA. Lloyd's work was substantial and used the skills he had used prior to attaining age 55 and blindness.

Lloyd was eligible for a TWP because this was his first comparable work attempt after entitlement and attaining age 55. Lloyd hadn't previously used his TWP. Because Lloyd continued to work above the blind SGA level using the skills he used prior to attainment of age 55, Social Security eventually terminated his benefits. If Lloyd again stops working, or reduces his work to below the SGA level prior to the time he attains full retirement age, he'll have to reapply for benefits or request EXR. EXR is discussed in Unit 9 of this module.

Tracking TWP Months

The local Social Security field office (FO) or the Office of Disability Operations (ODO) Payment Service Center (PSC) as requested by the FO may track TWP months once a beneficiary reports work activity. Because many factors may hinder successful TWP tracking, beneficiaries and Community Work Incentives Coordinators (CWIC) should never assume Social Security will know when the TWP ends. Social Security recommends a proactive approach in which the beneficiary assumes primary responsibility for keeping up with service months. The CWIC may assist in this process by working closely with Social Security personnel to research past work history and ensure that the beneficiary reports all work activity that could result in using TWP months.

Important Reminders about the TWP

Social Security is sometimes unaware of work efforts after entitlement. When CWICs give information about the TWP to beneficiaries, CWICs must verify and ensure that the beneficiary has reported and Social Security has developed all prior work activity. If it hasn't, the CWIC can't give specific information about TWP availability until the past work has been developed by Social Security. It's critical that the CWIC and the

beneficiary work together to provide wage information to Social Security so that prior work can be developed and TWP months recorded if used. This topic will be discussed in detail in Module 6.

Another critical issue to remember is that during the TWP, work incentives can't be applied to reduce earnings below the TWP guideline amount. Social Security will simply determine the gross wages a beneficiary earned in a month and compare those monthly wages to the current TWP guideline. If the gross wages are over the current TWP guideline, the beneficiary will have used a TWP month.

Benefit payments are protected if the beneficiary is working above the SGA guidelines during the TWP. However, Social Security may use work activity performed during the TWP to establish a pattern of work indicating the person can perform SGA once the TWP ends. Social Security will evaluate the individual's work activity using the SGA criteria once the TWP has ended. Any work performed (including work performed during the TWP) they will then consider to determine whether the individual has demonstrated the ability to engage in SGA. Social Security can use averaging throughout the TWP and beyond to determine whether a beneficiary has performed SGA.

Cessation Month and Grace Period

As long as the beneficiary continues to have a disability, the first time that SGA-level work could affect payment of benefits is after the TWP ends. When a beneficiary performs sustained SGA-level work for the first time after the TWP, this first month where this pattern begins is called the "cessation month." Social Security allows beneficiaries to receive a payment in this month and the two succeeding months, called the "Grace Period," for a total of three months. Even though the months have different names, they are really one work incentive and Social Security always applies them together as one three-month block. These are sometimes referred to collectively as simply the "Grace Period."

"Cessation" may seem like a confusing name to give this month because benefits don't actually cease (stop) until the entire three-month grace period has ended. It may help to think back to the two parts of the disability definition (inability to perform SGA due to disability). Essentially, "cessation" means that the individual ceases to meet the second part of the disability definition.

Social Security letters that indicate benefits are going to stop because the person is no longer disabled can confuse beneficiaries. If the notice is saying benefits are ceasing due to work activity, then Social Security has determined the beneficiary is working over SGA. In other words, the person no longer meets Social Security's disability definition, which requires both a medical impairment and the person's inability to perform SGA.

Cessation is a different concept from benefit termination. When Social Security ceases benefits due to work activity, it generally means that they merely suspend them, and that they can reinstate cash payments if the beneficiary is still within the 36-month EPE. Termination, on the other hand, means that the person must formally re-apply or request Expedited Reinstatement if benefits terminate due to SGA work activity.

For benefit termination to occur due to SGA-level work, the beneficiary must have completed the TWP and the EPE discussed later in this module. The Grace Period must have occurred as well. Benefit termination doesn't always immediately follow the Grace Period, but could happen much later, depending on the work activity of the beneficiary.

The cessation and grace months, like the TWP, are only available once during a period of disability. Social Security affords the beneficiary another Grace Period only if he or she becomes re-entitled to benefits.

NOTE: The Cessation and Grace Period months occur the first time Social Security determines that the beneficiary has performed SGA. This can occur at any time after the beneficiary completes the TWP. The Grace Period may occur during the 36-month re-entitlement protection of the EPE, or not until years after. If the beneficiary never performs SGA, it may not occur at all.

Example of the cessation and grace period:

Sara became entitled to SSDI benefits in May 2008. She began working at the library in July 2008, earning \$800 a month. Nine months later, in March 2009, her TWP ended. In April 2009, her three-year EPE began. She continued to work at the library. Her re-entitlement period ended three years after the TWP, in April 2012. Sara remained in cash

payment status even though her TWP and EPE were both used since her earnings were not SGA.

In August 2022, Sara received a promotion to supervisor and increased her monthly earnings to \$2,000. She reported her change in income to Social Security, and Social Security determined Sara was performing SGA.

Sara's Cessation month was August 2022 and her three Grace Period months were August, September, and October 2022. Her termination month was November 2022.

Extended Period of Eligibility (EPE)

Section 303 of the 1980 amendments to the Social Security Act provided a reinstatement period under Title II to an individual who completes nine months of trial work and continues to have a disabling impairment. This provision, referred to as the EPE, provides that an individual can be re-entitled to benefits any time during the 36-month EPE re-entitlement period if his or her countable income falls below the SGA level. The EPE reinstatement period begins with the month immediately following completion of the TWP and ends 36 months later. The POMS describes the EPE to include any months of entitlement after the 36-month re-entitlement period and before termination. Though it's correct that eligibility continues, the protection for re-entitlement only lasts 36 consecutive months.

Things to remember about the EPE:

- The EPE is a work incentive protection. A beneficiary must continue to have a disabling impairment to access the EPE.
- If a beneficiary isn't performing SGA at the time the 36-month re-entitlement period ends, benefits may continue indefinitely.
- The EPE re-entitlement period is a safety net for beneficiaries who engage in SGA. Some beneficiaries may never know they have used it if their earnings are consistently below SGA.
- Cessation and Grace Months may, or may not, occur during the 36-month re-entitlement period of the EPE. Cessation happens the first time after the TWP that a person performs SGA. That

could be the month after the TWP, it could be years later, or it might never happen. Cessation isn't dependent on the re-entitlement period of the EPE, and the Grace Period is a separate and distinct work incentive. The EPE re-entitlement period is a safety net to help beneficiaries return to cash payment status quickly if they are again unable to perform SGA.

- The EPE always begins the month after the TWP ends, regardless of whether or not the beneficiary continues to work beyond the TWP. If the TWP ends, the EPE begins the very next month whether the beneficiary continues working or not.
- If Social Security ceases a beneficiary's payments after the TWP, and the person needs to receive benefits again during the 36-month reinstatement period of the EPE, he or she doesn't have to file a new application. Instead, the individual must simply establish with Social Security that their work activity is below SGA.
- If Social Security reinstates a benefit during the EPE, the benefit will continue indefinitely until the person again performs SGA, or Social Security determines that the disabling impairment has medically improved.
- If the beneficiary performs SGA during the EPE, Social Security suspends rather than terminates benefits. The termination month is the first month of SGA after the 36-month EPE re-entitlement period ends. If the beneficiary didn't perform SGA during the 36-month EPE re-entitlement period, and later performs SGA, the individual is due benefits for the cessation and grace months, and then Social Security terminates benefits. Suspension means that Social Security easily can reactivate the payments without a new application. Termination means that the person must formally re-apply or request EXR to start payments again.
- The EPE doesn't change the definition of disability. A beneficiary is eligible for payments as long as he or she continues to meet both the medical part of the definition of disability and the "unable to perform SGA" requirement.

The main effect of the EPE provision is that it permits benefit reinstatement during the re-entitlement period. To be reinstated after a

work-related suspension of benefits, the beneficiary simply needs to report to Social Security that work is no longer working over the SGA threshold by making a request for reinstatement of benefits and supplying evidence of the decrease in earnings.

Although SGA isn't material until after the beneficiary has completed the TWP, Social Security may consider work during the TWP to establish a pattern of ability to perform SGA. This can occur if a period of work extends from TWP months into the EPE. However, if an individual is entitled to a TWP, the benefits Social Security paid during that period are generally paid, regardless of whether or not the individual performs SGA during the TWP.

Example of benefits due throughout TWP:

Angelina became entitled to benefits in October 2008. In March 2013, she began to work for the first time since she became entitled. Below are Angelina's countable earnings:

2013	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Earnings	0	0	540	1060	1105	1120	910	1045	1080	1160	1060	1042
Payment?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
TWP Status				1	2	3	4	5	6	7	8	9

2014	Jan	Feb	Mar	April	May	June	July	Aug	Sept
Earnings	1101	1300	905	342	45	0	0	0	0
Payment?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
EPE Status	EPE begins Cessation Month	EPE 2 Grace	EPE 3 Grace	EPE 4 Not SGA	EPE 5	EPE 6	EPE 7	EPE 8	EPE 9

2014 continued	Oct	Nov	Dec
Earnings	0	0	0
Payment?	Yes	Yes	Yes
EPE Status	EPE 10	EPE 11	EPE 12

Angelina was due benefits throughout her TWP, even though her earnings were over the SGA guideline. After her TWP, when Angelina goes to Social Security to report her earnings, Social Security is likely to determine that Angelina demonstrated the ability to perform SGA. Even though Angelina only performed SGA-level work for two months after the TWP, Social Security can consider work she performed during the TWP to ascertain a pattern. It's not an Unsuccessful Work Attempt (UWA) because Angelina actually had earnings at the SGA level for more than six months. Angelina's disability would "cease" in January 2014, but she would still be entitled to a benefit payment. After Angelina received the 2 additional Grace Period payments in February and March, Social Security would suspend her benefits. Because Angelina currently isn't performing SGA, and because she is still within the 36-month reinstatement period of the EPE, Angelina's benefits would be due for April. However, she would've used her Cessation Month and Grace Period and would no longer have access to the UWA or income averaging provisions in subsequent SGA determinations.

If Angelina had stopped working in November 2013, Social Security wouldn't have ceased her benefits because the work effort was totally within the protection of the TWP. However, if she didn't start working at SGA level until after the EPE, cessation wouldn't occur until the time Social Security made an SGA determination. Remember that the Cessation and Grace Period is a stand-alone work incentive, and isn't tied to the EPE.

The Definition of Termination

Termination for Social Security purposes doesn't just mean that the cash payments have stopped. Social Security may stop payments under certain circumstances even though a beneficiary remains eligible for disability benefits. Termination means Social Security has terminated or closed the computer record that maintains payments. Once Social Security has terminated benefits, a formal re-entitlement or reinstatement decision is required for payments to begin again. This is

important to understand because termination is more than just stopping payments. Termination is more than cessation, suspension, non-payment, or any other term Social Security uses to denote merely the loss of cash payment. It also means that no more benefits are payable based on that application, and that the “period of disability” has closed.

Prior to January 1, 2001, once Social Security terminated a disability benefit, the only way someone could receive payments again was to submit an entirely new application for benefits. The Ticket to Work and Work Incentives Improvement Act of 1999 created an important work incentive called EXR. EXR is a way to return more quickly to Social Security disability benefits when the former the beneficiary significantly reduces or stops work, and he or she is unable to perform SGA because of his or her original disabling condition. EXR also permits individuals to receive provisional payments while Social Security is processing the reinstatement request. This work incentive is discussed in detail in Unit 9 of this module.

Extended Medicare

When Title II disability beneficiaries have been entitled to cash payments for 24 months, Title XVIII of the Social Security Act entitles them to Medicare benefits. Medicare is a federal health insurance program that is covered in detail in Module 4 of this manual.

The most important thing for CWICs to know is that after cash benefits have stopped due to work activity, Social Security still allows for the continuation of Medicare benefits through a provision known as the Extended Period of Medicare Coverage (EPMC). This means that beneficiaries may continue, for at least 93 months after the Trial Work Period ends, to receive premium free hospitalization coverage. For the same period, working beneficiaries may continue to purchase Part B coverage even if they aren’t receiving cash benefits. This is a powerful work incentive because many individuals with disabilities fear they will lose their health insurance if they return to work. Module 4 discusses Medicare enrollment and the EPMC in detail.

Conclusion

Unit 3 of this module discussed the SGA determination process. This unit discussed additional protections, called work incentives.

- The TWP offers nine months of protection during which a beneficiary may have no limit on earnings and still be eligible for payments.
- The EPE 36-month re-entitlement period allows Social Security, after suspending beneficiaries' cash benefits due to work activity, to reinstate the benefits if earnings again fall below the SGA level during the 36-month re-entitlement period.
- The Grace Period offers three consecutive months of payments as a protection the first time a beneficiary performs SGA (cessation occurs) after the TWP.
- EXR offers 60 months after termination when a beneficiary may qualify for reinstatement of his or her entitlement if earnings fall below SGA, the individual has the same or a related disability, and the benefits terminated less than five years before the drop in earnings.

It's critical that CWICs understand these concepts. It's even more important that CWICs are able to explain these concepts clearly to beneficiaries. The concepts are complex and challenging to understand. Beneficiaries, however, need to know that these protections are there to help them if the return-to-work effort falters.

Conducting Independent Research

Pamphlets that are good resources:

- **The Red Book (A Summary Guide to Employment Support for Individuals with Disabilities). Social Security Publication No. 64-030**, (<http://www.ssa.gov/redbook/eng/main.htm>).

Programs Operations Manual Systems references:

- **DI 13010.035 The Trial Work Period (TWP)**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0413010035>)
- **DI 13010.060 Determining Trial Work Period (TWP) Service Months and Evaluating Subsequent Work Activity**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0413010060>)

- **DI 13010.066 Developing and Verifying Monthly Earnings in the Trial Work Period (TWP)**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0413010066>)
- **DI 13010.210 Extended Period of Eligibility (EPE) – Overview**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0413010210>)
- **DI 13010.215 Procedure for Extended Period of Eligibility (EPE)**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0413010215>)
- **DI 28055.005 How the EPE Works**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0428055005>)

Competency Unit 5 – Understanding the SSI Program

Introduction

Supplemental Security Income (SSI) is a disability benefit program administered by the Social Security Administration. SSI is different from the benefits Social Security pays under Title II of the Social Security Act discussed in the previous units of this module. Social Security pays SSI to people who are disabled, blind, or age 65 or older who have few resources and low income, and who meet certain citizenship or residency requirements. SSI benefits don't come from the Social Security Trust Fund; instead, Social Security pays SSI out of general federal tax dollars.

Prior to 1974, individual states provided varying degrees of public assistance to people with disabilities who didn't qualify for disability benefits under the Social Security system. Congress created the SSI program to provide a uniform minimum income level for elderly or disabled. SSI is intended to supplement a beneficiary's other income and help them meet their basic food and shelter needs. Because SSI is a "means-tested" program, Social Security will determine eligibility and payment amount based on the individual's available income and resources.

Once Social Security has established initial eligibility for SSI, the agency continues to assess the countable income and resources of all SSI recipients on a monthly basis. Beneficiaries with countable income (other than SSI) or resources in excess of the allowable limits aren't eligible for an SSI cash payment or (in most cases) associated Medicaid coverage.

Eligibility for People who are Blind or Disabled

In the SSI program, an adult applying for benefits must meet the same definition of disability or blindness as individuals applying for Title II disability benefits. Like Title II, disabled applicants performing SGA at the time of application are not eligible for SSI benefits. Social Security waives the SGA test for people who are blind per Social Security's definition. So, individuals who meet the definition of statutory blindness

may be approved for SSI benefits, even if they are performing SGA-level work.

For disabled individuals, the time of application is the only time SGA affects entitlement under the SSI program. For blind SSI applicants or recipients, the SGA test never applies. As a result, the SGA-related work incentives discussed in Unit 3 of this module do not apply to individuals who already receive SSI. That means, Social Security doesn't use work incentives such as Subsidy, Unpaid Help, Unsuccessful Work Attempts, or Income Averaging in determinations of continued payment under SSI. Impairment Related Work Expenses (IRWEs) do apply in the SSI program, but as a deduction from countable income in benefit calculations, rather than a means to assess if the person is engaging in SGA-level work.

Basic SSI Eligibility Requirements

The following are the specific eligibility requirements for the SSI program:

- Age 65 or older, blind, or disabled;
- Reside in one of the 50 states, the District of Columbia, or the Northern Mariana Islands, except for a child of military parent(s) assigned to permanent duty anywhere outside the United States, or certain students temporarily abroad;
- Citizen or legal resident meeting certain requirements (POMS sections SI 00502.100, SI 00501.420, GN00303.440)
- Have limited income and resources;
- Not be absent from the U.S. for a calendar month unless he or she is a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. Armed Forces, or is a student who is temporarily abroad for the purpose of conducting studies;
- File for any other benefits for which he or she is potentially eligible;
- Not be a fugitive felon;
- Not be violating a condition of parole or probation;

- Give Social Security permission to contact any financial institution at any time and request any financial records that financial institution may have about the individual. Other people who are responsible for the individual's support must also give Social Security their permission to contact any financial institution at any time and request financial records that financial institution may have about them; and
- File an application.

For more information, refer to **POMS SI 00501.001 - Eligibility under the Supplemental Security Income Provisions** found online (<https://secure.ssa.gov/poms.nsf/lnx/0500501001>).

Retroactivity and SSI

Unlike the Title II disability programs, there's no waiting period and no retroactivity under the SSI program. In the SSI program, Social Security can't make payments until the first full month following the date of application. For example, if a person applies for SSI on the 16th day of November and Social Security finds him or her eligible for SSI, Social Security will pay the first SSI benefit on the first day of the NEXT month, which would be December. It's important that potentially eligible individuals apply for SSI soon as possible, so as not to lose potential SSI payments.

Federal Benefit Rate (FBR)

SSI is a program intended to augment any other income a person may already have to meet minimum needs for food or shelter. The Federal Benefit Rate (FBR) is a monthly amount that changes in January of each year, and is the highest federal payment an individual or eligible couple (two SSI beneficiaries married, or holding out to the community as if married) may receive. Unlike the Title II disability benefits, Social Security reduces SSI payments if an individual or eligible couple has countable income. The more countable income an individual or SSI-eligible couple has, the lower the SSI cash payment will be. If an individual or SSI-eligible couple has too much countable income, they won't be eligible for a cash payment at all. To determine the SSI

payment amount, Social Security subtracts countable income from the FBR.

Social Security sets several Federal Benefit Rates (FBRs) each year. There are additional FBR amounts for individuals living in another person's household, or living in a Medicaid facility. Which FBR applies to an SSI payment determination depends on the person's living situation and marital status. The chart below shows the most recent FBR amounts:

Calendar Year	Individual FBR	Couple FBR
2013	\$710	\$1,066
2014	\$721	\$1,082
2015 & 2016	\$733	\$1,100
2017	\$735	\$1,103
2018	\$750	\$1,125
2019	\$771	\$1,157
2020	\$783	\$1,175
2021	\$794	\$1,191
2022	\$841	\$1,261

Optional State Supplements

When Congress created the SSI program, states were required to maintain the income levels of individuals whom Social Security transferred from the former state programs. The federal government mandated states to assure that their residents wouldn't receive lower benefits under the federal program than they had under the former state program. Some states choose to pay optional state supplements to help individuals meet needs the federal SSI payments don't fully cover. Some of the states that provide mandatory or optional supplements have elected to administer the payments themselves. In these states, the state agency that administers Temporary Aid to Needy Families (TANF)

and Medicaid makes decisions about eligibility. Other states contract with Social Security to administer the state supplements. When Social Security calculates SSI payments for beneficiaries who live in states with federally administered state supplementation, Social Security treats the supplement like an extension of the federal SSI payment. Social Security deducts countable income from the applicable FBR plus the supplement to determine the monthly amount due.

CWICs must remember to take any applicable state supplement into consideration when counseling beneficiaries on the effect of work on benefits. Also keep in mind that for some states, blindness is a criterion that permits payment of the state supplement, so blind beneficiaries might receive a higher amount of SSI, or a different supplement than other beneficiaries. CWICs should seek information on their own state supplement programs and the criteria under which they are paid.

How the SSI Program Defines Income

The SSI program considers income to be anything an individual receives in cash or in-kind that he or she can use to meet the basic needs for food or shelter. In-kind income isn't cash but food or shelter provided to an eligible individual or SSI-eligible couple by someone else. Under this definition, income also includes the receipt of anything that a person can use, either directly or by sale or conversion, to meet his or her basic needs of food or shelter. This means that some gifts that can be easily converted to cash may count as income when Social Security determines eligibility and payment. Some types of cash or in-kind items do meet Social Security's definition of income, but a federal statute specifically excludes them.

Any cash or in-kind item that meets the SSI definition of income Social Security must classify as either earned income or unearned income. Social Security treats earned income and unearned income very differently in the SSI program, so it's important that you take care when distinguishing between these two categories. Descriptions of both types of income are provided later in this unit.

Social Security determines an individual's total countable income after applying all allowable deductions or exclusions. Social Security allows many exclusions for each of the two types of income (earned and unearned), some of which will be explained in subsequent sections.

What Isn't Income?

The SSI program considers income to be anything an individual receives in cash or in-kind that he or she can use to meet the basic needs for food or shelter. In-kind income isn't cash but food or shelter provided to an eligible individual or SSI-eligible couple by someone else. Under this definition, income also includes the receipt of anything that a person can use, either directly or by sale or conversion, to meet his or her basic needs of food or shelter. This means that some gifts that can be easily converted to cash may count as income when Social Security determines eligibility and payment. Some types of cash or in-kind items do meet Social Security's definition of income, but a federal statute specifically excludes them.

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What Isn't Income?

As stated earlier, Social Security does NOT count items as income for SSI purposes if they are not food or shelter and a person can't use them to obtain food or shelter. Examples of some of the more common items that don't meet the definition of income for SSI purposes are listed below. The most common items that don't meet the SSI definition of income include:

- **Medical and social services:** Medical and social services aren't income for purposes of the SSI program. Under the complex circumstances specified in POMS SI 00815.050: Medical and Social Services, Related Cash, and In-Kind Items, cash and in-kind items received in conjunction with medical and social services are also not income for SSI purposes. The rules spelled out in this POMS citation are intricate. When in doubt about how to apply the provisions contained in this reference,

contact the local Social Security field office for a formal determination.

- **Food and shelter received during a medical confinement:** Food and shelter a beneficiary receives during a medical confinement aren't income. A medical confinement exists when an individual receives inpatient medical services in a medical treatment facility. (See POMS SI 00815.100: Food and Shelter Received during a Medical Confinement.)
- **Personal services performed for an individual:** Personal services a person or persons perform for an eligible individual aren't income. Examples of personal services would include mowing the lawn, doing housecleaning, going to the grocery store, and babysitting. (See POMS SI 00815.150: Personal Services.)
- **Receipts from the sale, exchange, or replacement of a resource:** Receipts from the sale, exchange, or replacement of a resource aren't income, but are simply resources that have changed their form. This includes any cash or in-kind item that replaces or repairs a resource that has been lost, damaged, or stolen. (See POMS SI 00815.200: Conversion or Sale of a Resource for more information on this issue.)
- **Rebates, refunds, or other returns of money:** Generally, when an individual receives a rebate, refund, or other return of money, it's not income but a return of an individual's own money. Some rebates don't fit that category, so when questions arise, seek assistance from the local Social Security field office. (See POMS SI 00815.250: Rebates and Refunds.)
- **Income tax refunds:** Any refund on income taxes an individual already paid isn't income. Income tax refunds aren't income, even if Social Security already excluded the income taxes as work expenses of the blind. (See POMS SI 00815.270: Income Tax Refunds.)
- **Proceeds of a loan:** Proceeds of a loan aren't income to the borrower because of the borrower's obligation to repay. Likewise, money that a person borrows under a bona fide loan agreement isn't income. Money a person receives as repayment of the principal of a bona fide loan is also not income. A bona

fide agreement is an agreement that is legally valid and made in good faith. Effective July 1, 2004, interest received on money loaned is excluded from income if the loan is bona fide. (See POMS SI 00815.350: Proceeds of a Loan and SI00830.500 Dividends and Interest.)

- **Payment of an individual's bills:** Payment of an individual's bills (including supplementary medical insurance or other medical insurance premiums) by a third party directly to the supplier isn't income. However, anything a beneficiary received in-kind as a result of the payment is income if it's food or shelter. (See POMS SI 00815.400: Bills Paid by a Third Party.)
- **Replacement income after a loss, theft, or destruction:** If an individual's income is lost, stolen, or destroyed and the individual receives a replacement, the replacement isn't income per POMS SI 00815.450: Replacement of Income Already Received. Similarly, a payment isn't income when the individual is aware that he or she isn't due the money and returns the check un-cashed or otherwise refunds all of the erroneously received money. (See POMS SI 00815.460: Return of Erroneous Payments.)
- **Weatherization assistance:** Weatherization assistance such as insulation, storm doors, and windows, etc. isn't income for SSI purposes per POMS SI 00815.500: Weatherization Assistance.
- **Miscellaneous fringe benefits:** Employers make various payments on behalf of their employees that aren't earnings and aren't available to meet food or shelter needs. Social Security doesn't consider these types of payments to be income and include funds the employer uses to purchase qualified benefits under a cafeteria plan, employer contributions to health insurance or retirement fund, and the employer's share of FICA taxes or unemployment compensation taxes. (See POMS SI 00815.600 Wage-Related Payments.)
- **Clothing:** Social Security generally won't count gifts of clothing as income. There is one situation where Social Security considers clothing as income. This situation could occur when an

individual receives clothing from an employer that would count as a form of wages.

Complete information about what Social Security doesn't count as income in the SSI program can be found in the **POMS starting with SI 00815.000 - What Is Not Income**, this is found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500815000>).

How SSI Treats Earned Income

Earned income is any cash or in-kind item that a beneficiary receives in exchange for work performed or as remuneration for work effort. Earned income includes the following types of payments:

- **Wages:** An individual receives these payments (before deductions like taxes) for working as someone else's employee. Wages may include salaries, commissions, bonuses, severance pay, military basic pay, sheltered workshop earnings, and any other special payments a person receives because of their employment. Social Security counts GROSS earnings from wage employment, which means before taxes and other deductions are withheld. Social Security counts earned income at the earliest of three points; when the person receives it, or when it's credited to his or her account, or set aside for his or her use. Social Security determines earned income for each calendar month.
- **In-kind Earned Income:** This would include the value of food or shelter, or other items an individual receives instead of cash in exchange for work performed. The most common type of in-kind earned income is when an employer provides room and board as part of the remuneration an individual receives for live-in employment. Social Security assesses in-kind earned income by applying current market value. If an individual receives an item (instead of cash) that isn't fully paid for and he or she is responsible for an unpaid balance, Social Security only counts the amount previously paid as income.
- **Net Earnings from Self-Employment (NESE):** This is gross receipts from a trade or business that an individual operates, less allowable deductions. Social Security counts net earnings from self-employment (NESE) on a taxable year basis. Social

Security multiplies the result by .9235 to deduct half of the Social Security taxes paid by self-employed individuals.

Earned Income Exclusions

Social Security doesn't count all earned income when it determines SSI eligibility and payment amount. Social Security first excludes income as authorized by specific federal laws or statutes. Social Security then applies other earned income exclusions to determine the monthly countable income, in the following order:

1. Earned income tax credit payments and child tax credit payments;
2. Infrequent income which is income that an individual receives only once during a calendar quarter from a single source, and which the individual didn't receive in the month immediately preceding that month or in the month immediately subsequent to that month, regardless of whether or not those payments occur in different calendar quarters.

Social Security excludes the following amount of income received either infrequently or irregularly:

- The first \$30 per calendar quarter of earned income; and
- The first \$60 per calendar quarter of unearned income.

Refer to POMS SI 00810.410: Infrequent or Irregular Income Exclusion for additional details;

3. Earned income of a blind or disabled student regularly attending school, who is under the age of 22, up to the student earned income exclusion (SEIE) monthly limit, but not more than the SEIE yearly limit. For a detailed explanation of the SEIE and how it's applied, refer to Unit 6 of this module, or refer to POMS SI 00820.510 Student Earned Income Exclusion;
4. Any portion of the \$20 monthly General Income Exclusion (GIE), which has not been excluded from unearned income in the same month;
5. \$65 of the Earned Income Exclusion (EIE) in the month;
6. Impairment Related Work Expenses (IRWE) which are reasonable out-of-pocket costs that are related to the

individual's disability and which are necessary for work. For more information, refer to Unit 6 of this module or see POMS SI 00820.540 Impairment-Related Work Expenses (IRWE);

7. One half of remaining earned income in a month;
8. Earned income of individuals with blindness that is used to meet any expenses the person has related to working, whether or not it's related to blindness, called Blind Work Expenses (BWE). BWEs include items that would be excluded under the Impairment Related Work Expense (IRWE) rules. In addition, these deductions are any out-of-pocket expenses that are necessary for work. For more information refer to Unit 6 of this module, or see POMS SI 00820.535 Blind Work Expenses (BWE); and
9. Any earned income a beneficiary uses to fulfill an approved Plan to Achieve Self-Support (PASS). PASS is a highly valuable, yet complex work incentive. For a detailed description of the PASS work incentives, refer to Unit 7 of this module or see POMS SI 00870.000 - Plans to Achieve Self-Support for Blind or Disabled People.

The unit provides a partial listing of the most common forms of earned income and earned income exclusions. For more detailed information, refer to **POMS 00820.000 - Earned Income Subchapter Table of Contents** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820000>).

How SSI Treats Self-Employment Income

Social Security counts net earnings instead of gross earnings when determining the SSI payments for an individual who is self-employed. To determine the Net Earnings from Self-Employment (NESE), Social Security reviews the individual's Federal income tax returns for the "Net Profit or Loss" amount on Schedule SE, C, C-EZ or F. Social Security may also look at business records and can accept the individual's allegation of NESE, if no other evidence can be obtained., Social Security divides the NESE amount equally among all 12 months in the taxable year (i.e., the calendar year), even if the business is seasonal, didn't operate for the entire year, or ceased operation prior to applying for SSI. Social Security adjusts benefit payments retroactively for the entire calendar year based on the NESE amount.

After the initial year of self-employment, Social Security generally uses the person's completed tax returns from that first year to estimate the total net profit for the coming year and will adjust the SSI payments prospectively over the entire year based upon this estimate. From that point forward, at the end of each year, SSI recipients submit their tax returns to Social Security so that it can compare the actual NESE to what the person estimated. Social Security will adjust the SSI payments retroactively to account for any variance between what the person estimated and what the person actually reported to the IRS as taxable profit. It's essential that SSI recipients who are self-employed make their estimates as early and accurately as possible to avoid large under or overpayments. As the year progresses, individuals may revise their estimates if Social Security finds earlier estimates too low or too high. The more accurate the estimate, the less self-employed SSI recipients will owe back to or be owed by Social Security when the tax year closes.

Example of NESE and SSI calculations: Elizabeth started her business in October 2020. Her NESE for the year was \$6,000. Even though Elizabeth didn't start the business until late in the year, Social Security would average her NESE over the calendar year: $\$6,000 \div 12 = \500 . Elizabeth would have \$500 per month in NESE for the purposes of SSI benefit calculations for every month in 2020.

Earned Income Limits

For an SSI recipient whom Social Security has already found eligible for benefits, Social Security treats his or her earnings in the manner described above and reduces the SSI check as countable earnings increase. Even when countable earnings are high enough to cause complete loss of the SSI cash benefit, individuals may retain SSI eligibility and Medicaid coverage under a special work incentive known as "1619(b) Medicaid While Working." To qualify for extended Medicaid under the 1619(b) provision, individuals must continue to meet Social Security disability standard, must have earned income below a special annual threshold amount (which varies by state), must demonstrate a need for Medicaid coverage and must continue to meet all other SSI eligibility requirements such as the unearned income limits and the resource limits. For more information on 1619(b) Medicaid While Working, see Unit 1 of Module 4, "Understanding Medicaid."

How SSI Treats Unearned Income

The definition of unearned income is very simple. Social Security describes unearned income as any cash or in-kind item a person receives that isn't earned income. Common forms of unearned income would include the following:

- **Periodic public payments or private annuities or pensions:** These payments are usually related to prior work or service (Social Security benefits, veteran's benefits, Railroad Retirement benefits, Worker's Compensation, Unemployment Compensation, etc.).
- **Income of a spouse or parent (for SSI recipients under the age of 18):** Social Security "deems" a portion of spousal income or parental income for SSI recipients under 18 to be available to the SSI recipient.
- **Alimony and child support payments:** For SSI purposes, alimony and support payments are cash or in-kind contributions to meet some or all of a person's needs for food and shelter. These periodic payments may be court ordered or voluntary. Alimony or spousal maintenance is the unearned income of the adult named in the court order. Generally, Social Security counts child support payments (including arrearage payments) a parent makes on behalf of an SSI-eligible child as unearned income to the child. For SSI recipients under age 18, Social Security excludes one-third of the amount of a child support payment made to or for an eligible child by an absent parent. This one-third exclusion does NOT apply to adults who receive child support payments. Social Security credits child support, or child support arrearages, differently once the child reaches adulthood. (See POMS SI 00830.420.)
- **Rental payments:** Social Security considers rental payments for things such as housing and the use of land or machinery to be unearned income in most cases. Social Security will only count the value of rental payments after the beneficiary deducts expenses related to the rental properties. Social Security makes these determinations on a taxable year basis. In some cases, Social Security determines rental income to be earned income if the SSI recipient is in the business of renting property or

equipment. When in doubt about whether Social Security would consider rental income earned or unearned, seek a determination from the local Social Security field office. (See POMS SI 00830.505 Rental Income)

Although Social Security may exclude some types of unearned income completely, the SSI program has only one standard deduction allowed for unearned income — the \$20 General Income Exclusion (GIE). Social Security subtracts the \$20 GIE from the monthly income attributable to the individual. For individuals whose only income is unearned income, the remaining amount — after the \$20 GIE — is subtracted from the FBR. This means that most unearned income results in almost a dollar-for-dollar reduction in the SSI cash payment.

The Most Common Form of Unearned Income – Title II Disability Payments

When an SSI recipient is also eligible for a Social Security benefit authorized under Title II, the individual will receive two separate payments each month. These individuals are known as “concurrent beneficiaries” because they receive SSI benefits and Title II benefits concurrently. Here are some examples of how concurrent status occurs:

- Beneficiaries who receive monthly SSDI/CDB/DWB payments that are less than the current FBR may be eligible for an SSI benefit that augments their Title II cash payments, provided they meet all other SSI eligibility criteria.
- SSI beneficiaries who work can establish “insured status” and eventually become entitled to Title II disability benefits. This can happen very quickly for young beneficiaries and beneficiaries who meet the definition of statutory blindness. If the countable SSDI benefit is more than the current applicable FBR, the person’s SSI will stop, but if the benefit is below the SSI FBR plus the \$20.00 GIE, the person will get reduced SSI benefits and become a concurrent beneficiary.
- An SSI recipient may become a concurrent beneficiary when a parent retires and collects Social Security, dies, or becomes entitled to Social Security disability benefits. These events could cause the SSI-eligible individual to establish entitlement for Childhood Disability Benefits (CDB). If that occurs, Social Security first makes the CDB payment and provides a reduced

SSI if the countable CDB payment is less than the applicable FBR and the beneficiary meets all other SSI eligibility criteria.

- If an individual receives a Title II disability benefit, and then becomes entitled to SSI through use of a PASS, that individual also becomes a concurrent beneficiary.

The SSI program views the Title II payment as unearned income. The \$20 GIE reduces the gross unearned income (Title II payment), and the remaining balance is subtracted from the individuals' applicable FBR to determine the adjusted SSI cash payment.

It's important to remember that Social Security considers SSI to be the payer of last resort. If an individual is eligible for any other Social Security benefit, Social Security must access that benefit first, before considering SSI. If the amount of the Title II payment is low enough, a beneficiary may receive a reduced SSI payment as long as the individual meets all other SSI eligibility criteria. SSI recipients or applicants cannot refuse a Title II benefit for which they are eligible in order to receive increased SSI payments. By federal law, Social Security must provide the Title II payment first and then will determine if the individual is still eligible for a reduced SSI benefit.

When Unearned Income Affects SSI Benefits

Social Security counts unearned income when the individual receives it or when the bank credits his or her account. Social Security determines an individual's unearned income for each calendar month. In some cases, the unearned income that counts when calculating the SSI payment may be higher or lower than the actual income the person receives. For example, SSI recipients who also receive a Title II disability benefit (such as SSDI) may be paying the Medicare Part B premium. When determining countable income, the SSI program will count the full Social Security disability payment before Medicare premiums are deducted even though the individual doesn't actually receive that amount to spend.

Another instance when SSI would count more income than the individual actually receives is when funds are withheld from unearned income because of a garnishment or to pay a debt or other legal obligation. For example, if a SSDI beneficiary is entitled to \$450 per month in SSDI benefits, but the government garnishes \$150 each month to pay for back child support, the individual would only receive \$300 each month. For

SSI purposes, Social Security will count the full \$450 as unearned income.

On the other hand, if an eligible individual is due a cash settlement, Social Security will subtract the expenses the individual incurs in getting the payment, before it uses the remaining amount in the benefit calculation. For example, if an individual receives damages from an accident, Social Security will only count what the person receives after it deducts the amount paid for the individual's medical, legal, or other expenses connected with the accident.

Unearned Income Exclusions

Social Security must determine the amount and source of all unearned income for SSI eligibility and payment purposes. Many federal statutes, in addition to the Social Security Act, provide assistance or benefits to individuals with little income and few resources. Under these statutes, Social Security may not consider the assistance or benefits as income, when deciding eligibility for SSI. Examples include SNAP, rental subsidies, home energy assistance payments, and educational grants or loans. Because other federal statutes exclude these programs, Social Security never counts them as income for the SSI program.

Social Security applies other unearned income exclusions after the agency deducts all other federal statutory exclusions. Because there are numerous forms of excludable income, and the regulations change regularly to add more, the best advice is to look in the Program Operations Manual Systems (POMS), seek technical assistance from VCU's NTDC, or check with the local Social Security field office as specific situations arise. Refer to **SI 00830.050 Overview of Unearned Income Exclusions** found online here: (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500830050>).

Other Income Exclusions – Infrequent or Irregular Income

Beginning September 8, 2006, Social Security defines infrequent income as income an individual receives only once during a calendar quarter from a single source and which the individual didn't receive in the month immediately preceding that month or in the month immediately subsequent to that month, regardless of whether or not those payments occur in different calendar quarters. For SSI purposes, Social Security will exclude the following amount of income, which the individual received either infrequently or irregularly: the first \$30 per calendar quarter of

earned income, and the first \$60 of unearned income. For more information on how Social Security applies this regulation, see POMS SI 00810.410.

Income Limits

The limit for countable income is the current FBR applicable to either the individual, or the SSI-eligible couple. Once Social Security determines how much unearned income to attribute to an individual, the only exclusion that applies to unearned income is the \$20 GIE. For example, if an individual receives an Unemployment Insurance benefit in the amount of \$400 per month, and no other income exclusions apply, the countable unearned income would be \$400 – \$20, or \$380 each month. Social Security subtracts this amount from the FBR when determining the individual's SSI eligibility. When countable income exceeds the FBR for the current month, ineligibility for both SSI cash payments and Medicaid will result (unless earned income caused the income to exceed the FBR, in which case the recipient may qualify for 1619(b), which protects Medicaid. We discuss the 1619(b) provisions in detail in Module 4.

You will find a detailed discussion of how SSI treats various forms of income in the VCU NTDC resource document entitled **"How Income Affects SSI Eligibility and Payment Amount,"** online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=1>).

Deemed Income

When Social Security determines the eligibility and amount of payment for an SSI beneficiary, it also considers the income and resources of people responsible for the recipient.. This concept is called "deeming" and is based on the idea that those who have a responsibility for one another share their income and resources. Because SSI is a means-tested program, Social security "deems" the portion of income and resources shared with an SSI-eligible person as being available to that person for the purposes of SSI eligibility and payment. It doesn't matter if the deemor actually provides money to an SSI-eligible individual for deeming to apply.

Deemed Income is Income Attributed to the Beneficiary

An SSI recipient who meets all other eligibility criteria may become ineligible due to deemed income or resources. This may occur at the time

of initial application, or at any other point at which a recipient becomes subject to deeming rules (i.e., when a recipient marries).

Three Types of Deeming

Social Security applies deeming only in three specific instances:

- From parents to a child,
- From a spouse to a spouse, and
- From a sponsor to an alien.

Parent-to-Child Deeming only applies to deeming of income and resources from an ineligible parent (or parents) to an SSI-eligible child below the age of 18. If one or both of the parents also receives SSI cash payments, then deeming does NOT apply. Once the child reaches age 18, deeming of income and resources from the parent(s) no longer applies under any circumstances. Generally, the child needs to live with the parent(s), but there are some exceptions to the rule (e.g., a child away at school but under parental control).

Spouse-to-Spouse Deeming only applies to the deeming of income and resources from a spouse that isn't eligible for SSI to a spouse that is eligible for SSI. If both members of a married couple are SSI eligible, another set of rules governing eligible couples applies. We will discuss eligible couples in more detail later in this module.

Generally, spouse-to-spouse deeming applies only when the two spouses live together in the same household, but there are some exceptions. Under some circumstances, Social Security may treat individuals who aren't legally married as a married couple for the purposes of deeming.

Sponsor-to-Alien Deeming only applies to the deeming of income and resources from an ineligible individual (and the individual's ineligible spouse if the individual is married) who sponsors an alien's legal entry into the United States. Deeming applies whether or not the alien lives with the sponsor.

Deeming Computations

Deeming computations are very complex and are beyond the scope of this manual. However, it's important for CWICs to understand that income belonging to a spouse, a parent, or an alien sponsor may affect entitlement or payment amount for an SSI beneficiary who is the child,

spouse, or sponsored alien. Social Security can deem both resources (see resource discussion later in this unit) and income. There are also special exclusions for some types of resources and income that apply to deeming. Social Security makes deeming determinations at initial application and during redeterminations. Though CWICs should understand that deeming could occur, only Social Security personnel can determine the amount of deemed income or resources.

For more information, refer to several **[VCU NTDC resource documents on deeming](https://vcu-ntdc.org/resources/resourceDetail.cfm?id=1)** found online (https://vcu-ntdc.org/resources/resourceDetail.cfm?id=1)

In-kind Support and Maintenance (ISM)

Because Congress intended SSI to cover the basic costs of food and shelter, if an SSI recipient receives food or shelter from another person, Social Security will consider these gifts to be unearned income. The specific type of unearned income is called “in-kind support and maintenance” or ISM. In-kind support and maintenance or ISM is unearned income in the form of food or shelter that an eligible individual receives a gift or because someone else pays for it.

Determining the Value of In-kind Support and Maintenance

When determining the value of ISM, Social Security applies one of two basic rules:

1. The Value of the One-Third Reduction Rule (VTR), or
2. The Presumed Maximum Value Rule (PMV).

These rules are mutually exclusive, meaning that Social Security may only apply one at any given time. Social Security personnel follow policies about exactly when each of these rules they should apply, and these policies relate to what specific type of living arrangement in which the beneficiary resides.

The Value of the One-Third Reduction (VTR) rule applies when the eligible individual lives in another person’s household for a full calendar month and receives both food and shelter from that person. When the VTR rule applies, Social Security reduces the SSI payment by a full one-third of the

current applicable FBR. When Social Security values ISM under the VTR rule, it actually results in a one-third reduction in the beneficiary's base SSI rate. Because SSI is intended to pay for the basic living expenses of food and shelter, it stands to reason that Social Security would reduce the payment if someone else were paying a portion of the individual's food and shelter expenses.

Example of VTR rule:

Ann and Mustapha (an SSI recipient) decide to live together in an apartment that Ann is renting. Ann neither charges Mustapha rent, nor does he pay for any of his food. Because he lives in the household of another person who is providing him with both food and shelter, Social Security values Mustapha's ISM under the VTR rule.

Social Security applies the Presumed Maximum Value (PMV) rule when an eligible individual receives ISM and the VTR rule doesn't apply, meaning that the eligible individual doesn't live in the household of another person and doesn't receive both food and shelter from the household. Under the PMV rules, Social Security will determine the household expenses, then figure out how much of these expenses represent the SSI recipient's "pro-rata" share. Next, Social Security will ask the individual how much he or she actually pays to the householder and will subtract that amount from the pro-rata share of expenses. Social Security counts the difference as in-kind support and maintenance up to a presumed maximum value of one third of the current FBR plus the \$20. If the actual value of in-kind support and maintenance is LESS than the "presumed maximum value," Social Security will count that lower figure to adjust the SSI payment. Under the PMV rule Social Security counts in-kind support and maintenance as unearned income when it calculates the SSI benefit amount. ISM determinations Social Security makes under the PMV rule are "rebuttable." This means the eligible individual can ask to rebut the ISM determination made by Social Security.

Under the PMV rule, Social Security may consider the actual value of ISM and count it as unearned income. If the contributions to the SSI beneficiary's or eligible couple's food or shelter exceed the cap discussed previously, Social Security limits how much of the food or shelter counts against the person's SSI. If the item of food or shelter is small and infrequent, then Social Security may exclude the item entirely from

consideration as unearned income under the infrequent or irregular income exclusion previously discussed.

Example of ISM:

Jose, who lives alone, receives assistance with food from his friend Ann. She gives him \$150 worth of groceries each month. Jose has no other income from any other source, other than SSI. Jose's actual ISM is \$150.

If the unearned income value of the beneficiary's or eligible couple's ISM is high enough, Social Security will cap the amount that counts against the SSI beneficiary. This cap is called the Presumed Maximum Value (PMV) and it provides some protections for SSI beneficiaries who receive help with food or shelter. The PMV is always one-third of the applicable Federal Benefit Rate + \$20. This is the maximum amount at which Social Security could value the ISM. The PMV rule guarantees that if the beneficiary contributes some portion of the cost of food and shelter, he or she will not be penalized more than would be the case if nothing were contributed.

Example of PMV rule:

Instead of giving Jose \$150 in groceries, Ann decided to buy \$500 in groceries for Jose the next month. Although Social Security considers groceries to be unearned income, the PMV rule decreases the effect on Jose's benefits. The PMV caps the value Social Security places on the ISM at the "presumed maximum" of one-third of the FBR plus the \$20 GIE. Even though Jose is receiving far more in groceries than he was before, Social Security capped the value of the ISM. Social Security will not reduce Jose's check any more than it would have been under the VTR rule — one third of the FBR.

ISM determinations can be very complex, and inexperienced WIPA personnel often misunderstand them. Social Security is responsible for ISM computations.

For more information on this subject, refer to the VCU NTDC resource document titled **"Understanding In-Kind Support and Maintenance"** found online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=19>).

Reporting Income in the SSI Program

The Social Security Administration requires all SSI recipients to report any and all income when it's received. This requirement applies equally to earned income such as wages and unearned income such as child support or Workers' Compensation payments.

In the SSI program, many things can affect a recipient's eligibility for benefits as well as the amount of SSI payment he or she receives. The following list represents the most common information that recipients should report to Social Security, but there may be other items an individual should report based upon his or her unique circumstances:

- Unearned income including things like Title II benefit payments, child support payments, or any other cash he or she receives that isn't wages.
- Any gross wages or earnings and net earnings from self-employment. This includes in-kind items he or she receives in lieu of wages (like room and board).
- In-kind support and maintenance he or she receives from others. This includes any assistance with food and shelter provided by another person.
- Change of address.
- Changes in living arrangements.
- Changes in marital status.
- Resources or assets near or at the SSI resource limit of \$2,000
- Use of any specific work incentives.

When in doubt about whether or not a recipient should report a piece of information it's best to recommend that the beneficiary go ahead and inform Social Security about it. If the information isn't relevant, then no harm has been done. If the information is relevant, then reporting will help ensure that Social Security pays benefits only when they are actually due and that the amount of the SSI cash payment is correct. It's always best to work proactively to avoid over or underpayments whenever possible.

SSI recipients can report relevant information by visiting, calling, or writing the local Social Security office (<https://secure.ssa.gov/ICON/main.jsp>). Individuals may report earned income by using the automated toll-free **SSI Telephone Wage Reporting Service** (<https://www.ssa.gov/ssi/spotlights/spot-telephone-wage.htm>), the free SSI Mobile Wage Reporting Smartphone app, or the “my Social Security” online wage reporting tool at **www.ssa.gov/myaccount**.

More information about **options for reporting** is available at Social Security’s website (<https://www.ssa.gov/benefits/ssi/wage-reporting.html>).

How Social Security Verifies Income—Periodic Redeterminations

Social Security conducts periodic SSI redeterminations for all SSI recipients. A redetermination is a review of a beneficiary’s or couple’s non-medical eligibility factors such as income, resources, and living arrangements to be sure they are still eligible for and receiving the correct SSI payment. Social Security conducts SSI redeterminations at periodic intervals that may vary depending on the likelihood of payment error that may affect an individual’s or couple’s SSI eligibility and payment amount. Generally, Social Security conducts a redetermination for SSI recipients at least once per calendar year.

During the redetermination, Social Security personnel examine income available to the SSI recipient on a month-by-month basis over the entire period since they conducted the last redetermination and determined how much in SSI payments the recipients were actually due. Social Security then compares this information to the monthly SSI payments the recipient received, and calculates any differences. It’s not at all uncommon for there to be either an overpayment or underpayment which Social Security must settle. When Social Security recovers an overpayment from an individual, they will typically withhold it from future SSI payments. By federal statute, Social Security isn’t permitted to withhold more than 10 percent of the current SSI FBR for recovery of overpayments without consent.

Social Security also receives information from other sources. When possible, Social Security will verify relevant information from other sources to ensure eligibility, and confirm that payment amounts are

correct. There is usually a delay between the month an individual receives income, and the month income is reflected in the SSI payment. This is because the SSI program uses a system called Retrospective Monthly Accounting (RMA) to figure payment amounts. In most cases, RMA methods will cause a 2-month gap between when an individual actually received other income and when Social Security adjusted the SSI check to reflect this income. As previously stated, however, Social Security makes SSI eligibility determinations using the current month's income. It's only during SSI payment computation that Social Security uses RMA procedures.

For more information about the redetermination process in the SSI program, refer to **POMS SI 02305.000 Redeterminations of Eligibility and/or Payment Amount** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502305000>).

A Closer Look at Retrospective Monthly Accounting

Social Security calculates SSI payments for a given month based on circumstances from an earlier, closed month. This is known as Retrospective Monthly Accounting (RMA). RMA has two elements:

- The income eligibility test, which is based on the individual's or couple's income, in the month for which the payment calculation is made; and
- The payment computation, which is generally based on the income received two months before the month for which payment is being computed.

Eligibility is for the current month and applies to that month, but Social Security usually bases an individual or couple's SSI payment on the income received two months earlier. RMA is an income computation. Other factors of eligibility don't apply; Social Security considers them separately.

Budget Month and Eligibility Month

Social Security personnel check to see if the person is eligible and due a payment whenever they calculate SSI benefits. In most circumstances, Social Security looks at the month the person will receive the payment as the eligibility month, and the month two months prior to the eligibility month as the budget month. If the SSI recipient isn't eligible in a given

eligibility month, even if he or she was in the budget month, the recipient isn't due a payment.

Example of determining SSI eligibility:

Billie didn't have any income in January through May of the current year. On June 5, Billie won \$900 in the lottery. Even though Billie had no income in June's budget month of April, she is ineligible for SSI payments in June because of her excess unearned income.

Transitional Computation Cycle

There are certain circumstances in which Social Security doesn't apply RMA because it isn't possible to use the month occurring two months prior to the computation month as the budget month. This may occur when an individual becomes eligible after a period of ineligibility. In these instances, Social Security uses the Transitional Computation Cycle (TCC) to determine which month to use as the budget month. The TCC uses the first month that the individual becomes re-entitled after a period of suspension as the budget month for that month and for the next two months. Therefore, if a person isn't due an SSI payment in a given month, the first month that the person is again eligible for SSI is the budget month for itself, and for the next two months.

Example of determining SSI eligibility:

Sharon received an inheritance in August that made her ineligible for SSI. In September and October, she still had more than \$2,000 of the inheritance as a resource, and was ineligible for SSI in those months. In October, Sharon bought the small condo she has been renting with the inheritance as a down payment. Because the condo is Sharon's residence, it's excluded as a resource for SSI. Sharon is again due SSI for the month of November. Sharon worked in November and earned \$275.

Because of the RMA provision, Social Security will calculate Sharon's SSI for November, December, and January using November's income. This is called the Transitional Computation Cycle (TCC). Sharon's payment in February will use December's income. From that point on, Social Security will base Sharon's SSI payments on the usual RMA

cycle. That means that the budget month will be the closest month occurring two months before the Computation, or payment month.

The Importance of RMA

It's valuable to understand and be able to explain RMA to SSI recipients. Without that information, it may be difficult to plan for fluctuations in monthly income that occur because of the Retrospective Monthly Accounting provision.

Example of determining RMA:

Stella works and receives SSI. In June, she earns \$285. In August she earns \$435. Because of RMA, Social Security bases Stella's August payment on her June, not August earnings. In this situation, Social Security would call June the "budget month" for RMA.

It's helpful to remind SSI recipients that there is a delay in the effect earnings have on the cash benefit. Stella, for example, will have extra to live on in August because her earnings were higher and Social Security based her SSI on June's lower earnings. In October, however, when Stella doesn't have work income, Social Security based her SSI payment on August and she has much less income in the month for her living expenses. This fluctuation, if not anticipated, can leave someone without enough funds to pay living expenses in a given month.

The Retrospective Monthly Accounting provisions are complex and often confusing. It helps to keep the following facts in mind:

- For most types of income, there is a two-month lag between a person's income and its effect on SSI payment.
- When payments start up, there is a period of up to three months where the payment amount won't fluctuate with changes in earning, but instead Social Security will base the payment on the same budget month's earnings for three months of payments.
- Once that cycle has passed, the SSI program resumes the rhythm of determining benefit payment amounts by calculating the benefit based on a month that occurred two months before the payment month.

WARNING about Income Determinations

Income determinations within the SSI program are complex. No matter what type of income an SSI recipient has, only Social Security can make the final determination as to when and how it counts. This manual only touches on the broadest concepts regarding what counts as income for SSI purposes, and provides very general information about how Social Security treats various types of income.

For more information on this subject, see the **[VCU NTDC resource document entitled "Retrospective Monthly Accounting"](https://vcu-ntdc.org/resources/viewContent.cfm?contentID=4)** found online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=4>).

How Resources Affect SSI

As explained earlier, SSI is a means-tested program intended for aged, blind, or disabled people who have little income and few resources. Both income and resources affect SSI eligibility, but unlike income, resources don't affect the amount of the SSI payment.

The basic definitions of income and resources applicable to the SSI program are as follows:

Income is defined as any item an individual receives in cash or in-kind that can be used to meet his or her need for food or shelter. Social Security counts any income an eligible individual receives for SSI purposes in the actual calendar month the person receives it.

Resources are defined as cash and any other personal property, including any real property, that an individual (or spouse, if any):

- Owns;
- Has the right, authority, or power to convert to cash (if not already cash); and
- Isn't legally restricted from using for his or her support and maintenance.

Social Security determines SSI eligibility with respect to resources as of the first moment of each calendar month, and it applies to the entire month. Subsequent changes in resources within the month have no effect until the following month's resources determination. In the SSI program, resources eligibility (or ineligibility) exists for an entire month at a time. If countable resources don't exceed the statutory limit, they have no effect on the amount of an individual's SSI payment. If countable resources exceed the limit, an individual (or couple) isn't eligible for an SSI payment.

Some items may count as both income and resources. For example, someone who wins the lottery would have income the month he or she receives the cash payoff. If the individual doesn't spend the money by the first day of the next month, the winnings become a countable resource for that month and for any additional months in which the individual retains the funds.

Resource Limits in the SSI Program

To be eligible for SSI, an individual's countable resources must not exceed \$2,000 as of the first moment of a given month. For an eligible couple (two SSI recipients married to each other or presenting themselves to the community as married and living together) the combined countable resources of the members must not exceed \$3,000. If countable resources are above the limit as of the first of the month, the individual (or couple) isn't due an SSI payment or associated Medicaid coverage for that month. If an individual has excess resources for more than 12 consecutive months, he or she would have to file a new SSI claim in order to receive SSI and provide evidence that his or her resources are below the statutory the limit.

In some cases, the resources that a family member has might make an individual ineligible for SSI. If a person who is eligible for SSI is married, Social Security assumes that the ineligible spouse shares his or her resources with the eligible spouse. If a child under age 18 lives with his or her parent(s), Social Security may count part of the parents' resources when determining the child's eligibility. This is called "deeming" of resources.

Resource Determinations

Social Security conducts periodic SSI redeterminations for all SSI recipients. A redetermination is a review of a recipient's or couple's non-medical eligibility factors such as income, resources, and living arrangements to be sure they are still eligible for and receiving the correct SSI payment. Social Security conducts SSI redeterminations at periodic intervals, which may vary depending on the likelihood of payment error (i.e., fluctuating wages). During the redetermination, Social Security examines resources available to the SSI recipient at the beginning of each month. If the countable resources are too high, then no SSI payment is due. Remember that eligibility with respect to resources is a determination Social Security makes at the beginning of each month for the entire month. Thus, changes in resources during a month don't count until the beginning of the next month.

Common Resource Exclusions

Not everything a person owns meets the SSI definition of a resource, and not all resources count against the statutory limit. The Social Security Act and other federal statutes require the exclusion of certain types and amounts of resources. Below is a list of some types of resources that Social Security excludes under the SSI program.

- Household goods and personal effects;
- Medical devices and adaptive equipment;
- Some life insurance policies;
- The home in which the beneficiary lives;
- An automobile used for transportation;
- Some burial funds, burial spaces, and life insurance assigned to funeral provider;
- Student financial assistance received under Title IV of the Higher Education Act of 1965 (HEA) or Bureau of Indian Affairs (BIA) including Pell grants and Work-Study grants;
- Certain Individual Development Accounts (IDAs);
- ABLE account balances up to and including \$100,000; and
- Some trusts.

This isn't a comprehensive list, and the rules governing some resource exclusions are complex. When in doubt, CWICs should consult the Social Security Program Operations Manual System (POMS), contact their VCU NTDC technical assistance liaison, or contact Social Security for clarification. The POMS citation listing resources exclusions is **SI 01110.210 Excluded Resources**, and you can find it online at (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501110210>)

Work Incentives that Create Excluded Resources

The SSI program contains several special provisions that allow individuals to set aside resources to use in achieving an occupational goal, or to use as part of a business or are necessary for self-support. These complex provisions generally require help from Social Security personnel or WIPA professionals to claim and manage. A brief explanation of these provisions is provided below:

Plan to Achieve Self-Support (PASS)

One of the most powerful work incentives SSI recipients may access is a Plan to Achieve Self-Support (PASS). A PASS is a formal plan to achieve a vocational goal. To develop a Plan to Achieve Self-Support, the person must have a feasible vocational goal, money other than SSI to set aside in the PASS, and expenses necessary to meet the goal. Individuals writing PASS plans may contribute some or all of their countable income. Individuals may also contribute cash resources to the PASS. Funds set aside in a PASS are excluded as either income or resources for the duration of the PASS. PASS is discussed in detail in Unit 7 of this module.

Property Essential to Self-Support (PESS)

Social Security excludes certain resources or property that an individual or eligible couple needs for self-support. Property Essential to Self-Support (PESS) may include property used in a trade or business, non-business income-producing property, and property used to produce goods or services essential to an individual's daily activities. There are different rules for considering property essential to self-support depending on whether it's income producing or not. Resources excluded under this provision generally fall into three categories as described below:

1. **Business Property or Property of an Employee:** Social Security excludes all property a beneficiary uses in the operation of a trade or business as property essential to self-support. For

self-employed individuals, this includes inventory, the building where the business is housed, and cash used in operating the business, regardless of value. The beneficiary must be currently using the property as defined by Social Security. The business must be unincorporated and active. Social Security also excludes personal property used by an employee for work such as tools, safety equipment, or uniforms. Social Security excludes these items whether or not the employer requires that the employee have them, provided that the SSI recipient or applicant is currently using them for work.

2. **Non-Business Property Used to Produce Goods or Services Essential to Daily Activities:** Social Security excludes up to \$6,000 of the equity value of non-business property used to produce goods or services essential to daily activities. An example might be a plot of land that the family uses to produce vegetables for their own use. Another example might be livestock intended for the family's dinner table.
3. **Non-Business Income-Producing Property:** Finally, Social Security excludes up to \$6,000 of the equity value of non-business income producing property from resources if it produces a net annual income of at least 6 percent of the excluded equity. If the equity is greater than \$6000, Social Security will count only the amount over \$6,000 toward the allowable resource limit. An example of this type of property is rental property.

Transfers of Resources

Social Security not only looks to see what resources an applicant or SSI recipient has, but also whether the person has transferred any countable resources to another person in the recent past. Depending on how the person transferred the resources, Social Security may determine the transfer to be valid or invalid.

Invalid Transfers

Giving away or transferring a resource for less than fair market value can result in a period of ineligibility for SSI for up to 36 months. The number of months of ineligibility depends on the value of the resource that the person gave away, but can't exceed 36 months.

The length of ineligibility depends on the value of the resource the person transferred.

For initial claims, Social Security will ask all SSI applicants if they transferred any resources within 36 months before the date of filing for SSI. In SSI redeterminations, Social Security will ask SSI recipients if they transferred any resources since the last Social Security review.

Social Security will compute the period of ineligibility using the following rules:

1. First, it will determine the total difference between the actual value of any resources a person sold or gave away with what the person received for the resource.
2. Next, it will divide that value by the full amount of current SSI Federal Benefit Rate plus the full amount of the state supplementary payment (if any) based on the individual's living arrangement.

The result of this calculation represents the number of months the person will be ineligible to receive an SSI payment, up to a maximum of 36 months. The calculation is more complex for eligible couples or when spouse-to-spouse deeming is involved.

There are some special circumstances under which Social Security permits transfers that don't cause SSI ineligibility. They are described below:

Valid Transfers

A valid transfer is based on a legally binding agreement. When there is a valid transfer, the individual no longer owns the resource. Both selling a resource and giving away a resource are valid transfers. If an individual sells a resource for what it's worth (fair market value or FMV), the 36-month period of ineligibility doesn't apply. However, what the individual or eligible couple receives for the sale may be countable as a resource in the month following the transfer if the couple or individual retains the resource. For example, the individual owns a parcel of land worth \$5,000 that isn't an excludable resource, so he or she isn't eligible for SSI. If he or she sells the real estate in April and receives \$5,000, this money, if he or she retains it, will count as a resource as of May. The individual then would be ineligible for SSI if he or she were over the \$2,000 limit.

For more information about resource transfers, refer to **POMS SI 01150.000 Other Resources Provisions Sub Chapter Table of Contents** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150000>).

Conditional Benefit Agreements

An individual who meets all other SSI eligibility requirements but is over the resource limit because he or she owns excess non-liquid resources can receive conditional SSI benefits for up to nine months. The individual must agree in writing to sell the excess resources and reimburse Social Security for the SSI benefits Social Security paid with the proceeds from the sale of the resources. Non-liquid resources are any resources which aren't in the form of cash or which an individual can't convert to cash within 20 workdays.

Conditional benefits are payable for up to nine months while an individual tries to sell real property. Real property includes land or buildings. While trying to sell personal property (such as automobiles), an individual can receive conditional SSI benefits for up to three months. Conditional benefit payments are overpayments that an individual must repay.

Conditional benefits can't begin until Social Security develops, signs, and accepts a "conditional benefits agreement." To be eligible for a "conditional" exclusion of excess property, an individual must meet the following circumstances:

1. The person's liquid resources don't exceed three times the applicable Federal Benefit Rate (FBR).
2. The SSI recipient(s) agrees in writing to:
 - a. Sell the resource at current market value within a specified period; nine months for real property, three months for personal property.
 - b. Use the proceeds of the sale to repay the overpayment of conditional benefits.

After nine months of an individual trying unsuccessfully to sell excess real property, Social Security will exclude the property as long as the individual continues to make reasonable efforts to sell the property. These payments are regular benefits and the individual doesn't have to repay them.

NOTE: Social Security will permit one three-month extension for disposal of personal property for good cause. Good cause exists when circumstances beyond an individual's control prevent him or her from taking the required actions to accomplish the reasonable efforts to sell. Examples might be the person not receiving an offer to buy the property, or being incapacitated by illness.

For more information on this subject, see the VCU NTDC resource document entitled **"How Resources Affect SSI Eligibility"** found online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=6>).

12-month Suspension Period

When an SSI recipient loses eligibility for cash payments due to reasons other than earned income, ineligibility for SSI results. Ineligibility will begin the first day of the month in which income or resources exceeds statutory limits or the individual ceases to meet another eligibility factor (e.g., person is incarcerated). While beneficiaries are ineligible for SSI at this time, most aren't "terminated" from the SSI program. Unless ineligibility was caused by medical recovery, beginning with the first month of ineligibility, individuals begin a suspension period of up to 12 months. The 12-month suspension period is a critically important safety net for SSI beneficiaries

A suspension is a loss of SSI cash benefits or 1619(b) Medicaid coverage. It's always effective the first day of a month in which an individual no longer meets all SSI eligibility requirements. This may be due to excess resources or income (unearned), being incarcerated in a penal institution, no longer meeting the citizenship requirements, or any other non-disability-related reason for ineligibility. Individuals who lose SSI eligibility due to medical improvement are NOT suspended, but are terminated.

The 12-month suspension period generally allows an individual 12 consecutive months after the effective date of a suspension to regain eligibility and have Social Security reinstate their benefits without having to file a new application. Before Social Security can reinstate benefits, the individual must notify Social Security that resources are below the statutory limits and re-establish eligibility for non-pay month(s). There is

NO limit to the number of times a recipient may move into and out of suspension status.

CWICs should understand that in the SSI program, suspension isn't the same as termination. Termination means Social Security has completely closed a person's record. A person in suspension status isn't getting benefits, but is still active in the Social Security computer system. The Social Security computer system automatically terminates certain SSI records after 12 consecutive suspension months. Social Security will give most recipients a written notice when Social Security is close to terminating them (towards the end of the 12-month suspension period).

Loss of SSI eligibility due to medical recovery causes termination, not suspension. Once Social Security terminates a person due to medical recovery, he or she must either appeal to be reinstated, or re-apply for benefits under a new period of entitlement.

For more information about the 12-month suspension period, see **POMS SI 02301.205 - Suspension and Reestablishing Eligibility** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301205>).

Eligible Couples

Social Security defines an eligible couple as two SSI-eligible individuals who are:

- Legally married under the laws of the state where they have a permanent home, or
- Living together in the same household and holding themselves out as husband and wife to the community in which they live, or
- Determined by Social Security to be entitled to either husband's or wife's Social Security benefits as the spouse of the other.

Eligible couples only exist when both members of the couple are SSI eligible, not when an SSI- eligible individual is married to an ineligible spouse. For this reason, spouse-to-spouse deeming in which Social Security "deems" income or resources from an ineligible spouse available to the eligible individual never applies to eligible couples.

Eligible couples may exist even when neither member is actually in SSI cash payment status. An example of this would be when both members

of an eligible couple are working and in 1619(b) status. The term “eligible couple” only applies to SSI recipients, not beneficiaries of the Title II disability benefit programs (SSDI/CDB/DWB). In some instances, an eligible couple may also be a “concurrent” couple. This means that both members are SSI eligible and one or both also receive a Title II benefit of some type.

Marital Relationships and SSI

Two people don’t need to be legally married in order for Social Security to consider them in a “marital relationship” for the purposes of SSI. The Social Security Act provides that two people, who aren’t legally married, yet who live in the same household are in a “marital relationship” for SSI purposes if they hold themselves out as husband and wife to the community in which they live. This provision is referred to as “holding out” by Social Security. It applies even in states that don’t recognize common-law marriage.

IMPORTANT NOTE: Effective June 20, 2014 Social Security has published new instructions that allow the agency to process more claims in which a same-sex relationship affects entitlement or eligibility. These instructions come in response to the Supreme Court’s decision in U.S. vs. Windsor that found Section 3 of the Defense of Marriage Act unconstitutional.

This latest policy development allows Social Security to 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 don’t 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 Supplemental Security Income (SSI) claims based on same-sex relationships.

To learn more, please visit www.ssa.gov/people/same-sexcouples

Social Security usually accepts a person's allegation about whether a marital relationship exists. However, Social Security will ask a series of questions to decide if a "holding out" relationship exists when circumstances are uncertain.

Social Security considers individuals to be no longer married for SSI purposes as of the date that:

- Either member of the couple dies;
- An annulment or divorce is finalized;
- Either member of the couple begins living with another person as that person's spouse;
- Social Security decides that either person isn't a spouse of the other for purposes of husband's or wife's Social Security benefits, if Social Security considered the persons married because of that entitlement; or
- The members of a couple whom Social Security determined to be holding themselves out as husband and wife begin living in separate households (with some exceptions).

If members of a couple report to Social Security that their "holding out" relationship has ended, but they remain in the same household for financial reasons, Social Security will request information from the couple supporting the fact they ended the relationship and are making efforts to live in separate households.

Determinations with Eligible Couples

There are some significant differences in the way Social Security treats eligible couples from the way it treats SSI individuals when determining either SSI eligibility or the cash benefit amount. Social Security treats two members of an eligible couple as one unit. Social Security considers the couple's combined income (earned and unearned) when calculating the benefit amount as a couple. In addition, Social Security applies the \$20 GIE and the \$65 earned income exclusion (discussed in the next unit of this module) only once to a couple, even when both members have income. Social Security also combines and deducts the eligible couple's work incentives, where appropriate. Finally, Social Security subtracts the total countable income of the couple from the couple FBR (as opposed to the individual FBR) and gives half of the adjusted check to each member

of the couple. Social Security refers to these rules as “couple computation rules.”

Social Security also applies different resource limits to eligible couples and eligible individuals when determining SSI eligibility. Currently, countable resources must not be worth more than \$2,000 for an individual or \$3,000 for an eligible couple. Social Security establishes the value of a couple’s combined resources (both money and property), subtracts all allowable exclusions, and then compares that amount to the \$3,000 couple resource limit when making eligibility determinations. Social Security makes these determinations at the beginning of each month and they are applicable for the entire month. Because of this rule, subsequent changes in resources have no effect until the following month’s resource determination.

For the most part, Social Security applies the resource exclusions to eligible couples in the same way they apply them to individuals. However, Social Security treats an eligible couple as if they were one person in certain instances. For example, Social Security would exclude only one home of an eligible couple, even though two people are involved. In addition, Social Security will only exclude one automobile per couple.

For more information on this subject, see the VCU NTDC resource document titled **“Eligible Couples”** found online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=21>).

Emergency Advance Payments and Immediate Payments

Emergency Advance Payments (EAPs) and Immediate Payments (IPs) are two ways to make payments to persons via Third Party Draft who are due disability benefits and have a financial emergency. Emergency Advance payments are only available to persons whom Social Security has found eligible for SSI. Social Security makes immediate payments to SSI recipients and Title II beneficiaries, as well as to concurrent beneficiaries receiving both SSI and a Title II benefit.

Emergency Advance Payment (EAP)

EAPs are expedited payments made by the Social Security field office (FO) Third Party Payment System (TPPS) to an initial SSI claimant who:

- Has a financial emergency, and
- Is eligible for SSI benefits, but whom Social Security has not yet paid on the claim.

A person must be due SSI benefits to receive an EAP; this provision does NOT apply to individuals receiving Title II disability benefits. A person can receive an EAP if he or she will receive SSI benefits based on a finding of presumptive disability or blindness.

A financial emergency exists when the SSI claimant has insufficient income or resources to meet an immediate threat to health or safety, such as the lack of food, clothing, shelter, or medical care. An emergency can exist when a person has liquid resources but can't access them quickly enough to meet an immediate threat to health or safety. Absent evidence to the contrary, Social Security will accept the individual's allegation that he or she doesn't have enough money to meet an immediate threat to his or her health or safety.

For more information about emergency advance payments, refer to the POMS here:

SI 02004.005 Emergency Advance Payments

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502004005>)

DI 11055.245 Emergency Advance Payment (EAP) in Cases of Disability and Blindness

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0411055245>)

Immediate Payment (IP)

Social Security established immediate payments (IP) to make expedited payments to beneficiaries in dire need of funds faster than the five-to seven-day period required for delivering Treasury-prepared payments. Immediate payments apply to both SSI and Title II beneficiaries as well as concurrent cases, and Social Security set them up to help individuals who don't qualify for EAPs. In order for Social Security to even consider making an immediate payment, the case must meet the following criteria:

- **SSI Cases:** There is a delayed payment of an initial claim, delayed or interrupted payments, or non-receipt of an issued payment.
- **Title II Cases:** A payment is due because of a stop-payment action, nonpayment, or a newly processed claim.

To receive an IP, the beneficiary must have an immediate financial need for payment (i.e., a need for food, shelter, medical treatment, etc.) that the person can't reasonably meet through other resources available in the community.

Social Security considers both EAPs and IPs to be advances against future SSI and Title II disability payments and Social Security must recover them at a later date. There isn't additional money due the individual. Social Security personnel must make EAPs and IPs when individuals meet the criteria. See the chart below for a comparison of the EAP and IP provisions.

Comparison of EAPs and IPs

Criteria	EAP	IP
Authority	Section 1631(a) of the Social Security Act	Decision by the Commissioner
SSI or Title II	SSI	SSI and/or Title II
When	Initial claims only	Initial claims or post eligibility
Money Limit	Federal Benefit Rate + State Supplementary Payment level	\$999 total Title II and SSI
Frequency	One time per claim	N/A
Recovery	Six monthly installments; or all at once from a retroactive payment	From first regular payment
Priority	EAP before IP	EAP before IP
POMS	SI 02004.005	SI 02004.100

For more information about immediate payments, refer to the POMS here:

SI 02004.100 Immediate Payments (IPs)

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502004100>)

RS 02801.010 Immediate Payment (IP) Criteria and Process

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0302801010>)

Conclusion

Benefits Social Security pays under Title XVI of the Social Security Act (SSI) are vastly different from the benefits it pays under Title II of the Social Security Act. SSI is needs based; income and resources available to the individual or eligible couple to meet needs for food and shelter affect payment amounts.

The individual's living arrangement also affects payment amount. If the individual lives with others and doesn't pay his or her pro-rate share for food and shelter, for example, Social Security reduces the SSI benefit by up to one third.

Conducting Independent Research

- **A rich source for consumer handouts on the SSI program is found in the SSI "Spotlights."** These brief discussions of specific SSI issues make great handouts for beneficiaries. The Spotlights may be found on the Social Security website (<http://www.socialsecurity.gov/ssi/links-to-spotlights.htm>)
- **Understanding SSI.** This is an excellent online resource that covers all of the important aspects of the SSI program. The current version of this resource is available online (<https://www.ssa.gov/ssi/text-understanding-ssi.htm>).
- **A Guide to SSI for Groups and Organizations.** This is an excellent resource for professionals who work with SSI recipients (www.ssa.gov/pubs/EN-05-11015.pdf).
- **The main Table of Contents for the POMS citations pertaining to the SSI program**

(<https://secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&res tricctcategory=05>).

Competency Unit 6 – SSI and Work Incentives

Introduction

In the previous unit, we provided very brief information about the calculations used to determine how much a beneficiary's SSI payment will be for any given month. The calculations are designed to help Social Security determine how much in earned and unearned income is "countable" for a given month. Social Security subtracts this countable income from the beneficiary's base SSI rate to determine the adjusted monthly payment due. This unit provides detailed information about how Social Security determines countable income in the SSI program and discusses some of the work incentives it uses to reduce countable earned income. CWICs must understand these work incentives in order to assist beneficiaries to access these valuable tools when they go to work.

How Earned Income Affects SSI Cash Payments – SSI Calculation

Social Security personnel apply the standard calculations presented in this unit after they have evaluated all of the income the recipient receives and have applied all other allowable exclusions or disregards. In Unit 5, a great deal of information was provided about specific types of unearned income that Social Security disregards when making SSI eligibility determinations and when calculating how much in SSI cash payments is due. Social Security applies additional disregards to earned income before the standard calculations, including:

- Earned income tax credit payments and child tax credit payments;
- Up to \$30 of earned income in a calendar quarter if it's infrequent or irregular.

Earned Income Exclusions in the SSI Program

The work incentives listed in this section are in the order they appear in the SSI payment calculation, and federal regulation determines this order. Performing the calculations in order is essential to providing a reasonably accurate estimate of the monthly SSI payment to beneficiaries. Remember, only Social Security can decide if any of these work incentives apply. The CWIC can only assist the beneficiary to estimate the effect of work on SSI payments. The earned income exclusions applicable to SSI benefits are as follows:

- **Student Earned Income Exclusion (SEIE):** Exclusion of income for individuals who are under age 22 and regularly attending school.
- **General Income Exclusion (GIE):** \$20 exclusion of any kind of income, earned or unearned, that an SSI beneficiary has. If the SSI beneficiary has no unearned income, or has less than \$20 in unearned income, Social Security may deduct the remainder of the \$20 exclusion from the person's gross earnings.
- **Earned Income Exclusion (EIE):** Social Security excludes the first \$65 of earnings after it subtracts the applicable Student Earned Income Exclusion (SEIE) or General Income Exclusion (GIE).
- **Impairment Related Work Expenses (IRWEs):** Social Security defines IRWEs the same way under the SSI program that it defines them under the Title II program. However, Social Security uses the deduction differently in the two programs. In the Title II program, Social Security uses IRWEs to assess the value of work to determine if it represents Substantial Gainful Activity (SGA). In the SSI program, IRWEs are a means to increase the SSI payment in order to partially reimburse individuals for the out-of-pocket expenses that relate to working.
- **The 1/2 earnings exclusion or the "one-for-two offset":** The "1/2" exclusion permits Social Security to exclude half of the earnings that remain after it makes applicable deductions for the exclusions listed above. It's because of this work incentive that SSI beneficiaries are always better off financially when they choose to work.

- **Blind Work Expenses (BWE):** If the SSI recipient meets the definition of statutory blindness, he or she may deduct any items that meet the IRWE definition, and additional items that meet the BWE definition. A detailed explanation of BWEs is provided in this unit.
- **Plan to Achieve Self-Support (PASS):** A PASS permits individuals to deduct countable income, or exclude resources that would otherwise reduce or eliminate the SSI payment. A PASS is an agreement between Social Security and the beneficiary. The beneficiary agrees to take incremental steps to achieve a specified vocational goal. The plan allows the beneficiary to use “countable income” or resources to pay for goods or services he or she needs in order to reach the goal. In turn, Social Security replaces the PASS expenditures by increasing the individual’s SSI benefit payment up to the maximum FBR rate for the state they live in. PASS is discussed extensively in Unit 7 of this module.

To determine “countable” income, Social Security applies work incentives and other income exclusions to both earned and unearned income. Social Security then subtracts the countable income from the Federal Benefit Rate (FBR) that applies to the individual or eligible couple. Social Security uses an eligible couple FBR when calculating the countable income for SSI couples. The individual’s living arrangement and whether or not in-kind support and maintenance is in evidence may also affect the FBR. Individuals and eligible couples who live in the household of another person and receive full in-kind support and maintenance values under the VTR rule have a reduced FBR. For a review of in-kind support and maintenance, see Unit 5. Finally, the FBR typically changes every calendar year to reflect increases in the cost-of-living.

SSI Federal Benefit Rates for 2022

- \$841 for individuals
- \$560.67 for individuals who have full ISM valued under the VTR rule
- \$1,261 for SSI-eligible couples
- \$841 for SSI-eligible couples who have full ISM valued under the VTR rule

After Social Security determines the applicable FBR and deducts the total countable income, what remains is the adjusted SSI payment. If the beneficiaries are members of an eligible couple, Social Security divides the amount in half and sends two payments — one check to each member of the couple.

Keep in mind that Social Security will subtract countable earned income received in prior years from whatever FBR it established for that year. For a complete listing of past FBRs, refer to **POMS SI 02001.020 Title XVI - Rate Increases and Rate Charts** (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502001020#b>)

SSI Calculation Sheet

The following is a calculation sheet for WIPA personnel to use when estimating SSI payments. To make the estimation of SSI payments as close to accurate as possible, remember to do the calculation steps in order. It’s also important to remember that not all forms of unearned or earned income count due to numerous federal rules. By using the chart below, CWICs will arrive at an **estimate** of the adjusted SSI payment, which may vary from the actual payment if other, less common exclusions or deductions Social Security permits based upon the individual recipient’s unique circumstances. CWICs must ensure that SSI recipients understand that the standard SSI calculation sheets used by WIPA programs merely result in estimated adjusted payments. Only Social Security personnel can determine the actual adjusted SSI payment amount.

NOTE: We provide this **SSI Calculation Sheet** as a blank template at the end of this unit. It’s also available at the VCU NTDC website (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=2>)

A key to this sheet follows the example below.

Step	Calculation
1.Unearned Income	
2.General Income Exclusion (GIE)	–
3.Countable Unearned Income	=

Step	Calculation
4.Gross Earned Income	
5.Student Earned Income Exclusion (SEIE)	-
6.Remainder	
7.General Income Exclusion (if not used above)	-
8.Remainder	
9.Earned Income Exclusion (EIE)	-
10.Remainder	
11.Impairment Related Work Expense (IRWE)	-
12.Remainder	
13.Divide by 2	
14.Blind Work Expenses (BWE)	-
15.Total Countable Earned Income	=
16.Total Countable Unearned Income	
17.Total Countable Earned Income	+
18.PASS Deduction	-
19.Total Countable Income	=
20.Base SSI Rate (check for VTR)	
21.Total Countable Income	-
22.Adjusted SSI Payment	=

Step-by-Step Instructions for Completing the SSI Calculation Sheet

1. Calculate Countable Unearned Income:

Include income an individual or either member of an eligible couple receives, such as:

- Title II or other benefits (other than SSI);
- In-kind Support and Maintenance (ISM) valued under the Presumed Maximum Value (PMV) rule;
- Any other unearned income that isn't excluded under the Act (See Unit 5).

Place result on "unearned income" line of calculation sheet.

Subtract General Income Exclusion (GIE) of \$20.

Result is Countable Unearned Income (CUI). Write result on Countable Unearned Income line on 3rd line of calculation, and also on Countable Unearned Income line that appears on line 16 of the calculation sheet.

2. Calculate Countable Earnings

Add together any earned income an individual or either member of an eligible couple received in a month, including:

- Gross earnings paid in the month for all employment;
- Value of in-kind income received as remuneration for work;
- 1/12 of Net Earnings from Self-Employment (NESE) averaged over calendar year.

Place the total gross monthly earnings on Earned Income line (Line 4 of calculation sheet).

If the individual or either member of an eligible couple is a student under age 22, subtract applicable Student Earned Income Exclusion (SEIE). Subtract the \$65 Earned Income Exclusion. Remember, eligible couples only receive one \$65 Earned Income Exclusion.

Subtract the value of any applicable Impairment Related Work Expenses (IRWEs) for an individual or member of an eligible couple who is working. DON'T deduct work expenses for blind individuals on this line.

Divide the remainder by 2.

If the individual or member of an eligible couple meets the definition of statutory blindness, subtract any applicable Blind Work Expenses (BWEs), if applicable.

The remainder is Countable Earned Income (CEI). Write countable earnings both in line 15 and in line 17.

3. Determine Total Countable Income

Add countable unearned income to countable earned income. Then subtract applicable PASS deductions from this combined total to determine Total Countable Income (CI).

4. Determine SSI payment

Enter applicable FBR (remember the lower Value of the One-Third Reduction FBR if VTR is applicable), subtract the Total Countable Income (CI), and the result is estimated SSI payment.

Common SSI Calculation Errors to Avoid:

- When estimating an SSI payment, never show it on the SSI calculation sheet as a negative figure — this confuses beneficiaries.
- Never apply unused earned income exclusions to unearned income.
- Don't carry over an unused portion of a monthly exclusion for use in subsequent months.
- The \$20 General Income Exclusion and \$65 Earned Income Exclusion apply only once to an eligible couple, even when both members have income, because the couple's earned income is combined when Social Security determines SSI payments.
- Because the purpose of the SSI calculation is to determine the SSI payment for a given month, never enter the person's current SSI payment on the "Unearned Income" line, as SSI doesn't count against itself.
- Some work incentives apply only to the Title II disability programs and don't apply to the SSI program. One of these is called subsidy. Subsidy doesn't apply to SSI benefits once Social Security finds an individual eligible and he or she starts receiving payments, so it never appears in the SSI calculation.

- Remember that an individual or SSI-eligible couple may have several exclusions. Use all exclusions that apply to the person or eligible couple's situation.
- Don't change the order of the calculation steps. The steps occur in the order they do because of federal regulations. Taking them out of order will cause the estimated payment amount to be incorrect.
- Whenever estimating payments, make sure the person knows that Social Security has the final say in any calculation, or in the application of any exclusion.
- Finally, remember that in most circumstances, there is a two-month delay between a person's income and the adjusted SSI payment that is affected by that income. For more information, see the section on Retrospective Monthly Accounting (RMA) in Unit 5 of this module.

SSI Calculation Examples

Now that we have discussed the remaining deductions Social Security uses when estimating SSI payments, here are examples of how it performs computations.

Example of individual living in his or her own household, with no earnings, but \$320 in unearned income:

Step	Calculation
Unearned Income	\$320.00
General Income Exclusion (GIE)	– \$20.00
Countable Unearned Income	= \$300.00
Gross Earned Income	0
Student Earned Income Exclusion	– 0
Remainder	0
General Income Exclusion (if not used above)	– 0

Step	Calculation
Remainder	0
Earned Income Exclusion (EIE)	- 0
Remainder	0
Impairment Related Work Expense (IRWE)	- 0
Remainder	0
Divide by 2	0
Blind Work Expenses (BWE)	- 0
Total Countable Earned Income	=0
Total Countable Unearned Income	\$300.00
Total Countable Earned Income	+ 0
PASS Deduction	- 0
Total Countable Income	=\$300.00
Base SSI Rate (check for VTR)	\$841.00
Total Countable Income	-\$300.00
Adjusted SSI Payment	=\$541.00
Adjusted SSI Payment	\$541.00
Gross Unearned Income Received	+\$320.00
Gross Earned Income Received	+0
Subtotal	=\$861.00
PASS, BWE, or IRWE Expenses	- 0

Step	Calculation
Total Financial Outcome	= \$861.00

Example with \$885 in earnings, but no unearned income:

Step	Calculation
Unearned Income	0
General Income Exclusion (GIE)	- 0
Countable Unearned Income	= 0
Gross Earned Income	\$885.00
Student Earned Income Exclusion	0
Remainder	\$885.00
General Income Exclusion (if not used above)	- \$20.00
Remainder	\$865.00
Earned Income Exclusion (EIE)	- \$65.00
Remainder	\$800.00
Impairment Related Work Expense (IRWE)	- 0
Remainder	\$800.00
Divide by 2	\$400.00
Blind Work Expenses (BWE)	- 0
Total Countable Earned Income	= \$400.00
Total Countable Unearned Income	0

Step	Calculation
Total Countable Earned Income	+\$400.00
PASS Deduction	-0
Total Countable Income	=\$400.00
Base SSI Rate (check for VTR)	\$841.00
Total Countable Income	-\$400.00
Adjusted SSI Payment	=\$441.00
Adjusted SSI Payment	\$441.00
Gross Unearned Income Received	+0
Gross Earned Income Received	+\$885.00
Subtotal	=\$1,326.00
PASS, BWE, or IRWE Expenses	- 0
Total Financial Outcome	=\$1,326.00

Example of In-kind Support and Maintenance (ISM)

Unit 5 of this module discusses In-kind Support and Maintenance (ISM). When Social Security values ISM under the Presumed Maximum Value (PMV) rule, it treats ISM as a kind of unearned income that isn't cash, but is either food or shelter, or something that an individual could convert to food and shelter.

If the person lives in the household of another and receives both food and shelter from the household, Social Security will value the ISM under the VTR rule. That means the person will actually have a lower base SSI rate for calculation purposes, and that rate is always two-thirds of the current FBR.

The following three examples simply show how ISM affects the SSI calculation. ISM may be the only income, or it may occur when other unearned income or earnings are involved.

Example of ISM valued using the PMV rule:

James lives with his brother in an apartment. All James pays toward the cost of his share of the food and shelter is \$100 each month for groceries. Social Security determines that James receives ISM valued under the PMV rule in the amount of \$200 each month. James also has a job in which he earns an estimated \$125 each month.

Step	Calculation
Unearned Income	\$200.00
General Income Exclusion (GIE)	– \$20.00
Countable Unearned Income	= \$180.00
Gross Earned Income	\$125.00
Student Earned Income Exclusion	– 0
Remainder	\$125.00
General Income Exclusion (if not used above)	– 0
Remainder	\$125.00
Earned Income Exclusion (EIE)	– \$65.00
Remainder	\$60.00
Impairment Related Work Expense (IRWE)	– 0
Remainder	\$60.00
Divide by 2	\$30.00
Blind Work Expenses (BWE)	– 0
Total Countable Earned Income	= \$30.00
Total Countable Unearned Income	\$180.00

Step	Calculation
Total Countable Earned Income	+\$30.00
PASS Deduction	-0
Total Countable Income	=\$210.00
Base SSI Rate (check for VTR)	\$841.00
Total Countable Income	-\$210.00
Adjusted SSI Payment	=\$631.00
Adjusted SSI Payment	\$631.00
Gross Unearned Income Received	+200 (ISM)
Gross Earned Income Received	+\$125.00
Subtotal	=\$956.00
PASS, BWE, or IRWE Expenses	- 0
Total Financial Outcome	=\$956.00

Example when Social Security values the ISM under the PMV rule at the maximum amount:

To demonstrate how the PMV rule works when Social Security values the ISM at the actual maximum amount (one-third of the FBR + \$20), suppose that James continues to pay \$100 each month toward the cost of groceries, but that his remaining share of the household expenses is actually \$400. Fortunately, Social Security won't count that full \$400 against James as unearned income. Under the PMV rule, the MAXIMUM amount of ISM Social Security can assess against James is one-third of the current FBR (\$280.33) plus \$20 or \$300.33 in 2022. James actually gets ISM from his brother in the amount of \$400, but the SSI program will only assess the value of his ISM at the maximum amount of \$300.33.

Step	Calculation
Unearned Income	\$300.33
General Income Exclusion (GIE)	- \$20.00
Countable Unearned Income	= \$280.33
Gross Earned Income	\$125.00
Student Earned Income Exclusion	- 0
Remainder	\$125.00
General Income Exclusion (if not used above)	- 0
Remainder	\$125.00
Earned Income Exclusion (EIE)	- \$65.00
Remainder	\$60.00
Impairment Related Work Expense (IRWE)	- 0
Remainder	\$60.00
Divide by 2	\$30.00
Blind Work Expenses (BWE)	- 0
Total Countable Earned Income	=\$30.00
Total Countable Unearned Income	\$280.33
Total Countable Earned Income	+\$30.00
PASS Deduction	-0
Total Countable Income	=\$310.33
Base SSI Rate (check for VTR)	\$841.00

Step	Calculation
Total Countable Income	-\$310.33
Adjusted SSI Payment	=\$530.67
Adjusted SSI Payment	\$530.67
Gross Unearned Income Received	+\$300.33
Gross Earned Income Received	+\$125.00
Subtotal	=\$956.00
PASS, BWE, or IRWE Expenses	- 0
Total Financial Outcome	=\$956.00+help with household expenses not counted as ISM

Example when Social Security values ISM under the Value of the One-Third Reduction (VTR) rule:

In this example, suppose that James continues to live with his brother in an apartment, but James pays nothing toward his pro-rata share of the household expenses. His brother is paying all of James' food and shelter expenses, and James is making no contribution. When this happens, Social Security determines that James is receiving full ISM and applies the VTR rule. The VTR rule simply reduces the base rate Social Security uses in the SSI calculations. Social Security does NOT apply it as a form of unearned income. James continues to work in a part-time job earning an estimated average of \$125 each month.

Step	Calculation
Unearned Income	0
General Income Exclusion (GIE)	- 0
Countable Unearned Income	= 0
Gross Earned Income	\$125.00

Step	Calculation
Student Earned Income Exclusion	- 0
Remainder	=\$125.00
General Income Exclusion (if not used above)	-\$20.00
Remainder	\$105.00
Earned Income Exclusion (EIE)	- \$65.00
Remainder	\$40.00
Impairment Related Work Expense (IRWE)	-0
Remainder	\$40.00
Divide by 2	\$20.00
Blind Work Expenses (BWE)	- 0
Total Countable Earned Income	=\$20.00
Total Countable Unearned Income	0
Total Countable Earned Income	+\$20.00
PASS Deduction	-0
Total Countable Income	=\$20.00
Base SSI Rate (check for VTR)	\$560.67
Total Countable Income	-\$20.00
Adjusted SSI Payment	=\$540.67
Adjusted SSI Payment	\$540.67
Gross Unearned Income Received	+0

Step	Calculation
Gross Earned Income Received	+\$125.00
Subtotal	=\$665.67
PASS, BWE, or IRWE Expenses	- 0
Total Financial Outcome	=\$665.67

By looking at these calculations, it's apparent that the way Social Security counts ISM can affect the SSI payment amount. Social Security determines whether or not someone has ISM and whether to value the ISM under the PMV or VTR rule. It's important for CWICs to understand that this might be a factor when estimating how work will affect benefits.

Student Earned Income Exclusion (SEIE)

The Student Earned Income Exclusion (SEIE) is a work incentive that allows certain SSI recipients who are under age 22 and regularly attending school to exclude a specified amount of gross earned income per month up to a maximum annual exclusion. The SEIE decreases the amount of countable earned income, thus permitting SSI recipients to keep more of the SSI check when they work. In many cases, the SEIE allows students to test their ability to work without experiencing any reduction in the SSI check at all.

Only SSI beneficiaries who meet all of the SEIE eligibility criteria will receive this important work incentive. To qualify for the SEIE, an individual must be:

- Under the age of 22,
- Regularly attending school, college or training to prepare for a paying job, and
- Working.

Regularly Attending School

Regularly attending school means that the person takes one or more courses of study and attends classes:

- In a college or university for at least 8 hours per week under a semester or quarter system;
- In grades 7-12 for at least 12 hours per week;
- In a course of training to prepare him or her for a paying job for at least 15 hours per week if the course involves shop practice, or 12 hours per week if it doesn't involve shop practice. This training includes anti-poverty programs, such as the Job Corps and government-supported courses in self-improvement; or
- For less than the amount of time indicated above for reasons beyond the student's control, such as illness, if circumstances justify the reduced credit load or attendance.

Examples of School Attendance

School attendance less than the required hours: Kim is a physically disabled student who attends vocational school only one day per week due to a lack of transportation. Although her enrollment for attendance is less than 12 hours per week, Kim qualifies as regularly attending school because the lack of transportation is a circumstance beyond her control.

Enrollment in special course of study: Edward is a 19-year-old student attending a public high school. He doesn't attend regular classes but receives special training to meet self-improvement skills such as combing hair, dressing, and eating. Edward isn't a student for SSI purposes despite attendance at a secondary school facility because he isn't attending a curriculum for grades 7-12.

Student in a training course: Sara is a 21-year-old student who attends Perkins School for the Blind. She is in a training course 20 hours per week. Sara spends 15 hours per week learning office skills and 5 hours per week learning personal grooming skills. At the conclusion of the course, Sara will be able to use her office skills for a paying job (sheltered or in a competitive job market). The 15 hours per week that she spends on learning office skills meets the required attendance hours and qualifies her as a student for SSI purposes.

Additional Types of Students

In addition to the general requirements above, a person may qualify as a student in any of the following categories provided he or she meets the additional criteria:

Homeschooled students

Homeschooling is a private educational program in which a parent or tutor educates the student at home. It's a program of study a student completes by choice. Social Security considers a homeschooled student regularly attending school if he or she receives instruction at home in grades 7-12 for at least 12 hours a week. Homeschool instruction must be in accordance with the homeschool laws of the state or other jurisdiction of the student's residence.

Homebound students

A homebound student is an individual who ceases actual physical presence in the classroom due to illness, injury, or other circumstances beyond the student's control. A homebound student may be regularly attending school, if he or she:

- Must stay home because of a disability;
- Studies a course or courses given by a school in grades 7-12, college, university, or government agency; and
- Has a home visitor or tutor from school who directs the studying or training.

Online School

Effective August 21, 2015, Social Security may consider online schooling as a form of regular school attendance, if the student meets certain requirements. An online school is one that offers Internet-based courses to students. Online schools vary considerably in the methods they use to provide education to students. Some features of online schools may include:

- Virtual classrooms;
- E-mail for submission of assignments and communication with teachers;
- Telephone for communication with teachers;

- Access to teachers, either online, by telephone or in-person;
- Completion of credits and tests;
- Requirements for time spent online monitored by the school; and
- Individualized instruction.

Social Security considers a recipient who receives his or her education through online schooling to be a student regularly attending school if:

- He or she studies a course or courses given by an online school in grades 7-12, a college or university, or a government agency; and
- The online school is authorized by the laws of the state in which it is located. In the case of a foreign school, the foreign school can qualify provided it's part of a secondary or post-secondary school system in a country or facility approved or authorized by the educational authorities in that country to provide secondary or post-secondary education.

For more information see **POMS SI 00501.020 Student – SSI** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500501020#c4>).

Applying the Student Earned Income Exclusion

Social Security applies SEIE to a student's gross earnings before any other allowable exclusion. Social Security will exclude all gross earnings up to a maximum amount per month until the beneficiary exhausts the full annual SEIE exclusion, or the individual becomes ineligible for SEIE by reaching the age of 22 or stops attending school.

Social Security establishes both the maximum monthly SEIE exclusion, and the maximum annual exclusion amount each calendar year. The annual SEIE maximum applies to the calendar year that begins in January and ends in December. Social Security will exclude all earnings an individual receives in a month up to the current monthly maximum until the individual has reached the annual maximum.

Social Security indexes SEIE amounts annually, meaning they go up (or at least remain the same) each year in January. Here are the current and past monthly and annual amounts:

For Months	Maximum Exclusion Per Month	Maximum Annual Exclusion
In calendar years before 2001	\$400.00	\$1,620.00
In calendar year 2001	\$1,290.00	\$5,200.00
In calendar year 2002	\$1,320.00	\$5,340.00
In calendar year 2003	\$1,340.00	\$5,410.00
In calendar year 2004	\$1,370.00	\$5,520.00
In calendar year 2005	\$1,410	\$5,670
In calendar year 2006	\$1,460	\$5,910
In calendar year 2007	\$1,510	\$6,100
In calendar year 2008	\$1,550	\$6,240
In calendar year 2009	\$1,640	\$6,600
In calendar year 2010	\$1,640	\$6,600
In calendar year 2011	\$1,640	\$6,600
In calendar year 2012	\$1,700	\$6,840
In calendar year 2013	\$1,730	\$6,960
In calendar year 2014	\$1,750	\$7,060
In calendar year 2015	\$1,780	\$7,180
In calendar year 2016	\$1,780	\$7,180
In calendar year 2017	\$1,790	\$7,200
In calendar year 2018	\$1,820	\$7,350
In calendar year 2019	\$1,870	\$7,550
In calendar year 2020	\$1,900	\$7,670

For Months	Maximum Exclusion Per Month	Maximum Annual Exclusion
In calendar year 2021	\$1,930	\$7,770
In calendar year 2022	\$2,040	\$8,230

Each year Social Security adjusts the annual monthly amount and the yearly limit based on any increases in the cost-of-living index. The SEIE may apply in addition to other allowable exclusions such as, Impairment Related Work Expenses (IRWE), Plan to Achieve Self-Support (PASS), or the Blind Work Expense (BWE). Social Security always deducts the SEIE from earned income first, before applying any other work incentive.

Example of SEIE:

Alfonzo is 20 years old and attends college. He has a summer internship and will earn \$2,000 per month for the summer. Alfonzo worked part-time earlier in the year, making \$600 per month, and will return to that job on September 1. Alfonzo has no unearned income.

Alfonzo’s Earnings:

2022	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Earnings	600	600	600	600	600	2,000	2,000	2,000	600	600	600	600

Alfonzo and the Student Earned Income Exclusion (SEIE)

Because Alfonzo meets the criteria for regularly attending school, is under 22, and has earned income, the SEIE applies. This means that the amount Social Security excludes will be subject to the monthly and annual limits. The chart below will show how this works.

2022	Jan	Feb	Mar	April	May	June	July	Aug
Earnings	600	600	600	600	600	2,000	2,000	2,000
SEIE	600	600	600	600	600	2,000	2,000	1,230

2022	Jan	Feb	Mar	April	May	June	July	Aug
Used	600	1,2000	1,8000	2,4000	3,0000	5,000	7,000	8,230

2022 continued	Sept	Oct	Nov	Dec
Earnings	600	600	600	600
SEIE	0	0	0	0
Used	8,230	8,230	8,230	8,230

Alfonzo used the last of his SEIE in August. By August, Social Security could exclude only \$1,230, leaving countable earnings of \$770. For the rest of the year, Alfonzo doesn't have access to the SEIE again. In January of the next year, because Alfonzo is still under age 22 and regularly attending school, he will be able to access the SEIE in effect for that calendar year.

Alfonzo's Estimated Payment for August 2022:

Step	Calculation
Unearned Income	0
General Income Exclusion (GIE)	- 0
Countable Unearned Income	=0
Gross Earned Income	\$2,000.00
Student Earned Income Exclusion	-\$1,230.00
Remainder	\$770.00
General Income Exclusion (if not used above)	- \$20.00
Remainder	\$750.00
Earned Income Exclusion (EIE)	- \$65.00

Step	Calculation
Remainder	\$685.00
Impairment Related Work Expense (IRWE)	- 0
Remainder	\$685.00
Divide by 2	\$342.50
Blind Work Expenses (BWE)	- 0
Total Countable Earned Income	=\$342.50
Total Countable Unearned Income	0
Total Countable Earned Income	+\$342.50
PASS Deduction	- 0
Total Countable Income	=\$342.50
Base SSI Rate (check for VTR)	\$841.00
Total Countable Income	-\$342.50
Adjusted SSI Payment	=\$498.50
Adjusted SSI Payment	\$498.50
Gross Unearned Income Received	+0
Gross Earned Income Received	+\$2,000.00
Subtotal	=\$2,498.50
PASS, BWE, or IRWE Expenses	- 0
Total Financial Outcome	=\$2,498.50

Eligible Couples and Student Earned Income Exclusion (SEIE)

Since Social Security can apply the SEIE to individuals who are married, how does it work? Remember that Social Security considers an eligible couple to be one unit for SSI purposes. An eligible couple gets one \$20 General Income Exclusion and one \$65 Earned Income Exclusion. Resource limits for a couple are \$3,000 instead of the \$2,000 limit individuals have. Eligible couples only get to exclude one house in which they live and one car used by the family. Unfortunately, they also only get to exclude one monthly maximum under SEIE, with an annual limit for the couple being the same as for an individual.

The following chart outlines what happens with eligible couples:

IF...	THEN...
Neither of the members of an eligible couple is working	No SEIE.
Neither member of the couple is regularly attending school	No SEIE.
One member of the couple is working, and the other member is regularly attending school	No SEIE.
One member of the couple is under age 22, working and attending school while the other member is working, but not attending school	The earnings of the one SEIE eligible member are subject to the SEIE, but the earnings of the other member of the couple aren't.
Both members of the couple are under age 22, working and regularly attending school	Earnings for both members of the couple are subject to the SEIE, but only 1 total deduction up to the monthly maximum may be applied. Monthly SEIE deductions may be applied to the combined income of the couple until the annual maximum is reached. For SEIE purposes, this couple would be treated as if they were one person.

NOTE: Students who are also members of an eligible couple are unlikely to occur every day in the practice of a CWIC. Mark this chart for reference for when the situation does arise. Remember, though, that most SEIE situations will be individual SSI beneficiaries who are under age 22 and regularly attending school.

Applying the SEIE during Periods of Non-Attendance

An individual remains a student for the purposes of the SEIE when classes are out if he or she attends classes regularly just before the time classes are out and:

- Tells Social Security that he or she intends to resume attending regularly when school reopens; or
- Does resume attending regularly when school reopens.

For most students, this would allow Social Security to apply the SEIE to summer employment when school isn't in session. When an SSI recipient graduates from school and doesn't intend to resume school later, the SEIE will apply for the last month during which the recipient attended school, and then will stop. When a student changes his or her intent to return, and doesn't return to school, the individual is no longer considered a student effective with the month the intent changed.

In some cases, a student's counselor or teacher may believe the student needs to stay out of class for a short time to enable him or her to continue studying or training. The POMS instructs Social Security personnel to consider the recipient to be a student regularly attending school, college, or training that prepares him or her for a paying job during this type of non-attendance.

How Social Security Verifies Student Status

Social Security verifies student status during the SSI redetermination process. An individual may document school enrollment by presenting a school record such as an ID card, tuition receipt, or other comparable evidence. If the individual doesn't have any evidence to present, Social Security may contact the school to verify attendance. If Social Security is aware of the child's student status, Social Security generally will apply the SEIE automatically when the student reports earnings. However, Social Security recommends that an individual clearly indicate student status in

writing when notifying Social Security of employment. The student doesn't need a special form or process to request the SEIE.

For more information on this subject, see our VCU NTDC resource document titled **"Student Earned Income Exclusion factsheet"** found online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=7>)

IRWE and SSI

As under the Title II disability program, Impairment Related Work Expenses (IRWEs) for SSI recipients permit the deduction of the value of goods or services that are:

- Related to the disability or to an impairment for which the person is receiving treatment from a health care provider,
- Necessary for work,
- Paid out of the beneficiary's pocket and not reimbursed by any other source,
- Reasonable, and
- Paid in the month the person received earnings, although Social Security may prorate the cost of durable items over a 12-month period.

Individuals must have receipts to prove they paid all approved expenses. Whether or not an item is deductible as IRWE is up to Social Security.

When Individuals May Deduct IRWEs

- Payments the beneficiary makes for items needed in order to work are deductible whether the person with a disability purchases the item before or after he or she begins working, if the person needs the item in order to work.
- Payments the beneficiary makes for services are deductible if the beneficiary receives the services while working. Social Security may make deductions for services even though a person must leave work temporarily to receive the services. The costs of any services a person receives before he or she begins working aren't deductible.
- The amount of an IRWE Social Security deducts from earned income is the total allowable amount (subject to reasonable limits)

that the person with a disability pays for the item or service. Social Security doesn't usually determine the amount deducted by assigning a certain portion of the expense to work activity and a certain portion to non-work activity (e.g., 40 percent of the time at work and 60 percent of the time at home). Attendant care services may be an exception to this general rule, depending on the situation.

- When determining countable income in an SSI calculation, IRWEs aren't deductible from earned income if Social Security deducts the income used for the purchase of the impairment-related item or service as part of a Plan to Achieve Self-Support (PASS) for the same period.
- Deductions from gross receipts of a business that Social Security uses to determine net earnings from self-employment (NESE) can't be deducted again as IRWE. If the expense meets the IRS rules for a legitimate business expense, Social Security should always apply it to reduce NESE because this approach has the benefit of lowering countable income for tax purposes as well as for SSI purposes.
- Social Security may pay some IRWEs on a recurring basis. For example, in some cases the cost of durable equipment (respirator, wheelchair, etc.) may be paid over a period of time under an installment purchase plan. In addition to the cost of the purchased item, interest and other normal charges (e.g., sales tax) that a person with a disability pays to purchase the item will also be deductible. Generally, the amount the person pays monthly will be the deductible amount.
- Part or all of a person's IRWE may not be recurring (e.g., the person with a disability makes a one-time payment in full for an item or service). Social Security may deduct such nonrecurring expenses either entirely in one month, or may prorate them over a 12-consecutive month period. Social Security will use the method that provides more benefits, including the amount of SSI payment in SSI cases.
- A person with a disability may make a down payment on an impairment-related item, or possibly a service, to be followed by regular monthly payments. Social Security deducts such down

payments either entirely in one month, or allocated over a 12-consecutive month period, whichever is most beneficial.

- When a person with a disability rents or leases an item while working, the allowable deductible amount is the actual monthly charge. Where he or she makes the rental or lease payments other than monthly (e.g., weekly), it's necessary to compute monthly payment amounts. As with other costs, rental or lease payment is subject to the reasonable limits provision.
- Payments made by the person with a disability for services rendered to someone else aren't deductible. Payments are deductible only when the services are provided for, or the items are used by, the beneficiary. For example, any payment by a person with a disability to care for his or her child isn't deductible.

All of the above rules also apply to the Title II program except where specified. When individuals receive both SSI and Title II disability benefits, the entire amount paid for the item or service is deductible when Social Security determines if work is SGA, and Social Security also deducts the amount from countable earnings when the SSI program calculates the SSI payment amount. In this manner, concurrent beneficiaries may apply the IRWE in two different ways for the two different benefits.

Example of IRWE with earned and unearned income:

Kathleen works and receives SSI. She has \$150 a month in unearned income from an annuity that her parents purchased for her when she turned 21. She is working 20 hours a week for \$10 per hour. She will have four paychecks in the month, each representing one week's work. This results in a monthly gross earned income of \$800 for most months, and an estimate of \$1,000 in the months when she receives five paychecks. Kathleen is neither a student, nor under 22, so she isn't eligible for the SEIE. She lives in a state that doesn't supplement SSI payments. Kathleen pays all of her own living expenses. She takes special transportation that Social Security counts as an IRWE. That transportation costs \$120 per month.

Step	Calculation
Unearned Income	\$150.00
General Income Exclusion (GIE)	– \$20.00
Countable Unearned Income	= \$130.00
Gross Earned Income	\$800.00
Student Earned Income Exclusion	– 0
Remainder	\$800.00
General Income Exclusion (if not used above)	– 0
Remainder	\$800.00
Earned Income Exclusion (EIE)	– \$65.00
Remainder	\$735.00
Impairment Related Work Expense (IRWE)	– \$120.00
Remainder	\$615.00
Divide by 2	\$307.50
Blind Work Expenses (BWE)	– 0
Total Countable Earned Income	=\$307.50
Total Countable Unearned Income	\$130.00
Total Countable Earned Income	+\$307.50
PASS Deduction	–0
Total Countable Income	=\$437.50
Base SSI Rate (check for VTR)	\$841.00

Step	Calculation
Total Countable Income	-\$437.50
Adjusted SSI Payment	=\$403.50
Adjusted SSI Payment	\$403.50
Gross Unearned Income Received	+\$150.00
Gross Earned Income Received	+\$800.00
Subtotal	=\$1,353.50
PASS, BWE, or IRWE Expenses	- \$120.00
Total Financial Outcome	=\$1,233.50

NOTE: Please refer to the development templates in Module 6 for Impairment-Related Work Expense

Blind Work Expenses (BWE)

Individuals receiving SSI due to statutory blindness are eligible for an additional work incentive. Social Security refers to this work incentive as Blind Work Expenses or BWE. In addition to goods or services that Social Security would normally deduct under the IRWE provisions outlined above, BWE provisions also allow exclusion of any other work-related items that a person pays out of pocket. The biggest difference between BWE and IRWE is that BWEs don't need to be related to any impairment.

REMEMBER — Blind Work Expense provisions ONLY apply in the SSI program! BWEs only apply to SSI recipients who meet Social Security's definition of statutory blindness and who receive benefits based on blindness.

Examples include, but aren't limited to:

- State and federal taxes
- Union dues

- Mandatory pension contributions
- Uniforms
- Reader services
- Driver services
- Cost of service animal's care
- Childcare
- Transportation
- Meals consumed at work
- Adaptive equipment purchased by the beneficiary

NOTE: Social Security may only deduct BWEs from earned income; Social Security can't use the BWE exclusion to reduce countable unearned income.

In most cases, it's safe to assume that any individual who receives SSI due to blindness and is earning more than \$85 per month would have at least some BWEs to claim. The CWIC should help the beneficiary identify the types of BWEs they are incurring and should estimate the total average cost of these BWEs when they submit the BWE request to Social Security for a formal determination.

Work Incentive Deductions for Blind Beneficiaries

If an individual meets the definition of statutory blindness, and receives both Social Security Title II disability and SSI, there are a few things to keep in mind:

- The BWE provisions ONLY apply to the SSI benefit. BWEs don't exist in the Title II disability program.
- For Title II, the SGA level is higher for individuals who meet the definition of statutory blindness.
- CWICs shouldn't assume that someone meets Social Security's definition of statutory blindness. Social Security needs to make a formal determination before blind individuals may access the special work incentives.
- SGA determinations never apply to SSI applicants who meet the statutory definition of blindness.

- Remember that Social Security deducts IRWEs under Title II for blind individuals, and the definition is the same for everyone. In the SSI program, however, all goods and services that would normally meet the definition of IRWE would also meet the definition of BWE, in addition to expenses that would only apply as BWE. In almost every case, an individual who receives SSI due to blindness should claim allowable expenses as a BWE instead of an IRWE, as it provides for greater reduction in countable earned income. Examples showing Social Security applying this deduction come later in this unit.

Example if Kathleen were blind:

In the example below, \$200 was added to approximate work expenses that wouldn't fit the criteria for IRWE, but would meet the criteria for BWEs. This would only apply if Kathleen met the disability standard of statutory blindness.

Step	Calculation
Unearned Income	\$150.00
General Income Exclusion (GIE)	– \$20.00
Countable Unearned Income	= \$130.00
Gross Earned Income	\$800.00
Student Earned Income Exclusion	– 0
Remainder	\$800.00
General Income Exclusion (if not used above)	– 0
Remainder	\$800.00
Earned Income Exclusion (EIE)	– \$65.00
Remainder	\$735.00
Impairment Related Work Expense (IRWE)	– 0

Step	Calculation
Remainder	\$735.00
Divide by 2	\$367.50
Blind Work Expenses (BWE)	– \$320.00
Total Countable Earned Income	=\$47.50
Total Countable Unearned Income	\$130.00
Total Countable Earned Income	+\$47.50
PASS Deduction	– 0
Total Countable Income	=\$177.50
Base SSI Rate (check for VTR)	\$841.00
Total Countable Income	–\$177.50
Adjusted SSI Payment	=\$663.50
Adjusted SSI Payment	\$663.50
Gross Unearned Income Received	+\$150.00
Gross Earned Income Received	+\$800.00
Subtotal	=\$1,613.50
PASS, BWE, or IRWE Expenses	– \$320.00
Total Financial Outcome	=1,293.50

NOTE: Please refer to the development templates in Module 6 for Blind Work Expense.

Examples of Deductible BWEs as Compared to IRWEs

This chart below is distilled from a Program Operations Manual System section and is an example of types of

expenses, indicating whether they meet the definition of IRWE or BWE, or both. For more information, refer to the original chart in **POMS SI 00820.555 - List of Type and Amount of Deductible Work Expenses** found online (**<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820555>**)

Item or Service	Is it IRWE?	Is it BWE?
Medications	Yes	Yes
Medical supplies	Yes	Yes
Taxes	No	Yes
Service animal expenses	Yes	Yes
Mandatory pension deductions	No	Yes
Meals at work	No	Yes
Child care costs	No	Yes
Uniforms	No	Yes
Tools for work	No	Yes
Adaptive devices	Yes	Yes
Physical Therapy	Yes	Yes
Prosthesis	Yes	Yes
Structural modifications	Yes	Yes
Union dues	No	Yes

Remember that the beneficiary must pay any cost and receive no reimbursement from any other source in order for Social Security to approve the expense under the IRWE and BWE rules. Also, this list is only a sampling of the many expenses that a person may deduct under

IRWE or BWE, depending on the situation, and depending on whether or not the expense is reasonable. With IRWE or BWE, the individual should submit any possible expense to Social Security for consideration. Only Social Security personnel can make determinations about what an individual may or may deduct as an IRWE or a BWE, although these determinations are subject to the appeal's process as long as the individual puts them in writing.

Estimating Monthly Wages

When Social Security personnel calculate SSI payments, they use the amount of income a beneficiary received in past months. To avoid SSI overpayments, Social Security estimates future earnings by projecting amounts based on the beneficiary's recent earnings. For CWICs and Social Security, there is value in projecting the beneficiary's earnings into the future to help the beneficiary understand the effect of work.

Remember that SSI treats earnings differently than the Social Security Title II disability programs. Under Title II, Social Security determines the value of work effort. Under SSI, however, Social Security is looking at income available for food and shelter. That means that the SSI program is interested in what an employer pays in the month, not what the beneficiary earned.

Example of estimating monthly wages:

Derrick worked in February and March. He earned \$300 in each month. He received his pay of \$600 at the end of March, when the job was finished. For Social Security Title II purposes, Derrick earned \$300 per month February and March. For SSI purposes, however, Derrick received \$600 in earned income in March.

If the beneficiary has a regular work schedule, one can easily estimate the beneficiary's monthly gross wages by looking at a calendar and counting the number of paychecks expected per month, then multiplying that number by the usual pre-tax amount per paycheck.

Example of estimating monthly wages:

Maria receives her weekly paycheck on Friday. Maria's wages are \$200 per week before any withholding for taxes. There are five paychecks in the month of May. Maria's earnings for May are \$1,000. In June, Maria would have \$800 in earnings, because she would only receive four paychecks in that month.

SSI and Net Earnings from Self Employment (NESE)

If the beneficiary is self-employed, Social Security will average the beneficiary's estimate of the year's Net Earnings from Self-Employment (NESE) over a full calendar year to determine self-employment earnings for each month. This is true regardless of when an SSI beneficiary begins working in self-employment during a calendar year.

Example of determining self-employment monthly earnings:

Martika is self-employed in a sole proprietorship. Martika started her business in December and made \$1,200 in NESE after all business deductions, including deductions for the extra Social Security taxes she pays as a self-employed individual. Although Martika didn't start her business until December 2022, Social Security will consider Martika's earnings to be \$100 per month throughout the 2022 calendar year.

We provide a complete discussion of how self-employment income affects SSI and how work incentives apply in self-employment situations in Unit 8 of this module.

When Countable Income is Too High for SSI Payments – Understanding the Break Even Point (BEP)

The break-even point or BEP is the point at which an SSI recipient's countable income causes Social Security to reduce the SSI cash benefit to zero. Basically, the break-even point is reached when the countable

income equals or exceeds the SSI individual's or couple's applicable Federal Benefit Rate (FBR). The break-even point is not the same for every SSI recipient, but varies depending upon the individual's or couple's applicable FBR (which is affected by the living arrangement) and countable income. The break-even point may be affected by each of the following specific factors alone or in combination:

- Living arrangement – specifically when an individual resides in a Medicaid funded facility;
- Amount of in-kind support and maintenance (ISM) received and whether ISM is valued under the VTR or PMV rule;
- Amount of unearned income received;
- Amount of earned income received other than wages;
- Eligible couple status or spouse-to-spouse deeming; and
- Use of specific work incentives such as IRWE, BWE and/or PASS.

If the beneficiary was entitled to SSI and the countable income based upon the SSI calculations is too high to permit payment (i.e.: the individual's countable income is over the BEP), then the individual experiences one of two results. If unearned income makes the person ineligible for cash payments, then the 12-month suspension period begins. However, if it's earnings that make payment impossible, then the individual may be able to continue Medicaid coverage under the Section 1619(b) provisions.

Section 1619(b) provides continued eligibility for SSI and SSI related Medicaid when a SSI beneficiary's earnings either alone, or combined with other income (for example, a Title II benefit) are too high to allow a cash payment. The great thing about this provision is that it allows the beneficiary to stay on the SSI rolls and continue to receive Medicaid until earnings exceed the state threshold limit for Medicaid. When a SSI recipient is in non-pay status, the Benefits Planning Query or BPQY will indicate "Non-Pay due to excess income." Non-payment is simply an interruption in the cash payment. It's not a suspension nor is it a loss of eligibility for SSI. This means that a recipient is section 1619(b) SSI eligible, and will stay in 1619(b) status as long as they meet five criteria:

1. Must meet the Social Security disability requirement;

2. Must have been eligible for a SSI cash payment for at least one month prior to ineligibility;
3. Must continue to meet all other non-disability SSI requirements (i.e., resources and citizenship);
4. Must need Medicaid benefits in order to continue working; and
5. Must not have earnings sufficient to replace SSI cash benefits, Medicaid benefits, and publicly funded personal or attendant care that would be lost due to earnings (in other words, earnings above the state threshold or when applicable above the individual threshold). SSA - POMS: SI 02302.010 - 1619 Policy Principles

Example of section 1619(b) SSI eligibility:

Ruth receives SSI only. She began working in January, earning \$1,800 per month. Given that she has no SEIE, IRWE, BWE, or PASS exclusions, her total countable income is \$857.50 after applying the General Income Exclusion, Earned Income Exclusion, and the 2-for-1 reduction. This is higher than the standard FBR of \$841 in 2022. As long as Ruth meets the criteria for 1619(b), she enters non-pay status, but continues her Medicaid eligibility.

Ruth continues working, and in June, her employer reduces her hours. She is now earning \$1,150 per month. After exclusions, her total countable income is now \$532.50. This is below the 2022 FBR of \$841. She notifies Social Security of her reduced earnings, and the agency places her SSI benefits in pay status again, because her countable income is below the standard FBR. In October, Ruth resumes earning \$1,800 per month and again moves into 1619(b), and her SSI returns to non-pay status.

For 1619(b) eligible individuals, Social Security will conduct annual redeterminations to ensure individuals still meet the 1619(b) criteria. See **POMS: SI 02302.060 - Quarterly Verification of Earnings** (<https://secure.ssa.gov/poms.nsf/lnx/0502302060>).

We discuss the 1619(b) provisions in detail in Module 4.

Conclusion

The SSI program is designed to gradually reduce income supports as earnings increase. Provisions in the law protect Medicaid eligibility through SSI entitlement and assist beneficiaries in making work pay. If individuals on SSI are working, their financial situation is almost always improved. Social Security uses these deductions and exclusions as a way to determine how much other income counts, or is “countable” as available to meet the beneficiary’s needs for food and shelter. Social Security may calculate an SSI payment by deducting “this countable” income from the applicable FBR. The result is the Supplemental Security Income (SSI) payment.

Conducting Independent Research

- As noted in Unit 5, **the SSI Spotlights** are a wonderful tool for CWICs to use when explaining these complex concepts to SSI beneficiaries. The spotlights are posted online (<https://www.ssa.gov/ssi/links-to-spotlights.htm>)
- **Understanding SSI**. This is an excellent online resource that covers all of the important aspects of the SSI program. The current version of this resource is available (<https://www.ssa.gov/ssi/text-understanding-ssi.htm>)
- **The main Table of Contents for the POMS citations pertaining to the SSI program is available** (<https://secure.ssa.gov/apps10/poms.nsf/chapterlist!openview&res tricctocategory=05>)

Competency Unit 7 – Plan to Achieve Self-Support (PASS)

Introduction

In earlier units of this module, we discussed various SSI work incentives that beneficiaries can use to ease the transition from dependency on benefits to self-supporting employment. None of these provisions seem as complex or challenging as the work incentive known as a Plan to Achieve Self-Support (PASS). While PASS is certainly complicated, it's also one of the most flexible and powerful work incentives available. It can help beneficiaries succeed in a work goal that might otherwise not be possible.

CWICs need to keep PASS in mind as a possibility whenever a beneficiary is trying to access training, equipment, services, or anything else that they need to start work, even the clothes an individual needs for interviewing. PASS is incredibly valuable and is far less difficult than it seems at first glance. It's worth the effort for you to understand PASS and to help disabled or blind SSI beneficiaries use the PASS work incentives to achieve greater independence through employment or self-employment.

This unit explains the rules that Social Security uses to determine if a PASS is appropriate. The CWIC's role in PASS, and suggestions about how best to support beneficiaries to access the PASS provisions, are discussed in Unit 4 of Module 6.

Overview of the Plan to Achieve Self Support (PASS)

A Plan to Achieve Self-Support (PASS) is a work incentive that allows a person with a disability to set aside income or resources for a specified period of time in order to pay for items or services needed to achieve a specific work goal. Under an approved PASS, an individual may set aside income or resources to pay for education or training, counseling, job coaching or other support services, transportation, job-related items,

equipment needed to start a business, or just about anything else needed to achieve an occupational goal.

Social Security doesn't count income or resources set aside in a PASS when determining SSI eligibility or when determining the amount of SSI payment an eligible individual is due. This means that a person whose income or resources are too high to qualify for SSI may develop a PASS to set aside the excess income or resources for use in their work goal, thus establishing initial SSI eligibility. For someone whom Social Security has already found eligible for SSI, the individual may use a PASS to set aside income or resources that would normally cause ineligibility or reduced benefit payments. A distinct advantage of a PASS is that it allows a person to direct his or her own career plan and secure the necessary items or services to reach his or her work goal.

Strengths of the PASS Work Incentive

While the PASS work incentive is widely unknown in the disability community, the original SSI statute over 40 years ago included this provision. The legislative history shows that Congress expressed a "desire to provide every opportunity and encouragement to the blind and disabled to return to gainful employment." Congress intended that the PASS provision "be liberally construed if necessary to accomplish these objectives." Several characteristics of the PASS work incentive make it an effective tool for individuals who want to work and decrease their dependency on Social Security disability benefits. These characteristics include the following:

- **PASS reflects individual choice.** Individuals choose their own work goal and develop their own plan for achieving that goal.
- **PASS is self-financed.** Individuals use their own funds to pursue the plan. The receipt of, or an increase in SSI benefits up to the amount of the Federal Benefit Rate (FBR), and any applicable state supplement replaces some or all of the funds that the individual uses for the PASS.
- **PASS is self-directed.** With Social Security's approval, individuals decide what goods and services they need to reach the work goal.

- **PASS is highly individualized.** Each PASS specifically reflects the needs of a unique individual.

Individuals Who May Benefit from a PASS

To qualify for a PASS, a person must meet the following criteria:

- Be under age 65, or be previously entitled to an SSI benefit based on blindness or disability the month prior to reaching age 65;
- Meet Social Security’s definition of disability or blindness;
- Meet all SSI eligibility criteria with the exception of the income and resources test; and
- Have earned income, unearned income, deemed income, in-kind support, or countable resources to set aside in the PASS.

Likely PASS Candidates

Not everyone who is eligible for a PASS is actually a good candidate for using this work incentive. Like all work incentives, PASS isn’t intended to be a “one size fits all” solution to every problem or to meet the employment support needs of every beneficiary. A likely PASS candidate would typically have one or more of the following characteristics:

- Eligible for or already receiving rehabilitation services from a State Vocational Rehabilitation (VR) agency, a state agency for the blind, other public agency (e.g., Department of Veterans Affairs) or a private agency (e.g., Employment Network, United Cerebral Palsy, Goodwill Industries, etc.);
- Enrolled in school or other training program, or interested in obtaining post-secondary education or occupational skill training of some type;
- Currently working, seeking employment, or interested in pursuing employment or self-employment;
- Interested in becoming self-supporting;
- In need of services or items in order to achieve a desired work or self-employment goal; or

- Social Security would otherwise deny initial SSI eligibility or suspend or terminate continued eligibility solely due to excess income or resources, or Social Security would otherwise reduce SSI benefits due to some form of countable income.

Unlikely PASS Candidates

Some individuals with disabilities may not qualify for a PASS, while still others may qualify, but simply wouldn't benefit from developing a PASS. Unlikely PASS candidates would include those who:

- Already secured the needed items and services under a previous PASS and haven't tried to seek employment in the work goal for which they obtained the required items or services that they identified as being sufficient to make them employable;
- Are ineligible for SSI benefits for any reason other than excess income or resources;
- Are under age 15 or over full retirement age (with some exceptions);
- Don't have any income or resources to set aside in the PASS or are unwilling to use set aside funds strictly for the PASS;
- Don't require any additional items or services to become employed or self-employed; or aren't interested in working or decreasing dependency on public benefits.

Example of an unlikely PASS candidate:

Oona receives a VA compensation benefit based on permanent and total disability of \$1,342 each month. She also owns investment property from which she earns rental income, and she and her husband have two cars. Oona's husband has a full-time job earning \$62,000 per year. Oona would like to write a PASS to help her pay for her current graduate degree.

Is Oona a good PASS candidate?

Oona probably fits the disability definition, and has income and resources other than SSI to put into the PASS. However, Oona wouldn't be a good PASS candidate because she has resources and deemed income that she isn't willing to use to meet her vocational goal. Because of this, the PASS

wouldn't make her eligible for SSI. Oona decided to pay for her graduate school herself.

Title II Disability Beneficiaries as PASS Candidates

There is widespread belief that beneficiaries who receive Title II disability benefits such as SSDI, CDB, or DWB can't utilize the PASS work incentive. Many people think that only individuals who already are receiving SSI benefits can develop and use a PASS. In fact, nothing could be further from the truth.

Remember that the SSI program views the Title II disability benefits as a form of unearned income. Because many Title II disability beneficiaries receive more than the current SSI FBR in monthly payments, they often have too much countable unearned income to qualify for SSI. By setting the Title II disability payment aside under an approved PASS, the SSI program essentially disregards this income when determining eligibility for SSI. If Social Security approves the PASS, the Title II payment continues and the beneficiary uses it to pay for the items or services needed to achieve their occupational goal. In return, the individual will receive SSI cash payments during the life of the PASS.

It's important to keep in mind that if a Title II disability beneficiary uses the PASS to establish eligibility for SSI and sets aside Social Security disability benefits, the goal must be likely to result in work above the SGA level and lead to the eventual loss of the Social Security disability benefit. More information on this point will be provided at a later point in this unit.

A major benefit of using a PASS for an individual who has been ineligible for SSI because of too much unearned income is that Medicaid eligibility comes with SSI entitlement in most states.

Example of PASS affecting benefits:

Manuel has been receiving a SSDI benefit of \$850 a month. Manuel only has Medicare for health insurance and must pay out over \$300 each month of his \$850 out-of-pocket in medical costs to survive. If Manuel were to write a PASS to help pay for expenses to reach a work goal, he would likely become eligible for Medicaid. Instead of living on the \$550 he has left after paying for his medical costs, Manuel not only would have the current FBR + \$20 to live on, but he

would have as much as \$830 of his SSDI benefit earmarked to help him achieve his employment goal.

When working with Title II disability beneficiaries who are interested in pursuing a PASS, keep in mind that the individual must meet all other SSI eligibility criteria. This means that countable resources must be under allowable limits.

REMEMBER: SSI also considers the income and resources of ineligible spouses and ineligible parents (for SSI recipients under 18). A Title II disability beneficiary who is married or who is under age 18 may have deemed income in the mix that you will need to consider when determining if PASS is a viable option.

Important note: It is possible that the SSDI beneficiary may need to go through a new medical determination for the SSI application. In some cases, Social Security field office staff may not be able to adopt the current disability decision. In these cases, the new claim could result in a denial or potentially raise a continuing disability review (CDR) on the existing entitlement. For specific information about this provision, go to **POMS DI 27515.001 Collateral Estoppel**, which can be found online here: (<https://secure.ssa.gov/apps10/poms.nsf/lrx/0427515001>)

PASS Requirements

Feasible Work Goal

In order for Social Security to approve a PASS, it must include a specific work goal. Basic living skills or homemaking skills aren't occupational goals, but Social Security can approve training in such skills if the individual needs them to achieve a work goal. The work goal contained in the PASS must meet several requirements:

- **Each PASS must specify and clearly describe a single work goal.** The work goal must be the earliest point on the person's chosen career path that would generate earnings sufficient to be self-supporting. This means that the income is enough to cover all living expenses, all out-of-pocket medical expenses, and all work-related expenses.

- **Social Security limits beneficiaries to one PASS per work goal.** If a beneficiary had a previous PASS with a goal, and the person wasn't successful in meeting that goal, it's not possible to develop another PASS for that same goal. However, under some circumstances the individual may resume a previous PASS with the same work goal.
- **The work goal must be "feasible."** This means that the individual must have a reasonable chance of performing the work associated with the occupational goal, taking into account his or her impairment, and the limitations imposed by it; age, in some cases; and strengths and abilities.

Important point to consider:

Social Security isn't likely to approve a beneficiary's PASS with the goal being "to buy a car." Buying a car isn't a work or employment goal. It may be a means to achieving employment, but in and of itself, it's not an employment goal. A person who establishes a work goal of being a delivery driver may include purchasing a car as part of the PASS expenses, but buying a car can't be the goal.

Some special PASS rules apply to a few specific occupational goals in supported employment and self-employment situations:

- **Supported Employment Goals:** An individual in a supported employment program may submit a PASS whose goal is to achieve stabilization in that job, to work more hours, or to work with less support (fewer hours of job coaching per week, for example). Such plans should specify the targeted level of performance in terms of the supports required, and how long it will take the individual to reach the goal. If it subsequently appears that the individual can change the targeted level of performance in order to provide additional countable income, they may submit a PASS amendment to the PASS cadre for review.
- **Self-Employment Goals:** For individuals with a work goal of self-employment, Social Security may approve general small business start-up costs through the first 18 months, or longer if needed, for business operations. A PASS with a self-employment goal must include a detailed business plan, and this plan must meet requirements set by Social Security.

NOTE: The lack of a business plan shouldn't delay an individual's submission of a request for a PASS. An individual can get help with developing a business plan from State VR Agencies, the Small Business Administration (SBA) personnel, Service Corp of Retired Executives (SCORE), Small Business Development Centers (SBDC), or local Chambers of Commerce. For specific information about the business plan requirements of the PASS work incentives, go to **POMS SI 00870.026 - Business Plans**, which can be found online here:
(<https://secure.ssa.gov/poms.nsf/lnx/0500870026>)

VR Evaluation Goals

Social Security may approve a PASS with the goal of "VR evaluation" in order to help the person select a specific work goal. Until the individual chooses a specific goal, the PASS will only cover the costs associated with having a public or private vocational rehabilitation (VR) agency or professional perform a diagnostic study or evaluation. A VR evaluation usually takes three to six months. An individual must justify a requested evaluation period of more than six months.

NOTE: Vocational evaluation expenses can include certain self-employment focused activities, but those activities have to be the same kind of activities one might see in an employment-focused vocational evaluation, such as:

- Is self-employment practical for this person?
- Is the business in question a good fit for this person?

Viable Plan for Achieving the Goal

The plan for achieving an otherwise feasible goal must be viable. By this, Social Security means that the plan for achieving the occupational goal must be realistic, taking into account the individual's education and training needs, any assistive technology required, and the interval steps (and the corresponding time frame to complete each step) necessary to actually secure employment or start a business. These steps, or "milestones," which demonstrate the person's progress towards achieving the goal, should be described sufficiently so that completion of the steps can be readily discernible and, if appropriate, measurable. The plan

should also examine whether the person will have sufficient means to cover PASS expenses, living expenses, and other necessary expenses.

Important Point to Consider: Can the individual live on the amount of disposable income he or she has once a PASS is in effect?

This question is critically important. Consider the case of an SSDI beneficiary who receives \$1,800 each month in benefit payments. Under an approved PASS, it's possible to take this unearned income and set it aside each month to pay for things the beneficiary needs to achieve the work goal. The only problem is that this beneficiary may be accustomed to living off of \$1,800 each month in income and may not be able to afford to live on less. With an approved PASS, the most SSI this person could receive in a month would be the current FBR (plus any state supplement available). Even under the best of circumstances, this amount of income won't equal \$1,800 a month in SSDI payments.

When this type of situation occurs, Social Security will look closely at the individual's living expenses to make sure the individual can afford to set aside the income and live on the SSI payment. The PASS application includes questions about the individual's monthly living expenses. If an individual isn't able to prove that he or she can live off of the available income, Social Security isn't likely to approve the PASS.

Earnings Requirements

For Social Security to approve a PASS, the agency must expect the individual's plan to result in a level of earnings that will decrease the individual's dependence on Social Security benefits. This level will vary depending on the individual's benefits status before using the PASS work incentive. For a person who was already eligible for SSI before the PASS, the work goal must generate enough earnings to substantially reduce or eliminate their SSI benefit. The reduction must occur in a reasonable amount of time based on the specific milestones and timeframe outlined in the PASS application.

Title II disability beneficiaries who wouldn't otherwise be SSI eligible without utilizing a PASS must choose an occupational goal that will generate earnings that demonstrate the individual's ability to engage in Substantial Gainful Activity (SGA). The work goal should result in earnings sufficient to replace the cash and medical benefits of the individual and any auxiliaries receiving benefits on that person's record.

There is a common misunderstanding that a PASS must generate earnings sufficient to cause the loss of all benefits — including cash payments and Medicaid or Medicare. Social Security does NOT expect beneficiaries to achieve employment that fully replaces the cost of public health insurance (particularly Medicaid), although some individuals who use a PASS do achieve this end.

PASS Expenditures

The PASS must show how the individual will spend the money set aside to achieve his or her work goal. A listing must include planned expenditures on a monthly basis and how they are connected to the work goal.

Expenses must be reasonable, and cost estimates for items or services included in the PASS must show how the cost estimate was calculated. When possible, indicate providers of services paid for through the PASS.

Some examples of possible PASS expenditures include:

- Equipment, supplies, operating capital, and inventory required to start a business;
- Supported employment services including job development and job coaching;
- Costs associated with educational or vocational training, including tuition, books, fees, tutoring, counseling, etc.;
- Additional costs incurred for room and board away from principal residence required to attend educational, employment, trade, or business activities;
- Dues and publications for academic or professional purposes;
- Attendant care;
- Child care;
- Equipment or tools either specific to the individual's condition or designed for general use; e.g., similar to what persons without disabilities would use for work;
- Uniforms, specialized clothing, safety equipment;
- Least costly alternatives for transportation, including:

- a. Public transportation and common carriers,
 - b. Hire of private or commercial carriers,
 - c. Assistance with purchase of a private vehicle;
- Operational access modifications to buildings or vehicles to accommodate disability; and
 - Licenses, certifications, and permits necessary for employment.

It's important to understand that Social Security may not allow all expenses at the beginning of the PASS. In some cases, approval of certain goods and services may be contingent based on the successful completion of milestones that justify the expense. Social Security refers to this as "deferred expenses."

In addition to meeting the requirements above, the PASS must clearly describe:

- When the individual will use the items and services;
- What income or resources the individual will set aside to purchase the items and services;
- Whether the individual will use the funds for periodic payments of expenses or save them for a future payment; and
- How the individual will keep the funds being set aside under the PASS separate and identifiable from other funds.

Expenses that are not Allowed

The PASS provisions do not allow certain types of expenses. An expense that is not allowed is one that:

- Is not purchased by the individual;
- Is for items or services that the individual can readily obtain from another agency for free;
- Is for items or services for which the individual will be promptly reimbursed;
- Is for items or services purchased in connection with a prior PASS, unless the individual provides a satisfactory justification (e.g., the individual paid for certain college courses in connection with a prior PASS but, for medical reasons, was unable to complete them); or

- Reflects an outstanding debt unrelated to the current PASS (with some exceptions).

In addition, the beneficiary must demonstrate to Social Security that he or she is able to live on the income available for living expenses after the PASS begins. This last point is essential to remember. Many beneficiaries misunderstand how PASS funds work and think that the PASS will provide additional money for living expenses. Instead, they must use money set aside in the PASS only for approved expenses to meet the work goal. Social Security requires proof that they have used the money appropriately. PASS doesn't provide more money in the monthly food and shelter budget; in fact, the individual will usually have the same or possibly less income available to meet living expenses with, or without, a PASS.

Disbursements – Spending PASS Funds

Ordinarily, beneficiaries should pay for items and services included in the PASS as soon as possible and should follow the schedule described in the PASS. For periods during which no disbursements are planned but for which beneficiaries are setting aside funds, Social Security will verify accumulated savings at predetermined intervals. Social Security will conduct reviews at least every six months in this situation to monitor that PASS funds are being appropriately conserved.

Beneficiaries may only use PASS funds to pay for items approved by Social Security as part of the plan. The beneficiary will have to replace any PASS funds he or she withdrew or spent on non-approved items. Beneficiaries must keep receipts and other financial records to substantiate all purchases made with PASS funds.

Time Considerations for PASS

A PASS must specify beginning and ending dates. It also must specify target dates for reaching intermediate milestones that reflect the beneficiary's progress toward achieving the occupational goal. These dates must reflect the amount of time the individual needs to achieve the milestones and complete the PASS, considering relevant factors. Social Security may extend these dates if circumstances beyond the individual's control delay reaching a milestone or completing the plan and the person

continues to meet all of the other requirements for continuation of the PASS.

When the occupational goal is self-employment, the initial PASS will include a minimum start-up period of 18 months unless the individual indicates that he or she will need less time for the business to sustain its operations. The individual must justify a request for a business start-up period of a longer duration than 18 months.

When a PASS May Begin

Social Security can make a PASS effective with any month of eligibility for SSI or any month of potential eligibility assuming approval of the PASS subject to the rules of administrative finality (see POMS SI 00870.007 - When to Start a PASS and SI 04070.001 - Title XVI Administrative Finality). While this may sound simple, it actually offers numerous possibilities for starting a PASS depending upon the unique circumstances of the beneficiary. These start-date options are as follows:

- **Starting Month:** Social Security generally sets the PASS start date as the date that Social Security receives the plan, unless another month applies and is more advantageous to the beneficiary.
- **Retroactive Month:** Subject to the rules of administrative finality, a PASS will start with the earliest month in which the individual was entitled to SSI and was incurring expenses or setting aside money for future expenses related to the occupational goal. By having a retroactive start date the PASS can exclude previously counted income that the individual used or set aside (in a manner that clearly identifies its purpose) for allowable PASS expenses. By applying this exclusion retroactively, the individual becomes entitled to more SSI than he or she actually received for that period. Upon PASS approval, the beneficiary is provided this additional SSI. (Note: Individuals with an outstanding SSI overpayment may not be able to establish a retroactive PASS start date.)
- **Future Month:** Sometimes, Social Security will start a PASS in a future month, meaning a month at some point AFTER Social Security received the PASS. This happens when it's more advantageous to the individual (e.g., using the month Social Security receives the plan as the starting month would provide the

person with a lower SSI payment than expected due to pro-ration), or the individual requests it and the system is able to accept the future month.

Beneficiaries requesting a retroactive start date will need to provide clear documentation with the PASS application to demonstrate that the expenses are related to the work goal and that they have already paid the expenses or saved them in a clearly identifiable manner. Some examples of clear identification include:

- The beneficiary purchased a \$100 business license with his or her own funds prior to PASS approval and had a receipt as documentation.
- A concurrent beneficiary saves \$50 per month of his or her SSDI benefit in a savings account for five months prior to PASS approval for school expenses and can show the accumulation of saved funds in the amount of \$250.

Careful planning will be necessary when you work with a beneficiary to develop a PASS.

Administrative Finality and Retroactivity for a PASS

As stated above, Social Security may approve a PASS to begin retroactively subject to the limits imposed by the rules governing “administrative finality.” The concept of administrative finality is an important protection for both beneficiaries and Social Security. These rules protect beneficiaries by allowing Social Security to re-examine certain determinations or decisions during a set period of time if it appears that the original determinations or decision wasn’t correct. Under most circumstances, the rules of administrative finality limit retroactivity for a PASS to no more than two years, although there are some exceptions to this limit. A detailed discussion of administrative finality is provided in Unit 9 of this module.

Tips for CWICs — Requesting a PASS Start Date

Because the start date for a PASS has important implications for the beneficiary, CWICs must make sure they explore the various options with beneficiaries while developing the plan. CWICs should ask individuals who are already eligible for SSI whether they began pursuing their work goal in the past, and if so, when? CWICs may need to help the

beneficiary gather documentation to show that **pursuit of the work goal began** prior to the submission of the PASS in order for Social Security to grant it retroactivity. If the applicant has an outstanding SSI overpayment, retroactivity may not be possible because any underpayment created by PASS will net against the pending overpayment. However, if the individual incurred PASS expenses in the past, allowing a retroactive date may reduce the amount of any overpayment. The PASS Specialist handling the request can best determine if retroactivity is possible.

While it's possible to request retroactivity on a PASS for up to two years (the limit based on administrative finality), it's up to the PASS Specialist's discretion to approve months of retroactivity. If the beneficiary doesn't agree with the determination the PASS Specialist makes with regard to retroactivity, the individual should request a personal conference to discuss it. Beneficiaries who don't currently receive SSI, but receive only a Title II disability benefit, must apply for SSI as part of the PASS application. In applying for SSI, the beneficiary must communicate that he or she is also applying for a PASS. Because a PASS can't start until the beneficiary is SSI eligible, the soonest a PASS can begin for a Title II beneficiary is the month after they request the SSI application.

Example of application timing for an SSDI beneficiary:

In March 2022, Jenny, who receives \$895 of SSDI, is planning to go to massage therapy school in September 2022. She meets with the CWIC and they work together to complete the PASS application by the end of April 2022. On April 25 Jenny goes to the local Social Security office and asks to apply for SSI, clarifying that she is applying for SSI as part of a PASS application. If Social Security finds Jenny eligible for SSI, based on a PASS excluding her SSDI, then the soonest Social Security could find her eligible for that SSI would be May 2022 (the month after she requests the SSI application). So, even though she began working on her PASS application in March 2022, the soonest the PASS could begin is May 2022, the month after she requested the SSI application.

Developing and Submitting a PASS

A beneficiary can develop and submit a PASS to Social Security at any time. The agency requires beneficiaries to submit their plans in writing and use **a standardized form, SSA-545-BK**. We provide a copy of this form at the end of this unit, but CWICs can also find it at Social Security's website in PDF format (<https://www.ssa.gov/forms/ssa-545.html>).

Individuals who develop a PASS but who aren't currently receiving SSI will have to complete the initial eligibility and application process for SSI and submit this with the completed PASS form. For those individuals already receiving SSI, they have already met the initial eligibility for SSI, so this step isn't necessary. It's important to remember that for an individual to be eligible for SSI, he or she has to meet the income and resources tests (other than the income and/or resource they will set aside for the PASS) and also be earning under the Substantial Gainful Activity (SGA) guideline.

PASS Specialists

When a beneficiary submits a PASS to the local Social Security field office, the PASS is sent to the regional PASS Cadre. The PASS Cadre members are Social Security employees, referred to as "PASS Specialists" or sometimes "PASS Experts" who specialize in reviewing and approving PASS applications. The PASS Cadre is responsible for direct contact with any claimant filing for a PASS. This includes not only developing the initial PASS, but also conducting progress reviews and progress checks, and dealing with the recipient on other post-eligibility PASS events. In most cases, Social Security prefers that a beneficiary submit his or her plans directly to the PASS Cadre that covers the area in which the beneficiary resides. CWICs can find a **listing of PASS Specialists with service areas and contact information** (<http://www.socialsecurity.gov/disabilityresearch/wi/passcadre.htm>).

PASS Specialists determine if the work goal is feasible and that the plan for achieving the goal is viable. Social Security policy directs PASS Specialists to assume that a work goal is feasible and the plan for achieving it is viable when there is no evidence to the contrary and when the PASS was prepared or supported by any of the following:

- A state VR counselor;
- A public or private vocational counselor, case manager, social worker, or other individual who is licensed or certified by: (1) A government agency, (2) the Commission on Rehabilitation Counselor Certification (CRCC), or (3) the Certification of Insurance Rehabilitation Specialists Commission (CIRSC); or
- An individual acting on behalf of an agency that has been certified by the above or accredited by an appropriate but unrelated local or nationally recognized organization such as the American Association for Counseling and Development or the National Rehabilitation Association.

If in doubt, PASS Specialists may ask for evidence of the preparer's credentials or those of the organization for which the preparer works, and to create a precedent file.

Getting Help with Developing a PASS

Social Security permits beneficiaries to receive assistance in developing a PASS and may even include fees paid for PASS preparation in the plan. A PASS Specialist, a CWIC, a vocational rehabilitation counselor, other professionals providing benefits counseling, or anyone else may provide assistance in developing a PASS. Assisting someone with a PASS is an important part of your role as the CWIC. CWICs may not indicate to beneficiaries that they don't assist with developing PASS plans, and CWICs may not charge beneficiaries for PASS preparation. A detailed explanation of the CWIC role in assisting beneficiaries to develop a PASS is provided at the end of this unit.

A PASS applicant or participant may authorize a third party to act on his or her behalf in matters pertaining to the PASS. The PASS application includes a section in which the applicant may identify others who assisted with developing the plan. To facilitate communication, the applicant should include a statement authorizing Social Security to communicate openly with the third party about all matters pertaining to the PASS.

PASS Progress Checks

Once Social Security has approved the PASS, the agency will continue to monitor the beneficiary's progress. The PASS Specialist generally will make an initial progress check within 30-60 days of approval, or by the first milestone, if earlier. A brief telephone call to ascertain progress may be sufficient. After this initial progress check, the PASS Specialist will set up a schedule of subsequent progress checks between progress reviews based on the circumstances of each PASS. The PASS Specialist will schedule regular progress reviews on the basis of various factors including:

- Critical milestones;
- Six-month intervals during which the beneficiary will be accumulating but not disbursing funds for PASS expenses;
- When the individual files a self-employment tax return;
- When the individual expects to achieve his or her work goal; and
- Any other factor the PASS Specialist considers appropriate (e.g., the end of every semester – to check grades and the next schedule of classes).

Making Changes to a PASS

A PASS may change in several ways. First, Social Security should offer the individual an opportunity to modify the plan before disapproving a PASS. This allows the individual to make any changes needed so that Social Security can approve the PASS. The PASS Specialist will identify and describe the needed changes and explain to the individual the reasons why the changes are necessary.

Social Security can also "amend" an approved PASS. The types of changes that require plan amendment include the following:

- Change in the amounts of income or resources to be set aside, i.e., the amount excluded;
- Change in planned expenditures;

- Change in the scheduled attainment date for the occupational objective or the milestones leading to that work goal; or
- Modification of the work goal regarding the level of independent performance from that originally anticipated, (as in a supported employment situation).

Any other substantive change in the occupational objective (i.e., a different job than stated in the original plan) requires a new plan. Social Security's PASS Specialists must approve any amendments to an existing plan.

Suspending or Terminating a PASS

Social Security will suspend a PASS when the individual has not met scheduled milestones, accounted for all PASS funds or other circumstances are present and the individual has not provided a reasonable explanation. The agency will also suspend a PASS when a beneficiary requests a new PASS with a new work goal. Social Security may suspend a PASS for up to 12 consecutive months. If the beneficiary does not resume the PASS within 12 months, Social Security will terminate the PASS.

A suspended PASS may resume when the individual resolves the reason for the suspension and the PASS Specialist approves the individual's request, including any amendment, to pursue the PASS. At the PASS Specialist's discretion, an individual may resume a PASS that Social Security suspended for more than 12 months as long as Social Security does not terminate the individual for SSI benefits.

A PASS terminates when one of the following events occurs:

- The individual's eligibility for SSI benefits terminates; or
- Twelve consecutive months have elapsed from the date of the PASS suspension decision without the plan resuming.

Social Security does not penalize an individual if he or she does not reach his or her work goal at the end of his or her PASS if the individual:

- Followed his or her PASS steps to reach his or her work goal as established or revised;
- Spent the set aside income or resources as outlined in the PASS;

- Kept records of the expenses including receipts; and
- Actively sought employment at the end of the PASS.

Number of Plans to Achieve Self-Support

There is no limit to the number of plans an individual can have, but an individual can have only one PASS at a time. Before Social Security can approve a subsequent PASS, an individual must complete a final accounting for the prior PASS and must show that he or she can either no longer work at, or obtain work in, a prior occupational goal for which the he or she obtained all of the necessary goods and services.

Though there is officially no limit, it's important to remember that a PASS is an agreement made by the beneficiary to work towards self-sufficiency. If the individual isn't successful with one PASS, he or she will need to make a compelling argument showing how they will achieve self-sufficiency in the subsequent PASS application in order for Social Security to approve further investment.

Using Various Forms of Income to Fund a PASS

There are different ways to set aside income to fund a PASS. Unfortunately, there are a great many misunderstandings about what types of income an individual can use and how he or she applies the types of income. An individual can use any form of "countable income" to fund a PASS. Countable income is the income remaining after Social Security applies all allowable deductions or exclusions that Social Security uses to determine eligibility for SSI as well as the monthly payment amount. For example, if an individual receives unemployment insurance benefits of \$690 each month, Social Security would deduct the \$20 general income exclusion from this and would count \$670 of unearned income for SSI purposes. The person would have the \$670 available to fund the PASS.

Income that Social Security doesn't count in SSI determinations is not available to fund a PASS. Because the income doesn't count, there's no benefit from setting it aside — it would have no effect on SSI eligibility or monthly payment amount. This would include income such as SNAP,

welfare payments, energy assistance, HUD rental subsidies, proceeds from a loan, or any other form of income specifically disregarded or excluded by the SSI program.

Using In-kind Support and Maintenance (ISM) to Fund a PASS

As discussed in Unit 5 of this module, because SSI is intended to pay for a recipient's food and shelter, Social Security may reduce SSI payments if someone else is paying all or part of these expenses on behalf of the recipient. This type of assistance is called "in-kind support and maintenance" or ISM.

When the beneficiary lives in another person's household and someone else pays for both food and shelter, Social Security considers the individual to be receiving full in-kind support and maintenance, and reduces the SSI check by one third of the full FBR. This reduction is known as "the value of the one-third reduction" or VTR.

If the recipient doesn't live in another person's household and receives help paying for the cost of his or her food and shelter, Social Security may reduce the SSI check under a different rule called the "presumed maximum value" or PMV. Under the PMV rule, Social Security determines the actual dollar value of the ISM and counts this as unearned income up to a maximum dollar amount called the presumed maximum value. This presumed maximum dollar amount equals one-third of the current FBR + \$20. Social Security counts this form of ISM as unearned income when calculating the SSI check amount. When entering ISM under the PMV rule into the SSI calculation form, Social Security enters either the presumed maximum value or the actual value of ISM, whichever is less. Social Security subtracts the \$20 general exclusion from that amount, leaving countable unearned income.

There is one significant advantage to having ISM valued under the PMV rules instead of the VTR rule. Under PMV, the in-kind support and maintenance has a specific dollar value and counts as a unique form of unearned income. This income is attributable to the beneficiary, and can be set aside under a PASS. If an SSI recipient develops a written PASS, he or she would have up to one third of the current FBR available to fund the occupational goal.

What this means in the most simple terms is that Social Security will increase the individual's SSI check to the full FBR each month, Social

Security will require the individual to put one third of the current FBR into the PASS account. In effect, the SSI recipient and his or her family are putting the in-kind support and maintenance into the PASS each month, and Social Security is reimbursing them for that contribution. The PASS allows Social Security to “disregard” this unique form of unearned income which otherwise caused the beneficiary to get a reduced SSI payment.

Example of determining a beneficiary’s PASS contribution:

Jerry lives alone in an apartment. Jerry’s mother pays the landlord and vendors \$700 per month for Jerry’s rent, food, and utility expenses. Because Jerry lives in his own apartment, Social Security determines his ISM under the PMV rule. The \$700 his mother contributes exceeds the PMV amount (one-third of the FBR + \$2-0), so Social Security caps the amount of ISM Jerry receives at the PMV amount. Jerry wants to pursue a PASS to help fund his occupational goal and wants to know how much he would have available to set aside in his PASS each month if Social Security approves his plan. See the SSI calculation chart below for the answer to this question.

Step	Calculation (no PASS)	Calculation (PASS)
Unearned Income (ISM)	\$300.33	\$300.33
General Income Exclusion (GIE)	– \$20.00	– \$20.00
Countable Unearned Income	= \$280.33	= \$280.330
Gross Earned Income	0	0
Student Earned Income Exclusion	– 0	– 0
Remainder	= 0	= 0
General Income Exclusion (if not used above)	– 0	– 0
Remainder	= 0	= 0
Earned Income Exclusion (EIE)	– 0	– 0

Step	Calculation (no PASS)	Calculation (PASS)
Remainder	= 0	= 0
Impairment Related Work Expense (IRWE)	- 0	- 0
Remainder	= 0	= 0
Divide by 2	0	0
Blind Work Expenses (BWE)	- 0	- 0
Total Countable Earned Income	= 0	= 0
Total Countable Unearned Income	\$280.330	\$280.33
Total Countable Earned Income	0	0
PASS Deduction	0	- \$280.33
Total Countable Income	= \$265.00	= 0
Base SSI Rate (check for VTR)	\$841.00	\$841.00
Total Countable Income	- \$280.330	- 0
Adjusted SSI Payment	= \$560.67	= \$841.00
Adjusted SSI Payment	\$560.67	\$841.00
Gross Unearned Income Received	+ 0	+ 0
Gross Earned Income Received	+ 0	+ 0
Subtotal	= \$560.67	= \$841.00
PASS, BWE, or IRWE Expenses	+ 0	- \$280.33
Total Financial Outcome	= \$560.67	= \$560.67

Using Earned Income to Fund a PASS

In some cases, a beneficiary may already be working part-time when he or she decides to pursue a PASS in order to attain a higher-paying career.

There is no rule prohibiting an individual from submitting a PASS when he or she is already employed part time, because the purpose of PASS is to help beneficiaries pay for the things necessary to obtain employment that will result in substantial reduction of SSI benefits or SGA-level earnings.

The thing to remember is that countable earnings are all the PASS can compensate for in terms of increased SSI cash payments, because it's countable earned income that Social Security uses to reduce monthly payments. If the beneficiary wants to fund the PASS using gross earnings, then less disposable income may be available to pay for day-to-day living expenses. That doesn't mean that beneficiaries may never set aside more than the countable earned income, only that they will be required to show Social Security that they can cover living expenses on the income left over. Another important point to consider is that Social Security defines countable income what is left after Social Security applies all applicable work incentives. This refers to provisions such as Student Earned Income Exclusion and Impairment Related Work Expenses, as well as Blind Work Expenses. The interaction of PASS with these other work incentives is discussed in greater detail later on in the module.

Example of using earned income to fund a PASS:

Aaron works part-time as a stocker at Walmart, but would like to pursue a professional career that would lead to full-time employment at a much higher salary than he currently receives. He currently earns an average of \$575 a month and receives SSI only. He wants to know how much he has available to fund a PASS. He doesn't have any other work incentives to apply. Here is how this works:

Step	Calculation (no PASS)	Calculation (PASS)
Unearned Income	0	0
General Income Exclusion (GIE)	- 0	- 0
Countable Unearned Income	= 0	= 0
Gross Earned Income	\$575.00	\$575.00
Student Earned Income Exclusion	- 0	- 0

Step	Calculation (no PASS)	Calculation (PASS)
Remainder	= \$575.00	= \$575.00
General Income Exclusion (if not used above)	- \$20.00	- \$20.00
Remainder	= \$555.00	= \$555.00
Earned Income Exclusion (EIE)	- \$65.00	- \$65.00
Remainder	= \$490.00	= \$490.00
Impairment Related Work Expense (IRWE)	- 0	- 0
Remainder	\$490.00	\$490.00
Divide by 2	\$245.00	\$245.00
Blind Work Expenses (BWE)	- 0	- 0
Total Countable Earned Income	= \$245.00	= \$245.00
Total Countable Unearned Income	0	0
Total Countable Earned Income	\$ 245.00	\$ 245.00
PASS Deduction	- 0	- \$245.00
Total Countable Income	= \$245.00	= 0
Base SSI Rate (check for VTR)	\$841.00	\$841.00
Total Countable Income	- \$245.00	- 0
Adjusted SSI Payment	= \$596.00	= \$841.00
Adjusted SSI Payment	\$596.00	\$841.00
Gross unearned income received	+ 0	+ 0
Gross earned income received	+ \$575.00	+ \$575.00
Subtotal	= \$1,171.00	= \$1,416.00

Step	Calculation (no PASS)	Calculation (PASS)
PASS, BWE or IRWE Expenses	+ 0	- \$245.00
Total Financial Outcome	= \$1,171.00	= \$1,171.00

Keep in mind that Aaron actually earns gross wages of \$575 each month. His PASS contribution of \$245 only includes his countable earned income. Social Security disregards the remainder of the money he earns each month when determining Aaron's monthly SSI payment. Aaron will have \$841 in SSI payments plus his remaining earned income of \$330 to pay for his day-to-day living expenses. Aaron could use more of his earned income to fund the PASS if he chose to and if Social Security approved it, but he would not receive more money from SSI and he would have less disposable income available to meet his living expenses.

Using Deemed Income to Fund a PASS

Using deemed income to fund a PASS is very similar to using ISM valued under the PMV rule. For a child under the age of 18 with parental deemed income, Social Security counts this income as a form of unearned income when it determines SSI eligibility and monthly payment amount. Assuming that the child had no other forms of income, the amount available to fund the PASS would be the amount of deemed income less the \$20 general income exclusion.

Example of using parental deemed income to fund a PASS:

Frank is 17 and lives with his parents. Frank's SSI is being reduced each month due to parental deemed income of \$450. He has no other form of income. Frank has submitted a PASS application in which he proposes to fund his PASS with the deemed income from his parents. He plans to set aside all of the countable deemed income which will allow his SSI cash payment to be increased to the full FBR.

Step	Calculation (no PASS)	Calculation (PASS)
Unearned Income (Deemed income from the parents as determined by Social Security using the parent to child deeming rules)	\$450.00	\$450.00
General Income Exclusion (GIE)	- \$20.00	- \$20.00
Countable Unearned Income	= \$430.00	= \$430.00
Gross Earned Income	0	0
Student Earned Income Exclusion	- 0	- 0
Remainder	= 0	= 0
General Income Exclusion (if not used above)	- 0	- 0
Remainder	= 0	= 0
Earned Income Exclusion (EIE)	- 0	- 0
Remainder	= 0	= 0
Impairment Related Work Expense (IRWE)	- 0	- 0
Remainder	= 0	= 0
Divide by 2	0	0
Blind Work Expenses (BWE)	- 0	- 0
Total Countable Earned Income	= 0	= 0
Total Countable Unearned Income	\$430.00	\$430.00
Total Countable Earned Income		0
PASS Deduction	- 0	- \$430.00

Step	Calculation (no PASS)	Calculation (PASS)
Total Countable Income	= \$430.00	= 0
Base SSI Rate (check for VTR)	\$841.00	\$841.00
Total Countable Income	- \$430.00	- 0
Adjusted SSI Payment	= \$411.00	= \$841.00
Adjusted SSI Payment	\$411.00	\$841.00
Gross unearned income received	+ \$450.00	+ \$450.00
Gross earned income received	+ 0	+ 0
Subtotal	= \$861.00	= \$1,291.00
PASS, BWE or IRWE Expenses	- 0	- \$ 430.00
Total Financial Outcome	= \$861.00	= \$861.00

Spouse-to-spouse deeming situations are more complex as the income from the spouse may be either earned, unearned or both, and Social Security combines it with any income the eligible individual has when the agency determines SSI eligibility and monthly payment amount. As a first step, Social Security determines the countable income attributed to the eligible individual using the spouse-to-spouse deeming rules. This is the amount of money the individual now has to fund the PASS.

Example of determining income by spouse-to-spouse deeming:

Louise is an SSI recipient married to Victor, who is an ineligible individual. Louise gets \$200 each month in CDB payments and Victor has a part-time job earning \$800 each month. There are no children in the household. Louise is interested in using a PASS to help fund her work goal. How much money would Louise have to set aside each month if Social Security approves her plan?

Step	Calculation (no PASS)	Calculation (PASS)
Unearned Income (Louise's CDB payment – Victor doesn't have any unearned income to add)	\$200.00	\$200.00
General Income Exclusion (GIE)	– \$20.00	– \$20.00
Countable Unearned Income	= \$180.00	= \$180.00
Gross Earned Income (Victor's wages from his part-time job – Louise doesn't have any earnings)	\$800.00	\$800.00
Student Earned Income Exclusion	– 0	– 0
Remainder	= \$800.00	= \$800.00
General Income Exclusion (if not used above)	– 0	– 0
Remainder	= \$800.00	= \$800.00
Earned Income Exclusion (EIE)	– \$65.00	– \$65.00
Remainder	= \$735.00	= \$735.00
Impairment Related Work Expense (IRWE)	– 0	– 0
Remainder	= \$735.00	= \$735.00
Divide by 2	\$367.50	\$367.50
Blind Work Expenses (BWE)	– 0	– 0
Total Countable Earned Income	\$367.50	\$367.50
Total Countable Unearned Income	\$180.00	\$180.00
Total Countable Earned Income	+\$367.50	+\$367.50

Step	Calculation (no PASS)	Calculation (PASS)
PASS Deduction	– 0	– \$547.50
Total Countable Income	= \$547.50	= 0
Base SSI Rate (check for VTR)	\$841.00	\$841.00
Total Countable Income	– \$547.50	– 0
Adjusted SSI Payment	= \$293.50	= \$841.00
Adjusted SSI Payment	\$293.50	\$841.00
Gross unearned income received	+ \$200.00	+ \$200.00
Gross earned income received	+ \$800.00	+ \$800.00
Subtotal	= 1,293.50	= \$1,841.00
PASS, BWE or IRWE Expenses	– 0	– \$547.50
Total Financial Outcome	= \$1,293.50	= \$1,293.50

Using Title II Disability Benefits to Fund a PASS

A Title II disability benefit is a specific form of unearned income from the perspective of the SSI program. What seems to confuse CWICs about using a Title II payment to fund a PASS is the fact that this is a benefit provided by Social Security. The fact of the matter is, however, that Social Security treats this income in exactly the same manner as any other form of unearned income when determining how much to set aside in the PASS.

Example of using Title II disability benefits to fund a PASS:

Amanda receives an SSDI benefit of \$680. She has no other income. Amanda isn't blind, she's not married, she's not a student under age 22, and she doesn't live in a state that supplements SSI. Amanda wants to develop a PASS to fund her vocational goal of being a social worker. She

wants to know how much she has to fund her PASS each month. The calculation sheet below shows how this works:

Step	Calculation (no PASS)	Calculation (PASS)
Unearned Income (Amanda's SSDI payment)	\$680.00	\$680.00
General Income Exclusion (GIE)	- \$20.00	- \$20.00
Countable Unearned Income	= \$660.00	= \$660.00
Gross Earned Income	0	0
Student Earned Income Exclusion	- 0	- 0
Remainder	= 0	= 0
General Income Exclusion (if not used above)	- 0	- 0
Remainder	= 0	= 0
Earned Income Exclusion (EIE)	- 0	- 0
Remainder	= 0	= 0
Impairment Related Work Expense (IRWE)	- 0	- 0
Blind Work Expenses (BWE)	- 0	- 0
Total Countable Earned Income	= 0	= 0
Total Countable Unearned Income	\$660.00	\$660.00
Total Countable Earned Income	+0	+0
PASS Deduction	- 0	- \$660.00
Total Countable Income	= \$660.00	= 0
Base SSI Rate (check for VTR)	\$841.00	\$841.00
Total Countable Income	- \$660.00	- 0

Step	Calculation (no PASS)	Calculation (PASS)
Adjusted SSI Payment	= \$181.00	= \$841.00
Adjusted SSI Payment	\$181.00	\$841.00
Gross unearned income received	+ \$680.00	+ \$680.00
Gross earned income received	+ 0	+ 0
Subtotal	= \$861.00	= \$1,521.00
PASS, BWE or IRWE Expenses	-0	- \$660.00
Total Financial Outcome	= \$861.00	= \$861.00

WARNING: Remember that Title II benefits are affected by earned income differently than SSI benefits. Although Social Security doesn't count income or resources that are set aside in a PASS during SSI eligibility determinations or when calculating payment amounts, setting aside earned income in a PASS does NOT exclude Social Security from counting these funds during TWP or SGA determinations conducted for Title II disability beneficiaries. The only way a beneficiary may deduct a PASS expense under the Title II program is if the goods or services he or she purchased also met the definition of Impairment Related Work Expenses (IRWEs). It's quite possible for SGA-level earnings to cause the LOSS of Title II cash payments while a PASS is in place. Social Security can't use PASS to reduce countable earnings for the purposes of SGA determinations.

EXAMPLE of how PASS affects other benefits:

Sammi is 25, unmarried, not blind, and lives in her own apartment. She receives CDB of \$343 per month and earns \$1,400 a month working part-time. She wants to work full-time for her current employer but doesn't have reliable transportation. She has been setting aside the countable portion of her CDB and her earnings in a PASS to purchase a modified van.

Using her countable CDB benefits and her countable wages of \$667.50 to pay PASS expenses allows Sammi to receive SSI payments at the full FBR. However, Social Security will look at Sammi's monthly wages of \$1,400 to see if she is performing SGA.

One of the PASS expenses, though, is the cost of special transportation to and from work. Sammi pays \$200 per month for an adapted paratransit van service. That part of the PASS expense meets all of the criteria for IRWE, so Social Security may deduct \$200 of the PASS expenses as IRWE during the SGA determination. Because her earnings are \$1,400, subtracting IRWE of \$200 would mean that Sammi isn't performing SGA in 2022.

The important thing to remember about beneficiaries like Amanda from our earlier example is that when she goes to work, the earned income will count one way for SSI purposes and another way for Title II disability purposes. Let's continue looking at Amanda's case.

Example of how PASS affects other benefits:

Because Amanda is using her Title II benefit to fund the PASS, we have to think about how paid employment will affect her Title II cash payment when we plan what funds will be available over time to meet her work goal. If Amanda engages in SGA, her Title II cash payments will eventually end. This may cause a disruption in her PASS if we don't plan for it carefully, because she won't have any of this income to contribute to her PASS once cessation occurs.

Amanda used her Trial Work Period about ten years ago. However, she hasn't performed SGA since she was first entitled to cash benefits under the Title II program, so she still has access to the cessation month and grace period if she performs SGA.

One of the milestones for Amanda's PASS is to find a part-time job in the social work field while she is earning her master's degree. Amanda finds a job working in a group home on weekends. Amanda places her countable earned

income from this job into the PASS to assist in paying for her education.

After a year in her job at the group home, Amanda's employer offers her additional hours and a raise that would pay her \$1,800 per month, instead of her prior wages of around \$800 per month. Amanda increases her contribution of countable earned income into her PASS. With her PASS amendment, however, Amanda also indicates that she will no longer have her SSDI benefit after three months at her new level of earnings. Because of the excellent counseling she has received from her local WIPA program Amanda knows that her SSDI benefits will stop after the grace period now that Social Security would consider her work to be SGA. Her PASS continues until she completes her master's degree and attains full-time employment.

Although Amanda's income would normally make her ineligible for SSI, placing the countable SSDI, and later the countable earnings in the PASS permits her to have a full SSI check for living expenses while saving towards her goal. As an SSDI beneficiary who was entitled for more than 24 months, Amanda has Medicare. She also has Medicaid in that state as an SSI beneficiary. When Amanda's Title II benefit ends because she is performing SGA, she remains an SSI beneficiary. As long as her earnings remain at the SGA level, she won't be entitled to the Title II benefit again, but she will retain her Medicaid entitlement through 1619(b) even when she is working full-time, until her earnings are high enough to replace SSI and the services she receives under Medicaid. She will also retain her Medicare benefit for at least 78 months after her checks stop, under the Extended Period of Medicare Coverage.

Budgeting the PASS Excluded Income

Once Social Security determines how much a beneficiary can set aside in a PASS, as described in the previous section, the CWIC can then help the individual determine whether he or she needs to request that Social

Security exclude all of his or her countable income, or only a portion, for the life of the PASS. For example, if Amanda receives \$680/month of SSDI, has \$8,500 in social work training expenses, and anticipates needing 18 months to reach her goal of being a full-time social worker, then she won't need to request that Social Security exclude all her countable income during the life of the PASS. If she set aside \$660/month of her countable SSDI for the full 18 months of the PASS, she would end up with a total of \$11,880 in excluded income. Because she only needs \$8,500 to reach her goal, the PASS could only exclude up to the amount of the necessary expenses. So, when Amanda is ready to complete her PASS application, she only needs to request that Social Security exclude \$8,500 of her SSDI during the life of her PASS.

A simple way to help a beneficiary determine if he or she will have too much, too little, or just enough PASS-excluded income to cover his or her expenses is to take the monthly countable income expected during the life of the PASS and multiply it by the expected length of the PASS. In Amanda's case, the CWIC would take \$660 (her monthly countable SSDI) and multiply it by 18 (total number of months of the PASS), resulting in \$11,880. Since Amanda only needs \$8,500 to reach her goal, the CWIC may discuss adjusting the length of the PASS.

Another important area of budgeting with PASS is in helping beneficiaries understand how much in PASS-excluded funds they will have available and when. Because the individual is simply setting aside each month the approved countable income, it could take time to save up to purchase one or more of their PASS-approved items. For example, Social Security approved Amanda to pay \$2,000 for a social worker training program, and she planned to start it the month after her PASS started, she would quickly find that she won't have enough PASS funds set aside to pay the tuition. If she is only setting aside \$660/month, and her PASS has only been going for two months, then she will only have saved \$1,320. Therefore, it's important that CWICs assist beneficiaries in budgeting for when they will have sufficient PASS funds to cover each of the requested PASS expenses.

How PASS Interacts with Other SSI Work Incentives

There are a few things to keep in mind about the interaction of PASS and other SSI work incentives.

Student Earned Income Exclusion (SEIE)

While SEIE is a powerful work incentive, one of its drawbacks is how it interacts with PASS. Because SEIE allows Social Security to exclude so much earned income, it leaves little countable income with which to fund a PASS. There are some instances in which a PASS would be more beneficial for the long-term career development of a student, but isn't usable due to SEIE. A potential solution to this problem lies in the SEIE. Because Social Security can exclude so much earned income, students could take these wages and put them in the bank. An individual could use the PASS not to set aside income, but resources. By using the SEIE and PASS in combination like this, the young adult could actually save for post-secondary education or training that would lessen future dependency on VR funds or educational loans. While using the SEIE, the student would keep most, if not all, of the SSI payment intact while saving for an education.

Impairment Related Work Expense (IRWE)

A PASS can pay for the goods or services that would normally fit the definition of IRWE, provided that the beneficiary needs the goods or services to achieve the work goal. However, an expense that Social Security deducts under PASS, may not simultaneously be deducted as IRWE in the same calculation for SSI purposes. When this occurs, it's generally most advantageous to include the expense under the PASS instead of claiming it as an IRWE because IRWEs only offer approximately one dollar of reimbursement for every two dollars in expense.

The individual may claim expenses as both an IRWE and under a PASS simultaneously when he or she has both Title II disability benefits and SSI. The individual could claim the expense as an IRWE to reduce countable income during an SGA determination for the Title II disability benefits and include it as a PASS expense for the purposes of SSI.

Blind Work Expenses (BWE)

Like IRWE, an expense that Social Security pays under the PASS, the beneficiary may not also deduct under the Blind Work Expense provisions in the same month. Unlike IRWE, however, BWE offers the same rate of return as a PASS, so the beneficiary simply needs to decide where the expense best fits and apply it accordingly.

Section 301 Continuation of Benefits after Medical Recovery

As discussed in earlier units from this Module, the section 301 provision allows continuation of disability or blindness benefit payments to certain individuals whose disability or blindness medically ceases while he or she is participating in an appropriate program of vocational rehabilitation (VR) services, employment services, or other support services.

A PASS qualifies as an appropriate program for the purpose of section 301 determinations. A PASS qualifies because it's a program of employment or other support services carried out with an agency of the federal government (Social Security) under an individualized written employment plan similar to an Individualized Plan for Employment (IPE) used by state VR agencies. Eligibility for section 301 payments will apply if:

- The individual is participating in a PASS that Social Security approved before the date of disability or blindness cessation;
- Participation continues beyond the two grace months after disability or blindness cessation; and
- Social Security has determined that the individual's completion of the plan, or continuation in the plan for a specified period of time, will increase the likelihood that he or she won't return to the disability or blindness benefit rolls.

Appealing PASS Determinations

When a beneficiary disagrees with a PASS Specialist's determination, there is a process for appealing this decision. We describe the standard Social Security appeals process for all initial determinations in Unit 9 of this module. Generally, these rules also apply to PASS cases. However,

there are also a few differences in how Social Security handles appeals with respect to PASS cases. Current regulations provide individuals with the option of having an informal conference instead of a formal case review as part of the first step of the appeals process, which is generally known as "reconsideration." A PASS specialist other than the one who made the initial determination will review the appeal, whether the beneficiary chooses an informal conference or a formal case review.

Most PASS reconsideration interviews are conducted by telephone. If the individual has pertinent material to submit, he or she may submit it to the PASS Specialist by mail, fax, or email. After the PASS Specialist has conducted the interview and reviewed all pertinent materials, he or she makes a written decision and issues a notice of the decision to the beneficiary.

If, after the reconsideration, the beneficiary remains dissatisfied with the determination related to the PASS, the beneficiary may request a hearing before an administrative law judge (ALJ). This written request should include:

- The individual's name and Social Security number;
- The name and Social Security number of the individual's spouse, if any;
- The reasons the individual disagrees with the previous determination or decision;
- A statement of additional evidence the beneficiary will submit and the date he or she will submit it; and
- The name and address of any designated representative.

The beneficiary must file the request at a Social Security office or send it directly to the PASS Specialist within 60 days after the date the individual receives notice of the previous determination or decision. If the beneficiary doesn't meet the 60-day deadline, it's possible under some circumstances for Social Security to grant him or her more time to make the request. The request for an extension of time must be in writing and it must give the reasons why the individual didn't file the request for a hearing within the stated time period. If the beneficiary shows that there was good cause for missing the deadline, Social Security will extend the time period.

The CWIC's Role in Assisting with Plans to Achieve Self-Support (PASS)

Social Security expects CWICs to be actively involved in the process of assisting beneficiaries with developing Plans to Achieve Self-Support. When an individual indicates the desire to pursue a PASS to achieve his or her work goal, the CWIC should begin by fully explaining the particulars of this complex work incentive and utilizing a variety of tools to help define appropriate candidacy and development of information to be included in the PASS application. A variety of sample templates to assist in this activity are in the Conducting Independent Research section, including the PASS Candidate Checklist and PASS Monthly Expense Sheet.

As you assist the beneficiary in completing the PASS form, it's helpful if you break it up into small sections for the individual to work on one at a time. The PASS application can be overwhelming when a beneficiary sees it in its entirety. Tackling small sections individually makes the task more manageable and helps the beneficiary stay focused. The CWIC's job isn't to write the plan for the individual. It's the CWIC's role to function as a teacher and facilitator for plan preparation. An effective strategy in the planning phase is to communicate regularly with the individual and assign "homework" at the conclusion of each consultation. The beneficiary should be prepared to present his or her finished "homework" assignment at the next scheduled contact for discussion and addition to the plan. Each homework assignment reflects a component of information required by the PASS application. Once the individual has completed the PASS application, it's ready for the individual to send to the designated PASS Cadre in the region. Although the PASS is now in Social Security's hands, the CWIC's role doesn't end. The CWIC may have interaction with the PASS Specialist assigned to review the plan. The CWIC will also be following up with the individual periodically to ensure that things are going smoothly and that he or she requests amendments if things change in regards to the plan.

As we have discussed, the CWIC has an integral role in facilitating the development of a PASS. Despite this, CWICs make the following common mistakes when working with beneficiaries who want to pursue a PASS:

- **The beneficiary has already achieved the desired work goal.** Too often CWICs try to use a PASS to pay for items needed to maintain the job the beneficiary already has. For

example: Mark is employed full-time at the local high school cafeteria and he relies on his parents to drive him to and from work. Mark's parents are divorcing, causing his mother to return to full-time work. Mark no longer has transportation to work, thus he wants to write a PASS to purchase a car. Mark has no desire to pursue a different vocational goal; he simply wants to buy a car. This isn't a viable PASS, as he has already achieved his work goal.

- **You describe the PASS to the individual, provide an application, and refer the beneficiary to the PASS Cadre for further assistance.** As previously mentioned, Social Security expects that CWICs will be involved with the entire PASS development process. This isn't an area where you simply explain the work incentive and then pass it off to others for development assistance. It's the CWIC's job to work closely with beneficiaries who are interested in developing a PASS.
- **CWICs write the PASS.** It's critical to remember that the CWIC's role is to guide and facilitate the process. This is the beneficiary's plan, and he or she must be directly involved in the development. The beneficiary needs to have a vested interest in the development in order to successfully complete the PASS.

Strategies for Success:

- Thoroughly explain the whole process of PASS development, approval, and follow-through.
- Utilize the PASS Candidate Checklist when an individual indicates desire to establish a PASS to help determine if a PASS is a good fit and to identify possible areas of weakness that you will need to address.
- Schedule regular communication with the beneficiary to begin PASS development. This can be done face-to-face, by phone, or by email.
- Assign "homework" to the individual in small sections, and set deadlines by which the sections are due.
- Remember that the CWIC's role is to be a guide through the process, NOT the author of and decision-maker for the PASS.

- Encourage the individual to thoroughly participate in the process. The PASS is likely to be more successful if the individual has invested his or her own time and effort into developing the plan.
- Strategize with other agencies, such as VR, for cooperation and buy-in to the PASS.
- CWICs should be prepared to work closely with PASS Specialists to advocate on behalf of the beneficiary during the PASS review and approval process.

NOTE: It's not up to the CWIC to determine who can or can't have a PASS. Approval of these plans is the responsibility of the Social Security PASS Specialists. An individual who wishes to pursue a PASS has the right to do so, even if the CWIC doesn't feel that Social Security will approve the PASS, or that the individual is a strong PASS candidate. While the CWIC may want to limit the amount of time spent developing a PASS that has little or chance of approval based on the current regulations, the CWIC cannot flatly refuse to assist.

Frequently Asked Questions about Helping Facilitate PASS Development

CWICs have lots of questions about how to help beneficiaries with the development, submission, approval, and subsequent management of a PASS. The PASS form is long and appears very intimidating at first. CWICs may become confused about whom to even talk to about PASS and how far to go in the facilitation process. Below are the most common questions CWICs pose about supporting PASS development:

How do I know with whom to even discuss PASS?

Certain beneficiaries are in situations that are more conducive to use of PASS than others. These are the people CWICs should watch for:

- Concurrent beneficiaries;
- SSI recipients with some form of countable income (earned or unearned); and

- Title II beneficiaries with relatively low monthly payments (under \$1,000 per month).

Keep in mind that PASS candidates must have clear career goals, and the goal must require that the beneficiary pay for something in order to reach the goal. The beneficiary must NEED items or services in order to achieve the career goal for a PASS.

How do I spot a really good PASS candidate?

All three of these items must be in place for a PASS to work:

1. The person **MUST** have a feasible work goal which is expected to result in SGA-level earnings or substantial reduction in SSI; and
2. The person must have some form of countable income or resources to set aside in the PASS; and
3. The person must need items or services in order to achieve the occupational goal.

There are also certain situations in which a PASS simply won't work:

- The individual has no desire to work, or the work goal clearly won't lead to SGA-level employment or substantial reduction in SSI.
- The individual is already working at a substantial level.
- There is no income or resources to set aside in the PASS.
- The individual can't establish eligibility for SSI, even with a PASS.
- The person can't live on disposable income left after a PASS is in place.

What can I do to help a beneficiary decide whether or not a PASS is right for him or her?

CWICs need to help beneficiaries assess their strengths and potential weaknesses as a PASS candidate **BEFORE** they invest time and effort in developing the PASS. There is absolutely no point in developing a PASS that has zero chance of being approved. This wastes the time of both the CWIC and the beneficiary, and needlessly raises the beneficiary's

expectations and hopes, only to see him or her suffer a letdown when Social Security denies the PASS. Using the PASS Candidate Checklist is a great way to conduct an assessment of PASS appropriateness. This tool will highlight any vulnerability the beneficiary will have in terms of PASS approval in advance. The CWIC can use these indicators to either help the beneficiary determine NOT to pursue the PASS, or to identify those areas that will require extra attention when writing the PASS. A copy of the PASS Candidate Checklist is provided at the end of this unit.

What is the best way to introduce PASS to a beneficiary who is a solid PASS candidate?

The best approach involves four simple tasks:

1. Focus on the possibilities and benefits of a PASS: Don't dwell on how much time and work it entails.
2. Cover the basic concepts: Don't overwhelm beneficiaries with too much detail in the beginning.
3. Explain your role and what you can do to assist with developing and managing the PASS.
4. Ask for a decision: yes or no?

When the decision to pursue PASS is a "go," what are the steps I need to take to get started?

1. Explain the PASS submission, review, and approval process carefully.
2. Introduce the PASS form and go over it in detail to answer questions.
3. Assign a manageable amount of "homework" to the beneficiary and support system.
4. Establish a deadline for completion of first homework assignment and next meeting.

NOTE: When self-employment is the goal, the first step MUST be the individual's development of his or her business plan. Don't begin the PASS until the beneficiary has developed the business plan in accordance with PASS requirements.

How exactly do I “facilitate” completion of the PASS homework?

CWICs shouldn't jump in and write the PASS for the beneficiary. The objective is to support the beneficiary to complete as much of the work as possible. If possible, have the beneficiary write or at least outline sections independently, and you merely advise and edit. If this doesn't work or if the capabilities of the beneficiary make this impossible, the next option is to have the beneficiary use his or her employment support team to assist with writing or outlining sections with your advising and editing. This could include a job coach, a case manager, the VR counselor, the representative payee, or any combination of people collaborating to support the beneficiary with PASS development. The final fallback position is for you to interview the beneficiary and support system and develop the written content. The beneficiary's employment support team would review and approve the final product.

How do I know when the PASS is good enough to submit for review?

Don't wait until the PASS is perfect. Submit the PASS when an acceptable working version is ready. As long as the beneficiary has addressed every section at some level, it should be sufficient for initial submission. As the CWIC, you should be identified in the PASS with contact information provided. Beneficiaries need to be prepared to answer questions from the PASS Specialist — it's their PASS, not the CWIC's.

One of the beneficiaries I work with just had their PASS approved. Now what?

Beneficiaries often view the approval as the end of the PASS process, but it's really just the beginning — now the hard part begins! You should invest significant time in educating the beneficiary about his or her responsibilities and offer advice about managing the PASS over time. The handout at the end of this unit should guide your discussions with beneficiaries about how to successfully manage their PASS. This handout (**Tips for Managing Your PASS**) can also be found on the VCU NTDC website (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=61>).

How much am I supposed to follow up with a beneficiary who has an approved PASS?

Beneficiaries with approved PASS plans are extremely high-priority WIPA clients. These are the very people who most need the CWIC's time and attention. Start by setting up a calendar of contact points with the beneficiary. Contact points will depend upon the milestones contained in the PASS and the unique needs of the beneficiary. You should initiate contact with the beneficiary on a regular basis to help keep things on track.

Intervals between contacts will depend on the individual and his or her plan, but all beneficiaries with active PASS plans should receive regular contact from WIPA personnel throughout the life of the plan.

What do I do when something goes wrong with the PASS?

In life, rarely does everything go exactly as planned, and managing PASS plans is no exception to this rule. Here are some tips for how you can handle PASS problems:

- Check in with the beneficiary on a regular basis to identify potential problems that you can catch before they become serious.
- Discuss problem areas openly and honestly with the beneficiary. Encourage the beneficiary to discuss problems with the PASS Specialist. Offer assistance with this as needed.
- Help the beneficiary develop a plan of correction — how will the problem be resolved?
- Hold the beneficiary accountable for following the steps needed for resolution.

Conclusion

PASS offers a unique opportunity for beneficiaries to achieve vocational goals, increase their available income, reduce their dependence on benefits, and improve their quality of life. Coupled with the other work incentives discussed earlier, particularly the Medicaid protection afforded under the 1619(b) provisions, PASS may assist individuals to also retain

essential supports until they are able to fully support themselves. While PASS isn't a work incentive that every beneficiary is eligible for or could benefit from, it provides incredible advantages for individuals who truly want to establish a successful career that leads to economic self-sufficiency.

Remember that facilitating use of work incentives such as PASS is what CWICs do — it's the primary function of the job. CWICs who never facilitate PASS development aren't doing their whole job — it's just that simple. As a general rule of thumb, CWICs should strive to have at least one PASS being developing or managed at any given time. CWICs shouldn't let the PASS form intimidate them — it's only a form and really isn't that difficult to complete. Just take the sections one by one and work with the beneficiary to address the items to the best of your ability. The very best way to learn how to develop a PASS is to jump right in and do it. If you get stuck, seek help from your VCU NTDC technical assistance liaison.

Conducting Independent Research

- **PASS Online**

This is a great website sponsored by Cornell University that provides specific information about PASS as well as an online tutorial to help CWICs learn how to develop a PASS (<http://www.passonline.org>).

POMS Reference

- **POMS SI 00870.000 – Plans to Achieve Self-Support for Blind or Disabled People – Subchapter Table of Contents**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500870000>)

Additional Resources

This section contains four important resources related to PASS:

1. **PASS Candidate Checklist** (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=58>)
2. Handout for beneficiaries entitled **“So, Your PASS was Approved – Now What? Tips for Helping Beneficiaries Manage a Plan to**

Achieve Self Support” (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=61>)

3. **PASS Form SSA-545-BK dated 8/2019 found online**
(<https://www.ssa.gov/forms/ssa-545.pdf>)

All of these documents are available on the VCU NTDC website
(<https://vcu-ntdc.org/resources/resourceDetail.cfm?id=3>)

Competency Unit 8 – Self Employment and Social Security Disability Benefits

Introduction

There are several important reasons why the Community Work Incentives Coordinators (CWIC) training manual includes an entirely separate unit on the effect of self-employment income (SEI) on Social Security disability benefits. First, Social Security treats self-employment income differently than wages in both the Supplemental Security Income (SSI) and Title II disability programs in some important ways and CWICs need to be aware of these critical differences. Second, several unique work incentives apply to self-employed individuals that don't apply to individuals in wage employment. In addition, some work incentives that apply in both wage employment and self-employment situations apply differently when the beneficiary is self-employed. You will need to counsel beneficiaries who are pursuing a goal of self-employment or small business ownership on the unique manner in which self-employment income affects disability benefits and the ways in which an individual may apply work incentives to help achieve a self-employment goal.

Self-employment is an increasingly popular employment objective for individuals with disabilities because it offers both significant flexibility as well as earnings potential. State Vocational Rehabilitation (VR) agencies and Employment Networks (EN) are supporting a growing number of beneficiaries who are pursuing a self-employment goal, and the volume of Work Incentives Planning and Assistance (WIPA) referrals on self-employment cases has also increased significantly in the past few years. Now more than ever, CWICs need to develop specific expertise in handling self-employment cases and must be skilled at counseling self-employed beneficiaries on benefits issues.

Telling the Difference between Wage Employment and Self-Employment

When providing WIPA services, there will be times when it's difficult to determine if the earned income a beneficiary gets is from wage employment (i.e., an employer-employee relationship exists) or if the person is actually self-employed. Determinations about whether earned income represents "wages" or "self-employment income (SEI)" can get very complicated. To add further difficulty, these issues don't fall simply under the jurisdiction of the Social Security Administration (SSA). Both the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) have a stake in these determinations and often have overlapping laws and regulations. These determinations are critically important because the Title II and SSI programs treat various forms of income differently. If CWICs are unclear about whether income is wages or self-employment income, they may give incorrect information about how Social Security will treat it. In turn, this may cause a beneficiary to make a series of poor choices about work.

This unit isn't designed to make CWICs experts in determinations of wage employment or self-employment. There are literally hundreds of POMS citations covering this topic, and the issues involve complex legal interpretations. The following sections will provide a general understanding of how wage employment and self-employment differ, and how Social Security decides which situation applies to a beneficiary with earned income.

Social Security and IRS make Independent Employment Determinations

Social Security's regulations state: "If there is a question about whether you are working as an employee or are self-employed, we or the IRS will make a determination after examining all of the facts of your case."

It's important to understand that the IRS and SSA have very different rules that govern these determinations. Social Security will make an independent employer-employee relationship determination to establish a worker's coverage status or to resolve earnings discrepancies. The IRS makes an independent employer-employee relationship determination to establish a worker's obligation to make Federal Insurance Contributions Act (FICA) contributions and for tax withholding purposes. Social

Security doesn't need to ask for copies of IRS determinations or rulings on employer-employee relationships. Social Security will make its own employment determination, regardless of whether or not there is an existing IRS determination. In addition, Social Security doesn't defer to the IRS' determination that a worker is, or isn't, an employee. The IRS will make its employment determination based on tax liability. The Social Security employment determination is for Social Security coverage purposes. Because of this, it's possible for the IRS to consider a beneficiary to be self-employed for IRS purposes, but in wage employment for Social Security purposes, and vice versa. This can be very confusing for beneficiaries and CWICs.

Social Security's Procedures for Making Employment Determinations

When a beneficiary's employment situation is unclear, local Social Security personnel may use Form SSA-7160 (Employment Relationship Questionnaire) to make an employment determination. The field office (FO) will request the worker and his or her alleged employer to complete this form to determine the worker's employment status. When possible, both the worker and the employer should complete the form independently of each other. In some cases, Social Security personnel may assist the worker and the employer in completing the form to ensure that they fully understand the questions. Form SSA-7160 is a questionnaire that gathers information from the worker and the alleged employer to determine the worker's employment status using a set of rules known as the Common Law Control Test.

Common Law Control Test

Social Security uses common law rules to establish the status of a worker (e.g., employee, contractor, or self-employed) by determining whether a relationship exists between the worker and the person receiving the services. Social Security examines facts and circumstances of individual cases to determine the degree of control the employer has over the worker. The courts identified various factors that Social Security can use to determine if an employment relationship exists. These factors are described in detail in **POMS RS 02101.000**, which can be found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0302101020>).

Social Security will consider an individual an employee if his or her relationship with the person receiving the services meets the common-law control test. Under this test, the individual is subject to control by the person receiving the services as to when, where, and how the work is done. The control doesn't need to be exercised for an employer-employee relationship to exist; the right to exert such control is enough. In borderline cases, a determination as to whether an individual is subject to the right of sufficient direction and control by the person for whom the services are performed is often a difficult one to make. Social Security must examine the relationship of the business and the worker. The three categories of evidence and key facts that demonstrate the right to direct and control are:

1. Behavioral control

The following are examples of behavioral control:

- Worker receives instructions from the business
- Worker receives training from the business

2. Financial control

The following are examples of financial control:

- Method of payment — worker receives an hourly wage or salary rather than a lump sum payment for a particular task
- Worker doesn't have the opportunity for profit or loss
- Worker doesn't make his or her services available to the relevant market
- Worker doesn't make significant investments
- Worker doesn't have unreimbursed expenses

3. Relationship of the parties

Examples of relationships between a business and a worker:

- Discharge or termination — either business or worker can end the relationship before the job is completed
- Employee benefits (beyond monetary compensation)
- Intent of parties — written contracts that indicate both parties believe they are in an employer-employee relationship

- Worker's services are a part of business's regular business activity

A finding that an individual is an employee means the individual was subject to control over when, where, and how (the means and methods) to perform the work. This finding indicates that the employer has the right to direct and control the worker. Social Security determines a worker to be an employee when the majority of these conditions are met:

- The employer furnishes the worker with tools or equipment and a place to work. (However, some artisans such as carpenters and plumbers usually provide some or all of their own tools.);
- The employer may fire the worker;
- The employer pays the worker's business or travel expenses;
- The employer sets the work hours, requires that the worker work full-time, or restricts the worker from working for others;
- The employer pays the worker by the hour, week, or month;
- The worker doesn't hire, supervise, or pay assistants (unless employed as a foreman, manager, or supervisor);
- The worker must perform the job personally; and
- The worker receives training from the employer, or the worker must follow the employer's instructions.

A worker is self-employed when he or she meets the majority of these conditions:

- Advertises his or her services to the general public;
- May be liable for damages if he or she quits before completing the job;
- Makes a profit or suffers a loss;
- Pays his or her own expenses and provides the equipment and work place; and
- Works for a number of persons or firms at the same time.

Determinations involving the common law control test can be complicated. CWICs should always refer beneficiaries to the local Social Security office for these determinations.

A reader-friendly **summary of the rules governing employment determinations** can be found in the Social Security Handbook here: (http://www.socialsecurity.gov/OP_Home/handbook/handbook.08/handbook-toc08.html).

Types of Self-Employment

Part of the process of determining when a beneficiary is self-employed involves deciding what type of self-employment the individual is engaged in or plans to be engaged in. These classifications are important because SSA may treat different forms of self-employment in different ways. Determining which form of self-employment a beneficiary is participating in can be very complicated. When in doubt, CWICs should refer the case to the local Social Security FO for assistance. The most prevalent types of self-employment are described below, but CWICs need to understand that many different situations may occur that Social Security may investigate on a case-by-case basis before making a determination.

Small Business Ownership

This is perhaps the most common form of self-employment and is the easiest to identify. Small business ownership occurs when a beneficiary owns all or part of a business or micro-enterprise and derives earned income by performing services for that business. Small businesses may assume many forms and owners can organize them under many different structures including sole proprietorship, partnership, limited liability companies (LLCs), and corporations. A beneficiary may be the only owner of a company or business, or may be one of a number of owners. Social Security considers an individual who owns a share of a business to be self-employed only when he or she performs some form of work or service for that business. It's possible to be an investor in a business but for Social Security to not consider that person self-employed or receiving earned income, depending on what role the person plays within the business. Some very complicated rules apply to businesses that are incorporated and are explained later on in this unit.

Independent Contractors

An independent contractor is a person, business, or corporation that provides goods or services to another entity under terms specified in a contract or within a verbal agreement. Unlike an employee, an

independent contractor doesn't work regularly for an employer but works as and when required. Independent contractors usually receive pay on a freelance basis.

In the United States, any company or organization engaged in a trade or business that pays more than \$600 to an independent contractor in one year is required to report this to IRS as well as to the contractor. Independent contractors don't have income taxes withheld from their pay as regular employees do. Independent contractors are responsible for their own self-employment tax.

In determining whether an individual is an employee or an independent contractor, Social Security applies the common control rule as previously described. When there is doubt about whether or not a beneficiary is working as an independent contractor, always refer the person to the local field office for a determination. These determinations can be very complex, and CWICs aren't authorized to perform them.

Statutory Employees

Statutory employees include workers from four occupational groups who perform services under certain prescribed circumstances. These workers can't qualify as employees under the common-law rules, but their work conditions are so similar to those who do that Congress provided for their coverage as statutory employees, rather than as self-employed persons. Statutory employees include:

- Agent or commission drivers who deliver food or beverages (other than milk) or pick up and deliver laundry or dry cleaning for someone else;
- Full-time life insurance salespeople who sell primarily for one company;
- Home workers who work by the guidelines of the person to whom they are providing services; and
- Traveling or city salespeople who work full time for one company or person.

These workers are employees for Social Security coverage purposes when:

- They have no substantial investment in facilities to do the work (other than transportation);

- They perform services in a continuing work relationship; and
- The service contract contemplates that they will perform substantially all of the services personally.

For more information about statutory employees, refer to **POMS RS 02101.300 - Statutory Employees**, which can be found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0302101300>).

Statutory Non-Employees

When workers don't meet the qualifications of an employee under the common law control test, Social Security will likely consider them to be self-employed as independent contractors. However, under IRS statute, Social Security does NOT consider workers in the following three occupations to be employees if they meet certain qualifications:

- Companion sitters;
- Direct sellers; and
- Real estate agents.

Section 3506 and 3508 of the Internal Revenue Code (IRC) provide that these workers are "statutory non-employees." This means the IRS treats them as self-employed for all federal tax purposes, including income and employment taxes, if a) substantially all payments for their services as direct sellers or real estate agents are directly related to sales or other output, rather than to the number of hours worked, and b) they perform their services under a written contract providing that the IRS will not treat them as employees for federal tax purposes.

For more information about how Social Security views real estate agents and other similar salespeople, refer to **RS 02101.200 Real Estate Agents and Salespeople** (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0302101200>) and **RS 01802.232 Real Estate Agents and Direct Sellers** (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0301802232>). Again, CWICs don't make these determinations, but should refer beneficiaries to the local field office.

For more information, refer to the Virginia Commonwealth University (VCU) National Training and Data Center (NTDC) resource documents titled **"Determining when a Beneficiary is an Employee or Self-**

Employed,” which is available online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=166>)

Unusual Self-Employment Situations

Certain types of activities can be difficult for Social Security to classify as self-employment, wage employment, or hobbies. The situations CWICs encounter the most include the following:

Ministers and Members of the Clergy

Social Security typically considers services performed by ministers or other members of the clergy to be self-employment for Social Security coverage purposes, unless the minister has applied for and received an exemption from SECA (Self-Employment Contributions Act) taxes. However, ministers do receive an IRS Form W-2 (Wage and Tax Statement) from the church, order, or other entity for which they perform services. The Form W-2 shouldn't show Social Security and Medicare wages or taxes because the beneficiary would pay these directly; the church wouldn't withhold them. Ministers can receive a variety of things in exchange for ministerial duties, some of which count as earned income while others won't. Gross income for a minister includes the following items:

- Salary;
- Fees and honoraria for officiating at weddings, christenings, funerals, and other services in the exercise of the ministry;
- Rental allowance for a parsonage or value of a parsonage furnished to the minister;
- Value of meals part of the compensation package; and
- Travel and automobile allowances, although the minister can deduct these same items as business expenses he or she incurred in the performance of ministerial duties.

A minister excludes the following items from gross income:

- Pensions and retirement pay;
- Parsonage or housing allowances when the employer includes it in retirement pay after the minister retires, or any other

retirement benefit the minister received after retirement pursuant to a church plan as defined in Section 414(e) of the IRC, Social Security must exclude when computing NESE. For example, if a minister retires from Church A and the rental value of a parsonage or any other allowance is included in his or her retirement pay, Social Security must exclude the parsonage allowance when determining NESE. However, if this same retired minister goes to work for Church B and it pays him or her a parsonage allowance, Social Security must include this new income when computing NESE.

- Gifts, unless they are part of the minister's compensation.

CWICs must be careful when counseling beneficiaries who say they are members of the clergy, because there is so much variance in what this actually means. In addition, even when a beneficiary does meet Social Security's definition of a clergy member, there are some cases in which an ordained minister is clearly an employee of the church or religious organization. For example, this is often the case for individuals who serve as youth ministers or music ministers for churches or religious groups. There are even special rules for certain members of the clergy, such as individuals who have taken a vow of poverty or clergy who are in the U.S. armed forces. Whenever there is any doubt about the employment status of a minister or member of the clergy, refer the case to the local Social Security FO for a formal determination.

Directors of Non-Profit Organizations

Beneficiaries sometimes want to start and manage a non-profit organization that they believe is a form of self-employment. In fact, Social Security doesn't consider an executive director or other paid manager of a non-profit corporation that has federal tax exemption status under 501(c) (3) of the IRS code as self-employed. A non-profit organization isn't "owned" by any person or entity in the way a business is owned, but rather is governed by a volunteer board of directors. The executive director of a non-profit organization is an employee of the organization who reports to the board of directors.

Artists and Authors

Social Security applies the same concepts described earlier when determining whether income derived from selling pieces of art or earning

royalties from published written work constitutes self-employment income. Beneficiaries begin some endeavors as hobbies with no intention of ever making a profit and as such, generally don't constitute engaging in trade or business. For example, if a beneficiary receives a royalty payment based on products he or she made originally as part of a hobby, Social Security won't consider the payments as "earned" for the period the individual was doing the activity as a hobby. However, if the beneficiary continues to provide the same services or products with the intention of making a profit, Social Security might consider any income he or she derived as self-employment income. In other cases, a beneficiary is clearly in the business of producing and selling art or literature, in which case any net earnings from self-employment derived from the business both the IRS and Social Security would count as earned income. Again, CWICs aren't authorized to make determinations of this type. When any doubt exists, you should refer the beneficiary to the local Social Security field office for a formal determination.

Farmers

Social Security considers beneficiaries who derive income from farming to be self-employed unless they are working as an employee of someone else who owns a farm. The rules governing how both the IRS and Social Security count farm income are terribly complex and depend on the unique circumstances of the individual. CWICs who encounter a self-employed farmer should contact their technical assistance liaison with the VCU NTDC for help.

Understanding Net Earnings from Self Employment (NESE)

Before a CWIC can understand how self-employment income affects Social Security disability benefits, you must understand how Social Security views income generated from self-employment. For people who are self-employed, Social Security doesn't count gross profits the business generated, but rather "net earnings from self-employment" (NESE). This is completely different from the way Social Security treats earned income from wage employment in which Social Security counts gross wages. The terms "gross" and "net," and what they mean for someone who is self-employed and receiving Social Security disability

benefits, can be confusing. Here is a brief explanation of the various terms:

- Gross income is the total amount of money that a business takes in from sales of products or services. This is also called “gross sales” or sometimes “gross receipts.”
- Net income is the amount of profit that the business makes. Profit is the gross sales minus any legitimate expenses that the business incurred. It’s this figure that a business owner reports to the IRS from which it assesses business taxes,
- NESE is the net income or net profit from a business less half of the self-employment taxes the beneficiary pays. More detail on how NESE is derived is provided in the next section.

Turning Net Income into NESE

The difference between net income from a business and NESE is the deduction of the extra Social Security tax that self-employed people pay. For people in wage employment, employers pay half of the Social Security tax on an employee’s behalf, but self-employed individuals must pay the whole sum by themselves. When determining NESE, Social Security gives self-employed individuals credit for paying the employer’s 7.65 percent share of the Social Security and Medicare taxes in addition to the 7.65 percent share they would normally pay as an employee.

When Social Security is trying to determine NESE for a current calendar year, it will take the estimated profit the beneficiary expects and will multiply that estimated net profit of the business by .9235. Social Security determines that factor by subtracting the percentage of extra taxes the beneficiary paid on each dollar of net earnings (.0765) from 1. When Social Security personnel are determining actual NESE for a calendar year that has concluded, they must perform the following steps:

1. Add the gross earnings from all trades or businesses carried on by the self-employed person.
2. Include the beneficiary’s distributive share of income from a partnership of which he or she is a general partner.
3. Exclude any types of income so specified by the Act or the IRC.
4. Subtract any ordinary and necessary expenses incurred in carrying on the business. In computing NESE, subtract from

total receipts all of the business expenses, which are deductible under the IRC.

5. Multiply the result by .9235 (i.e., $100\% - 7.65\% = 92.35\%$ or 0.9235) to derive the NESE, beginning with taxable years after December 31, 1989.

Example of turning net income into NESE:

Jeanne estimates that she will have \$2,000 in net profit. Jeanne operated her business beginning in November. Social Security would average the net profit in this estimate over the months worked: \$2,000 divided by 2 equals \$1,000 in net profit per month the business was active.

To determine Jeanne's estimated NESE for those months, multiply \$1,000 by .9235.

$\$1000 \times .9235 = \923.50 in NESE per month.

Social Security only deducts the employer's share of the self-employment tax to determine NESE when the beneficiary actually paid that tax. If the beneficiary paid no Social Security tax (either he or she didn't owe any or because he or she didn't file taxes), the deduction doesn't apply. In addition, NESE may include in-kind income (e.g., food, clothing, shelter, a car, etc.). Social Security values in-kind income from NESE at its current market value.

Once Social Security determines the NESE for a given month, the agency uses that number as the starting point for SGA decisions and when determining how much SSI will be due. Social Security determines countable income by taking NESE and deducting any allowable work incentives. Social Security calculates NESE in exactly the same manner for both SSI recipients and Title II disability beneficiaries. Keep in mind, however, that the countable NESE would affect SSI and Title II cash benefits in different ways - just as is the case in wage employment. Detailed explanations of how these programs treat NESE is provided later in this unit.

A Warning about "Owner's Draw"

When someone takes money out of his or her business, it's called an "owner's draw." Owner's draw isn't a "salary" in the way this word usually applies but can include money, assets, or services the owner

takes out of the business. A common misconception is that Social Security only counts what a beneficiary actually takes out of the business as earned income. Unfortunately, this isn't true.

Remember that Social Security is interested in the "net earnings from self-employment" or NESE. A business owner may choose to keep the profits of a business in the business account, or may take some or all of it out as an owner's draw. The amount of owner's draw a beneficiary takes is irrelevant to Social Security. Social Security uses NESE when making SGA determinations for beneficiaries of the Title II disability programs and when determining how much in SSI is due.

In the SSI program, Social Security refers to "owner's draw" as "Withdrawals for Personal Use." Because SSI is a means-tested program, if a beneficiary takes in-kind items or cash out of the business for personal use, Social Security could count it as income, which could cause a reduction in SSI cash payment, or possibly even cause ineligibility for SSI. When an individual alleges or when Social Security discovers that a beneficiary has withdrawn cash or in-kind items from a business for personal use, Social Security will ask the individual whether he or she properly accounted for the withdrawals in determining NESE. That is, did the beneficiary deduct them on his or her federal income tax return in determining the cost of goods sold or the cost of expenses incurred, or did he or she deduct them on his or her business records? If the individual alleges that he or she properly accounted for the funds, Social Security will accept this allegation and will NOT count this income against the individual again. If the individual did NOT properly account for the withdrawals, Social Security will proceed in the following manner:

1. Social Security will ask the individual to estimate the value of the cash or in-kind withdrawals. Social Security will deduct that amount from the cost of goods sold or the cost of expenses incurred on the profit and loss statement to arrive at the proper NESE.
2. If the individual can't or won't provide the profit and loss statement, but alleges an amount of NESE, Social Security will add the value of the withdrawals to the individual's allegation of NESE.
3. If an individual alleges withdrawals for personal use but can't or won't estimate the value of the withdrawals, or if the individual's

personal expenses exceed the stated NESE and no other income is available, Social Security will develop for unstated income.

CWICs should be aware that when an individual diverts money from a business to personal use without accounting for it through the business financial records, it's against IRS rules for both small business and individual income reporting. No one should ever encourage beneficiaries to do this under any circumstances. Beneficiaries should deposit all income attributable to the business into the business account (not a personal bank account), and they must reflect this in the profit and loss statements for the business.

Business Structures May Affect How Social Security Counts NESE

Social Security treats different business structures in different ways when determining how much income to attribute to a beneficiary when conducting SGA determinations and determining how much in SSI is due. Business structure can also affect how the SSI program looks at the business assets when making resource determinations. The structure of a business matters, and it's an important issue about which to counsel beneficiaries.

The five types of business structures are summarized below:

1. **Sole Proprietorship:** The easiest way to form a business is as a sole proprietor, and most small businesses have this structure. The business owner and the business are essentially the same. There is no need for legal documents, and there are no filing requirements other than the IRS Schedule C in the individual tax returns. A sole proprietor doesn't even need a federal employer ID number, but can do business under the individual owner's Social Security number.
2. **Partnership:** Partnerships exist when more than one person is involved in the ownership of the business. The partners share in income and expenses based on their percentage of ownership share in the partnership.
3. **Limited Liability Company (LLC, PLLC):** An LLC is the newest form of business ownership. It's a registered

unincorporated entity. It gives the same legal protection as a corporation, but without as much of the reporting and taxing requirements. An LLC can function like a sole proprietorship, partnership, or Sub S Corporation. Each state has certain requirements for setting up and maintaining an LLC.

4. **Sub S Corporation:** A Sub S Corporation is treated like a partnership for tax purposes, but creates a separate legal entity. The ownership is in the form of shares, so ownership can be transferred more easily. Businesses form a Sub S Corporation with the aid of an attorney or accountant.
5. **C Corporation:** A "C Corporation" is a standard corporation, and most large businesses use this structure. C Corporations provide good liability protection for the owner(s); however, the IRS sees a C Corporation as a separate entity and taxes it as such. This can result in double taxation. The corporation can pay taxes on income, then the owners pay taxes on distributions they receive. The ownership is in the form of shares. Businesses form a C Corporation with the aid of an attorney or accountant.

Officers and Directors of Corporations

Generally, Social Security considers an officer of a corporation to be an employee of the corporation. Social Security deems a corporate officer to be in "employment" even if he or she performs no services for the corporation, as long as he or she receives remuneration for holding corporate office. However, an officer of a corporation who as such doesn't perform any services, or performs only minor services, and who neither receives nor is entitled to receive, directly or indirectly, any remuneration for serving as an officer Social Security doesn't consider to be an employee of the corporation.

Although a corporate officer is generally an employee, payments made to the officer don't constitute "wages" unless such payments are for performing services for the corporation or for holding corporate office. Payments by a corporation to an officer for reasons other than the holding of a corporate office aren't wages. Examples of such payments would include payment of dividends, repayment of loans, or fees for services performed in other capacities of a non-employment

nature. Corporations often make payments of this type to “honorary” or inactive corporate officers.

The board of directors is the governing body of the corporation and therefore isn’t subject to control by the corporation. Therefore, a director who attends and participates in board meetings wouldn’t meet the common law test for an employee, but Social Security would deem the director to be in self-employment. A director who does work for the corporation, other than attending and participating in the meetings of the board of directors, may be an employee with respect to such work if it’s non-directorial in nature.

CWICs need to recognize that beneficiaries who are “officers” of relatively small companies that have been incorporated may think they are self-employed when, in fact, Social Security considers them to be employees. It’s good practice to check with the local Social Security FO whenever dealing with a beneficiary who is a corporate officer to verify employment status before offering advice. Remember that the difference between being an employee and being self-employed can have a significant effect on benefits — particularly in the SSI program. For more information, refer to **POMS RS 02101.016 Officer or Director of a Corporation**, which can be found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0302101016>)

A Warning about Businesses Structured as Corporations

Business structure does matter, and in most cases, forming a corporation isn’t the best way to proceed for a variety of reasons. Accountants who aren’t accustomed to working with beneficiaries of Social Security disability programs often recommend incorporation because it offers certain tax advantages and because they want to make sure the business owner is protected from personal liability claims that result from accident or injury claims that occur in the business. If a beneficiary operates a business as a sole proprietorship or a simple partnership, for example, people with liability claims against the can personally sue him or her— this means the beneficiary’s personal assets can be at risk.

There is another, more effective way of dealing with these liability issues in most cases — that is, to file as a Limited Liability Company or LLC instead of a corporation. The LLC structure offers business owners the liability protection they need without some of the negative financial consequences of forming a corporation. The LLC structure is also very

flexible. Business owners can design LLCs to act like sole proprietorships, partnerships, or even corporations in some instances. Besides, filing an LLC is usually far cheaper and faster than forming a corporation.

A full explanation of the various structures a business can take and how Social Security treats each structure would consume far more space than is available in this unit. In the overwhelming majority of cases, forming a corporation may be detrimental to a Social Security disability beneficiary as well as SSI recipients. While corporations may offer certain tax advantages, the disadvantages of corporations in terms of the negative effect on benefit eligibility can far outweigh any benefit that incorporation might provide. It's critically important that beneficiaries meet with a certified CWIC experienced in self-employment cases before they pay an accountant to incorporate a small business.

NOTE: Many self-employed beneficiaries use the services of a CPA, accountant, or bookkeeper to keep their books and prepare their tax returns. These professionals should have some working knowledge of how self-employment affects beneficiaries of the Social Security disability programs, but most will NOT have this knowledge or expertise. CWICs are encouraged to work closely with beneficiaries who are pursuing self-employment to help accounting and tax professionals understand the unique aspects of serving Social Security disability beneficiaries.

Self-Employment and Title II Disability Benefits

Title II disability beneficiaries who are self-employed utilize the same work incentives as beneficiaries who are in wage employment with a few notable differences. This section will highlight the differences in the way Social Security treats NESE as compared to gross wages.

The Trial Work Period (TWP) and Self-Employment

Work activity in self-employment constitutes "services" (i.e., a TWP month) when NESE in a calendar month is more than the current TWP guideline, or if the self-employed person spends more than 80 hours in that month engaged in self-employment activity. This can create some

problems, because many self-employed individuals don't keep their business accounts on a calendar month basis, but rather just report profit to the IRS on an annual basis. When working with beneficiaries who are planning to become self-employed, CWICs need to stress how important it is to track profits on a calendar-month basis. If month-by-month profit and loss statements are unavailable and the self-employed individual can't recreate them, Social Security has no choice but to determine if the beneficiary used TWP months by dividing the NESE earnings for the particular work period by the months in which the beneficiary alleges he or she was engaged in self-employment. Averaging NESE in this manner, over a period of months may not always be in the best interests of the beneficiary and may cause the beneficiary to use more TWP months than he or she would if he or she used a month-by-month breakdown. Again, CWICs need to advise beneficiaries to track business income and expenses on a monthly basis to ensure that Social Security makes accurate TWP determinations.

Even if the NESE for a calendar month is less than the current TWP guideline, the beneficiary may use a service month if he or she spent more than a specified number of hours in that month performing the work activity she or he would normally undertake for the business' profit. This means that under the current rules, it's possible for a beneficiary to have NESE under the current TWP guideline and still use a service month. This isn't the case in wage employment, and it represents a significant difference between how Social Security looks at wages and NESE.

Hours in a Business

A self-employed individual uses a TWP month if the Net Earnings from Self-Employment (NESE) is over the TWP amount, OR if the individual works more than 80 hours in the business. Either factor will cause Social Security to count that month toward the nine months of the TWP. Beneficiaries should keep track of the hours worked in the business. Hours that count are hours they spent on the ongoing business duties for pay or profit. The beneficiary shouldn't count hours he or she spent simply planning the business.

Special Work Incentives for Self-Employed Beneficiaries

Social Security recognizes that having the beneficiary's business expenses paid for by someone else or receiving free help operating the business, rather than using money from the business to buy the goods or services,

artificially inflates the beneficiary's Net Earnings from Self-Employment (NESE). This means that the NESE may not accurately reflect the person's actual earning capacity. When Social Security makes SGA determinations, they are only concerned with the beneficiary's OWN earnings ability, not help provided by others. Social Security identifies two very separate and distinct work incentives that may be applicable in self-employment cases: "unincurred business expenses" and "unpaid help."

Unincurred Business Expenses

In determining countable income from self-employment, Social Security deducts from the individual's NESE any business expenses that the beneficiary incurred and that another person or agency paid for. Social Security makes this deduction even though the beneficiary incurred no actual expense. The item or service must meet the IRS definition of legitimate business expense, the value of which is determined by a variety of methods.

There are many kinds of unincurred business expenses. For example, a local organization may pay for start-up equipment, or, more commonly, a state VR agency may purchase equipment or pay for initial operating costs. A family member or friend could give equipment or free rent to the beneficiary, etc. Social Security determines the value of these items and deducts the value from NESE when determining if someone is performing SGA.

Unpaid Help

Another potential deduction occurs when someone receives free help operating the business. Social Security can deduct the amount of wages the business would otherwise have paid the person if the business had to purchase the services.

Example of how unpaid help affects NESE and SGA:

Lou is a lawyer who has just passed the bar. Her mother offers to help her in the office and drive her van to help her start her business. A neighbor offers to do some typing at no cost. Lou's parents give her 200 square feet of accessible office space at no cost, space that her parents could rent for approximately \$5 per square foot. Imagine Lou has \$4,000 in NESE in the first month of her business.

She has already used her TWP in a paralegal job while she was in law school. Social Security looks at her NESE to determine if she is performing SGA.

Lou's mother works 40 hours per week as an uncompensated assistant. In the market where Lou lives, that work would be worth at least \$10 per hour. The neighbor offers up to 10 hours a week in uncompensated work, which Lou accepts. Typists receive \$10 per hour in the community. Thus, Lou receives 50 hours per week at \$10 per hour, or approximately \$2,150 in uncompensated help. Subtracting this value from her monthly NESE leaves \$1,850.

The office space Lou uses is worth \$1,000 per month. The rent is an unincurred business expense, which Social Security may also deduct from her NESE.

Using the unpaid help and unincurred business expense deductions allows Social Security to adjust Lou's self-employment income from \$4,000 to countable income of \$850.00. In 2022, the SGA guideline is \$1,350 for individuals who aren't blind. Because of subsidy for self-employed persons, Social Security would NOT consider Lou to be performing SGA.

When examining unincurred business expenses or unpaid help, it's valuable to think through what the person needs, what the business has purchased, and what the beneficiary has received through family connections or services such as the State VR agency. It's essential to keep records of any items or equipment provided to a business for both tax purposes and for SGA determination purposes, because reconstructing these deductions from memory may be difficult.

How IRWEs Apply in Self-Employment Situations

The rules for deducting IRWE are the same for self-employed individuals as for employees in wage employment. The big difference for beneficiaries who are self-employed is that many expenses that would qualify as IRWEs also meet the IRS definition of allowable business expenses. When this is the case, it's much more advantageous for the beneficiary to deduct the expense when determining net profit since this

decreases taxable income AND decreases the NESE for Social Security purposes. By running the expense through the business accounts, it also saves the beneficiary the time and effort of claiming an IRWE. It's important to note that individuals may not deduct the same expense as both an IRS deduction and as an IRWE when Social Security is determining countable NESE. The basic rule of thumb is that if the expense is an allowable deduction for IRS purposes, it should be deducted in this manner. If the expense in question does NOT meet the IRS definition of an allowable business expense, then the CWIC should explore the option of claiming the expense as an IRWE. When in doubt about whether or not an expense would qualify as a business deduction, CWICs are advised to refer the beneficiary to a qualified tax professional.

Example of business expense that is not an IRWE:

Lou purchased Dragon Naturally Speaking, a voice input software, for her computer. She was able to deduct this cost as a business expense. Although the cost meets all of the requirements for an IRWE, she may not deduct that cost as an IRWE, because she already used it to reduce her NESE.

CWICs should understand that there might be certain items that would meet the IRWE requirements but may not qualify as an allowable business expense for IRS purposes. Beneficiaries should seek the services of a qualified tax professional whenever questions arise about what Social Security does and doesn't allow as a business expense. To learn more about special tax rules for people with disabilities refer to **IRS Publication 907 – Tax Highlights for Persons with Disabilities** (<http://www.irs.gov/pub/irs-pdf/p907.pdf>).

SGA Determinations for Self-Employed Beneficiaries

Determining if a self-employed individual is performing SGA is a little more complex than making the same determination for employees. First, Social Security uses a slightly different form to collect information: Social Security 820 - Work Activity Report-Self-Employed. The information Social Security seeks is also different because individuals who are self-employed have more control of the income they report to the IRS than employees usually have. Second, Social Security uses two different approaches when making SGA determinations for self-employment beneficiaries — one approach for individuals who have been entitled to

Social Security disability benefits for 24 months or more and haven't ceased, and a different approach for individuals who have been entitled to benefits for less than 24 months or who have ceased. The following sections explain the differences between these two approaches.

Countable Income Test for SGA for Self-Employed Beneficiaries

If a Social Security disability beneficiary is self-employed and has received cash benefits for at least 24 months, the Social Security Administration will use the countable income test to determine if the individual's disability has ceased due to SGA.

For the purposes of the exemption of work activity provision, Social Security will consider a beneficiary to have received Title II disability cash benefits for 24 months beginning with the first day of the first month following the 24th month for which he or she received Title II disability benefits that he or she was due. The 24 months don't have to be consecutive. For EXR cases, the beneficiary will meet the 24-month requirement when the individual completes the 24-month initial reinstatement period (IRP). Any months for which the beneficiary was entitled to Title II disability benefits but didn't actually receive a Title II disability cash benefit Social Security won't count for the 24-month requirement.

When the countable income test applies, Social Security will compare the self-employed beneficiary's countable income (NESE less allowable work incentives) to the earnings guidelines to determine if the beneficiary has engaged in SGA. If the monthly countable income averages more than the applicable SGA guideline for the month(s) in which the individual worked, Social Security will determine that the individual has engaged in SGA unless there is evidence that shows the individual didn't render significant services in the month(s). If the average monthly countable income is equal to or less than the applicable SGA guideline for the month(s) in which the individual worked, or if there is evidence that shows the individual didn't render significant services in the month(s), Social Security will generally determine that the individual hasn't engaged in SGA.

SGA Test for Self-Employment When Countable Income Doesn't Apply

Under some circumstances Social Security won't use the countable income test, but rather will apply a more complex three-test approach to

determine if an individual has engaged in SGA. Social Security uses the three tests when:

- Determining initial eligibility for disability benefits;
- Determining whether work in self-employment performed by a Title II disability beneficiary before he or she has received Title II disability benefits for at least 24 months is SGA;
- Determining whether work a beneficiary performed in or after the EPE or re-entitlement period is SGA after Social Security has determined an SGA cessation; and
- Determining SGA during the initial reinstatement period (IRP) for expedited reinstatement (EXR) cases.

The three tests are as follows:

1. **Significant Services and Substantial Income:** The individual's work activity is SGA if he or she renders services that are significant to the operation of the business, and if he or she receives from it a substantial income; or
2. **Comparability of Work Activity:** The individual's work activity is SGA if, in terms of all relevant factors such as hours, skills, energy output, efficiency, duties, and responsibilities, it's comparable to that of unimpaired individuals in the same community engaged in the same or similar businesses as their means of livelihood; or
3. **Worth of Work Activity:** The individual's work activity is SGA if, although not comparable to that of unimpaired individuals, it is, nevertheless, clearly worth more than the applicable SGA guideline when Social Security considers it in terms of its effect on the business, or when Social Security compares it to the salary an owner would pay to an employee for such duties in that business setting.

Social Security applies these tests in the following manner:

Test One: Significant Services AND Substantial Income

The first test is called "Significant Services and Substantial Income." Significant services means that the beneficiary earned that money through his or her work effort. One-person businesses such as self-

employed carpenters, gardeners, handymen, nurses, bookkeepers, consultants, and people in numerous other business operations may engage in their trade or profession by themselves, without employees, partners, or other assistants. The services of an individual in a one-person business are necessarily "significant." The receipt of substantial income by the operator of a one-person business will typically result in a finding of SGA.

In a business involving the services of more than one individual, Social Security will find a sole owner or partner to be rendering significant services if he or she:

- Contributes more than half the total time required for management of the business; or
- Renders management services for more than 45 hours a month regardless of the total management time required by the business.

Where the services of a sole owner or partner are significant under either of the above tests, Social Security will find the individual engaged in SGA if he or she receives a substantial income from the business. Social Security will determine a self-employed individual to have a substantial income from a business if:

- "Countable income" (NESE less any applicable work incentives) from the business averages more than the appropriate SGA Earnings Guideline, or
- "Countable income" (NESE less applicable work incentives) from the business doesn't average more than the amount referred to above, but the livelihood that he or she derives from the business is:
 - a. Comparable to that which he or she had before becoming seriously impaired, or
 - b. Comparable to that of unimpaired self-employed individuals in his or her community engaged in the same or similar businesses as their means of livelihood.

If the self-employed person's average monthly "countable income" doesn't exceed the applicable SGA guideline, Social Security will consider whether the person's livelihood from the business is comparable to:

- That which he or she had before becoming seriously impaired, or
- That of unimpaired self-employed persons in the community engaged in the same or similar businesses as their means of livelihood.

The experience of the local Social Security field office is of particular value in determining whether the individual is deriving, or can be expected to derive, a substantial income from a business. Social Security personnel should include in their determination an account of all the factors they consider, so that it will be clear when Social Security isn't to take an earnings report at face value. It's especially important that Social Security give a detailed explanation why an apparently substantial business is reported as yielding a less-than-substantial income. On the other hand, a description of special conditions affecting an individual's business may make it clear why the beneficiary can't derive the income ordinarily obtained from an enterprise of that type and scope.

- Among relevant items Social Security should consider are the type of business, amount of gross sales, the markup on products sold, and expenses such as rent, utilities, transportation, labor, costs, profit shares to employees and partners, etc.
- When the business has been in existence for some time, Social Security personnel should obtain data regarding operations in the past (e.g., income tax returns) for the file.
- The impressions of the local Social Security personnel, based on knowledge of local conditions obtained in the investigation of earnings credits claimed by self-employed individuals, will be particularly helpful in determining the validity of reported income and expenses.

A business from which the individual previously derived a substantial net income Social Security may now expect to yield considerably less income as a result of the curtailment of the individual's work due to the disability. Development should show whether the individual has been obliged to cut down the size of the business, operate the business fewer hours, hire additional labor to replace the individual's own labor, accept the unpaid help of family members or others, or enter into a partnership arrangement so that the duties and income of the business will now be shared with others.

If the business was the individual's sole means of livelihood for a number of years before he or she became seriously impaired, and the individual continues to receive a comparable livelihood from it after becoming seriously impaired, Social Security will generally consider his or her income to be substantial. However, in some cases, chronic illness or other special circumstances existing for some time prior to the individual's becoming (or allegedly becoming) disabled may indicate that Social Security can't fairly consider his or her financial situation in that period an indication of the individual's standard of livelihood. Under such circumstances, the community standard of livelihood would be a more pertinent basis for determining whether current and expected income from the business is substantial.

In some businesses, particularly farming, the operator derives a livelihood despite the fact that cash income is small. Items that don't lend themselves to precise monetary evaluation, such as homegrown food, may be a considerable part of the individual's livelihood although not reportable for federal income or Social Security tax purposes, and, therefore, not reflected on the earnings record. In the case of a farmer, although a monetary evaluation of such commodities isn't controlling, Social Security should consider the commodities determining whether the yield from the farm is comparable to personal or community standards of livelihood.

Meeting the community standard of livelihood will be a sufficient basis for finding substantial income, regardless of the individual's economic circumstances prior to becoming (or allegedly becoming) disabled. However, in determining the community standard for similar business, Social Security excludes from consideration individuals who are, for various reasons, considered unrepresentative (e.g., where chronic illness accounts for a low level of income).

Social Security may question the self-employed beneficiary concerning the source and amount of his or her livelihood over a number of years (generally not less than five years) prior to becoming (or allegedly becoming) disabled. Where the individual doesn't meet his or her personal standard of livelihood or the information he or she furnishes is inconclusive as to his or her personal standard of livelihood, Social Security should obtain evidence regarding the community standard of livelihood for businesses of a similar nature. In some cases, the local field office's own observations and knowledge will be sufficient. In

others, Social Security will need evidence from the local Chamber of Commerce or other informed sources.

Tests Two and Three: Comparability of Work and Worth of Work Tests

If Social Security clearly establishes that the self-employed beneficiary isn't engaging in SGA on the basis of significant services and substantial income under test one as described above, the agency will consider the second and third tests of the general evaluation criteria. Under these tests, Social Security will determine the individual to be engaged in SGA if evidence demonstrates that:

- The individual's work activity, in terms of all relevant factors such as hours, skills, energy output, efficiency, duties, and responsibilities is comparable to that of unimpaired individuals in the same community engaged in the same or similar businesses as their means of livelihood;
- The individual's work activity, although not comparable to that of unimpaired individuals as indicated above, is, nevertheless, clearly worth more than the applicable SGA guideline when considered in terms of its value to the business, or when compared to the salary an owner would pay to an employee for such duties in that business setting; or
- When the beneficiary operates a business at a level comparable to that of unimpaired individuals in the community who make their livelihood from the same or similar kind of business, Social Security may determine that the beneficiary is engaging in SGA. To establish comparability of work activity, Social Security must show that the beneficiary is performing at a level comparable to that of unimpaired persons considering the following factors: hours, skills, energy output, efficiency, duties, and responsibilities. The lack of conclusive evidence as to the comparability of the required factors will result in Social Security finding that the work performed isn't SGA under the comparability test.

An important part of the comparison is the selection of the group of unimpaired persons and the type of self-employment must be the same. In addition, the unimpaired persons must maintain on the basis of their activity a standard of living regarded as adequate for a particular

community. Well-established businesses are generally the most reasonable choice for comparison.

Development of comparability of work must be specific. Businesses must describe in detail each factor cited above, showing its contribution to the business operation. Social Security considers general descriptions as inconclusive evidence for the point-by-point comparison the evaluator is required to make. Social Security instructions clearly state that if only a general description is possible or available the agency should resolve any doubt as to the comparability of the factors in favor of the beneficiary.

Evidence of the beneficiary's activities accompanied by a statement that the work is comparable to the work of unimpaired persons is insufficient for a sound SGA decision. If necessary, Social Security should obtain a description through a personal interview with an unimpaired self-employed individual from the selected group. It may be necessary to have a more comprehensive description of the impaired individual's activity than that which the impaired person can provide. Social Security personnel are instructed to contact people who have first-hand knowledge of the beneficiary's work situation obtained through actual participation or observation.

The degree to which evidence of comparability or worth of services should contain data supplied by outside authorities will depend on the individual situation. In many instances, the familiarity of the local field office with local conditions will make it unnecessary to document the file in great detail. For example, it might be evident in a poor farming area that management services on a small farm yielding a less-than-subsistence income wouldn't be comparable to the full range of physical and mental activities performed by an able-bodied farm operator, nor would the services be clearly worth more than the applicable SGA guideline. On the other hand, where there is any doubt as to the comparability or worth of services, Social Security should obtain evidence in appropriate detail and supplement it as required by opinions from authoritative sources in the community.

Examples of determining SGA for sole proprietors:

Test 1: Myrtle has a small accounting business. Her average NESE is \$2,000 per month for the period she worked this year. She has deductions for IRWE, and unpaid help of \$400. Myrtle is a sole proprietor and thus

her work is significant to the business. Myrtle has substantial income, and is thus performing SGA.

Test 2: Fred is a plumber. He has NESE of \$500 a month. Fred performs plumbing full-time, however, and plumbers in his area make \$5,000 per month. Fred does the plumbing himself and does as much work as other plumbers who work in his community. Social Security determines that Fred's work is comparable to SGA-level work. Social Security decides that Fred is performing SGA.

Test 3: In 2022, Octavia types and makes photocopies for small businesses in her community. Because of her disability, Octavia takes fewer jobs than other services. Even so, considering the effort and time that Octavia spends and the number of jobs she completes, her work should be worth \$1,500 a month, instead of the \$200 per month she reports. Octavia isn't blind, and the applicable SGA guideline is \$1,350. Social Security decides Octavia is performing SGA.

NOTE: The comparability of work, and worth of work tests never apply to beneficiaries who meet the definition of statutory blindness. For blind individuals, only the Significant Services and Substantial Income tests are relevant.

Use of Averaging in Self-Employment Cases

Because self-employment income may fluctuate widely due to transitory business conditions, changes in the nature and size of the business, improved methods of operations, or other factors, the self-employed beneficiary is far less likely than an employee to have a uniform monthly income, which Social Security can readily compare to the SGA guidelines. Because of this variance, Social Security averages the individual's countable income by figuring total countable income over a representative period and dividing by the number of months in that period. As in the case of employees, Social Security generally averages income over the entire period of work requiring evaluation, which may be up to a full calendar year. For some beneficiaries that period could be an entire calendar year, while for others it could consist of a just a few months. Social Security will average separately the distinct periods of

work involved when there is a regulatory change in the SGA earnings level or there is a significant change in work patterns or income.

SGA Determinations When Multiple Work Efforts Exist

Sometimes beneficiaries are engaged in self-employment and also hold wage employment jobs at the same time. Still other beneficiaries may operate more than one small business simultaneously. When more than one work effort exists at the same time, Social Security considers each separately during an SGA determination. If Social Security finds any single endeavor to represent SGA, the agency decides the case on that basis. If no single work effort equals SGA, then Social Security combines the income from all work efforts. Any self-employment loss would never reduce total earnings. Social Security would simply represent the self-employment income as zero.

Final Words about Self-Employment and SGA Determinations

It's much more likely that Social Security will make accurate and correct SGA determinations for self-employed beneficiaries if they keep complete accounting records. Benefit implications relate to the manner in which financial records are kept as well as the accuracy of month-by-month accounts. Because SGA determinations in self-employment situations can be so complex, beneficiaries are advised to seek assistance from qualified accountants or bookkeepers in maintaining their financial records.

SSI Net Earnings from Self-Employment (NESE)

The SSI program treats income from self-employment very differently from wages in some important ways. First, the POMS instructs Social Security personnel to estimate NESE for the current taxable year during an initial claim, redetermination, or review of income when an individual alleges he or she is (or has been) engaged in self-employment during the current taxable year. Social Security personnel must advise the individual:

- How they determined his or her estimated NESE and its effect on eligibility or payment amount;

- To promptly contact the field office if any change occurs that could affect the amount of his or her estimated NESE;
- To maintain business records until a federal income tax return is available, so he or she can report any changes promptly; and
- To provide a copy of his or her federal income tax return when it becomes available.

If the beneficiary is engaged in a new business, Social Security generally bases the estimate on the individual's allegation about what profits he or she expects to generate by the end of the calendar year. Depending on how much (or how little) the expected profit will be, Social Security will compute NESE by subtracting the employer's share of the self-employment tax by using the multiplier of .9235. If the beneficiary has engaged in a new business for a partial year, Social Security will obtain the individual's profit and loss statement or other business records for his or her taxable year to date, will ascertain his or her net profit to date, and will project that net profit for the entire taxable year to adjust the SSI cash payment moving forward. Social Security personnel will NOT use this method of estimating NESE for businesses that are seasonal or have unusual income peaks at certain times of the year. Social Security does this to avoid underpayments caused by overestimating NESE and reducing the SSI cash payment too much. After the initial year of business operations, Social Security will take the actual annual NESE from the initial year of operations and divide it equally among the number of months in the taxable year (12). It divides it over 12 months even if the business:

- Is seasonal;
- Starts during the year;
- Ceases operation before the end of the taxable year; or
- Ceases operation prior to initial application for SSI.

A period of less than 12 months may be a taxable year if:

- The basis for computing and reporting income changes (e.g., fiscal to calendar year); or
- The taxpayer dies (the taxable year ends on the date of death, and Social Security computes net earnings as of the date of death); or

- The Commissioner of IRS closes the taxable year.

NOTE: An individual's taxable year doesn't end when the beneficiary goes out of business. Once Social Security has determined how much NESE to attribute to each month in the calendar year, it retroactively applies this income to determine how much in SSI cash payments were due. Social Security will adjust the SSI check retroactively for the entire calendar year. In most cases, if the business generated more profit than the beneficiary expected, it will mean that Social Security overpaid the SSI recipient. After that first year of self-employment, Social Security will generally use the NESE from the prior year as an estimate of monthly countable income for the current taxable year, unless the beneficiary alleges his or her NESE for the current year will vary from NESE for past years and gives a satisfactory explanation for the variation.

Example of NESE for a self-employed beneficiary:

Martika is self-employed in a sole proprietorship. Martika started her business in December 2022 and made \$1,200 in NESE after all business deductions including deductions for the extra Social Security taxes she pays as a self-employed individual. Although Martika didn't start her business until December 2022, Social Security will consider Martika's earnings to be \$100 per month throughout the 2022 calendar year.

Example of NESE for a self-employed beneficiary:

Torrey operates a small business doing interior design. He began his business in March and made a profit of \$2,600 during the first six months of the year. Unfortunately, he accepted a big job in the second half of the year that lost money. When he filed his taxes for the year, his NESE represented a loss of \$200. Torrey submitted his tax returns to Social Security, and the agency did NOT reduce his SSI check for the past 12 months because he incurred a business loss. In the coming year, however, Torrey estimates his NESE to be \$3,000. For the coming 12

months, Social Security will count an average of \$250 in countable NESE (\$3,000 divided by 12). Torrey plans to watch his profits on a month-by-month basis and adjust his estimate of projected NESE if actual profits are significantly higher or lower than his projection.

If the business lost money in the calendar year as Social Security verifies by the tax returns, the agency divides any verified net loss for a taxable year evenly over the months in the taxable year. Social Security will subtract each monthly net loss amount from the individual's other earned income (NESE or wages) in the same month, if any exists. Social Security doesn't take into account an estimated net loss when estimating NESE for the current taxable year, because Social Security can only use a net loss to offset other earnings after Social Security has verified it. Social Security can only use verified losses to offset other forms of earned income.

Application of SSI Work Incentives for Individuals who are Self-Employed

There really are very few differences in the way the SSI work incentives apply in wage employment and self-employment cases. The Student Earned Income Exclusion (SEIE) and Blind Work Expenses (BWE) apply in the exact same fashion regardless of whether the beneficiary is wage-employed or self-employed. CWICs simply apply the deduction in the SSI calculation chart in the appropriate place to arrive at countable NESE.

As previously explained, the rules for deducting IRWE are the same for self-employed SSI recipients as for employees. The big difference for beneficiaries who are self-employed is that many expenses that would qualify as IRWEs also meet the IRS definition of allowable business expenses. When this is the case, it's much more advantageous for the beneficiary to deduct the expense when determining net profit because this decreases taxable income AND decreases the NESE for Social Security purposes. By running the expense through the business account, it also saves the beneficiary the time and effort of claiming an IRWE. It's important to note that individuals may not deduct the same expense as both an IRS deduction and as an IRWE. The basic rule of thumb is that if the expense is an allowable deduction for IRS purposes, the beneficiary should deduct it in this manner. If the expense in question does NOT meet the IRS definition of an allowable business

expense, then the CWIC should explore the option of claiming the expense as an IRWE.

Self-Employment and Medicaid

SSI applies the 1619(b) extended Medicaid provisions in exactly the same manner for self-employed individuals as for persons who are in wage employment. Once countable NESE exceeds the break-even point, the SSI recipient will stop receiving a cash payment, and Social Security will assess eligibility for continued Medicaid under 1619(b). The same eligibility criteria apply as in wage employment:

- Annual countable NESE must remain below the state threshold (work incentives apply to reduce countable income during 1619(b) determinations) unless Social Security can apply an individualized threshold amount.
- The individual must still be disabled per Social Security's definition.
- The individual must meet all other SSI eligibility requirements other than earnings (unearned income and resource limits).

CWICs must be aware that state Medicaid agencies aren't accustomed to dealing with beneficiaries who are self-employed and sometimes misapply the rules governing how Social Security determines NESE and applies it during Medicaid eligibility determinations. It may be necessary to print the POMS citations describing how NESE is determined in the SSI program to facilitate proper Medicaid determinations.

Important Considerations for SSI Recipients who are Self-Employed

During the initial tax year when a beneficiary first begins self-employment, it may be impossible to determine what NESE will be and how much to report to Social Security. This makes CWICs uncomfortable because they are accustomed to advising beneficiaries to report earned income in advance or at least shortly after employment begins. While it's required that an SSI recipient inform Social Security when he or she is embarking on small business ownership in the initial months of self-employment, there really isn't much one can do by way of reporting income. In self-employment, an individual may have profits one month and incur losses the next month. In some cases, there may be no way of

knowing whether there will be countable NESE until the entire tax year has ended and the beneficiary reports results on tax returns.

The best course of action is for the beneficiary to inform Social Security that he or she has started a small business as soon as operations begin. SSI recipients should initially provide a very conservative estimate of expected profits to Social Security. If they don't expect profits, it's imperative that they report this to Social Security to avoid unnecessary reduction of SSI cash payments. CWICs should advise SSI recipients to watch their profit and loss statements on a month-by-month basis to see if the business generates a profit. If the business generates a profit that isn't offset by losses in previous months, the SSI recipient should report it to Social Security so that the agency can adjust SSI cash payments accordingly. CWICs must clearly explain how this estimation process works to SSI recipients who engage in self-employment and should help these individuals minimize the risk of overpayments if the business profit exceeds initial projections.

After the initial tax year of self-employment, Social Security uses projected estimates of annual NESE at the start of each calendar year to calculate the monthly SSI payment for the coming 12 months. Social Security bases this projection on the NESE the beneficiary earned for the prior year using completed tax returns and may adjust the projection based on what the beneficiary expects profits to be for the coming year. Providing Social Security with inaccurate projections can have serious implications for SSI recipients. If the annual NESE projection is too high, the SSI monthly payment will be unnecessarily low, and underpayment of benefits will result. If the annual NESE projection is too low, the monthly SSI check will be too high, and overpayment will result.

The solution to this problem is to work closely with SSI recipients when developing projections of NESE and to track the actual profits the business generates on a month-by-month basis. By the mid-point of the year, if the profits appear to be off, CWICs should help the beneficiary develop a revised NESE projection that he or she should report to Social Security. The beneficiary should continue to monitor profits for the remainder of the year and then submit completed tax returns as quickly after the tax year ends as possible. The objective is to avoid any substantial over or underpayment of SSI benefits.

Small Business Ownership and Resource Determinations for SSI Recipients

In many instances, owning a business with assets, property, equipment, or cash in business accounts won't cause ineligibility for SSI or Medicaid, but it all depends on how the owner structures the business. Remember that individual SSI recipients may not have more than \$2,000 in countable resources to stay eligible for benefits, while eligible couples have a combined resource limit of \$3,000. However, for businesses structured as sole proprietorships or simple partnerships, Social Security specifically excludes assets held by the business as countable resources under a special provision called "Property Essential for Self-Support" or PESS.

The PESS provision allows the exclusion of certain property held by SSI recipients during resource determinations, regardless of its value or rate of return. PESS exclusions apply to:

- Property used in a trade or business (effective May 1, 1990);
- Property that represents government authority to engage in an income-producing activity;
- Property used by an individual as an employee for work (effective May 1, 1990); and
- Property required by an employer for work (before May 1, 1990).

The POMS citations describing application of PESS are available online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130500>).

Self-Employment and Plan to Achieve Self-Support (PASS)

CWICs can assist beneficiaries pursuing a self-employment goal by developing a PASS. Because establishing a small business may require start-up funding, developing a PASS can be a valuable method for generating this start-up capital. CWICs should always check to see if PASS is a possibility for any beneficiary who indicates an interest in becoming self-employed.

Business Plans and PASS

A PASS with a self-employment goal must include a detailed business plan that follows a very specific format. CWICs can find these **requirements for a business plan in the POMS** online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0500870026>)

Social Security won't deny a PASS because the business plan doesn't cover required elements. If the individual is willing to work on the business plan, PASS Specialists will provide assistance or direction as needed. For example, in some cases, this may involve asking a few questions that the individual may know or quickly determine. If appropriate, PASS Specialists will refer the individual to a third party who can help the person develop a detailed business plan. Such sources include the U.S. Small Business Administration and its sponsored organizations, the Service Corps of Retired Executives (SCORE) and Small Business Development Centers (SBDCs), State VR agencies, local Chambers of Commerce, local banks, and appropriate staff at local colleges and universities. Social Security may allow costs associated with developing a business plan (if any) to be included in the PASS as an allowable expense.

Start-up Costs

Start-up costs refer to the expenses associated with opening a business. PASS expenses are limited to the start-up costs for the particular work goal. For someone opening a business, the start-up costs include the expenses to start the business through the first 18 months, or longer if needed, of the business' operation. The use of an item as a business expense in determining net earnings from self-employment doesn't preclude its use as a PASS expense during the calendar years (or fiscal years) that encompass the start-up period of a business.

Social Security gives a business a minimum start-up period of 18 months unless the individual indicates that he or she will need less time to sustain business operations. A business owner must justify a request for a start-up period of a longer duration than 18 months.

Self-Employment Combined with Wage Employment

Some beneficiaries participate in both wage employment and self-employment simultaneously. Social Security has very specific rules about how to count income in these cases.

For Title II beneficiaries, SSA determines countable income for the wage employment and the countable income for the self-employment separately and adds the two forms of income together when making SGA determinations. Beneficiaries can't use losses from self-employment to offset SGA-level earnings in wage employment (See DI 10505.015 Averaging Countable Earnings).

In the SSI program, Social Security divides any verified net losses from self-employment over the taxable year in the same way as net earnings. The agency deducts the average monthly net loss only from other earned income of the individual or spouse in that month to determine gross income. It would then deduct work incentives from that amount when determining how much the Social Security payment should be (See **SI 00820.210 How to Determine Net Earnings from Self-Employment** found online at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820210>)

Self-Employment and the CWIC

Self-employment cases can be challenging for CWICs because they combine the complex effects of self-employment earnings and small business ownership on public benefits with the intricacies of private sector business planning and management. This combination sometimes confuses CWICs about their role in working with beneficiaries who are considering self-employment, or who already operate small businesses. The charts on the following pages are designed to clarify CWIC roles and responsibilities, as well as the limitations within each of the two critical areas specific to self-employment: the business domain and the benefits domain. First, let's start by explaining how CWICs initiate WIPA services with beneficiaries who plan to pursue self-employment.

Counseling Beneficiaries with Self-Employment Goals – Starting the Process

When a beneficiary expresses interest in self-employment, or is already engaged in some form of self-employment, the first step a CWIC must take is to determine where the beneficiary is in the process of establishing a small business:

- Initial stages of considering self-employment;

- Business concept development stage;
- Business planning stage;
- Business start-up stage; or
- Business operations stage.

Where the beneficiary is in the self-employment process determines what services the CWIC provides and defines the timeline for service delivery. It's much easier to counsel beneficiaries who are in the very early stages of planning a business before they make missteps that will require correction. The CWIC's role at this initial stage will involve:

- Helping the beneficiary decide if self-employment is the best option;
- Working with the beneficiary to determine if the activity he or she plans to pursue would be considered self-employment, wage employment, or a hobby;
- Advising the beneficiary on sources of support in refining a business concept or testing the concept for feasibility;
- Referring the beneficiary to sources of assistance for developing a written business plan; and
- Offering general advice on how self-employment income will affect disability benefits and how the beneficiary may use work incentives to finance a business start-up.

Some individuals who want to become self-employed don't understand what this goal truly entails. Before the CWIC spends a great deal of time and energy connecting the beneficiary with sources of assistance for feasibility analysis and business plan development, it's wise to explore how well the beneficiary has thought through the implications of pursuing self-employment. At the end of this unit, there's a handout for use in any initial discussion about self-employment. The handout (titled "So, You Want to be Self-Employed") lists the major areas the beneficiary needs to consider before entering into self-employment and helps the CWIC determine how well the beneficiary has thought through the process, while highlighting the areas that need more work. CWICs should cover the following items in this conversation:

- Business feasibility;

- Capitalizing business start-up;
- Developing a written business plan;
- Business structure;
- Accounting and financial record keeping;
- Tax implications of self-employment;
- Licenses, permits or other legal requirements;
- Accommodations needed to operate the business successfully; and
- How self-employment will affect Social Security disability benefits and other public benefits.

Once the beneficiary has explored all of the areas listed above, the next step is to begin business feasibility assessment and business plan development. This is where the CWIC begins to enter unfamiliar territory, as these are clearly business functions, with which most CWICs have very little experience. The following chart provides some direction on activities within the business domain in which CWICs should participate as well as boundaries or limits CWICs have in this domain.

The Business Domain

CWICs should:

- Research local resources available to help beneficiaries with business planning, feasibility studies, financing, accounting systems and bookkeeping, tax planning/preparation, and setting up corporations/LLC, etc.
- Provide specific information and referral services to help beneficiaries connect with local sources of business expertise and assistance.
- Help beneficiaries understand the business plan requirements inherent in the PASS program — reviewing business plans and providing general feedback about whether or not they meet PASS requirements.
- Advise beneficiaries about the effect of various business structures (corporations, LLC, sole proprietorship, etc.) on public benefits.

- Advise beneficiaries on the effect of accounting methods (accrual vs. cash) on public benefits.
- Help beneficiaries understand how to include work incentive payments in their business financial statements.

CWICs should NOT:

- Help beneficiaries decide what type of business they should pursue.
- Determine whether or not a beneficiary is capable of starting and managing a business.
- Provide direct assistance with writing, editing, or critiquing business plans.
- Share information with beneficiaries on any legal or tax issues related to business establishment or management.
- Give advice to beneficiaries on sources of business financing beyond work incentives related to public benefits. CWICs don't assist with preparing financing requests or loan applications.
- Perform feasibility studies or assessments. CWICs aren't qualified to evaluate the viability of a business concept.
- Prepare financial statements for the business such as break-even analysis, cash flow analysis, or income/expense statements.
- Provide business analysis, consultation, and problem solving services to increase profitability.

The following is an explanation of the CWIC's role in some of the most common areas related to the business domain:

The Business Concept and Business Feasibility

It's not uncommon for a beneficiary to pitch a business concept that may seem a bit unrealistic to the CWIC. In many cases, the beneficiary will be very excited about the idea and utterly convinced that it will result in a highly profitable business. CWICs may feel tempted to debate with the individual about the feasibility of the business concept, but the CWIC role in this area is very limited. When discussing business feasibility with beneficiaries, CWICs should keep the following boundaries in mind:

- It's NOT the CWIC's job to tell a beneficiary that a business concept is unrealistic, unfeasible, etc.
- It's the CWIC's job to know when a business concept may need more refinement or research before the beneficiary can write a business plan or before successful start-up is likely.
- It's the CWIC's job to know where a beneficiary can go for help with developing a solid business concept and to make referrals to these entities.
- No matter what the CWIC may think of the business concept, he or she is responsible for providing specific information about how self-employment income as projected by the beneficiary and business support team will affect benefits and how work incentives may apply.

The Business Structure Decision

First and foremost, it's important for CWICs to explain to beneficiaries preparing for self-employment that business structure does have an effect on how Social Security will treat the NESE and also how it may affect resource determinations for SSI recipients. If the beneficiary hasn't yet determined what business structure is best, the CWIC should provide counseling on how Social Security treats different types of structures and how the various structures may affect that individual's benefits.

Many accountants will recommend incorporation, because this is often most advantageous for individuals who aren't on disability benefits. CWICs need to warn beneficiaries about this possibility and should be specific about why this course of action wouldn't be most advantageous. The CWIC should provide written material on this subject to the beneficiary for sharing with the accountant and should offer to answer questions the accountant might have about how Social Security benefits are affected by business structure. CWICs should be familiar with knowledgeable sources for assistance in making business structure decisions (SBA, SCORE, etc.) and should make direct referrals to these sources when necessary.

If the beneficiary has already established a business structure by the time he or she makes contact with the CWIC, you'll need to discuss how Social Security will treat income from the business based on chosen business

structure, and identify potential options for changing business structure, if warranted. Once a business is operational, an owner can change the business structure, although it may cause some inconvenience and incur expense.

Business Plan Development

First, determine whether or not a formal written business plan is necessary. In most cases, it will be, but in some cases, it won't. If the business is a sole proprietorship with no need for capitalization, there may be no need to develop a detailed plan. In most cases, a business plan is necessary under the following circumstances:

- If the beneficiary is pursuing a PASS;
- If the State VR Agency or EN is providing funding for the business;
- If the beneficiary is seeking a business loan; or
- If other funding sources require it.

If the beneficiary does need to develop a business plan, the CWIC needs to be familiar with the agencies or individuals in the local area that provide assistance and support in this area. CWICs are responsible for referring beneficiaries to local resources to assist with the business planning process. They should also review general information about how Social Security treats self-employment earnings.

What CWICs Need to Know about Business Financials

It's NOT the CWIC's job to develop financial projections, determine profit estimates, or make cash flow projections. However, Social Security does expect CWICs to assist with advising the beneficiary and his or her supports (family, accountant, business planning team) on the effect of financial projections or business profits on benefits. When working with small businesses, CWICs are primarily interested in the bottom line — the net profit of the business. The net profit figure is the starting point for specific counseling on NESE and use of applicable work incentives. In most cases, the CWIC will need to know how to read a simple Profit & Loss Statement (P&L). This is a common financial report used to project business profit (or loss), which is generally prepared in a spreadsheet format. Typically, the business income (sales, returns, etc.) is listed across the top with individual business expenses listed by category

underneath. The expenses are subtracted from the income to calculate net profit or loss. There are some specific things CWICs need to know about P&Ls and how to account for work incentives such as:

- Don't include in P&L statements any PASS expenses that are also IRS allowable business expenses. Exclude from the P&L any PASS expenses that would NOT meet IRS rules for business expenses. Do NOT list PASS income in the P&L, as it's not a form of income, but rather the "owner's investment." For tax purposes, Social Security would consider the income that beneficiaries use to fund a PASS attributable to the individual rather than the business. Any tax liability would be the responsibility of the individual beneficiary as indicated by the individual's tax returns.
- Don't include in the P&L statements any IRWEs/BWEs that are also IRS allowable business expenses. CWICs should note that beneficiaries can't claim IRWEs/BWEs included as business expenses when reducing countable NESE during SGA determinations or when Social Security is adjusting the SSI check. That is because Social Security has already accounted for the expenses when determining the amount of profit. To claim these expenses a second time would constitute "double dipping," and Social Security doesn't permit it.
- Beneficiaries should NOT include in the P&L statements any expense purchased by other sources (VR, WIA, etc.). However, if the business owner directly receives funds from other sources (VR, WIA, etc.), both the funds and the expenses are included in the P&L.

NOTE: Under certain circumstances the beneficiary may exclude from income reported to the IRS, any items or cash the beneficiary received to pay for rehabilitation needs. In IRS Publication 525, there is an exemption on Page 27 under the section on "Welfare and Other Public Assistance Benefits" that reads:

"If you have a disability, you must include in income compensation you receive for services you perform unless the compensation is otherwise excluded. However, you don't include in income the value of goods, services and cash you receive, not in return for your

services, but for training and rehabilitation because of your disability. Excludable amounts include payments for transportation and attendant care, such as interpreter services for the deaf, reader services for the blind, and services to help mentally retarded persons do their work.”

CWIC Role in Accounting and Financial Record Keeping

CWICs have a very limited role in accounting or other financial record keeping. Keep the following parameters in mind when counseling self-employed beneficiaries:

- CWICs aren’t accountants. Don’t advise beneficiaries on specific accounting techniques or strategies.
- CWICs may be called upon to advise accountants or bookkeepers about various things including:
 - a. Recordkeeping for Social Security
 - b. Effect of self-employment income on benefits
 - c. Effect of accounting on work incentives usage or vice versa
 - d. Business structures (many accountants recommend incorporation for tax reasons, which may be disadvantageous to the beneficiary)
- Some accountants do have knowledge of Social Security benefits. When that’s the case, the CWIC should be ready to provide resources or referral information as necessary.
- CWICs should inform self-employed beneficiaries of all information that they should gather and retain. Most of the information Social Security needs is the same information the IRS requires. Social Security (or other benefits programs) may require additional information.

The Benefits Domain

This is the area where CWICs have a great many responsibilities. Social Security expects CWICs to have a solid understanding of how self-employment income affects Social Security cash benefits and Medicaid/Medicare, as well as other federal, state, and local benefits. There is no difference between wage employment and self-employment in terms of the CWIC’s work incentives counseling responsibility.

CWICs should:

- Explain the effects of self-employment income and business ownership on SSI, Social Security disability benefits, Medicaid, Medicare, and all other public assistance programs.
- Prepare a detailed, written Benefits Summary & Analysis (BS&A) report to spell out how self-employment will affect benefits.
- Provide specific advice about use of work incentives in self-employment, based upon the unique needs of the individual.
- Teach beneficiaries how they may use work incentives to help fund self-employment.
- Provide specific advice about, and assistance with the use of a PASS in establishing a business.
- Facilitate the development of a PASS to include coordinating with Social Security PASS specialists to facilitate approval of the plan.
- Act as an intermediary with business advisors to help them understand how Social Security may apply work incentives to help establish a business.
- Act as an intermediary with accounting or bookkeeping professionals to help them understand specific accounting needs related to Social Security benefits.
- Follow up periodically with beneficiaries pursuing self-employment with active Plans to see that everything is going as planned.

CWICs should NOT:

- Attempt to talk beneficiaries out of pursuing self-employment due to the complex inter-relationship between business ownership and public benefits.
- Simply refer the beneficiary to local SBDC or SBA without fulfilling the responsibility for assisting with the Benefits Summary & Analysis.
- Try to develop, edit, revise, or in any way oversee or manage the writing of the business plan. CWICs are simply NOT trained to assist with this process.

- Write the entire PASS in isolation of the beneficiary. The PASS belongs to the individual with the disability — not the CWIC. Substantial involvement from the beneficiary is necessary if the PASS is to be successful.
- Take responsibility for setting up business accounts, reporting estimated earnings to Social Security, or keeping track of PASS expenditures. The CWIC's role is to teach the beneficiary to do these things.
- Provide WIPA services to individuals who are withholding information about income and resources from Social Security or misrepresenting net earnings from self-employment to any agency administering public benefits programs.

Reporting Self-Employment Income to Social Security

CWICs should invest time and energy into teaching self-employed beneficiaries what income they need to be report to Social Security and how exactly to perform this reporting. The overwhelming majority of benefits problems CWICs deal with on self-employment cases are directly related to failure to report or reporting inaccurate information. Beneficiaries can make problems for themselves by not keeping their books on a regular basis and not preparing their taxes in a timely fashion. Remember, it's NESE that Social Security cares about, not gross income or even gross profit from the tax returns, and certainly NOT "owner's draw." Social Security may further reduce countable NESE by applying work incentives. To report NESE accurately, the beneficiary must retain receipts and track income and expenses in an organized fashion.

Here are some practical tips on reporting self-employment income that CWICs should share with beneficiaries.

Reporting Tips for Title II Disability Beneficiaries

- **Beneficiaries should keep business financials on a calendar month basis during the TWP.** The beneficiary should track profit and should know when profits have exceeded the applicable TWP guideline. Sending in month-by-month P&L statements will work for this reporting.

- **Beneficiaries should track all hours spent operating the business on a calendar month basis.** Beneficiaries must be aware that they may be using TWP months even if the business loses money if they spend more than 80 hours running or working in the business in a calendar month.
- **Even after the TWP ends, monthly financial statements are still the preferred way for beneficiaries to track their profits or losses for the purposes of SGA determinations.** Beneficiaries should be closely monitoring profits on a monthly basis and comparing countable NESE with the applicable SGA guideline. If countable monthly NESE begins to exceed the current SGA guideline, it's advisable to submit the profit and loss statements to Social Security and request that the agency conduct a work CDR. If the beneficiary waits until the tax year ends before reporting profits to Social Security, it's possible that a large overpayment could occur. Even if the business loses money, it's essential that the beneficiary gets his or her taxes prepared promptly and submitted to Social Security for review.
- **NEVER report gross sales or gross receipts from the business to Social Security.** Beneficiaries must retain all documentation of work incentives and should submit the Work Activity Report for self-employment (SSA Form 820) with the monthly profit and loss statements. Beneficiaries should also submit completed tax returns to Social Security each year as soon as they prepare them.

Reporting Tips for SSI Recipients

- **SSI recipients are required to notify Social Security when they initiate self-employment, even if they don't generate profits.**
- **Because Social Security may adjust the SSI payment by estimated profits in the initial year of business operations, it's essential to supply an accurate initial estimate to Social Security.** Recipients should be conservative in their estimate to avoid Social Security reducing the cash payment reduced too much. Recipients should carefully monitor profits on a month-to-month basis and adjust the estimate based upon actual countable NESE that they produce.

- **After the initial year of operations, watch out for using projected NESE.** Social Security will estimate annual income based on these projections and will adjust the SSI payment accordingly. If the projections are inaccurate, overpayments or underpayments will occur.
- **When the beneficiary uses estimates to adjust the SSI cash payment, he or she must diligently and carefully track actual NESE and adjust the projections quarterly as needed.**

Common Mistakes Beneficiaries Make in Reporting NESE

- **GROSS income isn't what Social Security counts** — it's countable NESE. Beneficiaries should never report gross income to Social Security when they are self-employed.
- **Social Security doesn't count PASS funds as income to the business.** The agency counts them as owner investment and aren't reportable to the IRS as part of the business tax returns.
- **Neither Social Security nor the IRS permits beneficiaries to claim personal expenses as business expenses.** The beneficiary must have a legitimate business purpose for the beneficiary to deduct the expense legally. When in doubt, beneficiaries should get the advice of a qualified tax professional.
- **Mixing business and personal funds is a VERY common problem for self-employed beneficiaries.** They must keep funds separate to meet both Social Security and IRS requirements.

Final Words on Supporting Beneficiaries to Achieve Self-Employment Goals

There are some significant differences in the way that Social Security treats income derived from self-employment as opposed to wage employment, and Social Security expects CWICs to have a complete understanding of these differences. While self-employment cases may be rather complicated and may be a bit intimidating for new WIPA personnel, CWICs can't avoid them, and you must pursue them with the same diligence as wage employment cases. The intent of this unit is to serve

as a starting point for developing competence in the provision of high-quality WIPA services to beneficiaries who wish to become self-employed. Undoubtedly, there will be cases that require additional research and extended support from the VCU NTDC personnel. CWICs should seek such support whenever questions arise.

Conducting Independent Research

POMS References

- DI 10510.000 - Evaluation and Development of Self-Employment
- DI 10510.001 - SGA Evaluation and Development of Self-Employment
- DI 10510.010 - SGA Criteria in Self-Employment
- DI 10510.012 - Determining Countable Income
- DI 10510.015 - Test One of General Evaluation Criteria: Significant Services and Substantial Income
- DI 10510.020 - Tests Two and Three of General Evaluation Criteria: Comparability of Work and Worth of Work Test
- DI 10510.025 - Documenting Self-Employment Cases
- DI 10510.030 - Completion of SSA-820-F4 (Work Activity Report — Self-Employed Person)
- DI 10510.035 - SSA-820-F4 Identification Items
- DI 10510.040 - SSA-820-F4 — Work Activity Report — Self Employed Person
- SI 00820.200 - Net Earnings from Self-Employment (NESE)
- SI 00820.210 - How to Determine Net Earnings from Self-Employment (NESE)
- SI 00820.220 - How to Verify Net Earnings from Self-Employment (NESE)
- SI 00820.230 - How to Estimate NESE for Current Taxable Year
- SI 00870.026 - Plan to Achieve Self-Support (PASS) for Self-employment – Pass Specialist

Additional Resources

The following resources are included in this section:

- Handout for beneficiaries titled “So, you want to be self-employed”

So, you want to be self-employed. Have you thought about...

Business feasibility?

How do you know that your business idea will work? Have you done any test marketing, or have you talked to knowledgeable people about whether or not your business idea has a reasonable chance for success?

Capitalizing business start-up?

Do you know how much it will cost to start your business? Do you have any ideas about how to get the money you think you will need?

Developing a written business plan?

If you plan to apply for a loan, submit a Plan to Achieve Self-Support (PASS), or ask the State VR Agency for funds, you will probably need a formal written business plan. Can you develop this document yourself, or will you need help?

Business structure?

This refers to the legal structure your business will take such as a corporation, partnership, Limited Liability Company (LLC), or sole proprietorship. Business structure decisions are important because the structure of your business affects how Social Security looks at any income your business generates as well as how the IRS assesses taxes.

Accounting and bookkeeping?

Being self-employed requires that you keep track of business income and expenses. Do you plan to do your own bookkeeping and accounting? Will you use the services of a professional? Have you looked into the cost of accounting software or the services of a bookkeeper or accountant? Will you need training to perform your own accounting?

Tax implications of self-employment?

When you are self-employed, you still have to pay your Social Security tax (FICA), Medicare tax, and all other federal, state, and local taxes. Do you know what the requirements are in this area?

Licenses, permits, or other legal requirements?

Will your business require any licenses or permits so that you can operate legally in your community? Do you know what paperwork you need to file to meet the federal, state, or local tax requirements?

Accommodations you might need to operate your business successfully?

Have you thought about what services and supports you might need to accommodate your disability as you manage your business? If you need services or supports because of your disability, do you know where to go to get help arranging and paying for with these?

How self-employment will affect your Social Security disability benefits?

Profits from a business count when the Social Security Administration looks at your earned income. As you move forward with your small business plans, make sure you stay in touch with your local WIPA program for assistance with Social Security benefits issues.

Competency Unit 9 – Understanding Rights and Other Protections Afforded to Beneficiaries of Social Security Disability Benefits

Introduction

This unit discusses the possibilities for continued entitlement or re-entitlement when an individual Social Security no longer considers a person to be disabled per the agency's definition. This may occur because of medical improvement or, for Title II disability beneficiaries, by performing SGA-level work. In either case, Social Security will no longer consider the individual to be disabled and will terminate benefits. This unit explores the various rights and other protections Social Security affords beneficiaries of the disability programs when it makes a determination that an individual is no longer disabled and thus, no longer eligible for disability benefits.

What is Termination?

Termination for Social Security purposes doesn't just mean that the cash payments have stopped. Social Security may stop payments under certain circumstances even though a beneficiary remains eligible for disability benefits. Termination means that Social Security has terminated or closed the computer record that maintains payments. Once Social Security has terminated benefits, the agency requires a formal re-entitlement or re-instatement decision for payments to begin again. This is important to understand, because termination is more than just stopping payments. Termination is more than cessation, suspension, non-payment, or any other term Social Security uses to denote merely the loss of cash payment. It also means that no more benefits are payable based on that application, and that the "period of disability" has closed.

Prior to January 1, 2001, once Social Security had terminated a disability benefit, the only way someone could receive payments again was to

submit an entirely new application for benefits. Reapplication is often a lengthy process requiring a new medical determination of disability. Reapplication is subject to the Sequential Evaluation process discussed in Unit 1.

Reapplication under the Title II Disability Program

First and foremost, it's critical for CWICs to understand that when Social Security terminates Title II disability benefits, no matter what the reason may be, a former beneficiary may always reapply for benefits if the disability subsequently prevents SGA-level employment. There's a common misconception that Social Security offers disability benefits on a "one time per customer" basis. This is absolutely false! Reapplying for benefits remains an option indefinitely. There is no limit on the number of times an individual can establish a new period of entitlement. As long as the beneficiary meets ALL eligibility criteria, Social Security may establish entitlement for disability benefits.

As discussed in Unit 1 of this module, when people apply for Social Security Disability Insurance (SSDI) based on their own work, they serve a waiting period before benefits are payable. The waiting period is five full calendar months after the date the disability began, also called the Date of Onset. Once Social Security terminates SSDI benefits due to work, there is a five-year (60-month) period after the termination during which former beneficiaries can apply and Social Security can re-entitle them without the beneficiaries having to serve another five-month waiting period. Persons who apply and that Social Security re-entitles in this manner also receive a new set of work incentives as soon as Social Security awards their benefits. If the beneficiary applies more than five years after termination, the applicant must serve a new five-month waiting period before becoming entitled to benefits. Once the waiting period has passed, these individuals also receive new work incentives as soon as Social Security entitles them.

Childhood Disability Beneficiaries (CDB) and Reapplication

CDB beneficiaries never serve a five-month waiting period. Also, effective October 2004, Social Security may re-entitle CDB beneficiaries to benefits

on the same parental work record at any time if the reason Social Security terminated the prior entitlement was performance of SGA. Before making this change, Social Security imposed a seven-year limit during which CDBs could re-establish entitlement on the original parental work record. Once this seven-year limit expired, the individual could no longer access benefits on that parental record. Currently, there is no time limit on re-establishing entitlement as long as termination was due to engaging in SGA-level employment.

Disabled Widow(er) Beneficiaries (DWB)

Like SSDI applicants, a DWB applicant must serve a five-month waiting period when initially entitled to benefits. Social Security may not re-entitle Disabled Widow(er)s to DWB benefits more than seven years from the date that Social Security terminated the prior benefits. It's likely, however, that at that point the individual will have reached 60. At that time, he or she could file for Widow(er)s Insurance Benefits (WIB) on the worker's Social Security work history, and be entitled to the same (or a higher) benefit. In addition, the individual might qualify for SSDI on his or her own record if he or she had sufficient work in covered employment or self-employment in the intervening years.

Expedited Reinstatement (EXR)

Introduction

The Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 created an important work incentive called Expedited Reinstatement (EXR). Expedited Reinstatement affords eligible individuals a quick way to re-establish entitlement for Social Security disability benefits after the agency terminated those benefits due to earned income and work activity. The former beneficiary must have the same or a related disability as the earlier entitlement, and the person must again be unable to perform SGA. EXR permits individuals to receive provisional payments while Social Security is processing the reinstatement request.

Prior to January 1, 2001, once Social Security terminated a Title II disability or SSI record, the only way someone could receive payments again was to submit an entirely new application for benefits. This is often a lengthy process requiring a new medical determination of disability. With the enactment of the EXR provisions, eligible individuals whom

Social Security terminated because of work received a valuable alternative to re-application. In October 2005, final federal regulations further expanded and clarified the EXR provisions.

Expedited Reinstatement (EXR) Basics

- EXR is available to former Social Security disability beneficiaries including those who received Social Security Disability Insurance (SSDI), Childhood Disability Benefits (CDB), or Disabled Widow(er)'s Benefits (DWB). It's also available to people who received SSI payments based on disability or blindness.
- Social Security must've terminated the individual's prior entitlement due to work activity, NOT medical recovery or any other reason. For Title II disability beneficiaries, this means Social Security determined the individual to have engaged in Substantial Gainful Activity. For SSI recipients it means that countable earned income or a combination of earned and unearned income was sufficient to cause the loss of cash benefits as well as 1619(b) extended Medicaid coverage.
- The individual must be unable to perform SGA due to the same disability (or a related disability) that entitled the beneficiary to payments previously.
- The EXR provision allows an individual to receive up to six months of provisional (temporary) cash benefits while Social Security conducts a medical review to determine whether the agency can reinstate the individual to benefits. The individual may also be eligible for Medicare or Medicaid coverage during the provisional benefit period.
- Social Security will pay provisional benefits and reinstate Medicare (if needed), beginning with the month the individual files the request for reinstatement if the individual doesn't perform substantial gainful activity in that month. Social Security will pay provisional benefits and reinstate Medicare (if needed) beginning with the month after the individual files a request for reinstatement if the individual performs SGA in the month.
- There is an important deadline for Expedited Reinstatement. To receive EXR benefits under any of the Social Security disability programs, the beneficiary must request the benefits within 60

months of when Social Security terminated the prior benefit, unless Social Security can substantiate good cause. Thus, if a person's disability causes the reduction or cessation of work more than five years after Social Security terminates the record, EXR won't be available, and the beneficiary must file a new application for benefits.

When EXR Applies

Title II Disability Beneficiaries (SSDI/CDB/DWB)

To expedite the reinstatement of benefits, Social Security must've terminated the earlier record due to work activity. Former beneficiaries must've worked through all of the work incentives. That means they used their Trial Work Period (TWP) and Extended Period of Eligibility (EPE), engaged in SGA, used the Cessation Month/Grace Period, and have a terminated Social Security record.

Beneficiaries who are still in their EPE don't need to request EXR, as Social Security hasn't fully terminated them from benefits. Beneficiaries reinstated during the EPE don't have to prove their disability again, unless it's time for a regularly scheduled CDR. For Social Security to reinstate their benefits during the EPE, beneficiaries merely need to submit documentation that their countable wages have fallen below SGA or their employment has ended.

Individuals who are in their Extended Period of Medicare Coverage (EPMC) but whom Social Security terminated for cash benefits and are beyond their EPE may also request Expedited Reinstatement. Since the disability standard for Expedited Reinstatement is the same as the standard for people using the EPMC work incentive, a denial of EXR for medical improvement will terminate Medicare. Former beneficiaries should consider this risk when requesting EXR.

Supplemental Security Income Recipients (SSI)

To be eligible for EXR, SSI recipients must exhaust all of the SSI work incentives, including 1619(b). These individuals must earn wages in excess of the applicable threshold amount long enough that Social Security terminated the SSI record. For this to occur, an individual must not be eligible for SSI payments or Medicaid under 1619(b) within the 12-month suspension period.

Like Social Security Disability beneficiaries in their Extended Period of Eligibility, individuals who received SSI or 1619(b) within the prior 12 months don't have to reapply or request EXR, as they aren't fully terminated from benefits. These people only need to show Social Security that their income has dropped for reinstatement.

IMPORTANT NOTE: Effective October 16, 2016 a previously entitled individual may request EXR in the same month he or she stopped performing SGA. These revised rules also allow provisional benefits to begin the month after the request for EXR if the individual stops performing SGA in the month of the EXR request. Claimants "become unable" to perform SGA if, in the month of their EXR request, their work is SGA, but they stop performing SGA by the day they file their request. To meet the requirement of having become unable to perform SGA, they must also not perform SGA in the month following the EXR request. These new rules apply to Title II disability beneficiaries (SSDI, CDB, DWB) and Supplemental Security Income (SSI) recipients.

Requesting EXR vs. Reapplying for Benefits

Social Security's Program Operations Manual System (POMS) specifically states that EXR and reapplication are mutually exclusive. CWICs may need to help some individuals understand how EXR and reapplication differ. CWICs may also need to help individuals explain some of their unique needs to Social Security when seeking information about which to request. This is an important decision that requires consideration and weight of the following factors:

Waiting Periods

One of the potential disadvantages of pursuing a new application over requesting EXR is that some disability benefits require that the beneficiary serve a waiting period before cash payments may begin. Social Security Disability Insurance (SSDI) and Disabled Widow(er) Beneficiaries (DWB) serve a waiting period before Social Security will pay benefits. This waiting period is five full calendar months after the date the disability began. Childhood Disability beneficiaries (CDBs) never serve the five-month waiting period.

Once Social Security terminates SSDI benefits due to work, there is a five-year (60-month) period after the termination during which former beneficiaries can apply and Social Security can re-entitle them without their having to serve another five-month waiting period. Persons who apply and whom Social Security re-entitles in this manner also receive a new set of work incentives as soon as Social Security benefits are awarded (i.e., TWP and EPE). Social Security may also re-entitle Disabled Widow(er)s without a waiting period within five years of termination. Social Security limits their re-entitlement, however, if more than seven years have passed since the agency terminated their benefits. In that case, however, the widow(er) over age 60 can apply for Widow(er)s Insurance Benefits (WIB) that Social Security doesn't base on disability. There is no waiting period at all for WIB.

Individuals may re-apply for SSI at any time after termination. Keep in mind that termination due to earned income doesn't occur until after a person has been ineligible for 1619(b) extended Medicaid for more than 12 months. If termination has occurred because of unearned income or resources, a beneficiary may move back into cash payment status without filing a new application if the beneficiary is eligible again within 12 months after Social Security suspended his or her benefits. If termination occurred because of earned income, it's highly likely that re-application will result in an award of SSDI instead of or in addition to SSI, as the individual will now have earned work credits and may have achieved insured status. Keep in mind that SSI is always the benefit of last resort. Applicants are required to apply for all other benefits they might receive before Social Security awards SSI. Only Social Security staff can calculate whether or not a claimant has established eligibility for SSDI.

Medical Disability Determinations during EXR and Reapplication

To understand one of the unique advantages of EXR over reapplication, one needs to know a little about the disability determination process. Each state has a subcontracted agency called the Disability Determination Service (DDS) that makes disability decisions for Social Security. There is a difference between the way these agencies look at initial applications for disability benefits and the way they make decisions about continuing the benefits at periodic reviews.

- When initially applying for benefits, claimants must have disabilities that prevent them from performing substantial work. They must not only have severe disabilities, but Social Security

must expect these disabilities to last more than 12 months or end in the applicant's death before then. To establish that a disability exists, Social Security looks closely at the applicant's medical records. The burden of proof lies with the person filing the claim, not with Social Security. The individual must prove that the disability meets the severity listings that the DDS uses to make a decision.

- A listing is a description of the severity of a physical, psychiatric, or cognitive disability. Each state's DDS uses these very specific descriptions to see if the applicant is entitled to benefits. This can be a hard standard to meet, especially if the person's disability isn't well documented.
- Once individuals are entitled to benefits, they must periodically prove their disabilities continue. For these reviews, the DDS uses a different standard from the one it uses for initial applications. Once people are entitled to benefits, the DDS doesn't look for medical evidence proving that disabilities exist, because that has already been established. Instead, the person making the decision looks for evidence that the disability is better. If there is sufficient medical improvement, the person's benefits are terminated. This is an easier test. The person isn't proving that he has a disability, only that the disability still exists at the same level of severity.

Under EXR the DDS will establish that the individual's current impairment(s) is the same as or related to the impairment(s) from the terminated entitlement. The DDS uses the disability determination process that it uses with Continuing Disability Reviews (CDRs). The DDS assumes that the disability is there. What it needs to establish is that the disability has the same or worse severity in order to pay benefits. This standard means that people may more easily return to the benefit rolls than they might be able to if they made a new application.

Provisional Payments under EXR

Some individuals may prefer to request EXR instead of reapplying, because EXR permits provisional payments, whereas reapplication doesn't. A person may receive up to six months of provisional payments while the DDS reviews the applicant's medical records. If the DDS determines that the beneficiary has medically improved and denies reinstatement, Social Security normally doesn't reclaim provisional

payments, meaning there is usually is overpayment. There are some exceptions to this general rule which Social Security describes in the POMS at DI 13050.080 – Overpayments.

Health Insurance Considerations for EXR and Reapplication

During the time that Social Security makes provisional payments, SSDI, CDB, and DWB beneficiaries will receive Medicare, while SSI recipients will receive Medicaid health insurance coverage. If Social Security awards the reinstatement, the health coverage will continue with the payments. If Social Security denies the EXR, the health insurance will stop with the cash payment, but Social Security won't assess overpayment. There is no provision for medical insurance during reapplication.

WARNING: There is one significant risk certain beneficiaries may incur when they apply for EXR. This risk is related to Medicare coverage. Under the Social Security disability program, a person may receive extended Medicare coverage for at least 93 months after the Trial Work Period ends. The person must still be disabled in order to receive this Medicare extension. If a beneficiary applies for EXR, and Social Security finds a medical improvement, he or she is no longer is disabled under Social Security law. That means his or her Medicare stops. If the person reapplies for benefits, instead of requesting EXR, neither a denial nor approval will affect Medicare entitlement under the Extended Period of Medicare Coverage.

How Social Security Determines Provisional Payments under EXR

For Title II beneficiaries, Social Security bases the provisional payment amount on the applicable percentage of the worker's Primary Insurance Amount (the worker's highest benefit), and is often similar to what the person was receiving before termination. For people who receive benefits based on their own work (SSDI), Social Security may re-compute the benefits to a higher amount if earnings of the prior termination are higher than the earnings used to calculate the initial benefit.

Primary Insurance Amount (PIA): The PIA is the result of a complex benefit calculation the Social Security

Administration uses to determine the amount of payments. It's the amount in benefits that the worker would receive at full retirement age. Social Security calculates all benefits paid on this worker's record from this PIA. For example, children receive part of the worker's PIA. The child of a living worker receives up to 50 percent of the worker's PIA, but a surviving child receives up to 75 percent of the worker's PIA.

Cost of living adjustments (COLAs) between the last period of entitlement and the EXR request increase the provisional benefit amount for all beneficiaries. This includes the COLA increases in SSI Federal Benefit Rates, for SSI beneficiaries.

Cost of Living Adjustments (COLA)s: In recent years, Social Security has increased Social Security payments and SSI Federal Benefit Rates (FBRs) by a factor that adjusts for the increase in the cost of living. COLAs currently increase the payment amounts in January of each calendar year. When Social Security calculates the cost-of-living raises, it adds the COLA to the Primary Insurance Amount, and then figures out what beneficiaries receive based on that PIA.

Social Security bases the SSI benefit on financial need. It bases provisional benefit amounts on the individual's countable income and the current FBR. Social Security doesn't make state supplemental payments during the provisional benefit period.

The difference in benefit amounts between re-application and reinstatement

Many factors could affect the amount of the reinstated payments. Social Security personnel are best equipped to estimate the differences and assist the beneficiary in understanding which option will yield a higher payment. Because of a special disability Primary Insurance Amount (PIA) guarantee, however, an SSDI beneficiary would never receive a lower benefit than the benefit he or she received before Social Security terminated the first period of disability. Here is an example of how this works:

Example of the difference in benefit amounts between re-application and reinstatement:

Yanna received \$900 a month in SSDI before she returned to work. Social Security terminated her benefit record four years ago. She has had a relapse of clinical depression and is deciding whether to reapply or request Expedited Reinstatement. Yanna checked with Social Security and found out that the benefit amount would be higher under the Expedited Reinstatement provisions, because she can access all of the COLAs since Social Security terminated her prior benefits.

For Yanna, there are several advantages to reinstatement instead of reapplication. First, Social Security would add the COLAs to her previous benefit, and her benefit would thus be higher. Second, Yanna is feeling a lot of stress about being re-entitled (a new disability determination). She wants Social Security to use the EXR standard (Medical Improvement Review Standard-MIRS) when deciding if she is disabled. She also wants to receive provisional payments. Yanna requests EXR.

Family Maximum

When Social Security calculates benefits, it must take into account the Family Maximum. This is a cap that limits how much the various family members of a worker may receive in total. Social Security pays his or her benefits first, and then whatever is left of the Family Maximum, Social Security divides among the entitled family members.

Workers receiving SSDI always receive their benefits without consideration of the Family Maximum. CDB and DWB beneficiaries, however, might receive a lower benefit because of the cap. For months of provisional benefits, individuals receive the former benefit without a reduction due to the family maximum. Once Social Security has approved the reinstatement, the family maximum could affect CDB or DWB payments, as well as the payments of other family members on the record. This could result in overpayments.

Retroactivity

Both with EXR and initial application, Social Security is able to pay retroactive Social Security disability benefits as much as 12 months prior to the date of application or request. If the agency denies an EXR request, the EXR request can then serve as a protective filing for a new initial claim. However, if Social Security denies an initial claim, it doesn't protect EXR filing. This could be an important consideration if more than 12 months' retroactivity is possible under both filing options.

SSI doesn't have the same type of retroactivity built into it as Social Security Disability benefits do. In fact, the furthest an SSI request for EXR can go back is the date Social Security first knew of the request.

Whether an applicant is making a request for EXR or a new application for SSI, there is a short waiting period. The month in which individuals inform Social Security that they want to apply is the eligibility month. Payments aren't possible until the next month. The benefit amount and work incentives would be the same with EXR or reapplication.

EXR and Work Incentives

The Initial Reinstatement Period (IRP)

An important aspect of EXR is that it allows the individual to obtain another Trial Work Period (TWP) and Extended Period of Eligibility (EPE), but not immediately. The individual must receive 24 months of EXR payments before Social Security entitles him or her to another TWP. These 24 months don't have to be consecutive. If someone who requests EXR goes back to work above the SGA level, the 24-month clock stops ticking until he or she again stops performing SGA and Social Security entitles him or her to another EXR payment. Once the individual has received 24 months of EXR payments, he or she receives a new TWP and EPE, and all of the other work incentives Social Security confers on initial applicants for Social Security disability benefits.

Medicare Coverage and EXR

Another important benefit of EXR is that it may significantly increase eligibility to Medicare. If former Title II beneficiaries who were previously entitled to Medicare request EXR, they will receive Medicare beginning with the first month of provisional payments and throughout the Initial Reinstatement Period. Even though Social Security suspends payments and the 24-month clock stops ticking for months of SGA, Medicare

coverage would continue for those months as well. Once the individual has received 24 months of payments, he or she will have free Medicare Part A as long as he or she is entitled to benefits. If the beneficiary returns to work at a level that causes suspension, he or she may access a new Extended Period of Medicare Coverage (EPMC).

Supplemental Security Income Beneficiaries (SSI)

If the individual receives SSI, and not Social Security disability benefits, then the beneficiary can use SSI work incentives immediately after they are reinstated. Once someone receives SSI through EXR, he or she must receive benefits for 24 months before again requesting EXR. If the entitlement ends before the 24 months have passed, the beneficiary would have to reapply to get SSI payments again.

Important Changes to the EXR Regulations

Effective October 31, 2005, final regulations clarified the expedited Reinstatement provisions in section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999.

Under the current regulations, Social Security no longer requires that the individual leave or reduce employment because of the person's disability. Instead, the beneficiary may leave or reduce employment for any reason, but must be unable to perform SGA because of the same or related disability at the point the he or she requests. Other provisions in the final regulations include:

- The opportunity to file a second request for reinstatement if Social Security denies the previous request. Social Security won't pay provisional benefits for the second request if it paid provisional benefits under the first request.
- Receiving Medicaid under section 1619(b) for a month uses one of the 24 months of the initial reinstatement period for SSI beneficiaries.
- Social Security will pay Childhood Disability and Disabled Widow(er) Beneficiaries provisional payments without consideration of the family maximum, the cap on total family benefits. If Social Security later reinstates provisional payments, however, the agency will consider the difference between the higher provisional payments and the adjusted reinstated payments an overpayment.

- A denial of EXR because an individual has medically improved will terminate Medicare entitlement under the Extended Period of Medicare Coverage. If this is a concern for a beneficiary, the individual may wish to file a new application rather than request EXR.
- Medical approval for EXR will generate a new Ticket to Work for beneficiaries, and will terminate any previously issued tickets for that individual.
- Requests for EXR made for Title II beneficiaries are effective the month that Social Security receives the request. If Social Security reinstates benefits, then Social Security will determine if any retroactive benefits are due. Retroactivity is possible for up to 12 months before the beneficiary made the request.
- EXR requests are effective for SSI the month after the beneficiary makes the request. There is no retroactivity for SSI entitlement. In addition, Social Security won't pay provisional benefits for any month in which a suspension or terminating event occurs under the usual rules, such as if the beneficiary is incarcerated. Social Security may recover provisional benefits as overpayments if the beneficiary knew or should've known that the beneficiary wasn't eligible for those payments.
- If a beneficiary performs SGA during the provisional benefit period, Social Security will terminate provisional benefits. The last month of provisional benefits payable is the first month of SGA. Provisional benefits don't resume after termination due to SGA.
- In the SSDI program, Social Security will only make provisional payments to the SSDI beneficiary, and not to family members. Once Social Security reinstates the worker under EXR, the spouse or eligible children need only make a request to have Social Security reinstate benefits.
- Beneficiaries may appeal denied EXR requests. However, they may not appeal determinations Social Security makes regarding provisional benefits. The EXR request does provide protective writing for a new claim, which the beneficiary can pursue while following the EXR appeals process.

In addition, effective April 17, 2017 the EXR regulations allow previously entitled beneficiaries to apply for EXR in the same month they stop performing SGA, and provides that provisional benefits to begin the month after the request for EXR if the beneficiary stops performing SGA in the month of the EXR request

Frequently Asked Questions about EXR

If a beneficiary requests EXR or re-applies for benefits and then returns to work at a substantial level shortly thereafter, how will this affect the EXR request or the status of my application?

If the individual plans to return to work shortly after making the EXR request or filing for re-application, then there are special considerations. Work above SGA shortly after applying, either for SSI or Social Security disability benefits, may cause Social Security to reopen and deny the application. EXR would permit provisional payment for the few months that the individual is below SGA. Social Security would suspend the payments for months above SGA, but there would be no overpayment.

What happens to provisional payments if the person owes Medicare Premiums?

If a Social Security disability recipient owes back Medicare premiums, Social Security will deduct the premiums from provisional benefits.

Will existing overpayments affect provisional benefits?

Social Security won't withhold overpayments from provisional benefits without the written consent of the individual. Once the agency reinstates the benefits, however, overpayment recovery follows normal rules.

If beneficiaries had family members receiving benefits before Social Security terminated the benefits, will Social Security owe the family members provisional payments?

Individuals who receive Social Security Disability Insurance based on their own work may have children or a spouse who previously received benefits on their record. These family members would receive benefits again once

Social Security makes the reinstatement decision. They won't be eligible for provisional payments.

What happens if someone was receiving CDB benefits previously, and married before or after Social Security terminated the benefits?

When Social Security terminates CDB benefits due to marriage, individuals won't be able to apply again on that parent's record, unless the marriage was void or annulled. EXR wouldn't be possible because Social Security would have terminated CDB benefits for reasons other than work activity.

What happens to individuals who are eligible for both Social Security disability and SSI?

People on SSI are required to apply for any other benefit for which they are eligible. If someone receiving SSI has earnings that drop below the Substantial Gainful Activity limit, he or she must apply or request EXR, which depends on the respective payment amounts. Social Security requires individuals who are entitled to SSI to procure whatever benefit will pay the earliest and the highest amount.

Are there differences in EXR if the individual is blind?

EXR applies to blind individuals the same way it applies to other beneficiaries, with some exceptions. For blind people over age 55, a special provision may let them come in and out of payment status, depending on earnings, without having to reapply. For those individuals, EXR isn't possible. Also, when considering reapplication or EXR for blind individuals, remember that there are some differences in the work incentives. For Social Security disability beneficiaries, the financial limit that Social Security uses to consider work as substantial is significantly higher. SSI recipients can make additional deductions when considering gross income to determine what income is countable. These work incentives apply immediately if Social Security reinstates the person. Under reapplication, the limit for substantial work only applies after the Trial Work Period is complete.

If someone reapplied and Social Security denied him or her, may the person request EXR?

As stated earlier, it's more difficult for a person to meet the medical disability standard for reapplication than the medical standard for EXR. A person could choose to reapply, and then Social Security could deny him or her. If that happens, he or she may request Expedited Reinstatement. The EXR request date won't be retroactive to the application date.

If Social Security denies EXR, may former beneficiaries reapply?

Yes, and the EXR request date will protect retroactivity for the individual's application date.

For more information about Expedited Reinstatement, refer to **DI 28057.000 - Expedited Reinstatement Sub Chapter Table of Contents** found online

(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0428057000>).

Continuation of Payments under Section 301

Section 301 provisions offer extended benefits to eligible individuals who would otherwise terminate from benefits due to medical recovery, not individuals who lose benefits due to work activity or other reasons.

Section 301 permits temporary payment of benefits for individuals working toward a vocational goal. In a sense, Social Security is making a short-term investment in the individual's benefits, "betting" that completing the vocational plan or program would help the individual not need benefits in the future.

When Social Security conducts a medical CDR or an age-18 redetermination, it may find that the beneficiary no longer meets the medical requirements to receive disability benefits. If that happens, Social Security usually stops the individual's benefits. Under certain specific conditions, however, Social Security may continue to provide cash disability payments and medical insurance (Medicare or Medicaid) to individuals who are participating in programs that may enable them to become self-supporting.

Because the statutory authority for these continued benefits first appeared in section 301 of the Social Security Disability Amendments of 1980, they often are called “section 301 payments.” The current statutory authority for them is in sections 225(b) and 631(a)(6)(A) of the Social Security Act.

Important Section 301 Facts

- Section 301 provisions only offer extended benefits to eligible individuals who would otherwise terminate from benefits due to medical recovery, not individuals who lose benefits due to work activity or other reasons.
- Section 301 allows continued benefit payments for any auxiliaries drawing off the insured worker (such as a spouse or dependent children).
- Section 301 payments are accompanied by continuation of Medicare or Medicaid health insurance as applicable.
- Section 301 provisions apply to SSI as well as the disability benefits authorized under Title II of the Social Security Act. This would include SSDI, CDB, and DWB.
- SSI recipients must continue to meet all SSI eligibility criteria such as the income and resource limits to retain Section 301 payments.
- All of the work incentives under the SSI program apply except for the 12-month suspension period and EXR.
- All of the work incentives apply under the Title II program except for the TWP and EPE.
- It is important to note that if the individual elects statutory benefit continuation during an appeal, Social Security will suspend Section 301 development.

Eligibility Requirements for Section 301 Payments

An individual receiving Title II or SSI benefits based on disability or blindness Social Security must've medically ceased or determined ineligible due to an age-18 redetermination, and meet all of the following requirements:

- The individual participates in an appropriate program of Vocational Rehabilitation (VR) services, employment services, or other support services;
- The individual began participating in the program before the month his or her disability or blindness ceased;
- The individual's participation in the program continues through the 2-month grace period after cessation; and
- Social Security determined that the individual's completion of the program, or continuation in the program for a specified period of time, would increase the likelihood that the individual won't return to the disability or blindness benefit rolls.

When Eligibility for Section 301 Payments Ends

Section 301 eligibility ends when:

- An individual completes the appropriate program of vocational rehabilitation, employment services, or other support services.
- The beneficiary stops participating in the program or supports for whatever reason for more than 3 months.
- A Title II disability beneficiary performs SGA.
- An SSI beneficiary loses cash payments due to any reason other than work activity that fits the 1619(b) criteria.
- Social Security determines that continuing participation in the program [other than a primary or secondary school individual Educational Plan (IEP)*] would no longer increase the likelihood of returning to benefit

* If the beneficiary is a student aged 18-22 who is in primary or secondary school, Social Security assumes that participation in an IEP will improve the likelihood of a reduced dependency on benefits. For these students, Social Security does not require case-by-case likelihood determinations.

Section 301 payments terminate effective with the month after the earliest of the following:

- The month that the individual completes the program;

- The month that the individual stops participating in the program for any reason; or
- The month that Social Security determines the individual's participation in the program will not or will no longer increase the likelihood that the individual won't return to the disability benefit rolls.

Individuals who receive continued SSI payments under Section 301 must also continue to meet all of the non-disability-related standards for this program, including the income and resource limits. Under no circumstances will Social Security stop benefit payments earlier than the second month after the month in which the disability ceased, provided that the beneficiary meets all other requirements for entitlement to benefits.

Section 301 determinations can get very complex and the details would be outside of the normal work scope for CWICs. For more information, refer to the VCU NTDC resource document titled "**Understanding Section 301**" found online (<https://vcu-ntdc.org/resources/viewContent.cfm?contentID=37>).

When Beneficiaries Disagree with Social Security

A Social Security applicant or beneficiary has the right to appeal any initial decision made about his or her benefits. Beneficiaries must make most requests within 60 days of the date he or she received the letter, or notice, of the decision. Social Security assumes beneficiaries will have received the letter within five days of the date Social Security sent it.

If an individual request an appeal past the 60-day appeal window, Social Security will take the request and determine whether or not there was a good reason, or "good cause," for the person to be late.

Levels of Appeal

A person who disagrees with an initial determination or decision may request further review. This is called an appeal. The appeal consists of several levels of administrative review that the beneficiary must request within certain time periods and at the proper level. The levels of administrative review are reconsideration, administrative law judge (ALJ)

hearing, and Appeals Council (AC) review. The AC review ends the administrative review process. If an individual is still dissatisfied, he or she may request judicial review by filing an action in federal court.

If the individual doesn't request review within the time period, he or she may lose the right of further review unless he or she can show good cause failing to make a timely request for review.

Reconsideration

In most cases, reconsideration is the first step in the administrative review process for individuals who disagree with the initial determination. Social Security provides the opportunity for an ALJ hearing as the first step in the administrative review process for those determinations involving a request for waiver of an adjustment or recovery of an overpayment.

The method of reconsideration for Title II consists of a case review and disability hearing. The method used depends on the issue involved. For non-medical issues, it's a case review. For medical issues, it's a case review for initial claims and a disability hearing, which is a face-to-face reconsideration, for all medical cessation cases.

ALJ Hearing

In general, with some exceptions, a hearing before an ALJ is the next level of appeal after Social Security has made a reconsideration determination.

Appeals Council

If the individual disagrees with either the ALJ decision or the dismissal of a hearing request, the individual may ask the AC to review the action. The AC may dismiss or deny the request for review, or it may grant the request and either issue a decision or remand the case to an ALJ. The AC may also review an ALJ decision (within 60 days of the hearing decision or dismissal) on its own motion. The AC has final review authority for Social Security.

Federal Court Review

The AC review completes the administrative review process. If an individual is still dissatisfied, he or she may request judicial review by filing a civil action in a federal district court.

Each of these appeal steps has required forms and time frames. CWICs may not represent beneficiaries in appeals against Social Security. However, you may assist beneficiaries in understanding their appeal rights, accessing the forms, and understanding what additional information may assist Social Security to make a decision if the beneficiary requests an appeal.

For more information refer to **POMS GN 03101.001 - Summary of Administrative Review Process** found online (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0203101001>).

Overpayments

An overpayment occurs when Social Security pays the beneficiary more than he or she should've received. If this happens, Social Security will notify the beneficiary and the representative payee, if applicable. The notice explains why the overpayment occurred, the beneficiary's repayment options, and his or her appeal and waiver rights.

Options for Repaying

If the beneficiary agrees that Social Security paid him or her too much and that the overpayment amount is correct, the beneficiary has several options for repaying it. If the Title II beneficiary is in current pay status, Social Security will withhold the full amount of the benefit each month, unless the beneficiary requests a lesser withholding amount and Social Security approves the request. Full withholding begins 30 days after Social Security notifies the beneficiary of the overpayment.

If the beneficiary receives SSI, generally Social Security will withhold 10 percent of the FBR each month to recover the overpayment. If the beneficiary can't afford this, he or she may ask that Social Security take less from his or her monthly benefit. Beneficiaries may also request that they pay back the overpayment at a rate greater than 10 percent. Social Security won't start deducting money from the SSI payments until at least 60 days after it notifies the beneficiary of the overpayment.

If the beneficiary no longer receives SSI, but does receive Social Security disability benefits, he or she can pay back the SSI overpayment by having Social Security withhold up to 10 percent of the monthly Social

Security benefit. If the beneficiary isn't receiving benefits, their options to repay include:

- Sending a check to Social Security for the entire amount of the overpayment within 30 days; or
- Contacting Social Security to set up a plan to pay back the amount in monthly installments.

If the beneficiary isn't receiving benefits and doesn't pay back the amount by using one of the above options, Social Security can recover the overpayment from federal income tax refunds due to the beneficiary or from wages if the beneficiary is working. Social Security can also recover overpayments from future SSI or Social Security benefits. Social Security may also report the delinquency to credit bureaus.

Appeal and Waiver Rights

If the beneficiary doesn't agree that Social Security overpaid him or her, or if he or she believes the amount is incorrect, the beneficiary can file an appeal by completing form SSA-561. He or she can obtain the form **SSA-561 online** or by calling or visiting the local Social Security office (<https://www.ssa.gov/forms/ssa-561.pdf>). The appeal must be in writing, and should explain:

- Why the beneficiary thinks Social Security hasn't overpaid him or her; or
- Why he or she thinks the amount is incorrect.

The appeal request should also include any evidence the beneficiary has to support his or her argument. For example, if a beneficiary is appealing an overpayment related to work activity, and IRWE weren't considered as part of the determination, the beneficiary should present IRWE receipts.

Beneficiaries have 60 days from the date they received the original overpayment notice to file an appeal. Social Security assumes that they received the letter five days after the date on it, unless the beneficiary shows them that he or she didn't receive the letter within the five-day period. The beneficiary must have a good reason for waiting more than 60 days to ask for an appeal.

A beneficiary may request a waiver of collection if he or she believes that he or she shouldn't have to pay the money back. He or she must submit Form SSA-632 to request a waiver, and he or she can obtain it online or

by calling or visiting the local Social Security office. There is no time limit for filing a waiver. The beneficiary will have to prove that:

- The overpayment wasn't his or her fault; and
- Paying it back would cause financial hardship or be unfair for some other reason.

Social Security may ask for proof of income and expenses. It may ask the beneficiary or representative payee to meet with its personnel. Social Security will stop recovering the overpayment until it makes a decision on either the request for an appeal or it makes a waiver.

Administrative Finality

The concept of administrative finality is an important protection for both beneficiaries and Social Security. These rules protect beneficiaries by allowing Social Security to re-examine certain decisions during a set period of time if it appears that the original decision wasn't correct. Administrative finality also protects Social Security because the agency shouldn't be required to establish findings of fact after the lapse of a considerable time from the date of the events involved. The administrative finality rules describe the types of decisions that Social Security may re-examine, and establishes the time limits for this process.

Here are a few things to keep in mind about reopening:

- A beneficiary has the right to appeal any initial determination. Reopening, however, does not meet the definition of an initial determination. Beneficiaries don't have a "right" to have a decision reopened or re-examined by Social Security.
- Social Security may choose to reopen a decision for up to 12 months for any reason, in both the SSI and Title II disability programs.
- If Social Security finds "good cause" to reopen a decision, the agency may reopen an SSI decision within two years of the notice of the determination in question.
- If Social Security finds good cause, the agency may reopen a Title II disability decision up to four years after the notice date of the prior determination.

- CWICs should refer beneficiaries to the local Social Security office when questions about possible reopening arise.

For more information about the reopening process, refer to:

DI 27505.000 Rules for Reopening found online
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0427505000>)

SI 04070.010 Title XVI Administrative Finality - Reopening Policies found online
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0504070010>)

Conducting Independent Research

- **Social Security Web Page on the appeal process**
(<https://www.ssa.gov/benefits/disability/appeal.html>)
- **Social Security Handbook sections on the appeals process**
(https://www.ssa.gov/OP_Home/handbook/handbook.20/handbook-2004.html)

Competency Unit 10 – The Ticket to Work Program

How the Ticket Program Began

The Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170) provided Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries a range of new or improved work incentives and employment-related services to support their movement to financial independence through work. The Ticket legislation also directed the Commissioner of Social Security to establish a Ticket to Work program to create a system to provide employment services in addition to the State Vocational Rehabilitation (VR) agencies around the country.

To understand the TTW program, it's important to understand why Congress created it through the Ticket to Work Act. Remember, Social Security disability beneficiaries experience very high levels of unemployment and few ever leave the disability rolls due to work. Over the years, Social Security has researched the reasons for this and involved hundreds of stakeholders in discussions about changes that could be made to improve employment outcomes. While chronic unemployment is a complex problem among adults with disabilities, two primary reasons for it are:

1. A lack of services and supports needed for individuals with disabilities to obtain and maintain employment, and
2. Fear among disability beneficiaries that employment will cause the loss of critical cash payments and health insurance.

The Ticket legislation created two programs to help solve these problems. First, the legislation authorized Social Security to create agreements with other organizations to provide employment support services to beneficiaries. These organizations, called Employment Networks (EN), receive payment from the agency when a beneficiary reaches specified earnings goals. This greatly expanded the number of service providers available to support beneficiaries to achieve employment.

Second, the Ticket legislation authorized Social Security to fund the Work Incentives Planning and Assistance (WIPA) program, which created a national cadre of trained professionals (called Community Work Incentives Coordinators (CWIC)s) who provide comprehensive work incentives counseling services. This specialized counseling helps beneficiaries understand how paid employment affects public benefits, and supports beneficiaries using work incentives to ease the transition from dependence on benefits to greater financial independence through work.

These two programs (TTW and WIPA) work together to overcome the most common barriers to employment faced by disability beneficiaries.

The Benefits of Participating in the Ticket Program

Remember that one of the original purposes of the TTW program was to expand the availability of services that people with disabilities need to successfully obtain and maintain employment. Social Security accomplished this goal by creating "Employment Networks" or ENs. An EN is an entity that enters into an agreement with Social Security to either provide or coordinate services to Social Security disability beneficiaries needed to enter or re-enter the workforce. The EN can be an individual, a public or private partnership or a group of organizations collaborating to combine resources to serve eligible individuals. Through the TTW program, Social Security provides funding to ENs when beneficiaries achieve specific employment outcomes. There are more than five hundred ENs providing a wide range of support to disability beneficiaries to help them achieve their employment goals.

The second important benefit someone gets from participating in the TTW program is protection from Continuing Medical Reviews (CDR). Social Security conducts periodic medical reviews, called CDRs to determine whether a beneficiary continues to meet Social Security's disability standard. If Social Security decides that a beneficiary's impairment has medically improved to the point that the person no longer meets Social Security's requirements, Social Security terminates the benefit based on medical improvement. Medical CDRs can be a source of real anxiety for some beneficiaries.

Participating in the Ticket program not only provides access to employment services, but also gives protection from medical CDRs. Social Security may not initiate a medical CDR when the beneficiary has assigned his or her Ticket and the beneficiary is making “timely progress”, a term we will discuss later in this unit. To participate in the TTW program, a beneficiary “assigns” his or her Ticket to an EN or the State VR agency. Assignment means that the beneficiary and an EN or a state VR agency have agreed to work together to support the beneficiary’s return to work.

The “Ticket”

The actual Ticket to Work (Ticket) is a symbolic representation of a beneficiary’s eligibility to participate in the program. Social Security mails letters to Ticket-eligible beneficiaries that includes information about the program and a brochure titled “Your Ticket to Work.” The letter briefly describes the Ticket program, how it works, and how to find ENs and State VR agencies. It notes that the program is free and voluntary, and explains that Social Security may not start a medical CDR if the beneficiary continues to meet certain requirements. The letter also includes information on how beneficiaries can use toll-free phone numbers for specific Ticket program questions, general questions about Social Security benefits, and reporting suspected Social Security fraud. Note: At this time only individuals who are likely to participate in the Ticket to Work program are sent these letters.

Ticket Eligibility

Most Social Security disability beneficiaries may participate in the Ticket to Work Program. An individual whom Social Security entitles to either Title II disability benefits (SSDI, CDB or DWB) or SSI benefits based on disability or blindness must meet the following additional criteria to be eligible to assign a Ticket to an EN:

- Be 18-64 years of age, and
- If an SSI recipient, be eligible for benefits under the adult disability standard and receiving a federal cash SSI benefit.

A beneficiary isn't eligible to participate in the Ticket program if he or she is receiving:

- "Section 301" payments (i.e., continued Title II disability or SSI benefits after a determination of medical improvement because he or she is participating in an approved VR program),
- Continued benefits while appealing a cessation of benefits based on a finding of medical improvement,
- Provisional cash benefits while Social Security is considering a request for expedited reinstatement of disability benefits, or presumptive disability payments while awaiting a final decision on an application for SSI benefits.

SSI beneficiaries who received SSI as children will qualify for the Ticket program at age 18 if Social Security finds them disabled based on the adult standard after conducting an age 18 redetermination.

Employment Networks

As discussed in Module 1, Employment Networks are agencies that offer various types of services. They could be an employer, a vocational training provider, or a wide range of other organizations that support employment of beneficiaries. An organization becomes an EN by entering into an agreement with the Social Security Administration to function as an EN under the Ticket to Work program.

Some of the general requirements for an EN are:

- Having systems in place to protect the confidentiality of personal information about beneficiaries seeking or receiving services.
- Being both physically and programmatically accessible.
- Not discriminating based on a beneficiary's age, gender, race, color, creed, or national origin.
- Having adequate resources to perform or otherwise provide the services required under the EN agreement.
- Implementing operations necessary to carry out the Ticket program.

Additionally, EN personnel must also have licensure, education, accreditation, and other qualifications to provide the services the EN offers.

The way an EN provides employment services or supports varies by organization, but there are several basic models. In the most common model, a single EN works directly with beneficiaries to provide services. For example, a beneficiary could assign the ticket to Goodwill Industries – an approved EN. The beneficiary would then work with a staff member at Goodwill to complete a career exploration program, determine an employment goal, develop a resume and use online job boards to apply for jobs. There are many different types of services ENs provide, depending on the unique needs of individual beneficiaries.

Some ENs hire beneficiaries as employees. This type of EN uses a business model that includes the EN serving as the beneficiary's employer. Social Security requires that Employer ENs:

- Identify the jobs they have available;
- Pay wages at or above the amount that Social Security defines as Substantial Gainful Activity (SGA);
- Identify where the EN plans to place beneficiaries; and
- Describe how the EN plans to provide beneficiaries with the supports and opportunities to permit them to keep a job that pays SGA-level earnings.

The business plan submitted by prospective Employer ENs must include:

- A promise to maintain an active program for hiring and providing ongoing services and supports to their workers with disabilities;
- A plan for placing SSI and SSDI beneficiaries in jobs that pay at or above the annual SGA amount;
- A provision for paying SSI/SSDI beneficiaries in a timely manner for work they perform.

Another service model is called the Consumer Directed Services (CDS) model. The TTW program defines CDS as an EN business model that shifts responsibility for key service decisions from the EN to the beneficiary. In this model, beneficiaries purchase a variety of their own employment support services, and based on subsequent achievement of

certain work expectations, are reimbursed by the EN for all or a portion of their work-related expenses.

The following three requirements apply to ENs operating a CDS business model.

- The "cash-back" payments to the beneficiary must be used for services related to that beneficiary obtaining or retaining work and not as a wage supplement or work incentive.
- Direct payments to the beneficiary are permitted only on a reimbursement basis for allowable expenses. It is important to remember that payments to Supplemental Security Income (SSI) recipients for other than allowable expenses may result in an overpayment of previously paid SSI benefits.

The EN must provide a detailed accounting for how the funds were spent, and the accounting for the expenditures will be considered documentation that the funds are being used for return to work expenses. In addition, the EN provider must be able to show that support payments to a beneficiary are used for services related to the beneficiary obtaining or retaining work and not to supplement wages or provide cash back to the beneficiary. Direct payments must be based on actual costs or for reimbursement for allowable expenses. **(Note: this model is no longer offered to organizations applying to become ENs)**

The last model is called an Administrative EN. This is an association of providers that combine their resources to function as a single EN. The EN of record is the organization that assumes responsibility for ensuring that the EN meets all requirements.

For a listing of current ENs, go to **choosework.ssa.gov – Find Help** (<https://choosework.ssa.gov/findhelp/>).

Working with an EN in the Ticket Program

The process begins when a beneficiary contacts an EN, and both parties agree to work together. The beneficiary may contact several ENs before he or she finds one that offers the services the beneficiary wants. Note that working together is a voluntary process for both the beneficiary and the EN. That means that beneficiaries may need to shop not only for

services, but also for ENs that are able and willing to work with them to provide those services.

The beneficiary and the EN jointly develop an employment plan, called the Individual Work Plan (IWP) that both parties sign. An IWP is a required written document signed by an EN and a beneficiary or the beneficiary's representative. A beneficiary and EN develop and implement it in partnership when they have agreed to work together to pursue the beneficiary's employment goal. The IWP outlines the specific employment services, vocational services, and other support services that the EN and beneficiary agree are necessary to achieve the employment goal.

The EN notifies the "Ticket Program Manager" or TPM that they have accepted a Ticket. This changes the ticket status to "In Use". The beneficiary has protection from initiation of medical reviews after Ticket assignment.

TPM is responsible for:

- Liaison with ENs and state VR agencies, from the point of initial outreach and recruitment through active EN participation;
- Training new ENs and supporting quality assurance activities to insure program integrity and effectiveness;
- Facilitating and monitoring active Ticket program participation by ENs;
- Administering and supporting the Ticket assignment process;
- Supporting the EN payment process;
- Marketing Social Security's work incentives programs (including the Ticket to Work Program) to beneficiaries with disabilities;
- Facilitating beneficiary access to employment networks serving under the Ticket to Work program;
- Supporting Ticket program data collection and reporting activities; and
- Operating the Ticket to Work Helpline to ensure accurate and timely information to Social Security beneficiaries with disabilities.

As the beneficiary meets work and earnings milestones, Social Security pays the EN set amounts, depending on the beneficiary's progress. The payments are based on the beneficiary's actions and accomplishments, rather than the amount that the EN spends to support the employment effort. ENs are paid under one of two EN payment systems described later in this unit.

State VR Agencies and the TTW Program

State Vocational Rehabilitation (VR) agencies across the country were serving Social Security disability beneficiaries long before Social Security implemented the Ticket to Work program. Social Security began reimbursing State VR agencies for the cost of successful rehabilitation services provided to disability beneficiaries in 1981. This program continues today. Social Security's VR Cost Reimbursement (CR) program is available only to State VR agencies; Social Security does not provide cost-reimbursement payments to ENs. However, on a case-by-case basis, State VR agencies may choose to act as ENs and be paid under one of the two EN payment systems.

The two purposes of the CR program are:

1. To make State VR services more readily available to Social Security beneficiaries with disabilities; and
2. To generate savings to the Social Security Trust Fund, for SSDI beneficiaries, and to the General Revenue Fund for SSI recipients.

Under the CR program, Social Security pays State VR agencies when beneficiaries served by State VR agencies achieve nine continuous months of earnings at or above the SGA level. When the beneficiary achieves this benchmark, the State VR agency submits a request to Social Security with supporting documentation. This documentation includes a breakdown of the direct costs for the beneficiary's services. Social Security then reimburses the State VR agency for approved direct rehabilitation costs.

State VR agencies can choose to serve Social Security beneficiaries under the traditional VR Cost Reimbursement (CR) program or as an EN under the Ticket program. When a State VR agency chooses to act as an EN, it

may elect payment under the traditional rules that allow the agency to receive reimbursement from Social Security for the cost of rehabilitation.

For individuals served in the Ticket program by a state VR agency, the agency must outline services through the Individualized Plan of Employment (IPE). We describe the IPE in a later section of this manual. In contrast to the EN, state VR agencies must serve all eligible individuals. In times of budget shortages, State VR agencies may serve only the most severely disabled applicants. When that happens, the State VR agency uses categories called "order of selection" when deciding if they are able to serve an applicant.

We include additional information about the TPM and how WIPA programs collaborate with this contractor in Module 2.

Protection from Continuing Medical Reviews (CDR) and Use of a Ticket

To begin to participate in the TTW program, a beneficiary "assigns" his or her Ticket to an EN or a State VR agency acting as an EN. Assignment means that the beneficiary and a state VR agency or an EN have agreed to work together to support the beneficiary's return to work. "Use" of a Ticket means that the person continues to meet specified requirements described later in this section, and means Social Security will not initiate a medical review.

NOTE: Protection from medical reviews does not change the work reviews Social Security may conduct to determine whether a Title II disability beneficiary is engaging in SGA, or determinations Social Security makes about an SSI recipient's income and resources. Even when participating in the TTW program, beneficiaries must report wages.

If Social Security initiates a medical CDR before a beneficiary assigns his or her Ticket (or begins service through a state VR agency), Social Security will complete the medical CDR. The date on the notice Social Security sent to the beneficiary that informs him or her that Social Security is beginning to review his or her disability is the date Social Security "initiates" the review.

Social Security usually conducts medical CDRs based on a reminder or “diary” that the state agency sets when they make a decision about the person’s disability. Social Security uses three levels of review diaries:

- Medical Improvement Expected (MIE),
- Medical Improvement Possible (MIP), and
- Medical Improvement Not Expected (MINE).

Each of these diaries establishes a date for the next review. MIE reviews usually occur between one and three years, MIP reviews occur between three and five years, and MINE reviews occur between five and seven years.

It’s possible for a beneficiary to assign the Ticket after Social Security initiates a medical CDR, pending the decision on the medical review. If the beneficiary has medically improved and is no longer entitled to disability-based benefits, Ticket eligibility will end.

Important Note: The protection from a medical CDR will be less important to some beneficiaries with permanent severe disabilities. For example, an individual with significant paralysis who uses a wheelchair may not fear a medical CDR if there is no expectation of medical improvement. For him or her, it may be less important to follow a strict pace of movement toward educational or work goals and more important to move at a pace that is realistic in light of the challenges created by his or her disability.

Using a Ticket and Timely Progress

Social Security defines using a Ticket as meeting specified education or employment goals. Once a beneficiary assigns a Ticket, he or she must make “Timely Progress” in order to retain the protection from medical reviews that the TTW offers. Social Security conducts periodic Timely Progress Reviews (TPR) to ensure beneficiaries are making sufficient progress to continue medical CDR protection.

During TPRs the TPM reviews the educational and work activities of a beneficiary during a specific time period. Social Security bases the relevant TPR period for a current review on how long ago the beneficiary

assigned the Ticket. For example, a person who has been in the program for three years would need to make progress at the level expected for the third 12-month TPR period.

The current regulations acknowledge the importance of higher education, technical training, and vocational training, by allowing beneficiaries to meet timely progress requirements through participation in those programs.

If a beneficiary reports to the TPM that he or she is unable to make timely progress toward self-supporting employment, the TPM will give the beneficiary the choice of placing the Ticket in inactive status or, if applicable, taking the Ticket out of assignment.

Timely Progress Requirements

Social Security conducts timely progress reviews on each assigned and in-use, Ticket every 12 months. The requirements for each 12-month progress review periods are:

First 12-month review:

- Any three months out of the 12 at trial work earnings level, or
- Completed G.E.D. or high school diploma, or
- Sixty percent of full-time college credit for one year earned or at least 60 percent of one year's course work for a vocational or technical school completed (based on what is considered full-time by that particular college or school).

24-month review:

- Six months out of the last 12 at trial work earnings level, or
- Seventy-five percent of full-time college credit earned or 75 percent of one year's course work at vocational or technical school completed.

36-month review:

- Nine months work out of the last 12 with earnings greater than the SGA-level applicable to the period in which the beneficiary performed the work. (SGA is work valued above \$1,350 per

month for non-blind individuals and \$2,260 for blind individuals in 2022), or

- Completed a two-year degree or certification program, a vocational or technical program, or an additional one-year of full-time college credit earned toward a four-year degree or certification.

48-month review:

- Nine months work out of the last 12 with earnings over SGA, or
- An additional one year of full-time college credit earned toward a four-year degree or certification.

60-month review:

- Six months work out of the last 12 with earnings in each of those six months that preclude payment of Title II disability benefits and federal Social Security cash benefits, or
- An additional one year of full-time college credit earned toward a four-year degree or certification.

72-month review:

- Six months work out of the last 12 with earnings in each of those six months that preclude payment of Title II disability benefits and federal SSI cash benefits, or
- Completed four-year degree or certification program.

Successive 12-month periods:

- Six months work out of the last 12 with earnings in each of those six months that preclude payment of Title II disability benefits and federal SSI cash benefits.

NOTE: Beneficiaries can combine work and education to meet timely progress requirements. For example, Social Security is reviewing a beneficiary after the first 12-month period and he or she worked one month at trial work level (33.3 percent of work requirement) and attended school at 40 percent of full-time credit (66.7 percent of education requirement), he or she will have met the timely progress

requirement. The combined percentages must add up to at least 100 percent.

NOTE: We provide a Quick Reference Chart at the end of this unit that lists the various 12-month progress review periods and provides a description of the timely progress requirements. We recommend that you use this chart as a desk reference when counseling beneficiaries on Ticket issues.

Beneficiaries who fail to meet the timely progress requirements retain their right to participate in the Ticket program. They only lose protection from a medical CDR. Also, Social Security will not perform a CDR unless it is time for a regularly scheduled review.

Assigning a Ticket or Otherwise Using It, Reassigning a Ticket, Extension Periods and Inactive Status

In general, a beneficiary can assign a Ticket to an EN or state VR agency if the Ticket is valid and the beneficiary is receiving a cash payment. To assign a Ticket, a beneficiary must first find an EN or state VR agency that is willing to accept it. If the beneficiary decides to accept services from the state VR agency that is not acting as an EN, the agency will decide whether it wants Social Security to pay under the Ticket program or Social Security's VR cost reimbursement program. State VR agencies may choose how they want to interact. When the VR agency chooses cost reimbursement, rather than acting as an EN, the ticket is placed in a status called "In-Use SVR." The beneficiary will have the same rights and responsibilities when Social Security assigns the Ticket and when it's in In-Use SVR status. Most importantly, the VR agency's decision regarding its payment option does not affect the beneficiary's protection from medical CDRs.

The 90-Day Extension Period

If a beneficiary takes his or her Ticket out of assignment or In-Use SVR status, the beneficiary is eligible for a 90-day extension period if the Ticket is in use at the time of retrieval (i.e., the Ticket wasn't in inactive status and the beneficiary was making timely progress toward self-

supporting employment at the time of the most recent progress review). During the 90-day extension period, Social Security will consider the Ticket still in use, and the beneficiary still to have protection from initiation of a medical CDR. The beneficiary may reassign the Ticket during the 90-day extension period even if he or she is not due cash payments. This differs from Ticket assignment at other times, when the beneficiary may only assign his or her Ticket if currently entitled to payments.

The extension period begins on the first day on which the Ticket is no longer assigned and ends 90 days later, or when the beneficiary assigns the Ticket to a new EN or state VR agency, whichever occurs first. If the beneficiary does not reassign the Ticket during the extension period, Social Security considers it no longer in use at the end of the extension period, and Social Security could initiate medical CDRs. In addition, the beneficiary must be receiving cash benefits to assign the Ticket after the extension period. Finally, Social Security omits the extension period in determining whether the beneficiary is making timely progress toward his or her work goals.

Example of the 90-day extension period:

Lydia assigned her Ticket to EN #1 on January 15th, understanding the EN would assist her with resume writing, job interview skills, and job leads to enable her to move from her part-time job to a better paying full-time position. Lydia is unhappy with EN #1 and four months later, on May 15th, retrieves her Ticket from EN #1. Sixty days later, on July 14th, Lydia fulfills the 90-day extension period criteria. Social Security could not initiate a medical CDR during the extension period. She will continue to have protection from medical CDRs after assigning her Ticket to EN #2 as long as she continues to meet the timely progress requirements described earlier in this section.

Inactive Status

A beneficiary may place his or her Ticket in inactive status at any time by submitting a written request to the TPM. Inactive status will be effective with the first day of the month following the month of the request. Social Security will not consider the beneficiary to be making timely progress during the months of inactive status, and could initiate a medical CDR

during those months. None of the months of inactive status will count toward the time limitations for making timely progress.

A beneficiary may reactivate a Ticket by submitting a written request to the TPM. Typically, the beneficiary would then return to in-use status if the Ticket is still assigned to an EN or a state VR agency acting as an EN. It's important to note that placing the Ticket in inactive status will not affect the beneficiary's relationship with the service provider, i.e., the beneficiary is still entitled to receive all appropriate services.

Example of a beneficiary in inactive status:

Lionel is receiving support from his state VR agency to attend college to become an engineer. He entered college in August 2020, completed the fall and spring semesters and, having completed more than the minimum 60 percent of his first-year credit requirements, met the first year's timely progress requirement for the year ending August 2021. During his second year of college, he obtains 30 percent of his second-year credits during the fall semester. Then he has a six-week hospitalization, is forced to drop out of college on February 20, 2022, and will not earn credits for the spring semester. He arranges to have his Ticket placed into inactive status, effective March 1, 2022. On August 1, 2022, he asked Social Security to reactivate his ticket. He returned to college in August, taking a full course load and obtaining another 50 percent of required credits for another year of college, ending the semester in December 2022.

When the TPM does the Second 12-Month Progress Review, the relevant review period will be August 2021 through December 2022, adding an extra five months to the usual 12-month period to reflect the five months his Ticket was in inactive status. Since the review period is extended through December 2022, Lionel is able to add his 50 percent of needed credits from the fall 2022 semester to the 30 percent he achieved in the fall 2021 semester. The resulting 80 percent of credits are more than the 75 percent he needed for Year 2 timely progress. As a result, he is once again protected from a medical CDR. Lionel will

now enter the third review period, which will run from January 2023 through December 2023.

NOTE: During the period Lionel's Ticket was in inactive status, March 1 to July 31, 2022, Social Security could have initiated a medical CDR. If, for example, Social Security started the CDR during May 2022, the CDR process would continue, even if Social Security did not complete the CDR until after Lionel reactivated his Ticket.

Retrieving and Reassigning a Ticket

A beneficiary may "retrieve" a Ticket or take it out of assignment at any time and for any reason. The beneficiary must notify the TPM in writing. The Ticket will no longer be assigned to that EN or state VR agency effective with the first day of the month following the month in which the beneficiary notifies the TPM. For example, if the beneficiary notifies the TPM on February 8 that he or she is taking the Ticket out of assignment, the Ticket is no longer assigned effective March 1. If an EN goes out of business or Social Security no longer approves the EN's participation in the Ticket program, the TPM will take the beneficiary's Ticket out of assignment. In addition, if the beneficiary's EN is no longer able to provide services, or if the state VR agency stops providing services because Social Security determines the beneficiary is ineligible for services, the EN or state VR agency may ask the TPM to take the beneficiary's Ticket out of assignment. In the two latter situations, the TPM will send a notice to the beneficiary informing him or her of this decision.

A beneficiary may reassign his or her Ticket as long as he or she maintains eligibility for the program. For example, a beneficiary may choose to reassign the Ticket to a different EN or to the state VR agency. To reassign a Ticket, the beneficiary must first meet the criteria for assigning a Ticket described above. If the beneficiary meets those criteria, he or she may re-assign the Ticket only if he or she continues to meet the Ticket eligibility requirements, has an unassigned Ticket, and has an EN or state VR agency that is willing to work with him or her and sign a new IWP or IPE.

Employment Network Payment Systems

Since its inception, Social Security has based the underlying premise of the Ticket to Work program on paying ENs when the EN's services lead to satisfactory employment (or self-employment) outcomes of the Title II disability or SSI beneficiary. ENs may elect Social Security to pay under one of two payments systems: the Outcome Payment System or the Milestone/Outcome Payment System.

Keep in mind that Social Security pays ENs based on the beneficiary's progress and success returning to work. Milestone payments are paid earlier in the process, for earnings milestones the beneficiary reaches. Social Security makes outcome payments when a beneficiary's cash benefits stop due to work activity. The advantage to the Milestone-Outcome payment system is that ENs receive payments earlier in the rehabilitation process. The advantage to the Outcome system is the potential for higher overall remuneration, if the beneficiary succeeds in keeping earnings high enough to suspend or terminate benefits until the EN receives all possible outcome payments.

An EN elects one of the two payment systems when it enters into an agreement with Social Security to serve as an EN. After first electing a payment system, the EN can then make one change in its chosen system for prospective Ticket assignees during each calendar year thereafter.

The Outcome Payment System

The Outcome Payment System is the easier of the two EN payment systems to understand, because all payments are based on the same formula. Total payments under this option are potentially about 10 percent higher than under the Outcome-Milestone Payment System. However, the trade-off for the EN is that payments are only available for months when the beneficiary is not eligible for Title II or SSI disability payments due to earnings. Social Security can pay an EN for an outcome month only if the earnings suspension occurs after a beneficiary has assigned his or her Ticket to the EN and before the individual's Ticket terminates.

Outcome Payments to Beneficiaries Who Receive SSDI Only or Who Receive Concurrent Benefits

When ENs serve Title II disability beneficiaries or concurrent beneficiaries, they can receive up to 36 outcome payments. An outcome payment would be available for each month when no monthly cash payment would be due for either Title II disability (based on performance of SGA) or, in the case of concurrent beneficiaries, SSI (because of earnings). The outcome payments need not be for consecutive months.

The outcome payment period for beneficiaries receiving only SSI extends to sixty months in order to compensate for the lower amount of each outcome payment. This applies even if the beneficiary subsequently becomes a concurrent beneficiary, or becomes entitled to a Title II disability benefit that precludes payment of SSI. Also, keep in mind that SSI benefits may be suspended with significantly lower earnings if the beneficiary has unearned income.

The Milestone/Outcome System

The Milestone/Outcome system permits Social Security to pay ENs for “milestones”, or specific accomplishments as they move towards work.

The Milestone/Outcome Payment System involves three phases for payment including:

- Phase 1 payments for gross earnings at the level for a trial work period (TWP) month, with the first of four milestone payments available with earnings at 50 percent of that needed for a TWP month and the second milestone payment available with TWP-level earnings in only three months in a six-month period;
- Phase 2 payments for gross earnings at the substantial gainful activity level (ignoring deductions for work incentives); and
- Outcome payments for gross earnings that result in ineligibility for cash benefit payments (i.e., after accounting for any Title II or SSI work incentives).

The Phase 1 milestones in particular allow an EN to receive milestone payments for lower earnings levels that are often part of the incremental path toward self-supporting employment.

If you want more information about the **rules for these payments refer to Social Security's website**

(<https://yourtickettowork.ssa.gov/employment-networks/payments.html>).

Keep in mind that your role as a CWIC is to help the beneficiary use his or her Ticket if he or she chooses. CWICs do not need to be expert about EN payments.

Limitations on Payments to ENs

Social Security will pay an EN only for milestones or outcomes achieved after the beneficiary assigned the Ticket to the EN and before the Ticket terminates. If the EN offers some services beyond those it makes available under the Ticket program, the EN must be clear in its advertising of this and must list in the IWP the services it will provide under the Ticket program. An EN may not charge beneficiaries for services it provides under an IWP.

In some cases, an EN may receive a number of milestone or outcome payments based on the level of work the beneficiary reports. If during a later review, Social Security finds that the beneficiary attained the required level of work for some, but not all of the milestone or outcome payments it provided to the EN, the EN can keep the milestone and outcome payments.

There will be some cases in which two or more ENs qualify for payment on the same Ticket. This may occur because the beneficiary assigned the Ticket to more than one EN at different times, and now more than one EN is claiming that their services contributed to the achievement of a milestone or outcome. When that happens, Social Security will have to split up the milestone or outcome payments. The TPM must make an "allocation" recommendation with regard to what percentage of a particular payment will go to each EN.

Receiving Services from both the State VR Agency and an EN – The Partnership Plus Program

Under current regulations, a beneficiary may receive services from both a State VR agency and then an EN, and, if the state VR agency is serving the beneficiary under the cost reimbursement program, both agencies may seek compensation from Social Security on behalf of the same beneficiary using the same Ticket. To ensure some savings to the Social Security Trust Fund and the General Revenue Fund, Social Security can only compensate for the provision of sequential, not concurrent, services. While a beneficiary's Ticket is in the "in-use SVR" status, it isn't otherwise available for assignment to another EN; however, a beneficiary may assign his or her Ticket to an EN after receiving services from the State VR agency under the "Partnership Plus" program. Social Security created the Partnership Plus option to allow a beneficiary to receive VR services to meet his or her intensive up-front service needs and, after the State VR Agency closes the case, assign his or her Ticket to an EN to receive ongoing support services.

Partnership Plus is specific to EN-VR partnerships. If two ENs serve the same beneficiary due to a change in Ticket assignment, they may agree to determine how they will share EN payments or the TPM can assist the ENs in determining how to split the EN payments based on the services each EN provides.

How Does Partnership Plus Work?

After a State VR agency closes their services, the beneficiary has the option of assigning his or her Ticket to an EN providing job retention and other ongoing support services. If VR served the beneficiary under the cost reimbursement program, the EN would then be eligible to receive some of the Milestone payments and any Outcome payments as the beneficiary reaches the designated levels of earnings.

If the State VR agency closed the cost reimbursement case with the beneficiary in employment (regardless of the hours of work or the beneficiary's earnings), the Phase 1 Milestone payments aren't available to the EN that accepts the beneficiary's Ticket assignment. This is because the Phase 1 Milestone payments are designed to provide compensation to ENs for the initial services, including job placement,

which resulted in the beneficiary's entry into employment. Since the VR agency will be able to submit a Cost Reimbursement (CR) claim when the beneficiary reaches nine months of continuous SGA-level earnings, Social Security cannot compensate both the VR agency and the EN for providing the services that led to the job placement. However, the EN can request Phase 2 Milestone payments as soon as the beneficiary's gross earnings exceed the applicable SGA level.

If a beneficiary assigns his or her Ticket to an EN after the VR agency closes a cost reimbursement case, and the EN is operating under the Outcome-only payment system, all outcome payments are available to the EN as the beneficiary attains the required levels of work and earnings.

You can find more information about **Partnership Plus** at the Ticket to Work website here: <https://choosework.ssa.gov/library/partnership-plus>

Eligibility for a Second Ticket

An individual has one period of Ticket eligibility during a period of entitlement to Title II disability or SSI based on disability or blindness. However, if entitlement to Title II disability or SSI ends or Social Security terminates and later reinstates benefits, the beneficiary will begin a new period of eligibility in the Ticket program. There is no limit to the number of times an eligible beneficiary can participate in the Ticket program.

Dispute Resolution

The Ticket program offers a dispute resolution system for four types of disputes: those between beneficiaries and state VR agencies acting as ENs; those between beneficiaries and ENs that aren't state VR agencies; those between ENs that aren't state VR agencies and the Ticket Program Manager; and those arising under agreements between ENs and state VR agencies.

We will discuss the first two dispute resolution systems, since they are the most likely to arise in your work with beneficiaries.

Disputes between Beneficiaries and State VR Agencies

When a state VR agency serves a beneficiary, Social Security requires the agency to comply with all of the provisions under Title I of the

Rehabilitation Act of 1973 and its implementing regulations. One of those requirements is the opportunity to resolve disputes through formal mediation services or an impartial hearing process.

Any individual who is seeking or receiving VR agency services, who is dissatisfied with a determination made by personnel of the agency, has the right to a timely review of that determination. Each state VR agency must develop and implement procedures to ensure that an individual may request a timely review, which must include the right to mediation and an administrative hearing before an impartial hearing officer. The VR agency must notify individuals, in writing, of their right to mediation, an impartial hearing, and the availability of the Client Assistance Program (CAP) to assist them with disputes. The agency must provide this at the following times:

- At the time the individual applies for VR services;
- At the time VR assigns the individual to a category in the state's order of selection, if the state VR agency has established an order of selection;
- At the time the individual and VR develop the Individualized Plan for Employment (IPE); and
- Upon the denial, reduction, suspension, or cessation of VR services.

At an impartial hearing, the individual has the right to be represented by an attorney or other advocate. Both the individual and the agency can present evidence and cross-examine witnesses. The hearing decision is final and must be implemented by all parties, unless overturned upon appeal.

Disputes between Beneficiaries and ENs

For disputes between beneficiaries and ENs that aren't state VR agencies, the Ticket program offers a three-step dispute resolution process:

1. The beneficiary can file a complaint through the EN's internal grievance process.
2. If the EN's internal grievance procedures don't result in an agreeable resolution, either the beneficiary or the EN may seek a resolution from the TPM.

3. If either the beneficiary or the EN is dissatisfied with the resolution proposed by the TPM, either party may request a decision by Social Security.

All ENs that are not state VR agencies must establish written grievance procedures that a beneficiary can use as a first recourse to seek a resolution to a dispute under the Ticket program. The EN must give each beneficiary seeking services a copy of its internal grievance procedures and inform him or her of the right to refer a dispute to the TPM for review, and then to Social Security for a decision. The EN also must inform each beneficiary of the availability of assistance from the State Protection and Advocacy system.

At a minimum, the EN must inform each beneficiary seeking services under the Ticket program of the procedures for resolving disputes when:

- The EN and the beneficiary complete and sign the IWP;
- The EN reduces, suspends, or terminates services in the beneficiary's IWP; and
- A dispute arises related to the services spelled out in the beneficiary's IWP or to the beneficiary's participation in the program.

When the EN's grievance procedures don't result in a satisfactory resolution, either the beneficiary or the EN may ask the TPM to review a disputed issue. The regulations do not have a time limit for requesting this review, but do require the TPM to contact the EN to submit all relevant information within 10 working days. The information the beneficiary should submit should include:

- A description of the disputed issue(s);
- A summary of the beneficiary's position, prepared by the beneficiary or a representative of the beneficiary, related to each disputed issue;
- A summary of the EN's position related to each disputed issue; and
- A description of any solutions the EN proposed when the beneficiary sought resolution through the EN's grievance procedures, including the reasons the beneficiary rejected each proposed solution.

The TPM has 20 working days to develop a “written recommendation” that should explain the reasoning for the “proposed resolution.” Upon receiving the TPM’s recommendation, either the beneficiary or the EN may request, in writing, a review by Social Security. The TPM must receive that request for review within 15 working days of the beneficiary’s or EN’s receipt of the TPM’s recommendation. The TPM has 10 more working days to refer this request to Social Security. The request for Social Security review must include a copy of the beneficiary’s IWP; information and evidence related to the disputed issue(s); and the TPM’s conclusion(s) and recommendation(s).

Social Security’s decision in response to this request is final, and no appeal is possible.

Representation of Beneficiaries in Ticket Disputes

If a beneficiary is using either the appeals system for resolving disputes with state VR agencies, pursuant to Title I of the Rehabilitation Act, or using the more informal procedures for resolving disputes with ENs, pursuant to the Ticket regulations, an attorney, advocate, or any other person can represent the beneficiary. The two advocacy programs, available in every state and territory to assist beneficiaries with these disputes, are the Client Assistance Program (CAP) and the Protection and Advocacy program. The CAP was created in the mid-1980s, largely to assist individuals with disabilities in connection with state VR agency disputes, and may also be available to assist with EN disputes.

Role of the WIPA Programs in Working with Beneficiaries on Ticket Issues

CWICs have a critically important role in helping beneficiaries understand and use the Ticket to Work as part of a holistic strategy for achieving employment and enhancing self-sufficiency. The Ticket to Work is a powerful work incentive for certain individuals, and may make the difference between remaining unemployed or successfully attaining a satisfying career.

CWICs can support participation in the Ticket program in the following ways:

- Screening all beneficiaries who request services to identify those who would most benefit from Ticket assignment and who would make strong candidates for Ticket assignment.
- Explaining in clear and understandable terms how the Ticket to Work program functions and what benefits individuals receive from using their Ticket.
- Encouraging beneficiaries who are strong Ticket candidates and who would benefit from the Ticket to Work program to consider Ticket assignment.
- Counseling beneficiaries on Ticket assignment by providing information about available ENs and helping the beneficiaries select an EN that best matches the individual's service or support needs and preferences.
- Counseling beneficiaries on what constitutes "timely progress" for applicable 12-month review period in the Ticket program. This will vary depending on the amount and type of employment preparation the beneficiary needs to achieve the desired occupational goal. Some beneficiaries will start with a goal of attaining a GED, while others may move directly into paid employment. Still others will pursue various types of post-secondary education or training. CWICs need a solid understanding of the planned route for achieving employment and will need to counsel individual beneficiaries on the timely progress requirements applicable to them.
- Coordinating with ENs to ensure that Social Security properly applies work incentives, conducts work CDRs in a timely fashion, and adjusts or ceases cash benefits. CWICs should work collaboratively with the EN, the beneficiary, and Social Security to make sure that they apply countable earnings correctly and cease cash payments when they should.
- Assisting with making Ticket assignment changes such as placing the Ticket in inactive status, un-assigning a Ticket, or re-assigning a Ticket.
- Helping resolve any problems with assigning or using a Ticket. Potential Ticket problems would include eligible individuals who failed to receive a Ticket, individuals whose Ticket isn't showing

as being assigned, and individuals who do not receive correct determinations of timely progress during annual reviews.

Role of WIPA Programs in Working with ENs on Ticket Issues

The WIPA programs have an important role to play in supporting the efforts of ENs. CWICs need to work in close partnership with ENs to overcome potential barriers to employment related to the Social Security disability benefits or other federal, state, or local benefits.

CWICs have an obligation under the Ticket Program to support ENs in the following ways:

1. CWICs should be knowledgeable about the ENs serving the WIPA program catchment area and help ENs understand and use WIPA services.

CWICs also must move beyond simply providing beneficiaries with basic information about ENs. Under the WIPA program, CWICs are encouraged to help beneficiaries choose an appropriate service provider for Ticket assignment and make referrals to ENs. To fulfill this role, CWICs must be able to suggest available ENs based on individual employment goals and service preferences. When possible, CWICs should develop in-depth knowledge of how these providers operate, the services they provide, and eligibility procedures and criteria.

Finally, CWICs can provide specific information to ENs about WIPA services. This includes:

- The overall mission and goals of the WIPA program;
- Eligibility requirements for WIPA services;
- Characteristics of a high-priority WIPA referral;
- Services provided by WIPA programs;
- How the WIPA program delivers services to eligible high priority beneficiaries; and
- How to make a referral for WIPA services.

CWICs are responsible for helping ENs understand how WIPA services fit into the larger picture of the Ticket Program and how these services can help ENs be more effective in helping beneficiaries obtain and maintain paid employment. CWICs can provide a great deal of education to new ENs to help staff members understand how they can use WIPA services to promote employment and decrease dependency on Social Security disability benefits.

2. CWICs should assist ENs to understand and use Benefits Summary & Analysis (BS&A) reports when working with beneficiaries to plan and deliver employment services and supports.

CWICs have an obligation to provide high-quality individualized work incentives planning, counseling and assistance to beneficiaries with Tickets assigned to local ENs. As a matter of fact, beneficiaries with Tickets in assignment and in use constitute a very high priority for WIPA services. As a part of this, CWICs need to help ENs understand how paid employment or self-employment affects a beneficiary's Social Security disability benefits, Medicaid/Medicare, and all other applicable federal, state, and local benefit programs. This includes helping ENs to understand when and how Social Security applies specific work incentives to the Social Security disability benefit programs to help beneficiaries achieve employment goals.

With the beneficiary's permission, CWICs can use the Benefits Summary and Analysis to help an EN gain an understanding of how work incentives apply to a specific beneficiary's situation. Of course, before CWICs can share any documents or reports with EN staff members, CWICs must obtain a signed release of information from the beneficiary. CWICs may not share information with anyone without the express written approval of the individual or his or her legal guardian.

CWICs are not required to provide training, technical assistance, or other information on EN payment mechanisms under the Ticket Program. You should refer ENs with questions about how Social Security pays for services under the Ticket Program the TPM. CWICs are also not required to provide intensive training or technical assistance to ENs on Social Security benefits and work incentives, except as part of working collaboratively to serve specific beneficiaries who have tickets assigned and in use.

3. CWICs should be knowledgeable about the Ticket Program provisions and how the Ticket Program functions as an important work incentive for beneficiaries.

CWICs can also support the efforts of ENs by providing complete and accurate information to beneficiaries on topics such as placing Tickets in assignment, re-assigning Tickets, moving a Ticket in or out of inactive status, or understanding the medical CDR protections. In addition, CWICs can help beneficiaries understand the employment or educational requirements for the various timely progress certification periods.

WIPA programs have a critically important role to play in helping beneficiaries realize their employment goals. However, the WIPA program cannot provide all of the services necessary to achieve these ends. Only by working in tandem with ENs that provide the actual vocational rehabilitation, career preparation, and employment services will CWICs achieve the most positive employment outcomes for the beneficiaries they serve.

Conclusion

Module 6 will provide a great deal more information on how to provide high-quality WIPA services to beneficiaries. Counseling on use of the Ticket to Work is an important part of service provision. CWICs should remember that the Ticket program is one of many work incentives available to beneficiaries of the Social Security disability programs. Like all work incentives, it's designed to meet the needs of certain beneficiaries, but isn't applicable to every individual or to resolve every barrier to employment a beneficiary may encounter.

Conducting Independent Research

- **Federal Regulations on Ticket to Work Program**
(https://www.ssa.gov/OP_Home/cfr20/411/411-0000.htm)
- **Ticket to Work FAQs**
(<https://choosework.ssa.gov/about/faqs/index.html>)
- **Ticket to Work Website** (<https://choosework.ssa.gov/>)

- **Ticket to Work POMS citations**
(<https://secure.ssa.gov/apps10/poms.nsf/lnx/0455000000>)

Additional Resources

A quick reference chart on timely progress reviews is provided on the following page. CWICs can provide this handout to beneficiaries when explaining the Ticket to Work program.

Timely Progress for Ticket Users Quick Reference Chart

12-Month Review Period	High School Diploma / GED	Technical Trade or Vocational Program	Degree / Certification Program	Work Requirement
1st	Obtained high school diploma or GED certificate.	Completed 60% of full time course load for 1 academic year.	Completed 60% of full time course load for 1 academic year.	3 out of 12 months with gross earnings at TWP level or above.
2nd	n/a	Completed 75% of full time course load for 1 academic year.	Completed 75% of full time course load for 1 academic year.	6 out of 12 months with gross earnings at TWP level or above.
3rd	n/a	Completed the technical, trade or vocational program.	Completed a 2-year program, or for a 4-year program, completed an additional academic year of full time study.	9 out of 12 months with gross earnings at non-blind SGA level or above.
4th	n/a	n/a	For a 4-year program, completed an additional academic year of full time study.	9 out of 12 months with gross earnings at non-blind SGA level or above.

12-Month Review Period	High School Diploma / GED	Technical Trade or Vocational Program	Degree / Certification Program	Work Requirement
5 th	n/a	n/a	For a 4-year program, completed an additional academic year of full time study or completed the 4-year degree program.	6 out of 12 months with earnings that preclude cash payments from either SSI or the Title II disability benefit programs.
6 th	n/a	n/a	Completed the 4-year degree program.	Work requirements are the same for the 5 th and all subsequent 12-month review periods.

Note: In lieu of fully meeting the guidelines for one category of progress, Social Security considers a beneficiary to have met the requirements of a 12-month period when the percentage of the educational or vocational training requirement completed and the percentage of the work requirement completed adds up to 100 percent or more.

In addition, Social Security affords Ticket users a “variance tolerance” to provide a margin of flexibility in determining when they are making timely progress. Social Security considers the beneficiary to be making timely progress when the completed course hours or course requirements are within 10 percent of the specified goal.

