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## Background

The Supplemental Security Income (SSI) program is a nationwide federal assistance program administered by the Social Security Administration (SSA) that guarantees a minimum level of income for needy aged, blind, or disabled individuals. In December 2002, 6.8 million individuals received federally administered monthly SSI benefits (including federally administered state supplementary payments) averaging \$407.

### History of the SSI Program

Entitlement programs for the aged, blind, or disabled have their roots in the original Social Security Act of 1935. That act established an old-age social insurance program to be administered by the federal government and an old-age means-tested assistance program to be administered by the states. Similar programs for the blind or disabled were added to the act in later years. Means-tested assistance was intended to supplement the incomes of individuals who were ineligible for Social Security or whose benefits could not provide a basic living.

This means-tested assistance, also known as categorical adult assistance, actually comprised three separate programs—Old-Age Assistance (OAA), Aid to the Blind (AB), and Aid to the Permanently and Totally Disabled (APTD). Despite substantial federal financing, those programs were essentially state programs; federal law established only broad guidelines and assistance. Federal financing was open-ended in the sense that the federal government would provide matching funds to support whatever payment levels the states established. Federal law specified no maximum or minimum standards. Consequently, each state was responsible for setting its own standards for determining who would receive assistance and how much they would receive. As a result, eligibility requirements and variations of payment levels differed from state to state.

Beginning in the early 1960s, this state-operated, federally assisted welfare system drew criticism from within and outside of government. Some of the criticism was directed at the "crazy quilt" eligibility requirements and payment levels. Other criticism centered on specific

requirements, such as lien laws and provisions that required certain relatives to bear responsibility for the maintenance of needy family members. The disparity in the degree of federal financial support provided to states was also an acknowledged problem.

Responding to these concerns, Congress passed and the President approved the SSI program (Public Law 92-603, enacted October 30, 1972), which reversed the historic federal and state roles with regard to adult assistance. Under the new arrangement, SSI would provide a uniform federal income floor and optional state programs would supplement that floor. The new program was historic in that it shifted from the states to the federal government the responsibility for determining who would receive assistance and how much assistance they would receive.

### The Basic Plan

The main objective of the SSI program is to provide the basic cash support of needy aged, blind, or disabled individuals. Congress designed the SSI program on the basis of the following principles:

- Eligibility requirements and benefit standards that are nationally uniform and eligibility determinations that are based on objective criteria;
  - An assistance source of last resort for the aged, blind, or disabled whose income and resources are below specified levels;
  - Incentives and opportunities for recipients who are able to work or to be rehabilitated that would allow them to reduce their dependency on public assistance;
  - An efficient and economical method of administering the program to provide assistance;
  - Inducements to encourage states to provide supplementation of the basic federal benefit and protection for former recipients of state adult assistance programs who were converted to the SSI program; and
  - Appropriate coordination of the SSI program with the Food Stamp, medical assistance, and other programs.
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## Uniform Standards and Objective Criteria

Prior to the SSI program, eligibility of aged, blind, or disabled individuals for federally funded adult assistance depended on the state in which they lived. Benefit amounts also varied from state to state. The SSI program replaced the state-run programs of assistance with a program having nationally uniform standards and objective eligibility criteria. Those standards include:

- A uniform limitation on the dollar amount or value of income and resources that an individual can have and still qualify for federal assistance. The countable income limits for individuals and couples are equal to their respective federal benefit rates and hence are increased annually according to changes in the cost of living. The resource limit is \$2,000 in countable resources for individuals and \$3,000 for couples.
- Sixty-five as the minimum age requirement for assistance based on age.
- A uniform definition of disability and blindness. The definitions for individuals 18 or older are the same as those used for the Social Security Disability Insurance program. In order to be considered disabled, an individual must have a medically determinable physical or mental impairment that is expected to last (or has lasted) at least 12 continuous months or to result in death and (1) if 18 or older, prevents him or her from doing any substantial gainful activity, or (2) if under 18, results in marked and severe functional limitations.<sup>1</sup> However, individuals for whom addiction to drugs or alcoholism is a contributing factor material to the determination of their disabilities are not eligible for benefits.<sup>2</sup> To be considered blind, an individual must have central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or have tunnel vision of 20 degrees or less.
- Uniform standards for citizenship and residency. To be eligible for SSI, an individual must be a citizen (or national) of the United States, an American Indian born in Canada who is under section 289 of the Immigration and Nationality Act (INA), an American Indian born outside the United States who is a member of a federally recognized Indian tribe under section 4(e) of

the Indian Self-Determination and Education Assistance Act, a noncitizen who was receiving SSI benefits on August 22, 1996, or a qualified alien in one of the following categories:<sup>3</sup>

- Certain noncitizens who are blind or disabled and were lawfully residing in the United States on August 22, 1996;
- Refugees (eligibility limited to the 7-year period after their arrival in the United States);
- Asylees (eligibility limited to the 7-year period after the date they are granted asylum);
- Noncitizens who have had their deportations withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or who have had their removals withheld under section 241(b)(3) of the INA (eligibility limited to the 7-year period after the date that deportation or removal is withheld);
- Cuban and Haitian entrants under section 501(e) of the Refugee Education Assistance Act of 1980 (eligibility limited to the 7-year period after the date they are granted entrant status);
- Amerasian immigrants admitted pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, and subsequent amendments (eligibility limited to the 7-year period after their arrival in the United States);
- Noncitizen active-duty armed forces personnel, honorably discharged veterans, and their spouses and dependent children; or
- Lawful permanent residents who have earned, or can be credited (from their spouses or parents) with, 40 qualifying quarters of earnings.

Note that qualified alien status includes noncitizens who have been battered or subjected to extreme cruelty in the United States by a spouse or parent (or a member of the spouse's or parent's family) with whom they live and who have an approved petition, or have a petition pending, setting forth a prima facie case for adjustment of their immigration status.

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Finally, certain noncitizens may be eligible for SSI regardless of their immigration status if they have been determined to be victims of severe forms of trafficking in persons in the United States.<sup>4</sup> Such individuals are treated for SSI purposes as refugees. That is, they are eligible for SSI for 7 years after a determination is made that they are trafficking victims.<sup>5</sup>

In addition to having to be a U.S. citizen (or national) or in one of the potentially eligible noncitizen categories, an individual must reside in the 50 states, the District of Columbia, or the Northern Mariana Islands—areas referred to here collectively as the United States. An individual also must be physically present in the United States for 30 consecutive days if he or she had been outside the United States for 30 or more consecutive days.

There are two exceptions to the residency and physical presence requirements:

- Blind or disabled children who are citizens of the United States may continue to be eligible for payments if they are living outside the United States with a parent who is on duty as a member of the U.S. armed forces.
- Students studying abroad for not more than 1 year may continue to be eligible for payments if the studies are sponsored by a U.S. educational institution but cannot be conducted in the United States.

## Assistance of Last Resort

As a means-tested program, SSI takes into account all income and resources that an individual has or can obtain. The amount of an individual's countable income and resources are the measure of his or her need for assistance.

## Income

The amount of an individual's income is used to determine both eligibility for, and the amount of, his or her SSI benefit. As countable income increases, an individual's SSI benefit amount decreases. Generally, ineligibility for SSI occurs when countable income equals the federal benefit rate plus the amount of applicable federally administered state supplementary payment (state supplementation is discussed later).

The monthly federal benefit rate is reduced dollar for dollar by the amount of the individual's "countable" income—that is, income minus all applicable exclusions. The result of this computation determines SSI eligibility and the amount of the monthly benefit payable. The benefit rates are adjusted annually (in January) to reflect changes in the cost of living.

When an individual lives in the household of another and receives support and maintenance in kind (that is, generally, room and board) from the householder, the federal SSI benefit rate is reduced by one-third in lieu of counting the actual value of the support and maintenance as unearned income. The value of food, clothing, or shelter-related items the individual receives in kind from persons other than the householder (including in-kind assistance from outside the household in which he or she lives) is counted as unearned income, up to an amount equal to one-third of the applicable federal benefit rate plus \$20.

SSI law defines two kinds of income—earned and unearned. Earned income is wages, net earnings from self-employment, remuneration for work in a sheltered workshop, royalties on published work, and honoraria for services. All other income is unearned. The distinction between earned and unearned income is significant because different exclusions apply to each type of income.

However, not everything an individual receives is considered to be income. Generally, if the item received cannot be used as, or to obtain, food, clothing, or shelter, it will not be considered as income. For example, if someone pays an individual's medical bills or offers free medical care, or if the individual receives money from a social services agency that is a repayment of an amount he or she previously spent, that value is not considered income to the individual. In addition, some items that are considered to be income are excluded when determining the amount of an individual's benefit (see Box 1).

## Resources

The amount of an individual's resources is used to determine whether he or she is eligible for SSI in a given month. SSI law states that eligibility is restricted to individuals who have countable resources, determined monthly, that do not

exceed \$2,000 (\$3,000 for a couple). The law does not define what resources are but does stipulate what items are not considered resources.

Regulations state that a resource is cash or other liquid asset or any real or personal property that individuals (or their spouses) own and could convert to cash to be used for their support and maintenance. This definition is consistent with the general philosophy of the SSI program that only items that can be used for an individual's food, clothing, or shelter should be used in determining his or her eligibility and benefit amount. Not all resources an individual owns are counted. The value of an item may be totally excluded or counted only to the extent that its value exceeds specified limits (see Box 1).

If an individual disposes of resources at less than fair market value within the 36-month period before he or she applies for SSI or at any time thereafter, he or she may be penalized. The penalty is a loss of benefits for a number of months (up to a 36-month maximum) obtained by dividing the uncompensated value of disposed-of resources by the federal benefit rate plus the maximum state supplementary payment, if any, applicable to the individual's living arrangement. The penalty does not apply if, among other things, the individual can show that the resources were disposed of exclusively for a purpose other than establishing SSI eligibility.

### Filing for Other Benefits

As the program of last resort, SSI benefits are provided to eligible individuals only to the extent that their needs are not met by other sources. That is, after evaluating all other income and resources, SSI pays what is necessary to bring an individual to the statutorily prescribed income "floor." In keeping with this principle, SSI law requires that SSI applicants file for other payments for which they may be entitled, such as annuities, pensions, retirement or disability benefits, workers' compensation, and unemployment insurance benefits.

SSA must provide an individual with written notice of potential eligibility for other benefits and of the requirement to take all appropriate steps to pursue those benefits. The individual has 30 days from receipt of the notice to file for the benefits involved.

## Box 1. Income and Resource Exclusions

### Income Exclusions

The principal *earned* income exclusions are:

- The first \$65 per month plus one-half of the remainder,
- Impairment-related work expenses of the disabled and work expenses of the blind,
- Income set aside or being used to pursue a plan for achieving self-support by a disabled or blind individual, and
- Infrequent or irregularly received income (\$10 or less a month).

The principal *unearned* income exclusions are:

- The first \$20 per month,<sup>1</sup>
- Income set aside or being used to pursue a plan for achieving self-support by a disabled or blind individual,
- State or locally funded assistance based on need,
- Rent subsidies under programs administered by the Department of Housing and Urban Development and the value of food stamps, and
- Infrequent or irregularly received income (\$20 or less a month).

### Resource Exclusions

The principal resource exclusions are:

- The home and land appertaining to it, regardless of value;
- Life insurance policies whose total face value does not exceed \$1,500;
- Burial funds not in excess of \$1,500 each for an individual and spouse (plus accrued interest);
- Household goods and personal effects in which one's equity does not exceed \$2,000;
- An automobile (depending upon its use), otherwise the current market value not in excess of \$4,500;
- Property essential to self-support; and
- Resources set aside to fulfill a plan to achieve self-support.

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1. Any portion of the \$20 amount not used to exclude unearned income may be used to exclude earned income.

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## Eligibility Issues for Residents of Public Institutions or Medical Facilities and Personal Needs Allowance

State and local governments—rather than the federal government—traditionally have taken the financial responsibility for residents of their public institutions. The SSI program continues this long-standing public assistance policy. People who are residents of public institutions for a full calendar month are generally ineligible for SSI unless one of the following exceptions applies:

- The public institution is a medical treatment facility and Medicaid pays more than 50 percent of the cost of care, or in the case of a child under age 18, Medicaid, private health insurance, or both pay more than 50 percent of the cost of care;
- The public institution is a publicly operated community residence serving no more than 16 residents;
- The public institution is an emergency shelter for the homeless (payments are limited to no more than 6 months in any 9-month period);
- The recipient was eligible under section 1619(a) or (b) for the month preceding the first full month in the public institution and is permitted by the institution to retain any benefits (payable for up to 2 months); or
- A physician certifies that the recipient's stay in a medical facility is likely not to exceed 3 months and continued SSI eligibility is needed to maintain and provide for the expenses of the home to which the individual will return.

When individuals enter medical treatment facilities in which more than half of the bill is paid by the Medicaid program, their monthly federal payment standard is generally reduced to \$30, beginning with the first full calendar month they are in the facility. In the case of an individual under age 18, the \$30 payment standard is also applicable if more than half of the bill is paid by private insurance or a combination of Medicaid and private insurance. In these cases, the SSI program provides up to \$30 a month, which is intended to take care of small comfort items not provided by the institution.

### Deeming

In certain situations, the income and resources of others are counted in determining whether an

individual's income and resources fall below the levels established by law. This process is called "deeming" and is applied in cases in which an eligible individual lives with an ineligible spouse, an eligible child lives with an ineligible parent, or an eligible noncitizen has a sponsor.<sup>6</sup> In concept, the practice takes into account the responsibility of the spouse, parent, or sponsor to provide for the basic needs of the eligible individual.

**Spouse-to-Spouse Deeming.** When an eligible individual lives in the same household with a spouse who is not eligible for SSI, the ineligible spouse's income and resources are deemed to be available to the eligible individual. In determining the amount of income and resources available to the eligible individual, all applicable exclusions are used. In addition, a living allowance is provided for the ineligible spouse and for any ineligible children under age 18 living in the household. The allowance reduces the amount of income to be deemed. Spouse-to-spouse deeming is intended to result in the same amount of income being available to the couple as would be available if both members of the couple were aged, blind, or disabled and eligible for SSI.

Deeming does not apply when the eligible individual is not living in the same household as the ineligible spouse. However, if the ineligible spouse's absence is temporary or is due solely to an active-duty assignment as a member of the U.S. armed forces, deeming continues to apply.

**Parent-to-Child Deeming.** A child under age 18 is subject to deeming from an ineligible natural or adoptive parent (and that parent's spouse, if any) living in the same household. Certain amounts of the parent's income are excluded, living allowances are provided for the parent(s), and an allocation is set aside for each ineligible child under age 18 (under age 21 if a student) who is living in the household. Deeming from an eligible parent to a child continues if the parent is absent from the household but the absence is temporary or is due solely to active-duty assignment as a member of the U.S. armed forces. A child living in a household in which all members are receiving public assistance benefits is not considered to be receiving any support, and deeming does not apply.

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**Sponsor-to-Alien Deeming.** The income and resources of noncitizens are deemed to include those of their sponsors. The way the income and resources are deemed and the length of the deeming period depend on whether the sponsor signed a legally enforceable affidavit of support, as required by Public Law 104-208, or the previous version of the affidavit. Generally, individuals who entered the country before 1998 did so under the old version of the affidavit.<sup>7</sup>

Under the old version of the affidavit, deeming of the sponsor's income and resources lasts until the noncitizen has been in the United States for 3 years.<sup>8</sup> Living allowances equal to the federal benefit rate are provided for the sponsor, and allowances equal to one-half of the federal benefit rate are provided for each of the sponsor's dependents. Allowances are also provided for the sponsor and his or her family members in determining deemed resources. These allowances reduce the amount of the sponsor's income and resources deemed to the noncitizen.

For noncitizens admitted into the United States under a legally enforceable affidavit of support, deeming generally applies until the noncitizen becomes a U.S. citizen. Deeming ends before citizenship if the noncitizen has earned, or can be credited with, 40 qualifying quarters of earnings. Children and spouses of workers may be credited with quarters earned by the worker. A quarter otherwise earned after 1996 does not count as one of the required 40 if the noncitizen or worker received federal means-tested public benefits during the relevant period.

Also for this group of noncitizens, deeming does not apply for specified periods if the noncitizens or their children or parents have been battered or subjected to extreme cruelty while in the United States or if sponsors left the noncitizens indigent by not providing them with sufficient support.

### **Incentives for Work and Opportunities for Rehabilitation**

SSI benefits provide a basic level of assistance for individuals who are blind or disabled with limited earnings ability due to their impairments. Nonetheless, for recipients who want to work, the SSI program is designed to encourage and support their work attempts in order to help them achieve greater degrees of independence. The

SSI program includes a number of work incentive provisions that enable recipients who are blind or disabled to work and retain benefits or to increase their levels of work activity without the loss of SSI disability status or Medicaid. These incentives provide higher amounts of income or resource exclusions as recognition of the expenses associated with working or as inducements to seek rehabilitation services and support for work efforts.

### **Earned Income Exclusion**

The first \$65 (\$85 if the individual has no income other than earnings) of any monthly earned income plus one-half of remaining earnings are excluded for SSI benefit computation purposes. This general earned income exclusion is intended to help offset expenses incurred when working. It assures that SSI recipients who are working will be rewarded for their efforts by having greater total income than those who do not work.

### **Impairment-Related Work Expense Exclusion**

The cost of certain impairment-related services and items that a disabled (but not blind) individual needs in order to work are excluded from earned income in determining SSI eligibility and benefit amounts.

In calculating these expenses, amounts equal to the costs of certain attendant care services, medical devices, equipment, prostheses, vehicle modifications, residential modifications to accommodate wheelchairs, and similar items and services are deductible from earnings. The costs of routine drugs and routine medical services are not deductible unless they are necessary to control the disabling condition.

### **Work Expenses of the Blind Exclusion**

Any expenses relating to work that a blind individual has are excluded from earned income in determining SSI eligibility and benefit amounts. Unlike an impairment-related work expense, a deductible expense need not be directly related to the worker's blindness; it need only be an ordinary and necessary work expense of the worker.

Some frequently excluded work expenses include transportation to and from work, meals consumed during work hours, job equipment,

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licenses, income or FICA taxes, and costs of job training.

### **Student Earned Income Exclusion**

The student earned income exclusion is an additional exclusion for an individual who is under age 22, regularly attending school, and neither married nor the head of a household. It is intended to help defray the cost of educational training. Under current regulations, up to \$1,290 of earned income per month but no more than \$5,200 per year may be excluded.<sup>9</sup>

### **Plans for Achieving Self-Support**

Plans for achieving self-support (PASS) allow a disabled or blind individual to set aside income and resources to get a specific type of job or to start a business. The plans may involve setting aside funds for education or vocational training, to purchase work-related equipment, or to pay for transportation related to the work goal. The income and resources that are set aside are excluded under the SSI income and resources tests.

The individual must have a feasible work goal and a specific savings or spending plan. He or she also must provide for a clearly identifiable accounting for the funds that are set aside. The PASS is time limited and must be approved by SSA. The individual must then follow the plan and negotiate revisions as needed. SSA monitors the approved plan by reviewing it periodically to ensure the individual's progress toward attaining the work goal.

### **Special Provisions for Disabled People Who Work**

These work incentives are generally referred to by their section number in the Social Security Act, section 1619. Under section 1619(a), disabled individuals who would cease to be eligible because they earn more than the substantial gainful activity level can receive special cash benefits as long as they:

- Continue to have the disabling condition,
- Have income under the amount that would cause ineligibility for any payment under SSI income counting rules, and
- Meet all other nondisability requirements for SSI payment.

In many states, being a recipient of the special benefit permits the individual to be eligible for Medicaid benefits.

Under section 1619(b), "SSI recipient" status for Medicaid eligibility purposes also is provided to an individual:

- Whose earnings preclude any SSI payment but are not sufficient to provide a reasonable equivalent of the SSI, social services, and Medicaid benefits that the individual would have in the absence of earnings; and
- Whose ability to continue working would be seriously inhibited by the loss of social services and Medicaid benefits.

To qualify for extended Medicaid coverage under section 1619(b), an individual must:

- Have a disabling condition,
- Need Medicaid in order to work,
- Not be able to afford equivalent medical coverage and publicly funded personal or attendant care that would be lost without assistance,
- Meet all nondisability requirements for SSI payment other than earnings, and
- Have received a regular SSI cash payment in a previous month within the current period of eligibility. (In some states, the individual must have qualified for Medicaid in the month preceding the first month of 1619 eligibility.)

In determining whether individuals' earnings are not sufficient to provide them with the equivalent benefits they would be eligible for if they stopped working, their earnings are compared with a threshold amount for their state of residence. Section 1619(b) status continues if the earnings are below the threshold. If earnings exceed the state threshold, an individualized assessment of the need for Medicaid is made and 1619(b) status may continue.

### **Vocational Rehabilitation and the Ticket to Work Program**

Since the beginning of the SSI program, SSA has made provision for blind or disabled individuals who are receiving SSI benefits to be referred to state Vocational Rehabilitation (VR) agencies. If the state VR agency does not accept the referral, SSA can refer recipients to

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an alternate provider to receive vocational rehabilitation services. SSA reimburses the VR agency or alternate provider for services that result in the individual's working at the substantial gainful activity level for a continuous period of 9 months, and in certain other limited situations.

The Ticket to Work and Work Incentives Improvement Act of 1999 established a Ticket to Work program under which a disabled beneficiary is able to obtain vocational rehabilitation, employment, and other support services from a qualified private or public provider. Providers of such services in this new setting are referred to as employment networks (ENs). In addition, the Ticket legislation provided for a new procedure for compensating the ENs under an outcome or outcome-milestone payment system. By expanding the pool of providers and giving the providers incentives for achieving success, this program seeks to expand a disabled beneficiary's access to these services for assistance in finding, entering, and retaining employment and reducing his or her dependence on cash benefits. Regulations issued by the Commissioner of Social Security became effective January 2002.

Individuals receiving SSI benefits who improve medically and are therefore no longer considered disabled or blind can continue to receive SSI benefits if they are actively participating in the Ticket to Work program, or another approved VR program, and if continuing or completing the program would increase the likelihood that they would be permanently removed from the SSI rolls. SSI benefits and Medicaid generally continue until the rehabilitation services are completed or until the individual ceases to participate in the program.

### **Expedited Reinstatement**

A disabled or blind individual whose eligibility for SSI payments was ended because of earnings can request expedited reinstatement of his or her SSI benefits without filing a new application. To qualify for expedited reinstatement, the individual must make the request within 60 months after the eligibility ended and must have a disabling medical condition that (1) is the same as (or related to) the disabling medical condition that led to the previous period of eligibility and (2) prevents him or her from performing substantial gainful activity. In determining whether the

individual is disabled or blind, the medical review standard is applied. Normal nonmedical requirements for SSI eligibility still apply.

An individual requesting expedited reinstatement may receive up to 6 months of provisional benefits while the request is pending. These benefits generally are not considered an overpayment if the request is denied. Provisional benefits may include Medicaid but do not include any state supplementary payments. Provisional benefits also may be received by the individual's spouse at a couple's rate if the spouse was previously eligible for SSI as a spouse.

### **Administration of the SSI Program**

The framers of Supplemental Security Income chose the Social Security Administration to administer the program because the basic system for paying monthly benefits to a large number of individuals was already in place in the form of the Social Security program.

### **Application Process**

Individuals can make appointments to apply for SSI benefits at any one of the approximately 1,300 SSA field offices around the country or through SSA teleservice centers. The claims process includes the application interview, the obtaining of necessary evidence and documentation, and the adjudication of the claim. Many individuals file for benefits under both the SSI and the Old-Age, Survivors, and Disability Insurance programs at the same time. Potential claimants initially contact SSA by phone, mail, or in person. Field office personnel conduct an interview with the claimant, his or her representative, or both.

SSA corroborates information provided by applicants for SSI through independent or collateral sources. Generally, the basic responsibility for obtaining evidence lies with the claimant, although SSA often gives advice on ways to obtain the needed information. Because of the special circumstances of the SSI population (for example, financial need, old age, or illness), SSA makes special efforts to assist claimants in obtaining the necessary proofs.

With regard to disability and blindness claims, SSA makes determinations of all of the nonmedical eligibility factors, and each state's

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Disability Determination Services (DDS) makes determinations of the medical eligibility factors.

### **Determinations of Eligibility**

SSI applications have no retroactivity and become effective in the month after the month of filing or the month after all eligibility requirements are met, whichever is later. Eligibility for benefits is determined on a current monthly basis. SSI recipients are required to have their nonmedical eligibility factors redetermined periodically, generally every 1 to 6 years depending on their specific situation.

In addition to these nonmedical reviews, medical reviews are conducted on disabled or blind recipients in order to determine if they continue to be disabled or blind. For administrative efficiency the medical reviews are done most often on disabled or blind recipients whose medical conditions are considered likely to improve. Medical reviews are required for disabled or blind recipients, for example, under the following circumstances:

- When earnings of recipients exceed the substantial gainful activity level,
- At least once every 3 years for recipients under age 18 whose medical conditions are considered likely to improve,
- Within 12 months after birth for recipients whose low birth weight is a contributing factor material to the determination of their disability unless the Commissioner determines that the impairment is not expected to improve within 12 months of the child's birth, and
- Within 1 year after attainment of age 18 and using the adult eligibility criteria for recipients whose eligibility for SSI benefits was established under the disabled child eligibility criteria.

### **Representative Payees**

When SSI recipients are incapable of managing their benefits, SSA appoints representative payees for them, and their SSI benefits are sent to the representative payees. In many cases the representative payee is a spouse, parent, or other close relative who will act in the recipient's best interest. In some cases, an SSA-approved organization may be appointed, and some organizations have been authorized by SSA to

collect a fee from the benefit for acting as payee. The fee cannot exceed the lesser of 10 percent of the benefit amount or a specified amount (\$30 a month in 2002, \$57 a month for disabled recipients who also have a drug addiction or alcoholism condition).

Representative payees may use an SSI recipient's benefit only for the use and benefit of the recipient and must account for all benefits received. Representative payees also are required to report any changes that may affect SSI recipients' eligibility and payment amount and may be held liable for certain overpayments that occur.

### **Appeal Rights**

Recipients must be informed in writing in advance of adverse actions that SSA plans to take and must be given the opportunity to request that their benefits continue pending a decision at the first level of appeal.

### **Attorney Fees**

At any time, an individual may appoint a representative in any dealings with the Social Security Administration. If such a representative is an attorney, he or she must be in good standing, have the right to practice law before a court, not be disqualified or suspended from acting as a representative in dealings with Social Security, and not be prohibited by any law from acting as a representative. If the individual is not an attorney, he or she must meet qualifications specified by the Commissioner (for example, be of good character and able to provide valuable service to claimants).

A representative may charge and receive a fee for his or her services, but the Social Security Administration generally decides how much the fee will be. Although the Social Security Act does not establish a maximum fee, most attorneys use an options process that limits their maximum fee to the lesser of 25 percent of the retroactive payment or \$5,300.<sup>10</sup>

### **Advance Payments**

The SSI program has provisions that help respond to the immediate needs of new claimants. These procedures are in addition to state and local programs designed to help those in need pending decisions on their SSI status.

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**Emergency Advance Payments.** A new claimant who faces a financial emergency and who has a strong likelihood of being found eligible may receive up to 1 month's SSI benefits—the federal payment amount plus any applicable state supplement. The amount paid is recovered from later SSI payments (in full from the first payment or in increments over no more than a 6-month period, depending on the circumstances). However, if the claim is subsequently not allowed because of not finding disability or blindness, repayment is waived. If the claim is disallowed for other reasons, the amount paid is an overpayment and is processed as such.

**Presumptive Disability or Blindness.** Up to 6 months' payments may be made to an individual applying for benefits based on disability or blindness when the available evidence reflects a high degree of probability that the impairment will meet the definition of disability or blindness and he or she is otherwise eligible. These payments are not considered overpayments if the individual is later determined not to be disabled or blind.

## State Supplementation

In designing the SSI program, Congress recognized that states, in many instances, would want to provide a higher level of income maintenance than was available under the federal program. At the same time, states were given the option to either provide no supplementation to the federal assistance payments or supplement those payments based on their views of the needs of their citizens. They were mandated to ensure that their citizens would not receive lower benefits under the federal program than they had under the former state program.

### Types of State Supplementation

State supplementation can be optional or mandatory.

**Optional State Supplementary Payment Programs.** For individuals who first became eligible for SSI in 1974 or later, each state could supplement federal payments to whatever extent it found appropriate with respect to the needs of its citizens and the resources of the state. In 2001, 45 states had optional state supplementary payment programs.

Some states provide supplementary payments to all individuals eligible for SSI benefits; others may limit them to certain SSI recipients such as the blind or residents of domiciliary care facilities or may extend them to persons ineligible for SSI because of excess income. States' flexibility in setting supplementary payments, however, has been significantly restricted by mandatory passalong provisions (described below).

**Mandatory State Supplementary Payment Programs.** States are required to maintain the December 1973 income levels of individuals who were transferred from the former state adult assistance programs to the SSI program in 1974, except for Texas, which until 1999 had a constitutional bar against mandatory state supplementation.<sup>11</sup> Because of the increases in federal benefits, only a few individuals continue to receive mandatory state supplementary payments.

### Administration of State Supplementary Payments

A state may administer its supplementary program or enter into an agreement under which SSA will make eligibility determinations and payments on behalf of the state. Under state administration, the state pays its own program benefits and absorbs the full administrative costs. Under federal administration, states are required to pay SSA an \$8.59 fee for each supplementary payment issued in fiscal year 2003. Fees are scheduled to rise in succeeding fiscal years.

States that administer their own supplementary payment programs establish their own eligibility criteria. States with federally administered programs must adhere to SSI eligibility criteria in all aspects except additional income exclusions.

### Mandatory Passalong

It was originally Congress's view that increases in the federal SSI benefit rate would eventually replace state supplementary payments. However, public reaction to states reducing their supplementary payment amounts when SSI payments were increased led Congress to mandate that states pass along SSI benefit increases resulting from cost-of-living adjustments.

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To meet the passalong requirement, a state may either maintain each state payment level from year to year (the "payment levels" method), or it may spend the same amount of money, in the aggregate, that it spent for supplementary benefits in the 12-month period preceding the increase in the SSI benefit rate (the "total expenditures" method).

## **Coordination with Other Programs**

SSI benefits are not the only form of assistance available to needy aged, blind, or disabled individuals. Medicaid, food stamps, and temporary state assistance are also important in keeping individuals from sliding further into poverty. SSA plays a limited but important role in helping states with regard to administration of the Medicaid and Food Stamp programs, and provisions in the SSI statute ensure that payments made by states or under the Social Security program are not duplicated by SSI benefits.

### **Windfall Offset**

If a person receives SSI payments and is later determined to be entitled to retroactive Social Security benefits, such retroactive benefits are reduced by the amount of SSI payments the person would not have been eligible for had the Social Security benefits been paid in the month they were due. This process, called the windfall offset, was enacted to prevent windfall payments to individuals when Social Security and SSI payments were paid for the same period.

### **Medicaid Determinations**

Generally, SSI recipients are categorically eligible for Medicaid. A state may use SSI eligibility criteria for determining Medicaid eligibility, or it may use its own criteria as long as the criteria are no more restrictive than the state's January 1972 medical assistance standards. Forty states use SSI criteria, and 11 states use eligibility criteria that are more restrictive than those of the SSI program.

States also may enter into agreements with SSA for SSA to make Medicaid eligibility determinations on their behalf as long as the eligibility requirements of the state's Medicaid plans are the same as those for the SSI program. Under these agreements, SSA determines only when an individual is eligible for Medicaid; SSA

does not determine Medicaid ineligibility. SSA has Medicaid determination agreements with 33 states.

Continued Medicaid eligibility is provided in SSI law for certain Social Security beneficiaries who lose SSI eligibility because of either an entitlement to Social Security benefits or an increase in Social Security benefits resulting from:

- Cost-of-living adjustments,
- Actuarial increases in widow(er)s benefits,
- Changes in the definition of disability for widow(er)s benefits, or
- Increases in disabled adult child benefits.

### **Food Stamp Applications**

SSI recipients in all states, except California, may be eligible for food stamps. Under agreements entered into by the Secretary of Agriculture and SSA, Social Security offices notify Social Security and SSI applicants and recipients of their potential benefits under the Food Stamp program and make food stamp applications available to them.<sup>12</sup>

The law also provides for Social Security offices to take food stamp applications from potentially eligible or eligible SSI households that are not already receiving food stamps and do not have a food stamp application pending. Food stamp applications from SSI households may be taken in connection with initial SSI claims or at the time of a redetermination. Food stamp applicants have the option of applying at Social Security offices or at state food stamp offices if expedited service is required. Social Security offices forward the food stamp applications and any supporting documents to the local food stamp offices within 1 day of taking the application. Eligibility is determined by the food stamp office.

### **Interim Assistance Reimbursement**

SSA may enter into agreements under which states or local governments are reimbursed for basic needs assistance provided during the period that an eligible individual's SSI application for benefits was pending or the individual's SSI benefits were suspended and subsequently reinstated (the interim period).

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## Notes

<sup>1</sup> Substantial gainful activity (SGA) is used to describe a level of work activity that is both substantial (that is, involves the performance of significant physical or mental duties that are productive) and gainful (that is, performed for remuneration or profit). Generally, earnings from work activity of over \$780 a month in 2002 were evidence of ability to engage in SGA. Applicants who earned over \$780 a month would generally not be considered disabled. However, SSI recipients who earned over \$780 a month could continue to be eligible for SSI. (See the section Incentives for Work and Opportunities for Rehabilitation.) The SGA level of \$780 was increased to \$800 effective January 1, 2003. Increases in the SGA level in subsequent years will be based on increases in the national average wage index.

The definition of disability for individuals under age 18 reflects amendments made by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Prior law required a medically determinable physical or mental impairment of comparable severity to that required for individuals 18 or older.

<sup>2</sup> The provision reflects amendments made by title I of Public Law 104-121, the Senior Citizens' Right to Work Act of 1996, enacted March 29, 1996.

<sup>3</sup> These standards reflect amendments made by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by Public Law 104-208, Public Law 105-33, and Public Law 105-306. Prior law permitted SSI eligibility for individuals who were residents of the United States, citizens or nationals of the United States, aliens lawfully admitted for permanent residence in the United States, or aliens permanently residing in the United States under color of law.

<sup>4</sup> Generally defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

<sup>5</sup> Public Law 106-386, the Victims of Trafficking and Violence Protection Act of 2000, enacted October 28, 2000.

<sup>6</sup> Deeming also applies to an individual who lives with an essential person (a concept carried over from the former state assistance plans). However, there are fewer than 100 of these cases remaining.

<sup>7</sup> The Immigration and Naturalization Service (INS) began using the new, legally enforceable affidavits on December 19, 1997. However, if a potential immigrant had a visa issued before that date, the sponsor would sign an old affidavit even if the affidavit was signed after December 19, 1997.

<sup>8</sup> For a temporary period—January through September 1996—the deeming period was 5 years.

<sup>9</sup> Under current regulations, this exclusion will be increased in subsequent years based on changes in the cost of living.

<sup>10</sup> Fee agreements prior to February 1, 2002, were limited to the lesser of 25 percent of the retroactive payment or \$4,000.

<sup>11</sup> The requirement does not affect West Virginia, since SSI federal benefit rates in 1973 exceeded the applicable income standards under the state's adult assistance programs.

<sup>12</sup> California "cashes out" food stamps, and SSI recipients receive a cash payment in their state supplementary payment in lieu of food stamps.