

SSI, SSDI and Survivor Benefits: Differences and Eligibility Requirements – the 2008 Update

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These 2008 materials are designed as a review of major government benefit programs to assist the experienced Elder Law attorney in understanding the major government programs affecting our clientele. This section covers programs contained in the Social Security Act (Social Security Retirement, Survivors and Disability Insurance Benefits under Title II of the Act, also known as Old Age, Survivors and Disability Insurance (OASDI) and the Supplemental Security Income (SSI) old age and disability benefits under Title XVI, a welfare program also administered by the Social Security Administration. These two programs, along with Medicaid and Medicare, make up the “big four” of Social Security Act programs that impact the lives of almost all Americans on a relationship matrix.

I. **Social Security Retirement, Survivors and Disability Benefits.** When first enacted in 1935, the Social Security program was almost exclusively a retirement program. Since then, disability benefits and payments to dependents of workers (survivors and dependents benefits) were added to the program. As of January 2008, the program is paying benefits to over 50 million people. 42 U.S.C. 402 *et seq.*; 20 C.F.R., Subpart D, §404.301 *et seq.*

A. **Social Security Retirement Insurance Benefits (RIB).** Workers earn “insured status” by paying self-employment or payroll deduction taxes on earnings. To be “fully insured” a worker must have 40 quarters of contributions (10 years) to be eligible for RIB. The amount of benefit paid is based on the amount of contribution into the Social Security Trust Fund. 42 U.S.C. 402(a); 20 C.F.R. §404.310

1. **To qualify**, a worker must be:

- a. **old enough** (full retirement age is currently 65 years and 10 months for those born in 1942, and for those born between 1943 and 1954, full retirement age is 66, and it is rising to age 67 over the next few years for people born in 1960 or later; workers can retire at age 62 or anytime between 62 and their normal or full retirement age, with an early retirement reduction which will continue to be reduced for the rest of their lives.)
- b. **retired** (there is an earnings tests: if a “retired” worker is under full retirement age and continues to work part time, \$1 for every \$2 earnings is subtracted from the RIB for all earnings over an annual exempt amount, currently \$13,560 (2008); and
- c. **have filed an application.** Applications can be filed at any time, but cannot be made more than 6 months retroactive (unlike disability, which can be retroactive to the established onset date or up to 12 months prior to the date of filing).

2. **Retirement benefits are NOT paid to a person who is:**

- a. under full retirement age and earns more than the exempt amount;
- b. over retirement age and works outside the U.S. for more than 45 hours in a month;
- c. is in the U.S. and is neither a citizen nor an alien lawfully present;

- d. has been deported or removed from the U.S.;
- e. is an alien who is outside the U.S. for more than six calendar months in a row;
- f. is an alien living in a country where it is not permitted to mail U.S. Government;
- g. has waived the right to benefits because the person is a member of a recognized religious group that is opposed insurance; or
- h. is confined within the U.S. in a jail, prison, or other penal institution or correctional facility because of a conviction for a felony.

B. Social Security Survivors and Dependents Benefits. Certain dependents and survivors of a worker may also receive Social Security benefits, under certain circumstances, based on the contributions of the worker. The potential survivors and dependents of deceased or disabled workers include:

- 1. a widow or widower, age 60 or over, of a deceased worker, and the disabled widow or widower (age 50 through 59) and disabled surviving divorced spouse (age 50-59) of a deceased worker, 42 U.S.C. 402(b) and (c);
- 2. a surviving dependent child (or stepchild, grandchild or step-grandchild) under age 18 (or in high school to age 19) or age 18 and older under a disability that began prior to age 22, 42 U.S.C. 402(d); 20 C.F.R. §404.350-369;
- 3. a widow or widower of any age and surviving divorced spouse of a deceased worker who has children of that worker in their care (“mother’s and father’s benefits), 42 U.S.C. 402(e) and (f);
- 4. a dependent parent age 62 or over of a deceased worker, 42 U.S.C. 402(h).

C. Social Security Disability Insurance Benefits. A portion of each FICA contribution (deduction for “Social Security”) is placed in the Disability Trust Fund to pay workers and their dependents if the worker becomes disabled prior to full retirement age. To qualify for Title II disability benefits, also known as DIB (Disability Insurance Benefits) or SSDI (Social Security Disability Insurance) a worker must be insured and medically disabled. 42 U.S.C. 424(a).

- 1. **Insured.** A disabled worker must be “fully insured” and be “currently insured.” To be fully insured the worker must have worked a minimum of 10 years (40 quarters), or if age 31 or younger, have worked one-half the quarters between age 21 and the claimant’s age at time of becoming disabled. In addition to fully insured, the claimant must be “currently insured.” That is, the disability must have begun during the period the claimant has paid into the system 20 quarters of the past 40 quarters (5 of the last 10 years).
- 2. **Medically Disabled.** The claimant must be unable to work because of a physical or mental impairment that has lasted or is expected to last for 12 months (the duration requirement), or is expected to result in death. The impairment must prevent substantial gainful activity in the worker’s normal occupation or in any other activity for which the claimant would be qualified by reason of age, education, work experience, when considering the claimant’s residual functional capacity (physical and mental). 42 U.S.C. 424(d); 20 C.F.R., Subpart P, §404.1501-1599.

3. **Sequential Evaluation Process.** The Social Security Administration uses a five step series of questions, in order, each yielding a yes or no answer, which drives the decision maker to a conclusion of disabled or not disabled. 20 C.F.R. §404.1520a.
 - a. Step 1. Is the claimant engaging in “substantial gainful activity” now. If yes, claimant is not disabled; if no, proceed to step 2. In 2008, SGA is presumed for all non-blind persons if earning more than \$940 per month, and \$1,570 for blind persons.
 - b. Step 2. Does the claimant have a non-severe (incredibly minor) medical impairment? If yes, not disabled, if no, proceed to step 3.
 - c. Step 3. Does the claimant have a medical condition so severe that it is found in the Listing of Impairments for automatic payment of benefits without further inquiry? If yes, pay the benefits; if no, proceed to Step 4.
 - d. Step 4. Can the claimant return to any type of work the claimant has done in the past 15 years? If yes, deny claim. If no, proceed to the one million dollar question at step 5.
 - e. Step 5. Given the claimant’s Residual Functional Capacity, and considering the claimant’s age, education, prior work experience and transferable skills, is there any alternative work that the claimant can do on a full time basis? If yes, deny; if no, pay the benefits.
4. **Procedure.** A disability claim is begun by calling SSA at 1-800-772-1213, or by filing online. Paperwork is then filed at any one of the hundreds of local Social Security district offices. Medical evidence is gathered and sent to a State Disability Determinations office for analysis and recommended decision. If denied, the claimant is notified of the opportunity to request Reconsideration. Another paper review is conducted by medical personnel. If denied again, the claimant may file a Request for Hearing before a federal Administrative Law Judge. No claim may be denied at that level without a full evidentiary hearing. If denied, the claimant may file a Request for Review by the Appeals Council in Falls Church, Virginia. This completes the administrative agency review. If denied by the Appeals Council, the claimant may file a Complaint in the United States District Court, and proceed through the various levels of appeal to the U.S. Circuit Court of Appeals and the United States Supreme Court.
5. **Attorney Representation and Fees.** A claimant is entitled to have a representative who can file any and all documents except initiate a claim for benefits. Attorney’s fees for representing claimants are highly regulated. 42 U.S.C. §406; 20 CFR §§404.1720-1799. To charge and collect a fee a representative must obtain approval from the Social Security Administration. Failure to follow the requirements subjects the attorney to a fine and imprisonment, and disbarment from Social Security practice. 42 U.S.C. §406(a)(5).
6. **Working while Disabled.** Unlike SSI disability claimants, Title II DIB recipients are entitled to a 9-month Trial Work Period (TWP) wherein they can receive full disability benefits and work. The months do not have to be consecutive. In addition, to encourage disabled persons to attempt to work, Congress extended Medicare

eligibility for up to 36 months after the person is no longer entitled to monthly DIB payments. However, if the claimant is receiving benefits, but also engaging in work which is less than the TWP threshold of \$670 per month gross in 2008, such minimal work will not affect continued eligibility for DIB monthly payments nor count as a month of Trial Work Period. 20 C.F.R. §404.1585.

7. **Amount of Benefits Paid.** The benefit paid to a disabled person is the same check they would receive at full retirement age. In other words, the retirement age is compressed down to the disabled person's age at time of disability. Benefits are augmented by a cost-of-living increment each year. There is no such thing as partial disability. A claimant is 100% disabled – or not! 42 U.S.C. 415.
 - a. **Cash.** In 2008, the average monthly benefit amount is \$1,079 to a single retired worker, \$1,761 for a retired couple both receiving benefits, and \$1,690 per month to a disabled worker, with a spouse and one child. Benefits are retroactive to the date of onset of the disability, but no longer than 12 months back from the date of application.
 - b. **Dependent benefits.** Dependent benefits are paid to a spouse of a disabled worker who is caring for children age 16 and under, and to the children under age 18, or under age 19 if in school and not yet graduated.
 - c. **Medicare coverage.** Medicare coverage is provided to the disabled worker (but not his dependents) beginning 24 months after the worker was in payment status for disability benefits purposes, not necessarily when the disability began.

II. Supplemental Security Income.

A. **Definition.** Supplemental Security Income (SSI) is a cash assistance program funded and administered by the Federal Government. The program is authorized by Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. Beginning in January 1974, SSI replaced the Federal/State matching grant program of adult assistance to the aged, blind, and disabled. Under SSI, there is no minimum age limit for establishing eligibility based on blindness or disability. As of January 2008, approximately 7 million people receive SSI benefits 20 C.F.R. §416.110.

B. **Administration.** The SSI program is administered by the Social Security Administration, an agency formally under the Department of Health and Human Services, but since March 31, 1995, is an independent agency of the federal government headed by a Commissioner and a Board of Trustees.

C. **Purpose and Principles.** The basic purpose of SSI is to provide a minimum level of monthly income to persons who are aged, blind or disabled. Payments are made based on objective, measurable standards of need taking into account other sources of income and resources. 20 C.F.R. §416.110

D. **Financing.** SSI payments are made from the funds in the general treasury of the United States, not from the Social Security Retirement, or Disability or Medicare Trust Funds.

E. **Relationship to Medicaid.** Under Section 1634 of the Social Security Act, Florida has opted to have the Social Security Administration make eligibility decisions regarding SSI-related Medicaid. POMS SI 0715.020 If a claimant is eligible for at least \$1 of SSI monthly income benefits, the claimant is automatically eligible for Medicaid. Florida Statutes, §409.903; DCF ESS Manual §2040.0801.01.

F. **Categorical eligibility.** In order to be eligible for SSI benefits, a claimant must fit one of the following three categories:

1. **Aged** - An "aged" person is someone who is age 65 or older; however, certain lawfully admitted U.S. Permanent Residents over age 65 are denied benefits unless they are also disabled;
2. **Blind** - A "blind" person is someone whose vision, with use of a correcting lens, is 20/200 or less in the better eye or who has tunnel vision of 20 degrees or less. There is no minimum age limit; or
3. **Disabled** - A "disabled" person is someone who meets the Social Security disability insurance program definition of disability. That is, he or she:
 - a. Must be unable to engage in substantial gainful activity (SGA) due to a medically determinable physical or mental impairment; and
 - b. The impairment can be expected to last for at least 12 months in a row or result in death.
 - c. Unlike Title II DIB benefits, there is no minimum age limit. A child under age 18 is eligible if he or she meets conditions (a) and (b) above. 20 C.F.R. §416.202.

G. **Other non-financial eligibility requirements.** See 20 C.F.R. §416.210-216. These include meeting all of the following:

1. Be a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands, or be a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. armed forces;
2. Be a citizen of the U.S., or an alien in an immigration category qualified to receive Federal benefits and meet certain additional requirements;
3. Not be a resident of a public institution throughout a month;
4. Not be absent from the U.S. for a calendar month unless the claimant is:
 - a. a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. armed forces; or
 - b. a student who is temporarily abroad for the purpose of conducting studies;
5. Apply for any other benefits for which the claimant is potentially eligible;
6. Not refuse, without good cause, vocational rehabilitation services if the claimant is blind or disabled;
7. Accept appropriate treatment, if available, for drug addiction or alcoholism;

8. Not be a fugitive felon; and
 9. Not be violating a condition of parole or probation.
- H. **Special alien requirements.** 20 C.F.R., Subpart P, §416.1600-1619. The claimant must be a U.S. Citizen, or one of a select group of aliens who are “qualified aliens” or “Non-qualified aliens” who were lawfully present in the United States prior to August 22, 1996. To be a qualified alien, the claimant must meet one of the categories listed below:
1. A person lawfully admitted for permanent residence (LAPR), **and**:
 - a. Has 40 qualifying quarters of creditable work; or
 - b. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 - c. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - d. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 - e. Was granted one of the alien classifications listed below within the last seven years:
 - 1) Refugee under section 207 of the INA;
 - 2) Asylee under section 208 of the INA;
 - 3) Alien whose deportation is being withheld under section 243(h) of the INA or whose removal has been withheld under section 241(b)(3) of the INA;
 - 4) Cuban/Haitian entrant under one of the four categories in Section 501(e) of the Refugee Education and Assistance Act of 1980; or
 - 5) Amerasian immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988.
 2. A refugee under section 207 of the INA **and**:
 - a. Is a veteran, active duty member of the U.S. military, or a spouse or dependant child of a veteran or member of the U.S. military; or
 - b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 - d. Was granted refugee status under section 207 Of the INA within the last seven years.
 3. A person granted asylum under section 208 of the INA **and**:
 - a. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 - b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 - d. Was granted asylum within the last seven years.
 4. A person whose deportation was withheld under section 243(h) of the INA or removal withheld under section 241(h)(3) of the INA **and**:
 5. A veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; **or**:
 - a. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - b. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 - c. Deportation or removal was withheld within the last seven years.

6. A conditional entrant under section 203(a)(7) of the INA **and:**
 - a. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 - b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - c. Is lawfully residing in the United States and was receiving SSI on 8/22/96.

7. A person paroled into the U.S. for one year or more under section 212(d)(5) of the INA **and:**
 - a. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U. S. military; or
 - b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 - d. Was granted Cuban/Haitian entrant status within the last 7 years under 501(e) of the Refugee Education and Assistance Act of 1980.

8. A Cuban/Haitian entrant under Section 501(e) of the Refugee Education and Assistance Act of 1980 **and:**
 - a. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 - b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
 - d. Was granted Cuban/Haitian entrant status within the last seven years.

9. A battered spouse or child who petitioned for status as a lawfully admitted permanent resident under section 204(a)(1)(A)(i)-(iv) or 204(a)(1)(B)(i)-(iii) of the INA, or suspension of deportation under section 244(a)(3) or 240A(b)(2) of the INA, **and:**
 - a. Is a veteran, active duty member of the U.S. military or a spouse or dependant child of a veteran or member of the U.S. military; or
 - b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
 - c. Is lawfully residing in the United States and was receiving SSI on 8/22/96.

- I. **Financial eligibility requirements.** SSI benefits are paid to those individuals who meet the above eligibility requirements and who further meet the financial requirements for low income and resources. 20 C.F.R., Subpart D, §416.401-435.
 1. **SSI income requirements.** A claimant must not have monthly “countable” income more than the current Federal Benefit Rate (FBR) which is increased each year by a cost-of-living-adjustment unless Congress also adjusts the FBR as part of the budget process (Congress has done so only once since creating the SSI program in 1974). The FBR for an eligible couple (both qualifying) is approximately 1.5 times the individual rate. The Federal Benefit Rate for 2008 for an individual is \$637 per month, and for a couple, \$956 per month. 20 C.F.R., Subpart K, §416.1100-1182.
 - a. **Definition of income.** Income is anything the claimant receives during a calendar month and used to meet their needs for food or shelter. It may be in cash or in-kind. In-kind income is not cash; it is food or shelter, or something the claimant can use to get food or shelter. 20 C.F.R. §416.1102.

b. **Certain things are NOT income.** See 20 C.F.R. §416.1103. These include:

- 1) Medical care and services, including room and board, provided by anyone while the claimant is living in a medical treatment facility such as a hospital or nursing home;
- 2) Social Services;
- 3) Receipts from the sale, exchange, or replacement of a resource.
- 4) Income tax refunds;
- 5) Payments by credit life or credit disability insurance;
- 6) Proceeds of a loan;
- 7) Money paid by someone else directly to a supplier on the claimant's behalf. However, goods or services you receive as a result of the payments may be in-kind income even if the third-party payments themselves are not;
- 8) Replacement of income already received, e.g., replacement of a stolen paycheck;
- 9) Assistance received to protect the claimant's residence from bad weather, such as insulation or storm doors; and
- 10) Any item (other than an item of food, clothing, or shelter) that would be an excluded non-liquid resource.

c. **Countable income.** Countable income, that is, the amount that is subtracted from the federal benefit rate to determine the amount of the claimant's monthly SSI check, consists of the dollar amount left over after subtracting everything that is "not income" (above) and applying the income "exclusions." The exclusions are a \$20 general income disregard, and \$65 from earned income, and one-half of the amount of earned income.

d. **Earned income exclusions.** See 20 C.F.R. §416.1112. In figuring countable earned income, certain exclusions are applied in the following order:

- 1) Exclusions authorized by Federal laws other than Title XVI;
- 2) The full amount of any earned income tax credit payments;
- 3) Up to \$10 per month of earned income if received infrequently or irregularly. For example, if the income is received only once during a calendar quarter or if its receipt cannot reasonably be expected;
- 4) For 2008, up to \$1,550 in a month (but no more than \$6,240 per year) for a blind or disabled child who is a student regularly attending school;
- 5) Any portion of the \$20 per month general income exclusion that is not used against unearned income in the same month;
- 6) \$65 of earned income;
- 7) Impairment-related work expenses of a disabled (not blind) individual who:
 - a) Is under age 65; or
 - b) Received SSI based on a disability for the month before turning age 65;
- 8) One-half of the month's remaining earned income;
- 9) Any expenses reasonably typical of the earning of income for a blind (not disabled) individual who:
 - a) Is under age 65; or

- b) Received SSI because of blindness for the month before turning age 65; and
 - 10) Any earned income used to fulfill an approved plan for achieving self-support in the case of a blind or disabled individual who:
 - a) Is under age 65; or
 - b) Received SSI based on blindness or disability for the month before turning age 65.
- e. **Unearned income exclusions.** See 20 C.F.R. §416.1124. These include:
 - 1) Exclusions authorized by Federal laws other than Title XVI (e.g., food stamps, TANF payments);
 - 2) Any public agency's refund of taxes on real property or food;
 - 3) Assistance based on need and funded wholly by a State and/or one of its political subdivisions (including Indian tribes);
 - 4) Any portion of a grant, scholarship, or fellowship used for paying tuition, fees or other necessary educational expenses. However, any amount set aside or actually used for food, clothing, or shelter is not excluded;
 - 5) Food raised by an individual or by his or her spouse if consumed by the household;
 - 6) Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any Federal statute because of a catastrophe declared by the President to be a major disaster;
 - 7) Up to \$20 per month of unearned income if received infrequently or irregularly; i.e., if received only once during a calendar quarter from a single source or if its receipt cannot reasonably be expected;
 - 8) Payments received by certain recipients under the Alaska Longevity Bonus program;
 - 9) Payments to an individual for providing foster care to a child placed in the individual's home by a qualified agency;
 - 10) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement left to accumulate and become part of the separately identifiable burial fund;
 - 11) Certain home energy and other needs-based support and maintenance assistance;
 - 12) One-third of support payments made by an absent parent to or for an eligible child;
 - 13) The first \$20 per month of an individual's total unearned income other than income based on need;
 - 14) Any unearned income used to fulfill an approved plan for achieving self-support in the case of a blind or disabled individual who is under age 65 or received SSI based on blindness or disability for the month he or she turned 65;
 - 15) Federal housing assistance, whether provided directly by the Federal Government or through other entities such as local housing authorities, nonprofit organizations, etc.;
 - 16) Any interest accrued on (or after April 1, 1990) and left to accumulate as part of the value of an excluded burial space purchase agreement;
 - 17) The value of any commercial transportation ticket received as a gift and not converted to cash. This applies to travel among the 50 states, District

of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;

- 18) Hostile fire pay from the Uniformed Services received in or after October 1993;
- 19) Payments received from a State fund to aid victims of crime;
- 20) Relocation assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970;
- 21) Austrian Social Insurance payments that are based, in whole or in part, on wage credits received for certain losses suffered before and during World War II;
- 22) Payments made by the Dutch Government under the Netherlands Act on Benefits for Victims of Persecution 1940-1945 to individuals who were victims of persecution and suffering from illnesses or disabilities resulting from the persecution.

f. **Inkind support and maintenance.** "In-kind income" is income that is not in the form of cash or negotiable instruments. See 20 C.F.R. §416.1130-1157. Examples of in-kind income include real property, food, and occasionally, wages (e.g., room and board as compensation for employment). In-kind income that is unearned and directly satisfies the need for food or shelter is called "in-kind support and maintenance." It has special rules for valuation. Any other in-kind income is valued at its current market value. There are two rules for placing a value on in-kind support and maintenance: the "one-third reduction rule" and the "presumed maximum value rule."

- 1) Under the one-third reduction rule, an amount equal to one-third of the FBR is considered to be the value of the in-kind support and maintenance (ISM) regardless of the actual current market value of the amount received. The one-third reduction rule applies to a claimant who lives in another person's household and receives both food and shelter from within that household, 20 C.F.R. §416.1131;
- 2) The presumed maximum value rule applies in any other situation (for example, where the claimant lives in a home owned by the claimant, and someone, like a trustee, outside the home pays the mortgage or some other food or shelter expense). Again, regardless of the amount paid, the reduction is the presumed maximum value amount, 20 C.F.R. §416.1140.

Table 1. The Individual and Couple Federal Benefit Rates, 2001-2008.

	2008	2007	2006	2005	2004	2003	2002	2001
Individual Full FBR	\$637	\$623	\$603	\$579	\$564	\$552	\$545	\$530
Medicaid Care	\$30	\$30	\$30	\$30	\$30	\$30	\$30	\$30
Eligible Couple Full FBR	\$956	\$934	\$904	\$869	\$846	\$829	\$818	\$796
Medicaid Care - Couple	\$60	\$60	\$60	\$60	\$60	\$60	\$60	\$60

Table 2. The one-third reduction rule values (RRV) and applicable Presumed Maximum Values (PMV).

	2008	2007	2006	2005	2004	2003	2002	2001
Individual RRV	\$212.33	\$207.66	\$201.00	\$193.00	\$188.00	\$184.00	\$181.66	\$176.66
Eligible Couple RRV	\$318.66	\$311.33	\$311.33	\$289.66	\$282.00	\$276.33	\$272.33	\$285.33
Individual PMV	\$232.33	\$227.00	\$221.00	\$213.00	\$208.00	\$204.00	\$201.66	\$196.66
Eligible Couple PMV	\$318.66	\$311.33	\$311.33	\$289.66	\$282.00	\$296.33	\$292.00	\$285.33

2. **SSI Resource Requirements.** In addition to meeting the income requirements, the claimant must not have countable resources in excess of a specified amount at the beginning of each month. The limits for January 2008 remain the same as they have for many, many years at \$2,000 for an individual and \$3,000 for a couple. 20 C.F.R. §416.1201.
 - a. **Definition.** For SSI purposes, a resource is any of the following owned by the claimant or claimant's spouse, if any, including cash, liquid assets, and real or personal property that can be converted to cash to obtain support and maintenance. If the claimant has the right, authority, or power to liquidate the property, it is considered a resource.
 - b. **Resource exclusions.** Certain things are not counted as resources by operation of law. 20 C.F.R. §416.1210; 42 U.S.C. 1382b(a). They include:
 - 1) An individual's **home**, regardless of value. A home includes any adjacent land and related buildings on it, 20 C.F.R. §416.1212;
 - 2) **Household goods** and personal effects are excluded without regard to value as of March 9, 2005. Household goods are defined as "items of personal property, found in or near the home, that are used on a regular basis, and needed by the householder for maintenance, use and occupancy of the premises as a home;" EXCEPT items "acquired or held because of their value or as an investment are not considered household goods." "Household goods include, but are not limited to, furniture, appliances, electronic equipment such as personal computers and televisions." Personal effects are defined as "items of personal property that are worn or carried by an individual or "items that have an intimate relation to the claimant;" and include, but are not limited to, "clothing, jewelry, personal care items, prosthetic devices, and educational or recreational items such as books, musical instruments, or hobby materials." POMS SI 01130.430. and 20 C.F.R. §416.1216;
 - 3) **One automobile**, regardless of value, if used to provide necessary transportation, effective April 1, 2005. For SSI purposes, "automobile" means any vehicle used for transportation. Vehicles used for transportation include but are not limited to cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and even animals. Not included is a vehicle that is used only as a recreational vehicle (e.g., a boat used on

weekends for pleasure) which can NOT be excluded as “personal property” and whose equity value is counted as a resource. POMS SI 01130.200 and 20 C.F.R. §416.1218;

- 4) **Special Needs Trusts** pursuant to Foster Care Independence Act of 1999 (P.L. 106-169). Section 205; 42 U.S.C. 1382b; and **Third Party Special Needs Trusts**. See POMS SI 01120.201 *et seq.*
 - 5) **Life insurance with a face value of less than \$1500** with some caveats, 20 C.F.R. §416.1230 ;
 - 6) **Burial spaces regardless of cost, and burial funds up to \$1,500**, 20 C.F.R. §416.1231;
 - 7) **Title XVI (SSI) or Title II (SSDI, DAC or RIB) retroactive payments** as provided in CFR §416.1233;
 - 8) Restricted allotted Indian lands, 20 C.F.R. §416.1234;
 - 9) Property of a trade or business without limit;
 - 10) Non-business property of a reasonable value that is needed for self-support;
 - 11) Resources of a blind or disabled individual that are needed carry out an approved plan for achieving self-support, 20 C.F.R. §416.1225-1227;
 - 12) Disaster relief, 20 C.F.R. §416.1237;
 - 13) Payments or benefits excluded by provisions of a Federal statute other than Title XVI of the Social Security Act;
 - 14) Housing assistance as provided in CFR §416.1238;
 - 15) Refunds of Federal income taxes and advances made by an employer relating to an earned tax credit as provided in CFR §416.1255;
 - 16) Shares of stock held by a native of Alaska in a regional or village corporation during the 20-year period in which, under the provisions of the Alaska Native Claims Settlement Act, such stock cannot be transferred;
 - 17) Payments received as compensation for expenses incurred or losses suffered as a result of a crime for nine months following receipt, 20 C.F.R. §416.1229;
 - 18) Relocation assistance from a State or local government for nine months; and
 - 19) Dedicated financial institution accounts required to be established for the payment of past-due benefits to disabled children as provided in 20 CFR 416.1247.
- c. **Deeming of Income and Resources.** Under certain circumstances, all or portions of the income or resources of a spouse, parent, or sponsor of an alien are “deemed” to be the income or resources of the claimant. Pension funds owned by an ineligible spouse or by an ineligible parent or spouse of a parent are excluded from resources for deeming purposes. Pension funds are defined as funds held in Individual Retirement Accounts (IRA's) or in work-related pension plans. **Note:** deemor’s IRAs and pensions funds are excluded, but not the claimant’s IRAs or pension funds under the theory that the claimant’s IRAs can be converted to purchase food and shelter and therefore are NOT excluded in determining eligibility. 20 C.F.R. §416.1160.

- 1) **Deeming from spouse to spouse.** The deeming of spousal income and assets applies only if the parties are living in the same household. In addition, if there are children under age 21 living in the household, an allocation for their living allowance is provided (up to \$319 in 2008 depending on the child’s own income), as well as for the spouse who lives in

the household. The allocation is equal to the difference in the FBR for an individual and the FBR for a couple, see the calculations on the subsequent pages. The resources of an ineligible spouse and the eligible claimant are added together and compared to the resource limit for a couple (\$3,000) to determine eligibility. In addition, the same income exclusions available to the claimant spouse, apply to the ineligible spouse's income. 20 C.F.R. §416.1161 *et seq.*

- 2) **Deeming from parent to child.** Deeming does not apply if the eligible child does not live in the same household as the parent (e.g., separated or divorced parents). Children are subject to deeming from natural, adoptive parents, and a stepparent if living in the same household. However, if the child is living with a stepparent only due to the death or divorce of the natural parent, the stepparent's income and resources are NOT deemed to a child. There are also living allocations for other children under age 21 (up to \$319 in 2008), and the income exclusions of both parents apply in determining eligibility. 20 C.F.R. §416.1165. [See deeming chart on next page].

CAUTION!! DO NOT USE THE FOLLOWING CHART FOR SPECIFIC PLANNING FOR A SPECIFIC CLIENT – SPECIFIC INFORMATION ABOUT EACH DEPENDENT MUST BE SOLICITED AND THE ELIGIBILITY CALCULATION MUST BE DONE BY HAND (like a tax return).

BREAK-EVEN DEEMING ELIGIBILITY CHART FOR CHILDREN FOR 2006

CAUTION: . If there is any doubt about whether a disabled child is financially eligible, please contact SSA for help.

Deeming Eligibility for Children	Gross monthly income BELOW the dollar amounts* shown means a disabled child may be eligible for at least \$1 of SSI benefits.			
	* Amounts given are general guidelines only.			
Number of ineligible children in household	All income is earned		All income is unearned	
	One parent in household	Two parents in household	One parent in household	Two parents in household
0	\$ 2,537	\$ 3,139	\$ 1,246	\$ 1,547
1	\$ 2,838	\$ 3,440	\$ 1,547	\$ 1,848
2	\$ 3,139	\$ 3,741	\$ 1,848	\$ 2,149
3	\$ 3,440	\$ 4,042	\$ 2,149	\$ 2,450

4	\$ 3,741	\$ 4,343	\$ 2,450	\$ 2,751
5	\$ 4,042	\$ 4,644	\$ 2,751	\$ 3,052
6	\$ 4,343	\$ 4,945	\$ 3,052	\$ 3,353

The Deeming Eligibility Chart for Children does not apply when:

- The parent(s) receives both earned income (e.g., wages or net earnings from self-employment) and unearned income (e.g., Social Security benefits, pensions, unemployment compensation, interest income, and State disability).
- The parent receives a public income maintenance payment such as Temporary Assistance for Needy Families (TANF), or a needs-based pension from the Department of Veterans Affairs.
- The parent pays court-ordered support payments.
- The child has income of his or her own income.
- Any ineligible child (non-disabled brothers or sisters in the same household) has income of his or her own, marries, or leaves the home.
- There is more than one disabled child applying for or receiving SSI benefits.
- The State supplements the Federal benefit.

3. **Transfer of Assets Penalty.** The same statute that incorporated 42 USC §1396p(d)(4)(A) re-instituted a transfer of assets penalty for transferring ownership of a resource for less than fair market value can result in a period of ineligibility for SSI. Foster Care Independence Act of 1999 (P.L. 106-169). Section 205; 42 U.S.C. 1382b. This provision is effective for transfers made on or after 12/14/99. If the individual received fair market value for the transferred resource, the period of ineligibility does not apply. The look-back period to develop uncompensated transfers is 36 months. That is, any resources transferred 36 months before the date of application for SSI benefits, even if transferred for the specific purpose of qualifying for SSI, are permissible transfers. 42 U.S.C. 1382b(c).

a. **Penalty provisions.** If a resource was transferred without value and does not meet one of the exceptions below, the penalty is calculated by dividing the fair market value of the resource transferred by the FBR (Federal Benefit Rate, which is the maximum SSI payment to a single individual, for example, in 2008 it is \$637). The result is the number of months of ineligibility, capped at 36 months forward from the date of transfer. 42 U.S.C. 1382b(c)(1)(A).

b. **Exceptions to the transfer of assets penalty:**

- 1) **Transfers to Trusts.** The period of ineligibility does not apply to an individual who transfers a resource to a trust established for the sole benefit of the individual's child of any age who is blind or disabled. This includes trusts qualifying as "Medicaid trust exceptions" in [SI 01120.200](#) ff. (i.e., trusts established under Section 1917(d)(4)(A) and (C) of the Social Security Act). 42 U.S.C. 1396p(d)(4)(A). The period of ineligibility also does not apply to an individual who transfers a resource to a trust established for the sole benefit of an individual including himself or herself who is under age 65 and is blind or disabled.
- 2) **Transfers of a home.** 42 U.S.C. 1382b(c)(a)(C). It is impermissible to even add another person to the title of the claimant's home. However, certain transfers of the home to another are permissible:
 - a) Transfer to a spouse (including a separated spouse), a child under age 21 regardless of student or marital status; a child of any age or any marital status who is blind or disabled.
 - b) Transfer to a sibling of the claimant who has an ownership interest (including life estate and equitable ownership) in the home, and who was residing in the claimant's home for at least 1 year immediately before the date the transferor becomes institutionalized.
 - c) Transfer to a Son or Daughter who was residing in the transferor's home for at least 2 years immediately before the date the individual becomes institutionalized, and who provided care to the individual which permitted the individual to reside at home instead of in an institution.
- 3) **Non-home resource transfer exceptions.** The penalty does not apply if the non-home resource was transferred to the transferor's spouse (including a separated spouse), or another person for the sole benefit of the transferor's spouse, or the transferor's child of any age who is blind or disabled. POMS SI 0150.123.
- 4) **Resource returned.** If the improperly transferred resource is returned, and then the claimant seeks conditional SSI payments subject to sale or proper disposition of the excess resource, the penalty does not apply. POMS SI 01150.124.
- 5) **Transfers for purposes other than to qualify for SSI.** Some transfers are made in the normal course of life, and then the claimant becomes unexpected medically eligible for SSI disability benefits. In this circumstance and similar ones, the penalty would not apply.
- 6) **Undue Hardship.** This exception is extremely limited, aiding those individuals who have disposed of resources and whose only funds are now equivalent to less than one month's FBR and whose ordinary expenses are greater than the FBR.

J. **Attorneys Fees.** Attorney's fees for representing SSI claimants are highly regulated. 42 USC §406; 20 CFR §§404.1720-1799. To charge and collect a fee a representative must obtain approval from the Social Security Administration. Failure to follow the requirements subjects the attorney to a fine and imprisonment, and disbarment from Social Security practice. 42 USC §406(a)(5).

A relatively new requirement, beginning January 1, 2007: to collect a fee, an attorney must file an SSA tax form, SSA 1695, with the Social Security Administration prior to beginning representation of the claimant.

2008 SOCIAL SECURITY CHANGES

Cost-of-Living Adjustment (COLA):

Based on the increase in the Consumer Price Index (CPI-W) from the third quarter of 2006 through the third quarter of 2007, Social Security and Supplemental Security Income (SSI) beneficiaries will receive a 2.3 percent COLA for 2008. Other important 2008 Social Security information is as follows:

<u>Tax Rate</u>	2007	2008
Employee	7.65%	7.65%
Self-Employed	15.30%	15.30%

NOTE: The 7.65% tax rate is the combined rate for Social Security and Medicare. The Social Security portion (OASDI) is 6.20% on earnings up to the applicable taxable maximum amount (see below). The Medicare portion (HI) is 1.45% on all earnings.

Maximum Earnings Taxable:	2007	2008
<u>Social Security</u> (OASDI only)	\$97,500	\$102,000
Medicare (HI only)	No Limit	

<u>Quarter of Coverage:</u>	2007	2008
Earnings required	\$ 1,000	\$1,050

<u>Retirement Earnings Test Exempt Amounts:</u>	2007	2008
Under full retirement age NOTE: One dollar in benefits will be withheld for every \$2 in earnings above the limit.	\$12,960/yr. (\$1,080/mo.)	\$13,560/yr. (\$1,130/mo.)
The year an individual reaches full retirement age NOTE: Applies only to earnings for months prior to attaining full retirement age. One dollar in benefits will be withheld for every \$3 in earnings above the limit.	\$33,440/yr. (\$2,870/mo.)	\$36,120/yr. (\$3,010/mo.)

There is no limit on earnings beginning the month an individual attains full retirement age.

<u>Social Security Disability Thresholds:</u>		2007	2008
Substantial Gainful Activity (SGA)	Non-Blind	\$ 900/mo.	\$ 940/mo.
	Blind	\$1,500/mo.	\$1,570/mo.
Trial Work Period (TWP)		\$ 640/mo.	\$ 670/mo.

Maximum Social Security Benefit: Worker Retiring at <u>Full Retirement Age</u> in	2007	2008
	\$2,116/mo.	\$2,185/mo.

<u>SSI Federal Payment Standard:</u>	2007	2008
Individual	\$ 623/mo.	\$ 637/mo.
Couple	\$ 934/mo.	\$ 956/mo.

SSI Resources Limits:	2007	2008
Individual	\$2,000	\$2,000
Couple	\$3,000	\$3,000

<u>SSI Student Exclusion Limits:</u>	2007	2008
Monthly Limit	\$1,510	\$1,550
Annual Limit	\$6,100	\$6,240

Estimated Average Monthly Social Security Benefits Payable in January 2008:	Before 2.3% COLA	After 2.3% COLA
All Retired Workers	\$1,055	\$1,079
Aged Couple, Both Receiving Benefits	\$1,722	\$1,761
Widowed Mother and Two Children	\$2,192	\$2,243
Aged Widow(er) Alone	\$ 1,017	\$1,041
Disabled Worker, Spouse and One or More Children	\$1,652	\$1,690
All Disabled Workers	\$ 981	\$ 1,004