



April 17, 2023

Acting Commissioner Kilolo Kijakazi
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted via www.regulations.gov

Re: Omitting Food From In-Kind Support and Maintenance Calculations, Docket No. SSA-2021-0014

Dear Acting Commissioner Kijakazi,

Thank you for the opportunity to submit comments on SSA's proposal to omit food from the in-kind and support maintenance (ISM) calculations. These comments are submitted on behalf of the Special Needs Alliance and the Alliance of Pooled Trusts.

The Special Needs Alliance (SNA) is an alliance of accomplished and committed attorneys who have joined together to advocate for individuals with disabilities and their families. Special needs attorneys provide counsel and education for people with disabilities to enable them to live quality lives. SNA members have a unique combination of relevant legal experience in the disability and elder law fields, direct family experience with disability, active participation with national, state, and local disability advocacy organizations, and work to maintain a high professional and ethical reputation. We regularly work with individuals and their families who are affected by the proposed rule.

The Alliance of Pooled Trusts (APT) is the first coalition in the United States dedicated to uniting pooled trust providers in establishing best practices for the industry. Its membership is made up of non-profit organizations across the country who provide trust services to people with disabilities of all ages. The members of APT work daily with those who receive SSI and intimately understand the challenges that ISM places on this oftentimes food insecure population.

In our practices, we often advise individuals and trustees who either have a desire to assist a loved one or have a fiduciary duty to do so. In that capacity, ISM reductions often require us to make difficult choices between meeting an individual's basic needs and causing a reduction in the individual's Supplemental Security Income (SSI) due to an ISM expenditure.

We fully support the letters sent by others, such as the Consortium for Constituents with Disabilities, which partly focus on the administrative cost to the SSA in administering ISM reductions due to food expenditures. We also strongly agree and support the SSA's rationale for

the proposed rule change that “would make it easier for SSI applicants and recipients to comply with our program requirements, which would save time for both them and us, and improve the equitable treatment of food assistance within the SSI program.”

Here we briefly explain some of our experiences of the headaches that the ISM reduction for food expenditures causes people with disabilities and the fiduciaries and loved ones on whom they rely.

1. In-kind support and maintenance reductions can be counter-productive for taxpayers.

While the concept of in-kind support and maintenance may have originally had reasoned intentions, we believe it is counter-productive for taxpayers. Other Social Security regulations will reduce the SSI award if an individual has additional income. Yet why do we disincentivize other individuals from providing their discretionary funds to help individuals receiving SSI? This discretionary gift usually *lessens* the taxpayer burden in numerous ways.

For example, SSI is rarely sufficient to pay for unsubsidized housing. Why do we disincentivize a family member from providing additional support that may *save* the taxpayer by allowing the individual to afford unsubsidized rent?

Relatives also often want to drop off a bag of groceries or fixings for a holiday dinner to their family member with a disability due to the barriers involved for people with disabilities to get to the grocery store. Imagine having to tell your relative with a disability that you cannot provide them with a bag of groceries because it will reduce their monthly income? How is discouraging these kinds of actions a societal or taxpayer benefit?

While we would like to see the elimination of in-kind support and maintenance altogether, removing food purchases would at least be an additional step toward eliminating this disincentive.

2. Inflation is hitting food and shelter costs harder than average inflation.

It has always been difficult for SSI recipients to budget housing and food expenditures within their monthly SSI awards. In 2020, adults with disabilities were twice as likely to be food insecure as adults without disabilities.¹ With inflation, paying unsubsidized rent is becoming nearly impossible.

The CPI-U increased 5% in the year ending March 2023, but costs for in-kind support and maintenance expenditures outpace this. Over this same period, food prices increased by 8.5%, energy services increased by 9.2%, and shelter experiences increased by 8.2%.²

Eliminating food from in-kind support and maintenance reductions eases this inflation crunch.

3. Individuals with disabilities often require specialized diets for optimal health outcomes.

Individuals with disabilities are more likely to have various dietary restrictions. For example, many of our clients on the autism spectrum require special diets, which are nearly impossible to provide within the SSI and food assistance program benefits. However, failing to adhere to these specialized diets will only increase taxpayer costs through increased Medicaid and Medicare

¹ <https://www.agriculture.com/news/business/food-insecurity-rises-among-disabled-people-but-solutions-exist>

² Bureau of Labor Statistics, https://www.bls.gov/news.release/archives/cpi_04122022.pdf.

expenditures due to suboptimal health outcomes. Why would we discourage loved ones from assisting with these necessary diets?

4. ABLE accounts allow for food purchases without impacting SSI.

Food is a qualified disability expense (as a basic living expense) when paid for from an ABLE account. *See, e.g.*, POMS SI 01130.740.B.9. A food purchase from an ABLE account is not in-kind support and maintenance because ABLE account distributions are not income at all.

Thus, a family member wishing to support an SSI recipient eligible for an ABLE account can avoid the ISM reduction by funding the ABLE account and then having the recipient purchase the food with funds from the ABLE account.

But this is administratively costly. To be viable, ABLE accounts should prioritize being a long-term savings program. But the ISM requirement encourages families and fiduciaries to increase deposits and distributions, which burdens ABLE programs with high administrative costs. Eliminating food from the ISM requirement would instead better align SSI policy with qualified distribution expenses under ABLE accounts.

5. Our modern retail environment makes it more difficult to separate food expenditures.

Consistent with supported decision-making and related movements to encourage self-direction, we want individuals receiving SSI to be as independent as possible. However, giving individuals cash is income under SSI rules. Thus, increasing independence requires using credit cards (or hybrid credit cards like TrueLink referenced in POMS SI 01120.201). This need is also consistent with stores increasingly going cashless.

But numerous stores selling affordable essentials like clothing and personal care items also sell food (e.g., Walmart). Encouraging an individual's financial independence while ensuring that funds do not cause an ISM reduction is tedious and difficult. Eliminating food from the ISM requirement would assist a family's or fiduciary's burden in encouraging financial independence with the realities of today's retail environment.

Eliminating food expenses as a source of ISM is one of your agency's top four regulatory priorities this year. Your agency, our organizations and the people with disabilities whom we all serve know now is the time to make this critical and impactful change to the ISM rule.

If you have any questions, please contact SNA's public policy advisor, Brian W. Lindberg, at brian@consumers.org.

Respectfully submitted,



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