

Thea D. Rozman Kendler,
Assistant Secretary for Export
Administration.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA-2023-0010]

RIN 0960-A182

Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are finalizing our proposed regulation to apply nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that has until now been available only for SSI applicants and recipients residing in seven States. This final rule provides that a “business arrangement” exists, such that the SSI applicant or recipient is not considered to be receiving ISM in the form of room or rent, when the amount of monthly required rent for the property equals or exceeds the presumed maximum value (PMV).

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Background

The SSI program provides monthly payments to: (1) adults and children with a disability or blindness; and (2) adults aged 65 or older. Eligible individuals must meet all the requirements set forth in the Social Security Act (Act), including having resources and income below specified amounts.¹ Resources are cash or other

¹ See 42 U.S.C. 1382 and 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 part 416.

liquid assets or any real or personal property that individuals (or their spouses, if any) own and could convert to cash to be used for their support and maintenance.² Income is anything individuals receive in cash or in-kind that they can use to meet their food and shelter needs.³ An individual’s resources may affect their eligibility to receive SSI, while their income may affect both their eligibility for payments and the amount of payments they are eligible to receive.

The Act and our regulations⁴ define income as “earned,” such as wages from work, and “unearned,” such as gifted cash.⁵ Both earned income and unearned income include items received in-kind.⁶ This final rule pertains to rental subsidy, which is a type of ISM under the broader umbrella of unearned income. Generally, we value in-kind items at their current market value, and we apply various exclusions for both earned and unearned income.⁷ However, we have special rules for valuing ISM that is received as unearned income.⁸

ISM includes shelter that is given to an individual or that the individual receives because someone else pays for it.⁹ For example, an SSI applicant or recipient whose friend allows them to live rent-free at an investment property owned by the friend, or whose friend pays their rent, receives ISM in the form of shelter. Shelter includes room, rental payments, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.¹⁰

Rental Subsidy

Our regulations clarify that an individual is not receiving ISM in the form of room or rent if they are paying the monthly required rent charged under a “business arrangement.”¹¹ Under our general regulatory definition

² 20 CFR 416.1201(a).

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

⁴ See 42 U.S.C. 1382a and 20 CFR 416.1102 through 416.1124.

⁵ See 20 CFR 416.1104.

⁶ See 20 CFR 416.1110 and 416.1120.

⁷ See 20 CFR 416.1111(d), 416.1112, 416.1123(c), and 416.1124.

⁸ See 20 CFR 416.1123(c) and 416.1131 through 416.1147.

⁹ See 20 CFR 416.1130(b). We recently published a final rule to remove food from the calculation of ISM. See *Omitting Food From In-Kind Support and Maintenance Calculations*, 89 FR 21199 (Mar. 27, 2024). The amendatory language shown below reflects changes to 20 CFR 416.1130 made by that final rule, since it has been published, although the change will not be effective until September 30, 2024.

¹⁰ See 20 CFR 416.1130(b).

¹¹ 20 CFR 416.1130(b).

prior to this final rule, a “business arrangement” existed when the amount of monthly required rent equaled or exceeded the current market rental value (CMRV)—that is, the price of rent on the open market in the individual’s locality.¹² To illustrate, if the owner of an apartment would rent that property to any potential tenant for \$800 per month, then the CMRV is \$800 per month. Consequently, in this example, if an SSI applicant or recipient agrees to pay the landlord rent in the amount of \$800 per month, a “business arrangement” would exist and the SSI applicant or recipient would not be receiving ISM in the form of room or rent. The SSI applicant or recipient in this example would thereby—absent any other countable income or resources—receive the Federal Benefit Rate (FBR).¹³ Conversely, if the SSI applicant or recipient agrees to pay the landlord less than the CMRV of \$800 per month (for example, \$400 per month), we would impute the difference between the CMRV and the monthly required rent as ISM received by the applicant or recipient in the form of room or rent (up to the PMV, which is \$334.33 in 2024).¹⁴ In this example, the landlord agrees to accept a rent of \$400 per month instead of the CMRV of \$800. The rental subsidy amount is \$400. However, the PMV is \$334.33 in 2024, so only \$314.33 would be counted as ISM (after we subtract the \$20 general income exclusion from the PMV and assuming there is no other income). Consequently, in this example the SSI recipient would receive \$628.67 as a monthly payment in 2024¹⁵ (the 2024 FBR (\$943) minus the PMV and minus the general income exclusion (\$314.33 (or \$334.33 – \$20)) = \$628.67).

¹² See *id.* See also 20 CFR 416.1101.

¹³ See 20 CFR 416.1101. *Federal Benefit Rate* (FBR) means the maximum Federal monthly payment rate for an eligible individual or couple. It is the figure from which we subtract countable income to find out how much your Federal SSI benefit should be. The FBR does not include the rate for any State supplement paid by us on behalf of a State. The FBR for 2024 is \$943 for an individual or \$1,415 for an eligible individual with an eligible spouse.

¹⁴ When an SSI applicant or recipient receives ISM and the one-third reduction rule does not apply, we use the presumed value rule (PMV). Instead of determining the actual dollar value, we presume that the ISM received is worth a maximum value. This maximum value (or PMV) is one-third of the FBR plus the amount of the general income exclusion (\$20). See 20 CFR 416.1140 and POMS SI 00835.300. In 2024, the PMV is \$334.33 for an individual.

¹⁵ For the purposes of this exercise, we are assuming there is no other countable income. In a real-world case, at times there are other countable income sources, and in such cases those income sources would factor into the monthly payment amount as well.

Exception

Following court cases that challenged how we applied these ISM rules for rental subsidy, we provided an exception for residents of the Seventh Circuit (in our regulations),¹⁶ residents of the Second Circuit (in an Acquiescence Ruling),¹⁷ and residents of Texas (in the Program Operations Manual System (POMS)).¹⁸ For residents of these seven excepted States (Connecticut, New York, Vermont, Illinois, Indiana, Wisconsin, and Texas), a “business arrangement” exists when the monthly required rent equals or exceeds the PMV (instead of the CMRV). Application of this rental subsidy exception tends to reduce or eliminate the amount of ISM counted towards an individual’s SSI payment, which generally results in a higher SSI payment amount. In the example, discussed above, an SSI applicant or recipient living in one of the seven excepted States who agrees to pay \$400 per month for an apartment with a CMRV of \$800 per month would not be charged ISM because their monthly required rent is more than the PMV (\$334.33 for 2024). Consequently, the SSI applicant or recipient would continue to receive the FBR (provided they did not have any other countable income or resources for SSI purposes).

Proposed Rule

Consistent with the *Social Security Administration’s Agency Strategic Plan for Fiscal Years 2022–2026*, and with the stated goal of simplifying the SSI program, advancing equality, and promoting uniform treatment of rental assistance, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 24, 2023, entitled *Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients*.¹⁹ In the NPRM, we proposed to revise our regulations by making the rental subsidy exception our nationwide policy. Under the proposed rule, all SSI applicants and recipients would be held to the same standard; that is, a “business arrangement” exists, and the applicant or recipient is not considered to be receiving ISM in the form of room

or rent, if the applicant or recipient has a monthly required rent equal to or exceeding the PMV.

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

The NPRM includes a discussion of the ISM policy²⁰ as well as the rationale for and analysis of this policy change,²¹ which in this final rule we are adopting in full. As discussed in the NPRM, the rationale underlying the exception that has been in place in the seven excepted States was based largely on the court decisions from the Second and Seventh Circuit Courts of Appeal.²² In *Jackson*, the Seventh Circuit reasoned that it is not enough for a claimant to be provided shelter at a rate below market value for that difference to be counted as “income” for SSI purposes; rather, to be counted as “income,” the difference between the market value and the monthly required rent must result in increased purchasing power to meet an applicant’s or recipient’s basic needs.²³ In *Ruppert*, the Second Circuit similarly found that the difference between the market value and the monthly required rent should constitute an “actual economic benefit” to be counted as “income” for SSI purposes.²⁴ In implementing *Ruppert* for residents of the Second Circuit, we announced in our Acquiescence Ruling that an applicant or recipient does not receive an “actual economic benefit” from a rental subsidy when the amount of monthly required rent equals or exceeds the PMV.²⁵

Thus, applying nationally the definition of “business arrangement” based on the PMV rather than the CMRV focuses on the SSI applicant’s or recipient’s purchasing power or the actual economic benefit they receive and ensures that all SSI applicants and recipients, regardless of where they reside, will have the same policy applied to them regarding the definition of a business arrangement. This policy change therefore supports our goal of enhancing equality in the programs we administer for all applicants and recipients.

Comment Summary

We solicited comments on the proposed rule and received 179 public comments on our NPRM from August 24, 2023, through October 23, 2023. All comments are available for public viewing at <https://www.regulations.gov/document/SSA-2023-0010-0001/comment>. These comments were received from:

- Individuals; and
- Advocacy groups, such as the National Organization of Social Security Claimants’ Representatives and the Consortium for Constituents with Disabilities.

We carefully considered the public comments we received. A significant majority of commenters (170 comments) supported the policy we proposed in the NPRM—to extend the rental subsidy exception nationwide—without reservation or suggestions for modifications. Some commenters agreed with the proposal, but recommended further amendments to ensure the greatest number of SSI applicants and recipients could avail themselves of the benefits provided by the new policy. Only one commenter disagreed with the proposal altogether.

We received several comments suggesting changes that are not feasible for us to make or are outside the scope of the proposed rule and the final rule. For example, some commenters recommended changes to the statutorily set resource limits, and others recommended that we do away with counting ISM altogether. Even though these comments are outside the scope of the NPRM and final rule, we address them in a general manner to help the public better understand the SSI program. We note that commenters frequently compared or conflated the concepts of *rental subsidy* and *rental liability*, which are not the same thing under our policies. An individual receives ISM in the form of *rental subsidy* when the monthly required rent (including a flat fee payment) is less than the amount charged under a

¹⁶ See 20 CFR 416.1130(b); *Jackson v. Schweiker*, 683 F.2d 1076 (7th Cir. 1982).

¹⁷ See Acquiescence Ruling (AR) 90–2(2); *Ruppert v. Bowen*, 871 F.2d 1172 (2d Cir. 1989)—*Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act*. When this final rule becomes effective, we will rescind AR 90–2(2) as obsolete, in accordance with 20 CFR 416.1485(e)(4).

¹⁸ See *Diaz v. Chater*, No. 3:95–cv–01817–X (N.D. Tex. Apr. 17, 1996); POMS SIDAL 00835.380.

¹⁹ 88 FR 57910.

²⁰ See 88 FR 57910, 57910–12 (Aug. 24, 2023).

²¹ Id. at 57912–13.

²² Id. at 57911–12. See also *Ruppert v. Bowen*, 871 F.2d 1172 (2d Cir. 1989); *Jackson v. Schweiker*, 683 F.2d 1076 (7th Cir. 1982).

²³ See 88 FR 57912. See also *Jackson*, 683 F.2d at 1082–87.

²⁴ See 88 FR 57912. See also *Ruppert*, 871 F.2d at 1079–81.

²⁵ See 88 FR 57912. See also AR 90–2(3), 55 FR 28947, 28949 (July 16, 1990).

business arrangement.²⁶ We develop for rental subsidy by contacting the landlord when necessary²⁷ to verify (1) the monthly required rent (2) and the reason for accepting a reduced rent, if that is at issue.²⁸ In developing rental subsidy, we also obtain information about the CMRV from the landlord or another knowledgeable source (and will continue to do so) to determine if the CMRV is less than the PMV.²⁹

In contrast, *rental liability* is an oral or written agreement between an individual (or the individual's spouse with whom they live or a person whose income may be deemed to be the individual) and a landlord that the landlord will provide shelter in return for rent.³⁰ Rental liability is generally verified through oral evidence from the landlord or written evidence of the rental agreement. Rental liability is related to the development of an applicant's or recipient's living arrangement which is necessary to understand before determining if an applicant or recipient receives ISM in the form of a rental subsidy.³¹ Otherwise stated, the establishment of rental liability must precede a determination of rental subsidy. When an applicant or recipient demonstrates rental liability, we find that they are living in their own household (not the household of another).³² This determination, in turn, is central to whether we apply the value of the one-third reduction (VTR)³³ rule or PMV rule to value any ISM they receive—if an applicant or recipient is living in their own household, then the PMV rule applies to valuing ISM.³⁴ In other words, establishing *rental liability* is one of the threshold issues in determining an applicant's or recipient's living arrangement, which determines whether we use the VTR rule or PMV rule to value any ISM received; *rental subsidy*, on the other hand, is one type of ISM that may be applicable and developed

for applicants and recipients who are not subject to the VTR rule.

Comments and Responses

Category I: Support for the Proposed Rule With No Request for Further Changes

Comment: We received 170 comments from advocacy groups and interested citizens unreservedly stating their support for our proposal to apply the rental subsidy exception nationwide. These comments did not suggest modifications to the proposed rule.

Response: We acknowledge and appreciate the support for the proposal.

Comment: Of note, many of these 170 commenters opined that adoption of the proposed rule would simplify the SSI program, advance equity, and promote uniform treatment of rental assistance for SSI recipients.

Response: As we expressed in the NPRM, these three outcomes were our primary aims in developing this rulemaking. Accordingly, we appreciate that many commenters also highlighted them as benefits of the rule.

Comment: Multiple commenters identified administrative efficiencies associated with the adoption of the proposed rule. For example, several commenters expressed that the rule would save SSA staff time, time which, in the words of one commenter, could be used to “run the SSI program better.” Other commenters opined on the overall positive effect the rule would have on the administrative efficiency of our programs.

Response: Since the rule will result in nationwide uniformity and require less information from some SSI applicants and recipients, we agree that, after an initial implementation period, it will increase administrative efficiency.

Comment: Many commenters urged us to move quickly to finalize and implement the regulation. They further indicated support for our efforts to update our “financial rules” in other ways that benefit disabled people and older adults.

Response: We are finalizing this rule and will implement it on the date specified herein. Also, as indicated by our Fall 2023 Unified Agenda,³⁵ we are contemplating other regulatory actions aimed at benefiting vulnerable populations.

³⁵ See https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=0960&csrf_token=3FE7BC5F46AC43624D85A63227874C0C8BCF6ED346AD43F4DC50FD05D9B63DC5C7005A531663BBC086DDF17A8F74A3C016A0.

Category II: Opposition to the Rule

Comment: We received one comment opposing any changes in SSI, including this rule, because, per the commenter, a change in SSI would “be a hardship for my family.”

Response: The commenter did not explain specifically why they perceived that changes to the SSI program would be a hardship. Nonetheless, we note that the change will not decrease payment amounts for any individuals and might increase payment amounts for some individuals. Also, we expect the change to be simpler to understand and reduce burden for individuals reporting information.

Category III: Support for the Proposed Rule, But With Request for Additional Changes

Comment: Another commenter wrote that they “believe that ISM rules disproportionately penalize people of color, including refugees and other recent immigrants.”

Response: SSA administers the nation's largest social welfare programs, including the SSI program that is designed to lift millions out of poverty. Our vision is to provide income security for the diverse populations we serve, including those in underserved communities, people with disabilities, workers, their families, and people who communicate primarily in languages other than English, as laid out in Social Security's Equity Action Plan 2023 Update.³⁶ Our intent is to serve all who apply for and all who are eligible for SSI payments, and apply our rules equally to all SSI applicants and recipients. To the extent the commenter believes ISM should be eliminated from the SSI program, that change would require Congressional action.

Comment: Multiple commenters opined on our already-existing rental-liability evidentiary requirements, which are laid out in our POMS instructions. One commenter recommended that we accept SSI applicants' and recipients' self-attestations regarding rental agreements rather than requiring formal rental agreement documentation that we then verify. Similarly, multiple commenters recommended that we not require written verification of a rental agreement because they find many agreements to be oral in nature, and it can be difficult to compel landlords to cooperate with the verification process. In that vein, many commenters encouraged us to “follow the lead” of the USDA Food and Nutrition Service,

³⁶ See <https://www.ssa.gov/equity/assets/materials/2023.pdf>.

²⁶ See POMS SI 00835.380.

²⁷ Based on the new rule, if the lease presented by the individual contains all necessary information (rent charged is higher or equal to the PMV), contacting the landlord is unnecessary to develop rental subsidy.

²⁸ See id.

²⁹ See id. See also 20 CFR 416.1130(b).

³⁰ See POMS SI 00835.020; POMS SI 00835.120.

³¹ See POMS SI 00835.120A; POMS SI 00835.380B6.

³² See POMS SI 00835.120A.

³³ When a claimant or couple lives throughout a month in another person's household and receives both food and shelter from others living in the household, we reduce the applicable FBR by one-third. This reduction in the FBR has an income value, known as the VTR or the value of the one-third reduction. See POMS SI 00835.200A.

³⁴ See id.

which, according to the commenters, does not require written verification of rent for those applying specifically for Supplemental Nutrition Assistance Program (SNAP) benefits. In contrast, one commenter asserted that our proposed rule would not work unless individuals were still required to report proof of their rental payments.

Response: As discussed above, rental liability and rental subsidy are two distinct policies. Rental liability relates to determining an applicant's or recipient's living arrangement and whether they have demonstrated that they live in their own household (and are subject to the PMV rule) or in the household of another (and potentially subject to the VTR rule). Rental subsidy, on the other hand, is a type of ISM that may be applicable depending on an applicant's or recipient's circumstances.

Regarding the comments on our development criteria for rental liability, we acknowledge the diverse viewpoints on our existing requirements. We note that we do accept statements from an applicant or recipient to establish rental liability in some circumstances—if the individual lives alone or if the only other household members are the spouse, a deemor,³⁷ or a child.³⁸ As discussed above, the purpose of verifying rental liability is to establish whether an applicant or recipient is living in their own household or the household of another (as this affects whether they are subject to the PMV rule or the VTR rule).³⁹ If an applicant or recipient lives alone (or only with their spouse, deemor, or any child), they live in their own household, not the household of another. However, per our current POMS policy, if the applicant or recipient lives with others, then we need additional evidence of rental liability to verify that they are not living in another person's household (and potentially subject to the VTR rule). Because the living arrangement determination is critical to how we value an applicant's or recipient's ISM, we currently do not accept self-attestations when it is not already clear from the individual's circumstances that they are living in their own household.

As for the possibility of oral rental agreements, we note that our existing

rental liability verification does not require written evidence of all rental agreements. For example, we accept verbal confirmation from a landlord of a rental agreement or submission of rent receipts to establish rental liability, as long as the rent receipts satisfy certain criteria.⁴⁰

Regarding the comments on the FNS policies for implementing their SNAP program, we note that the eligibility requirements for SSI and SNAP are not the same. Thus, it is difficult to compare point-for-point the eligibility and verification requirements for the two programs. For example, as discussed above, a critical factor that we need to determine for SSI purposes is whether an applicant or recipient is living in their own household or another person's household, as that affects whether we use the PMV rule or the VTR rule to value the individual's ISM. Our rental liability policy is designed to ensure we get the information we need to verify whether an applicant or recipient is living in their own household or the household of another person. In contrast, for example, there are SNAP requirements that appear to be more focused on verifying State residency, which is a factor more important for SNAP eligibility.⁴¹ We note that SNAP applicants and recipients must also verify "factors affecting the composition of a household, if questionable;" and applicants "who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency."⁴² While the SNAP regulations do not appear to specify the type of evidence required for every eligibility factor, we note that documentation such as "rent receipts" and contacts with collateral sources such as "landlords" are included in the examples of "sources of verification" for SNAP eligibility requirements as well.⁴³ Overall, because of the differences between the programs, we are not adopting the same development processes that FNS uses to determine and verify the eligibility requirements for SNAP.

Finally, as to the commenter's statement that our rental subsidy rule "would not work unless individuals were still required to report proof of their rental payments," we agree that we will continue to require information about applicants' and recipients' monthly required rent for the purposes

of calculating rental subsidy ISM, when it applies.

Comment: Many commenters recommended that we accept proof of rent regardless of the format (e.g., money order copies, cancelled checks, and proof of electronic payments) for purposes of rental liability verification.

Response: The NPRM and this final rule address only the definition of a business arrangement in the context of rental subsidy—not the development criteria for establishing rental liability for purposes of determining an applicant's or recipient's living arrangement. This rule does not address the evidentiary requirements associated with developing rental subsidy or rental liability, and, in fact, all current requirements are contained exclusively in our POMS. In addition, under this rule, we do not require submission of rent receipts—to make a *rental subsidy* determination, we can obtain verbal verification from the landlord of the monthly required rent.⁴⁴

However, we note that under our current *rental liability* policy, we accept electronic payments, such as rent receipts, if they satisfy all of the criteria that we believe are necessary to adequately document rental liability. To establish rental liability, a rent receipt needs to contain the following: the individual's name, amount paid, period covered by payment, and the signature of the landlord or authorized representative.⁴⁵ We require this information for rent receipts because it enables us to confirm that the payment being made is for the individual's monthly required rent and provides sufficient information to establish a rental agreement between the individual and the landlord. Electronic payments (such as Zelle, Venmo, and PayPal) may not always satisfy the criteria. For example, these electronic payment receipts may not indicate the period covered by the payment.

Comment: One commenter recommended that we consider using the U.S. Department of Housing and Urban Development's (HUD) fair market rent data set⁴⁶ to establish market prices.

Response: We considered the recommendation but decided not to adopt it at this time. The HUD fair market rent data set might be considered

³⁷ "Deeming" is the process of considering one person's income to be counted as another person's (in this case, the SSI applicant's or recipient's) income as well. There are four categories of deemors: (1) ineligible spouse; (2) ineligible parent; (3) sponsor of an alien; and (4) essential person, as defined in 20 CFR 416.222. See <https://www.ecfr.gov/current/title-20/chapter-III/part-416/subpart-K/subject-group-ECFRdaeb44ef1420053/section-416.1160>.

³⁸ See POMS SI 00835.120C.

³⁹ See POMS SI 00835.120A.

⁴⁰ See POMS SI 00835.120D.

⁴¹ See 7 CFR 273.2(f)(1)(vi); 7 CFR 273.3.

⁴² See 7 CFR 273.2(f)(1)(x).

⁴³ See 7 CFR 273.2(f)(4)(i) and (ii).

⁴⁴ See POMS SI 00835.380C.

⁴⁵ See POMS SI 00835.120.

⁴⁶ HUD compiles and lists Fair Market Rents (FMR). FMRs are statistics developed by HUD to determine payments for housing assistance programs like the Section 8 housing choice voucher program. For more information, please see: <https://www.hud.loans/hud-loans-blog/what-is-fair-market-rent/>.

a knowledgeable source for the purpose of establishing the CMRV for the applicant's or recipient's rental property.⁴⁷ However, there would be advantages and disadvantages. For example, on one hand, information provided by a government agency generally is reliable, and it would be helpful to have another knowledgeable source from which to obtain relevant evidence—though, under this final rule, we will develop CMRV in the rental-subsidy context only for the limited purpose of ensuring that it is not less than the PMV, which we expect will be rare. On the other hand, due to the input requirements for the HUD database, utilizing the HUD fair market rent data set would require technicians to obtain more information from the SSI applicant or recipient—such as the number of rooms or square footage of the rental unit—which may not be readily available and is not otherwise required for SSI purposes. Therefore, instead of simplifying the development process, using the HUD database would add another layer of development that could be burdensome to the SSI applicant or recipient and cause a delay in the case being processed. We believe that those disadvantages outweigh the apparent advantages, and so we decided not to adopt the recommendation at this time.

Category IV: Comments Relating to ISM, but Outside the Scope of This Rule

Comment: One commenter suggested that SSA could use the Supplemental Nutrition Assistance Program (SNAP) standard allotment, based on family size, to determine if the amount paid for food is at market value.

Response: These comments are beyond the scope of the NPRM and final rule, as they relate to food, and the NPRM and final rule relate to rent. We note, however, that we recently published a final rule relating to the food element of ISM⁴⁸ which addresses the relevant comments that were submitted in response to the associated NPRM.

Comment: Many commenters encouraged us to ensure the rental subsidy policy extends to all SSI recipients who pay at least the PMV towards their monthly required rent.

Response: When we apply our rental subsidy policy, all SSI applicants and recipients who pay a monthly required rent, under a rental agreement, equaling or exceeding the PMV will receive the benefit of this rule (or at least will not

be disadvantaged by it). As we discussed in the NPRM, one of our goals in implementing this rule is to bring nationwide uniformity to the application of our rental subsidy policy.⁴⁹

Comment: Many commenters opined that we should revise our sub-regulatory guidance related to rental liability and simplify rental liability determinations “to maximize the simplification effects of the rental subsidy rule.” Specifically, they suggested that we streamline our rental liability policy, particularly for applicants and recipients who “rent from someone with whom they live” because “SSI recipients who live in the same residence as their landlord must first establish rental liability before the proposed rental subsidy rule would apply.”

Response: As we noted at the outset of the comment section, simplifying the rental liability determination is separate from the new rental subsidy policy (or ensuring that it extends to all SSI applicants and recipients who pay at least the PMV). Specifically, the commenters recommend we revise our pertinent guidance to find, “without additional development, that *rental liability* (emphasis added) exists” for an applicant or recipient who rents from someone with whom they live “unless the landlord is a parent or child” of the applicant or recipient. However, this recommendation concerns our determinations about an individual's living arrangement and whether an individual has rental liability—not our rental subsidy policy, which was the intended subject of this rulemaking. Under our current POMS instructions, in certain circumstances we can rely on self-allegation of rental liability by the applicant or recipient consistent with commenters' suggestions, which we refer to in a process called “curtailed development.” Under curtailed development, we accept an individual's statement of rental liability in limited circumstances where it is otherwise already clear that they live in their own household, such as when an applicant or recipient lives alone.⁵⁰ However, we acknowledge that in most other circumstances we currently require additional evidence of rental liability, and we will consider commenters' feedback again if we make changes to our rental liability POMS in the future.

Comment: One commenter urged us to “modernize the processes and systems used to make ISM determinations and calculations.”

Response: We will make the necessary systems changes to implement the final rule.

Comment: Several commenters suggested that when SSI recipients rent from someone with whom they live, SSA should find, without any additional development, that rental liability exists unless SSA has evidence to the contrary, or the landlord is a parent or child of the SSI recipient.

Response: It appears that the commenter is suggesting we accept the applicant's or recipient's allegation of rental liability without more development. However, when an applicant or recipient alleges that they are renting from someone with whom they live, under our current POMS instructions we consider this to be a “room rental” situation and must determine whether the applicant or recipient is in a “separate household” from the person from whom they are renting a room.⁵¹ A “separate household” (within one home) is one that functions as a separate economic unit—if the applicant or recipient and the landlord do not function as separate economic units, the applicant or recipient is not considered to be living in a separate household, cannot have rental liability, and may be subject to the VTR rule.⁵² Again, this distinction is important because whether an applicant or recipient is living in their own (separate) household or in another person's household will affect whether the VTR rule or the PMV rule applies in valuing their ISM. When an applicant or recipient is living with the person from whom they rent (*i.e.*, renting a room), under our current rental liability policy we obtain information sufficient to enable us to verify and make an accurate determination regarding the individual's living arrangement, such as contacting the landlord and obtaining information about the household organization, rent, meals, and access to the property.⁵³

Comment: Several commenters recommended that we update the rules applicable to the Value of the One-Third Reduction (VTR). They suggested that we should consider that if an SSI recipient spends more than one-third of their benefits on shelter costs, the recipient should not be subject to ISM reductions. They further stated that the NPRM as written did not affect those who live in another person's household and receive both food and shelter from within that household (that is, those currently subject to ISM under the VTR rule).

⁵¹ See POMS SI 00835.120A4 & 00835.120E.

⁵² See POMS SI 00835.120A4.

⁵³ See POMS SI 00835.120E.

⁴⁷ See *id.*

⁴⁸ *Omitting Food From In-Kind Support and Maintenance Calculations*, 89 FR 21199 (March 27, 2024).

⁴⁹ See 88 FR 57912–13.

⁵⁰ See POMS SI 00835.120C.

Response: This comment is outside the scope of the NPRM and final rule. We note that the VTR is established in the Social Security Act.⁵⁴

Comment: One commenter recommended that we educate beneficiaries and the public on the new rules and instruct field office staff to help individuals secure the benefits of the new rule.

Response: Prior to implementation, we will provide our front-line technicians with training and policy updates that state the new rule and instructions for administering the change. In addition, we are working on updating publicly accessible POMS instructions, publications, and forms.

Comment: One commenter opined that we should revise our policies on assessing ISM when calculating back awards. Specifically, the commenter expressed that we should never deduct ISM from back payments we calculate, because even people who provide food and shelter on a non-loan basis probably expect that they will be paid back once the claimant is awarded back payments. The commenter asserted that we should make this policy change via rulemaking and update our regulations, sub-regulatory guidance, and associated paperwork to apply this new policy.

Response: This commenter is asking us to revise our past ISM loan policy,⁵⁵ and this is outside the scope of the current rulemaking.

Comment: Several commenters encouraged us to go further and eliminate the ISM deduction altogether, because, in the view of these commenters, it unfairly penalizes people with disabilities for getting help obtaining shelter when they are already struggling to meet their basic needs on an insufficient income.

Response: The elimination of ISM from the SSI program would require Congressional action to change existing statutory law because ISM is established in the Social Security Act.⁵⁶ Therefore, the comment is outside the scope of the NPRM and final rule.

Commenter: The same commenter opined that, if ISM is not abolished altogether, it should only be used in cases where an equivalent market-based price is practicable to establish.

Response: See our response directly preceding this comment. Any such change would require Congressional action to amend existing statutory law.

Comment: Several commenters opined that we must increase resource and asset limits for individuals and couples.

Response: This recommendation is outside the scope of the proposed rule and the final rule, and Congressional action would be required to change the existing statutory law.⁵⁷

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563 and Executive Order 14094

We consulted with the Office of Management and Budget (OMB), and OMB determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and Executive Order 14094. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this final rule would result in a total increase in Federal SSI payments of \$837 million over fiscal years 2024 through 2033, assuming implementation of this rule on September 30, 2024. These transfers reflect an estimation that approximately 41,000 individuals who would be eligible under our current rules will have their Federal SSI payment increased by an average of \$132 per month in 2024 attributable to implementation of this rule. There would also be an annual average of an additional 14,000 individuals from fiscal year 2024 through 2033 who are not eligible under current rules who would be newly eligible and would receive payments under the final rule.⁵⁸

Anticipated Net Administrative Cost Savings to the Social Security Administration

Our Office of Budget, Finance, and Management estimates that this regulation will result in net administrative savings of \$10 million for the 10-year period from FY 2024 to FY 2033. The net administrative savings are mainly a result of unit time savings as field office employees will not have to spend time developing CMRV for all rental subsidy calculations during initial claims, pre-effectuation reviews,

redeterminations, and post-eligibility actions. The savings are offset by costs to update our systems, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs because of more individuals being eligible for SSI benefits, which increases claims, reconsiderations, appeals, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits to the Public

We anticipate the following qualitative benefits generated from this policy:

- Saving time and effort for claimants and third parties who may have evidence related to a claimant's application because they would need to submit less information. We estimate at a minimum that this will result in more than 7,000 hours of time saved in annual reduced paperwork burden, representing an opportunity cost of \$1,140,526 (see the Paperwork Reduction Act section of the preamble below for specifics).
- Potentially get faster determinations or decisions regarding SSI eligibility, payment amount, or both, which would have both quantitative effects financially and qualitatively may alleviate stress for applicants and recipients associated with the length of time it may take to obtain SSI.
- Administratively easier to apply the same policy nationwide.

Anticipated Qualitative Costs

We do not anticipate more than *de minimis* costs associated with this rulemaking. We do not anticipate that this final rule would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the SSI applicant and recipient community.

Congressional Review Act

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

Executive Order 13132 (Federalism)

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

⁵⁴ 42 U.S.C. 1382a(a)(2)(A).

⁵⁵ The commenter seemed to be referencing the policy found at <https://secure.ssa.gov/poms.nsf/lnx/0500835482>. Again, this is outside the scope of the current rulemaking.

⁵⁶ See 42 U.S.C. 1382a(a)(2)(A).

⁵⁷ See 42 U.S.C. 1382(a)(3)(A) & (a)(3)(B).

⁵⁸ Implementation of this final rule will cause the ISM amount charged to some individuals to decrease. If such individuals are already receiving an SSI payment under current rules, their SSI payment will increase. Individuals whose ISM under current rules causes them to be ineligible for SSI because of excess income may become eligible under this final rule, assuming they meet all other eligibility criteria.

to discharge traditional State governmental functions.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This final rule does not require any new collections or revisions to existing collections. However, we anticipate the application of the revisions based on this rule will cause a burden change to our currently approved information collections under the following information collection requests: 0960–

0174, the SSA–8006, Statement of Living Arrangements, In-Kind Support and Maintenance; and 0960–0454, the SSA–L5061, Letter to Landlord Requesting Rental Information. Based on our current management information data from the seven states currently implementing these changes, we anticipate these changes will allow for verbal responses from landlords in place of the current form in some situations, thus reducing the overall burden as SSA will not require those respondents to complete the entirety of Form SSA–L5061. In addition, we note that for those who use the paper form, we will send a revised version with question #5 removed. We also anticipate a slight burden reduction to Form SSA–8006, as the respondents may not need to provide as much detail pertaining to

their rental subsidy agreement due to the proposed rule.

We published a notice of proposed rulemaking on August 24, 2023, at 88 FR 75910. In that NPRM, we solicited comments under the Paperwork Reduction Act (PRA) on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. The comments section above includes our responses to the PRA-related public comments we received under the NPRM.

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

OMB #: Form #	Number of respondents	Frequency of response	Current average burden per response (minutes)	Current estimated total burden (hours)	Anticipated new burden per response under regulation (minutes)	Anticipated estimated total burden under regulation (hours)	Estimated burden savings (hours)
0960–0174 SSA–8006 (Paper Form)	12,160	1	7	1,419	6	1,216	203
0960–0174 SSA–8006 (SSI Claims System)	109,436	1	7	12,768	6	10,944	1,824
0960–0454 SSA–L5061 (Paper Form)	35,640	1	10	5,940	8	4,752	1,188
0960–0454 SSA–L5061 (Phone Call)	35,640	1	10	5,940	3	1,782	4,158
Totals	192,876	.....	.....	26,067	.....	18,694	7,373

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

OMB #: Form #	Number of respondents	Anticipated estimated total burden under regulation from chart above (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
0960–0174 SSA–8006 (Paper Form)	12,160	1,216	* \$13.30	** 19	*** \$67,391
0960–0174 SSA–8006 (SSI Claims System)	109,436	10,944	* 13.30	** 24	*** 727,749
0960–0454 SSA–L5061 (Paper Form)	35,640	4,752	* 31.48	** 24	*** 598,372
0960–0454 SSA–L5061 (Phone Call)	35,640	1,782	* 31.48	.....	*** 56,097
Totals	192,876	18,694	.....	.....	*** 1,449,609

* We based this figure on the average disability insurance (DI) payments based on SSA's current FY 2024 data (2024FactSheet.pdf (ssa.gov)); on the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

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

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

SSA submitted a single new Information Collection Request which encompasses the revisions to both information collections (currently under OMB Numbers 0960–0174, and 0960–0454) to OMB for the approval of the changes due to the final rule. After approval of this information collection, we will adjust the figures associated

with the current OMB numbers for these forms to reflect the new burden.

As we have revised the associated burdens for the above-mentioned forms since we made revisions to the final rule which were not included at the NPRM stage, we are currently soliciting comment on the burden for the forms as shown in the charts above. If you would

like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–

2830, Email address:
OR.Reports.Clearance@ssa.gov

You can submit comments until May 13, 2024, which is 30 days after the publication of this document. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax. (Catalog of Federal Domestic Assistance Programs No 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

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

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

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we amend 20 CFR part 416 as set forth below:

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

Subpart K—Income

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

Authority: 42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b; sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. In § 416.1130, revise paragraph (b)(1) to read as follows:

§ 416.1130 Introduction.

* * * * *

(b) * * *

(1) We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly required rent to be paid equals or exceeds the presumed

maximum value described in § 416.1140(a)(1). If the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market rental value (see § 416.1101), whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

* * * * *

[FR Doc. 2024–07675 Filed 4–10–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–900]

Schedules of Controlled Substances: Placement of Etodesnitazene, N-Pyrrolidino Etonitazene, and Protonitazene in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final amendment; final order.

SUMMARY: With the issuance of this final order, the Administrator of the Drug Enforcement Administration is permanently placing 2-(2-(4-ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (other names: etodesnitazene; etazene), 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (other names: *N*-pyrrolidino etonitazene; etonitazepyne), and *N,N*-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (other name: protonitazene), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts are possible within the specific chemical designation, in schedule I of the Controlled Substances Act. This scheduling action discharges the United States' obligations under the Single Convention on Narcotic Drugs (1961). This action imposes permanent regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research or conduct instructional activities with, or possess), or handle etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene.

DATES: Effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the United Nations Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol. Article 3, paragraph 7 of the Single Convention requires that if the Commission on Narcotic Drugs (Commission) adds a substance to one of the schedules of such Convention, and the United States receives notification of such scheduling decision from the Secretary-General of the United Nations (Secretary-General), the United States, as a signatory Member State, is obligated to control the substance under its national drug control legislation. Under 21 U.S.C. 811(d)(1) of the Controlled Substances Act (CSA), if control of a substance is required “by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970,” the Attorney General must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by 21 U.S.C. 811(a) or 812(b), and without regard to the procedures prescribed by 21 U.S.C. 811(a) and (b). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (DEA).¹

Background

On April 12, 2022, DEA issued a temporary scheduling order, placing etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene, along with four other substances,² temporarily in schedule I of the Controlled Substances Act (CSA).³ That order for etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene (codified at 21 CFR 1308.11(h)(51), (55), and (56)) was based on findings by the Administrator that the temporary

¹ 28 CFR 0.100.

² Those four other substances, [butonitazene, flunitazene, metodesnitazene, metonitazene], will not be discussed further in this final order.

³ Schedules of Controlled Substances: Temporary Placement of Butonitazene, Etodesnitazene, Flunitazene, Metodesnitazene, Metonitazene, *N*-Pyrrolidino etonitazene, and Protonitazene in Schedule I, 87 FR 21556 (Apr. 12, 2022).