

# Spouse-to-Spouse Deeming

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## Introduction

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

## When Spouse-to Spouse Deeming Applies

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

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

### *What SSA means by “Holding Out”*

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

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

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

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

SSA does not develop “holding out” if the file shows that a man and woman who live in the same household are related by blood or marriage; or have an obvious reason for living in the same household other than as a couple (such as an individual who lives in the home to provide care for a disabled individual).

Holding out determinations are complex and may only be performed by SSA personnel. Whenever there is doubt about a marital relationship, seek a formal determination from the local Field Office

## **How SSA Deems Spousal Income**

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

1. The amount of countable earned and unearned income of the ineligible spouse is determined. Remember that not all money a person receives may count as income under the SSI rules. Income exclusions which are applied during spouse-to-spouse deeming are discussed in the next section of this paper.
2. A standard “allocation” is subtracted from any income the ineligible spouse has for each ineligible child in the household (some exceptions apply). The allocation is simply the couple FBR less the individual FBR which for 2011 would be  $\$1011 - \$674 = \$337$ . Each allocation is reduced by the amount of that child’s income. Not all money an ineligible child receives would count as income. If there are ineligible children in the household spousal deeming can get very complicated. CWICs are advised to stop and get help from SSA personnel.

3. If the remaining income of the ineligible spouse is less than the standard allocation amount of \$337 after all applicable allocations have been deducted, NO income is deemed to the eligible spouse and SSA stops right here. If the remaining income is more than \$337, then spouse-to-spouse deeming does apply and SSA moves on to the next step to determine both eligibility and how to adjust the eligible person's SSI check.
4. If the remaining income of the ineligible person (both earned & unearned) is more than \$337, the eligible individual and the ineligible spouse are treated as if they were an eligible couple from this point forward. Use the eligible couple SSI calculation sheet to determine countable income. A copy of that form is provided at the end of this paper.
5. SSA combines the remainder of the unearned income of the ineligible spouse (after ineligible child allocations are applied) with that of the eligible individual and one \$20 General Income Exclusion (GIE) is applied.
6. SSA combines the remainder of the earned income of the ineligible spouse (less ineligible child allocations if not already taken from unearned income) with any earned income from the eligible individual. If the GIE was not already applied to unearned income, SSA applies it to any earned income the couple has. In addition, one \$65 earned income exclusion (EIE) is applied to the earned income.
7. SSA divides the remaining earned income of the couple by two to determine countable earned income.
8. Work incentives for the eligible individual are applied as appropriate within the SSI calculation chart. No work incentives can be applied for the ineligible spouse.
9. SSA adds the countable earned income to the countable unearned income to determine total countable income for the couple. Total countable income is subtracted from the couple FBR (\$1,011 in 2011) to determine both SSI eligibility as well as the adjusted SSI for the eligible individual.
10. If the remaining figure is zero, no SSI check is due and the eligible spouse will be found ineligible. If the figure is more than zero, this is what the adjusted SSI payment for the eligible person will be. The payment can never be more than the individual FBR.

## **Events that Cause Spousal Deeming Changes**

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

### **1. Ineligible Spouse Becomes Eligible**

If an ineligible spouse becomes eligible, the individual and spouse are treated as an eligible couple effective with the month the spouse becomes eligible. Both eligibility and payment amount are based on the couple's income for that month. In the second month, the payment amount is based on the couple's income in the first month of eligibility.

### **2. Spouses Separate or Divorce**

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

### **3. Eligible Individual Begins Living with an Ineligible Spouse**

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

### **4. Ineligible Spouse Dies**

If an ineligible spouse dies, deeming stops for purposes of determining eligibility effective with the month following the month of death. The payment amount beginning with the month following the month of death is determined using only the eligible individual's own income from the budget month. Any income deemed from the ineligible spouse that month is excluded.

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

If an eligible individual moves into a medical care facility and the \$30 payment limit applies (see POMS SI 01320.450), deeming stops for purposes of determining eligibility effective with the first month for which the \$30 payment limit applies. The payment amount beginning with the first month for which the \$30 payment limit applies is determined using only the eligible individual's own income from the budget month. Any income deemed from the ineligible spouse that month is excluded.

## **Income Excluded from Spouse-to-Spouse Deeming**

It is essential to understand that receipts which are not income to an eligible individual for SSI purposes also are not income to an ineligible spouse. This means that all of the income exclusions that SSA applies to eligible individuals are also applied to the ineligible spouse during deeming determinations.

The following types of income are excluded by Regulation when determining countable income of an ineligible spouse subject to deeming. These types of income are also excluded from the income of an ineligible child in a household for purposes of reducing the ineligible child and alien allocations.

1. Income excluded by Federal laws other than the Social Security Act;
2. Any public income maintenance payments and any income which was counted or excluded in figuring the amount of that payment;
3. Any of the income of an ineligible spouse, parent, or ineligible child that is used by a public income-maintenance program to determine the amount of that program's benefit to someone else;
4. Any portion of a grant, scholarship, or fellowship used to pay tuition or fees;
5. Money received for providing foster care to an ineligible child;
6. The value of food stamps and the value of Department of Agriculture donated food; these are also excluded from the income of an essential person or the sponsor of an alien;
7. Home produce grown for personal consumption;
8. Tax refunds on real property or food purchased by the family;
9. Income used to fulfill an approved Plan for Achieving Self-Support (PASS);
10. Any income that is used to comply with the terms of court-ordered support or support payments enforced under Title IV-D of the Social Security Act;
11. The value of In-kind Support and Maintenance (ISM);
12. Periodic payments made by a State under a program established before July 1, 1973 and based solely on duration of residence and attainment of age 65;
13. Disaster assistance; some types of disaster assistance may also be excluded from the income of an essential person or the sponsor of an alien;
14. Infrequent or irregular income per the SSI rules;
15. Work expenses of the blind;
16. Income paid under a Federal, State, or local government program (e.g., payments under Title XX of the Social Security Act) to provide chore, attendant, or homemaker services to the eligible individual;
17. Certain home energy assistance and support and maintenance assistance; such assistance is also excluded from the income of an essential person or the sponsor of an alien;
18. Any child's earned income up to a monthly and yearly maximum determined by cost-of-living indicators, provided that the child is a student, is excluded from the income of an ineligible child or an ineligible spouse. This exclusion is commonly known as the Student Earned Income Exclusion or SEIE.

See POMS SI 00810.005 for the definition of income for SSI purposes, and examples of items that are not income. WIPA personnel should also refer to Unit 5 of Module 3 in the CWIC Training Manual for detailed information about common SSI income exclusions and how they are applied.

#### **EXAMPLE 1: No Deemed Income after Allocation for Ineligible Child**

Mrs. Anne Wilson, a disabled individual, lives with her ineligible spouse and their ineligible child, Mike. She is eligible for SSI based on her own income. Mr. Wilson receives \$600

unearned income per month. He has no earned income and Mike has no income at all. First, allocate to Mike \$337 (the difference between the FBR for a couple and the FBR for an individual). Then subtract the \$337 allocation from Mr. Wilson's \$600 unearned income, leaving \$263. Since the \$263 remaining income is not more than \$337, which is the difference between the FBR for a couple and the FBR for an individual, no income is deemed to Mrs. Wilson. Instead, compare only her own countable income with the FBR for an eligible individual (\$674 in 2011) to determine whether she is eligible. If Mrs. Wilson's own countable income is less than or equal to the FBR, she is eligible.

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

Mr. Jack Ingalls, a disabled individual, lives with his ineligible spouse and ineligible child, Cathy. Mr. Ingalls and Cathy have no income. Mrs. Ingalls has earned income of \$450 a month and unearned income of \$485 a month. First, \$337 is allocated to Cathy. Subtract the \$337 allocation from Mrs. Ingalls' \$485 unearned income, leaving \$148 in unearned income. Since the total remaining income (\$148 unearned plus \$450 earned) is more than \$337, which is the difference between the FBR for a couple and the FBR for an individual in 2011, combine Mr. and Mrs. Ingalls' income and compute countable income the same as for an eligible couple as follows:

Unearned income	148.00
General income exclusion	<u>- 20.00</u>
Countable unearned income	128.00
Earned income	450.00
Earned income exclusion	<u>- 65.00</u>
Remainder	385.00
Divide by 2	192.50
Countable unearned	128.00
Countable earned	<u>192.50</u>
Total Countable	320.50
Couple FBR	1011.00
Total countable income	<u>-320.50</u>
Adjusted SSI	690.50

\*\*The SSI check can never be more than \$674.00, so Mr. Ingalls' check would be \$674.00/month.

**EXAMPLE 3: Both Eligible Individual and Ineligible Spouse have Income**

In 2011, Harold Bergman, a disabled individual, lives with his ineligible spouse, who earns \$659 per month. Mr. Bergman receives a pension (unearned income) of \$365 a month. Since Mrs. Bergman's income is greater than \$337, which is the difference between the FBR for a couple and the FBR for an individual in 2011, deeming will apply and SSA computes the combined countable income for the couple.

Unearned income	365.00
General income exclusion	<u>- 20.00</u>
Countable unearned income	345.00
Earned income	659.00
Earned income exclusion	<u>- 65.00</u>
Remainder	594.00
Divide by 2	297.00
Countable unearned	345.00
Countable earned	<u>297.00</u>
Total Countable	642.00
Couple FBR	1011.00
Total countable income	<u>-642.00</u>
Adjusted SSI	369.00

## How SSA Deems Spousal Resources

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

All resource exclusions that apply to an eligible couple's resources apply to the combined resources of an eligible individual and an ineligible spouse who lives with him or her. For a detailed explanation of common resource exclusions, refer to Unit 5 of Module 3A in the CWIC training manual. WIPA personnel may also refer to POMS SI 01110.210 for a list of resource exclusions.

In addition to the standard resource exclusions, certain other items are disregarded when spousal deeming determinations are made. These additional exclusions include:

- Pension Funds - Pension funds owned by an ineligible spouse are excluded from resources for deeming purposes. “Pension funds” are funds held in individual retirement accounts (IRA's), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans).
- Burial Fund Exclusion - A burial fund is a specifically designated fund of up to \$1,500 in value set aside to pay for funeral expenses. Each eligible individual and their spouse may have their own burial fund. The SSA must know this fund exists before it is excluded, so SSI recipients must let the SSA know as soon as they plan to set money aside. Burial funds must be kept separate from all non-burial related resources. If they are commingled, the burial exclusion will not apply.
- Burial Space Exclusion - The burial space exclusion applies to burial spaces for use by the eligible individual, spouse, and members of his/her immediate family. Burial plots, crypts, caskets, urns, etc., may be purchased in advance and are completely excluded up to an unlimited value. The only exception to this is if there is more than one of a particular item for one individual. For example, if a person owns a collection of urns or caskets, only one item is excludable.

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

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

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

**Excluded Resources – NONE**

**Countable Resources:**

\$1,900 - Mrs. Daley's savings account  
+ 500 - Mrs. Daley's lot  
\$2,400 - couple's combined resources

- 0 - applicable exclusions  
\$2,400 - couple's countable resources

**The resource computation is as follows:**

\$2,400 - couple's countable resources  
-\$3,000 - couple's resource limit  
0

Mr. Daley meets the resource eligibility requirement for SSI.

**EXAMPLE: Some Resources Excluded — Individual Meets the Eligibility Requirement**

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

**Excluded Resources**

\$5,000 - pension fund  
+1,000 - gravesites  
\$6,000 - excluded resources

**Countable Resources**

\$1,000 - joint bank account

**The resource computation is as follows:**

\$1,000 - couple's countable resources  
-3,000 - couple's resource limit  
0

Mr. Sands meets the resource eligibility requirement for SSI.

**EXAMPLE: Some Resources Excluded — Individual is Ineligible**

Mr. and Mrs. Smith are married and live together. They have the following resources: a joint checking account of \$250; United States savings bonds (in both their names) worth \$400; and two automobiles — one used for transportation and valued at \$6,000, and the other with a current market value and equity value of \$3,000. In addition, Mrs. Smith owns a plot of land which produces no income and has an equity value of \$2,000. Mr. Smith owns a life insurance policy on his own life with a face value of \$2,000 and a cash surrender value (CSV) of \$897. Mrs. Smith owns a life insurance policy on her life with a face value of \$1,000 and a CSV of \$900.

### **Excluded Resources**

\$6,000 - automobile used for transportation  
900 - life insurance of Mrs. Smith with face value not over \$1,500  
+1,000 - household goods and personal effects  
\$ 7,900 - excluded resources

### **Countable Resources**

\$ 250 - joint checking account  
400 - savings bonds  
3,000 - second automobile  
2,000 - Mrs. Smith's real estate  
+897 - CSV of Mr. Smith's life insurance  
\$6,547 - couple's countable resources

### **The couple's computation is as follows:**

\$6,547 - couple's countable resources  
-3,000 - couple's resource limit  
\$3,697 - excess resources

Mr. Smith is ineligible for SSI at this time

## **What CWICs Need to Know about Deemed Spousal Income and Resources**

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

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

**EXAMPLE: Spousal Deeming when an Eligible Individual Works**

In 2011, Harold Bergman, a disabled individual, lives with his ineligible spouse, who earns \$659 per month. Mr. Bergman receives a pension (unearned income) of \$365 a month, and is considering a job offer that would pay him \$452 per month. Since we previously determined that Mrs. Bergman's income is greater than \$337, which is the difference between the FBR for a couple and the FBR for an individual in 2011, spousal deeming will apply and the anticipated combined countable income for the couple is as follows:

Unearned income	365.00	
General income exclusion	<u>- 20.00</u>	
Countable unearned income	345.00	
Earned income	1111.00	(659.00 + 452.00)
Earned income exclusion	<u>- 65.00</u>	
Remainder	1046.00	
Divide by 2	523.00	
Countable unearned	345.00	
Countable earned	<u>523.00</u>	
Total Countable	868.00	

Couple FBR	1,011.00
Total countable income	- <u>868.00</u>
Adjusted SSI	143.00

## Summary

Spousal deeming is one of the most complex aspects of working with SSI recipients. CWICs are not expected to serve as SSA Claims Representatives by determining exactly how much income from an ineligible spouse would be deemed against an eligible individual. However, CWICs do need to be able to explain how the spousal deeming process works in general terms and should be competent in establishing a working estimate of deemed income, especially when the eligible individual is considering employment. Keep in mind that while deemed income from a spouse may cause an individual to be found ineligible for SSI, the deemed income may also present opportunities for use of a PASS to help achieve an occupational goal.

## Conducting Independent Research

POMS SI 01320.400 -- Deeming of Income from an Ineligible Spouse

POMS SI 01320.100 -- Items Not Included in Deeming - General

POMS SI 00501.152 -- Determining Whether a Man and Woman Are Holding Themselves Out as Husband and Wife

POMS SI 01330.220 -- Deeming - Exclusions from Resources

POMS SI 01320.450 -- Deeming - Change of Status – Couples  
Eligible Couples Calculation Sheet – see attached.

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## Eligible Couple Calculation Sheet (2011)

Customer Names \_\_\_\_\_ Date \_\_\_\_\_

WIPA Staff Person \_\_\_\_\_

**Scenario Description:**

Step	Calculations
Unearned Income (combine BOTH members)	
General Income Exclusion (GIE \$20)	-
Countable Unearned Income for Couple	=
Gross Earned Income (combine BOTH members)	
Student Earned Income Exclusion	-
Remainder	
GIE (if not already applied to unearned income)	-
Remainder	
Earned Income Exclusion (EIE \$65)	-
Remainder	
Impairment Related Work Expense (IRWE)	-
Remainder	
Divide by 2	
Blind Work Expenses (BWE)	-
Total Countable Earned Income for Couple	=
Total Countable Unearned Income for Couple	
Total Countable Earned Income for Couple	+
PASS Deduction	-
Total Countable Income for Couple	=
Couple FBR of \$1011 (check on VTR status!)	
Total Countable Income for Couple	-
Adjusted SSI Benefit Due to Couple	=
Divide in Half for Amount due Each Member	
Adjusted SSI Benefit Due to Couple	
Gross Earned Income Received by Couple	+
Gross Unearned Income Received by Couple	+
PASS, BWE or IRWE Expenses for Couple	-
Total Financial Outcome for Couple	=