§416.1166a How we deem income to you from your sponsor if you are an alien.

Before we deem your sponsor’s income to you if you are an alien, we determine how much earned and unearned income your sponsor has under §416.1161(b). We then deduct allocations for the sponsor and the sponsor’s dependents. This is an amount equal to the Federal benefit rate for an individual for the sponsor (or for each sponsor even if two sponsors are married to each other and living together) plus an amount equal to one-half the Federal benefit rate for an eligible individual for each dependent of the sponsor. An ineligible dependent’s income is not subtracted from the sponsor’s dependent’s allocation. We deem the balance of the income to be your unearned income.

(a) If you are the only alien applying for or already eligible for SSI benefits who has income deemed to you from your sponsor. If you are the only alien who is applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(b) If you are not the only alien who is applying for or already eligible for SSI benefits and who has income deemed from your sponsor. If you and other aliens are applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(c) When you are an alien and income is no longer deemed from your sponsor. If you are an alien and have had your sponsor’s income deemed to you, we stop deeming the income with the month in which the third anniversary of your admission into the United States occurs.

(d) When sponsor deeming rules do not apply to you if you are an alien. If you are an alien, we do not apply the sponsor deeming rules to you if—

(1) You are a refugee. You are a refugee admitted to the United States as the result of application of one of three sections of the Immigration and Nationality Act: (1) Section 203(a)(7), effective before April 1, 1980; (2) Section 207(c)(1), effective after March 31, 1980; or (3) Section 212(d)(5);

(2) You have been granted asylum. You have been granted political asylum by the Attorney General of the United States; or

(3) You become blind or disabled. If you become blind or disabled as defined in §416.901 (at any age) after your admission to the United States, we do not deem your sponsor’s income to you to determine your eligibility for SSI benefits beginning with the month in which your disability or blindness begins. However, to determine your benefit payment, we follow the rule in §416.420 of counting your income in the second month prior to the current month.

(e) Examples. These examples show how we deem a sponsor’s income to an eligible individual who is an alien when none of the exceptions in §416.1160(b)(2) applies. The income, income exclusions, and the benefit rates are in monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Mr. John, an alien who has no income, has been sponsored by Mr. Herbert who has monthly earned income of $1,300 and unearned income of $70. Mr. Herbert’s wife and three children have no income. We add Mr. Herbert’s earned and unearned income for a total of $1,370 and apply the allocations for the sponsor and his dependents. Allocations total $1,008. These are made up of $336 (the Federal benefit rate for an eligible individual) for the sponsor, plus $672 (one-half the Federal benefit rate for an eligible individual) for Mr. Herbert’s wife and three children. The $1,008 is subtracted from Mr. Herbert’s total income of $1,370, which leaves $362 to be deemed to Mr. John as his unearned income. Mr. John is ineligible.

Example 2. Mr. and Mrs. Smith are an alien couple who have no income and who have been sponsored by Mr. Hart. Mr. Hart has earned income of $1,350 and his wife, Mrs. Hart, who lives with him, has earned income of $150. Their two children have no income. We combine Mr. and Mrs. Hart’s income
§ 416.1167 Temporary absences and deeming rules.

(a) General. During a temporary absence, we continue to consider the absent person a member of the household. A temporary absence occurs when—

(1) You, your ineligible spouse, parent, or an ineligible child leaves the household but intends to and does return in the same month or the month immediately following; or

(2) You enter a medical treatment facility and are eligible for either benefit payable under §416.212. We consider your absence to be temporary through the last month benefits under §416.212 were paid unless you were discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

(b) Child away at school. If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider you temporarily absent from your parents’ household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income (or resources) to you. Being subject to parental control affects deeming to you only if you are away at school.

(c) Active duty military service. If your ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty, we continue to consider that person to be living in the same household as you, absent evidence to the contrary. If we determine that during such an absence, evidence indicates that your spouse or parent should no longer be considered to be living in the same household as you, then deeming will cease. When such evidence exists, we determine the month in which your spouse or parent should no longer be considered to be living in the same household as you and stop deeming his or her income and resources beginning with the month following that month.

Example: Tom is a child who receives SSI. In January 1996, Tom’s father leaves the household due solely to a duty assignment as a member of the Armed Forces. Five months later in June 1996, while Tom’s father is still on active duty assignment, Tom’s parents file for divorce. As a result, Tom’s father will not be returning to live in Tom’s household. Therefore, Tom’s father should no longer be considered to be living in the same household with Tom. Beginning

($336+150=$1,500). We deduct the allocations of $336 for Mr. Hart (the Federal benefit rate for an individual) and $504 for Mrs. Hart and the two children ($168 or one-half the Federal benefit rate for an eligible individual for each), a total of $840. The allocations ($840) are deducted from the total $1,500 income which leaves $660. This amount must be deemed independently to Mr. and Mrs. Smith. Mr. and Mrs. Smith would qualify for SSI benefits as a couple in the amount of $504 if no income had been deemed to them. The $1,320 ($660 each to Mr. and Mrs. Smith) deemed income is unearned income to Mr. and Mrs. Smith and is subject to the $20 general income exclusion, leaving $1,300. This exceeds the couple’s rate of $504 so Mr. and Mrs. Smith are ineligible for SSI benefits.

Example 3. Mr. Bert and Mr. Davis are aliens sponsored by their sister Mrs. Jean, who has earned income of $800. She also receives $250 as survivors’ benefits for her two minor children. We do not consider the $250 survivors’ benefits to be Mrs. Jean’s income because it is the children’s income. We exclude $336 for Mrs. Jean (the Federal benefit rate for an individual) plus $336 ($168, one-half the Federal benefit rate for an eligible individual for each child), a total of $672. We subtract the $672 from Mrs. Jean’s income of $800, which leaves $128 to be deemed to Mr. Bert and Mr. Davis. Each of the brothers is liable for rent in the boarding house (a commercial establishment) where they live. Each lives in his own household, receives no in-kind support and maintenance, and is eligible for the Federal benefit rate of $336. The $128 deemed income is deemed both to Mr. Bert and to Mr. Davis. As a result, each has countable income of $108 ($128 minus the $20 general income exclusion). This is less than $336, the Federal benefit rate for an individual, so that both are eligible for SSI. We use their income in a prior month to determine their benefit payments.

Example 4. The same situation applies as in example 3 except that one of Mrs. Jean’s children is disabled and eligible for SSI benefits. The eligibility of the disabled child does not affect the amount of income deemed to Mr. Bert and Mr. Davis since the sponsor-to-alien and parent-to-child rules are applied independently. The child’s countable income is computed under the rules in §416.1165.

[52 FR 8887, Mar. 20, 1987]