

How Self-Employment Affects Social Security Disability Benefits

Business capitalization is one of three allowable asset purchases for Assets for Independence (AFI) Individual Development Account (IDA) recipients. It is a good strategy for many people with disabilities. However, earning income through a small business can have implications for beneficiaries of Social Security Administration (SSA) disability programs—namely Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). AFI grantees will need to be cognizant of the interaction between income and benefits and who they can contact for additional information. This article provides answers to some common questions about self-employment and SSA disability benefits.

These include:

- Some AFI IDA participants with disabilities use their IDAs to save money to start a business. Does this money count against the Social Security disability benefits in any way?
- How does the money an IDA participant earns in his/her business affect SSA benefits?
- Some AFI IDA participants are interested in starting a business but they cannot save enough in their IDA to pay for everything they would need to get the business off the ground. Are there ways to use Social Security disability benefits to fund business start up?
- Some IDA participants with disabilities receive SSA disability benefits that restrict resources to no more than \$2,000. Would owning a business or having money in a business account make these persons ineligible for benefits?
- If an IDA participant's business is not making a profit, does he/she still have to report employment to SSA?
- What will happen to SSDI and Medicare benefits if a participant becomes self-employed?
- Are there ways that a beneficiary can reduce the income SSA counts from the business when deciding the beneficiary is engaging in Substantial Gainful Activity (SGA)?

QUESTION – Some AFI IDA participants with disabilities use their Individual Development Account (IDA) to save money to start a business. Does this money count against the Social Security disability benefits in any way?

Individuals who receive a Title II disability benefit from SSA will not have the money saved in an IDA count against them in any way! These benefits are commonly referred to as Social Security Disability Insurance (SSDI), Childhood Disability Benefits (CDB), or Disabled Widow(er)s Benefits (DWB). These Social Security benefits are NOT “means-tested” and SSA does NOT count resources or assets in any way when determining eligibility for these benefits or when calculating benefit payment amounts. Individuals who receive a Title II disability benefit

from SSA have no restrictions on participating in any type of IDA program, or any other savings or investment program.

SSI, however, is “means-tested.” For SSI beneficiaries, there currently is a limit on countable resources of \$2,000 for an eligible individual or \$3,000 for two SSI beneficiaries who are members of an eligible couple. However, funds set aside in an AFI IDA are NOT counted as either a resource or as income. In fact, there is no negative effect on an individual’s SSI benefit for participating in an AFI IDA program. As of January 1, 2001 the following SSI rules apply to all IDAs funded through AFI programs:

- Any earnings an individual contributes to an AFI IDA are deducted from wages in determining countable income. This means that participating in an AFI IDA program can actually allow beneficiaries to keep MORE of the SSI cash payment!
- An individual's contributions that are deposited in an AFI IDA are excluded from resources.
- Any matching funds that are deposited in an AFI IDA are excluded from both income and resources.
- Any interest earned on the individual's own contributions and on the matching funds that are deposited in an AFI IDA is excluded from both income and resources.
- Disbursements from an AFI IDA can only be made for a qualified purpose (i.e., business capitalization, postsecondary education or training, or first home purchase) or for an allowable emergency. Disbursements from an AFI IDA used for a qualified purpose are excluded from income. Emergency withdrawals are considered to be loans and therefore are not counted as income for SSI purposes.

QUESTION--How does the money an IDA participant earns in his/her business affect SSA benefits?

For people who are self-employed, SSA is only interested in their “net earnings from self-employment” (NESE), instead of gross income. This is completely different from the way SSA treats earned income from wage employment in which gross income is counted. There is a great deal of confusion about the terms “gross” and “net” and what they mean for someone who is self-employed and receiving SSA disability benefits. Here is a brief explanation:

- Gross income is the total amount of money that a business takes in from sales of products and/or services. This is also called “gross sales” or “gross receipts.”
- Net income is the amount of profit that the business makes. Profit is derived by taking the gross sales and subtracting any legitimate expenses that the business incurred. It is this figure that a business owner reports to the IRS in order for business taxes to be assessed.

SSA goes one step further than the IRS does. When SSA is looking at net earnings from self-employment or NESE, they take the profit reported to the IRS and multiply it by a factor of 0.9235, which is equal to the employer portion of the FICA contribution for a person in wage employment. SSA does this to reduce the countable earnings so as not to penalize beneficiaries for that portion of the self-employment taxes that an employer would pay for a person in wage

employment. Individuals who are self-employed are required to pay a “self-employment tax.” This self-employment tax (SE tax) is equivalent to the Social Security and Medicare tax paid by wage earners.

Not only is SSA interested in the net earnings from self-employment, but they also look to see what portion of this NESE actually is “countable” for their purposes. There are numerous special work incentives in the SSA disability programs that provide ways to reduce the income SSA counts when calculating an SSI check, or determining whether an individual is engaging in Substantial Gainful Activity (SGA) for the Social Security disability programs. These work incentives are covered further below.

QUESTION - Some AFI IDA participants are interested in starting a business but they cannot save enough in their IDA to pay for everything they would need to get the business off the ground. Are there ways to use Social Security disability benefits to fund business start up?

There is a particular Social Security work incentive known as a Plan for Achieving Self-Support (PASS). PASS is a wonderful way for some beneficiaries to finance business start-up and can be used simultaneously with an AFI IDA. The PASS work incentive allows individuals to set aside income or resources that would otherwise cause either ineligibility for SSI or a reduction in SSI cash payments for use in achieving an occupational goal – including self-employment. Basically, the SSI beneficiary has to determine a specific occupational goal, determine what items or services are needed to achieve that goal and complete the PASS form describing how PASS funds will be spent on the items or services needed to meet the employment goal. The income or resources set aside in the PASS are disregarded when SSA determines SSI eligibility and when calculating the amount of the SSI payment each month. This allows the beneficiary to either establish SSI eligibility or to keep more of the SSI payment. By using a PASS, beneficiaries can actually leverage their own Social Security benefit to save for things they need or to pay for business start-up expenses.

The primary purpose for using a PASS in self-employment is to create operating capital while stabilizing cash flow during (at least) the first 18 months of the PASS. This makes PASS an invaluable source of ongoing funds to support day-to-day operating expenses during the initial business startup phase. In addition, PASS funds are considered to be “owner’s equity.” This means PASS funds provide the beneficiary with available cash that is not counted as business income for tax purposes.

While the PASS work incentive is of tremendous assistance to many SSA disability beneficiaries who have a self-employment goal, it may not be a viable option for everybody. To determine if a PASS makes sense for a particular AFI IDA participant, contact the local Work Incentives Planning and Assistance (WIPA) provider to schedule an analysis of the individual’s unique benefits situation. The WIPA provider for a given area may be located by going to <https://secure.ssa.gov/apps10/oesp/providers.nsf/bystate>.

QUESTION – Some IDA participants with disabilities receive SSA disability benefits that restrict resources to no more than \$2,000. Wouldn't owning a business or having money in a business account make these persons ineligible for benefits?

No, owning a business with assets, property, equipment and/or cash in business accounts does not cause loss of SSA disability benefits in most cases. Remember that there are two very different types of SSA disability benefits – SSI and Title II Social Security disability benefits (SSDI, CDB, and DWB). The Social Security disability programs authorized under Title II of the Social Security Act are not means-tested in any way. Beneficiaries of these programs may have unlimited assets and still be eligible for benefits.

For individuals on the SSI benefits, it is true that beneficiaries are not permitted to have countable resources of more than \$2,000 for an individual or \$3,000 for an SSI eligible couple. However, there is a special provision which allows for resources owned by a certain businesses to be excluded during eligibility determinations. This provision is known as Property Essential for Self-Support (PESS).

Under the PESS provisions, SSA does not count property if the beneficiary uses it in a trade or business (for example, inventory) or uses it for work as an employee (for example, tools or equipment), regardless of the value of this property or rate of return. SSA also disregards up to \$6,000 of equity value of non-business property that a beneficiary uses to produce goods or services essential to daily activities, regardless of the rate of return. An example of this would be land used to produce vegetables solely for consumption by the beneficiary's household. Finally, SSA does not count up to \$6,000 of equity value of non-business income-producing property if the property yields an annual rate of return of at least 6 percent. An example of this would be rental property. SSA would NOT generally exclude liquid resources as PESS such as stocks or bonds, unless the beneficiary uses them as part of a trade or business. However, a bank account held by a business would typically be excluded as PESS.

It is important to note that the PESS provisions only apply to businesses structured as sole proprietorships or simple partnerships, not to business structured as corporations or Limited Liability Companies (LLCs). For corporations or LLCs, it is as if the SSI recipient owns "stock" in the business as a shareholder and the value of this "stock" is counted as a resource for SSI eligibility purposes.

QUESTION - If an IDA participant's business is not making a profit, does he/she still have to report self-employment to SSA?

Yes, it is still required that beneficiaries report their employment status to SSA – even if the business is not breaking even. Work activity of any kind must be reported to Social Security. It is recommended that reporting of this type be done in writing so that the beneficiary has a paper trail to document that he/she did in fact notify SSA of self-employment. Individuals may also go to the local SSA field office to make reports of this type, but it is still recommended that the participant keep something in writing to prove that work activity was reported. It is NEVER a good idea to make work reports by phone.

For SSI beneficiaries, SSA needs to have an estimate of what the beneficiary expects to earn from the business so that they can adjust the SSI check accordingly. When the calendar year is over and the beneficiary prepares his/her tax return for the year, he/she must submit these forms to SSA. Social Security will take the total profit made for the year and average it out over all 12 months. This monthly average is what they will use to determine how much SSI should have been received and this will be applied retroactively. In some cases, beneficiaries may have received more than they were due, but in other cases, SSA may owe the beneficiary money. SSA will adjust the benefit check to account for this discrepancy. Even if the beneficiary doesn't expect to make a profit right away, he/she still needs to notify SSA that a business has been started.

Individuals who receive a Social Security disability insurance benefit like SSDI, CDB, or DWB, also need to inform SSA that they are engaged in self-employment – even if the business is not making a profit yet! Under these programs, beneficiaries are afforded various work incentive phases. The first phase is the Trial Work Period (TWP). The TWP allows a beneficiary to test his/her ability to work for a limited amount of time and offers a guarantee that benefits will NOT be lost, no matter how much is earned during this period. For someone who is self employed, SSA will count a TWP month when either net earnings for the business were over the current TWP amount (\$720 per month for 2010), or when the business owner spent more than 80 hours per month operating the business. The amount of time an individual spends working in the business can trigger a TWP month, even if the business lost money or just broke even in terms of profit for that month. In the Title II disability programs (SSDI, CDB, DWB), a beneficiary can be using up their TWP even if they are not making any profit.

QUESTION – What about AFI IDA participants who are on SSI and Medicaid? How will their benefits be affected if they become self-employed?

The SSI program treats both wage employment and self-employment very favorably. It is almost impossible to earn wages or have self-employment income and NOT be better off for it in the SSI program. The reason for this is that once countable net earnings from self-employment, or NESE, is determined, SSA only reduces the SSI check by \$1 for every \$2 the business generated in countable NESE. The SSI check is not reduced dollar-for-dollar by self-employment income, which means beneficiaries will have more money at the end of the month than they previously had when their only income was an SSI payment. It truly pays to own a profitable small business in the SSI program!

There are some important differences in the way Social Security treats income derived from self-employment as compared to wage employment of which IDA participants with disabilities need to be aware. First, when SSI beneficiaries initially report to SSA that they have begun self-employment, SSA will adjust future SSI checks based upon estimates or projections of annual NESE. Because of this, small business owners on SSI need to think carefully about what they estimate their profits to be in the first year of operating a business. If a beneficiary estimates the NESE too high, he/she will end up with a very small SSI check which may not be sufficient to cover living expenses if the business does not do as well as expected. Conversely, if a beneficiary projects profits too conservatively, he/she could end up getting more SSI than was due. This creates an overpayment situation which SSA will have to collect back from the beneficiary at some point in the future.

As noted above, at the end of every calendar year, beneficiaries will need to bring completed tax returns into the local Social Security office so that staff can determine the actual NESE. SSA will take the total profit for the year less any applicable work incentives and will divide that amount evenly by 12 months. They will retroactively adjust the SSI checks over the entire past calendar year based upon actual NESE. It is important to understand that SSA will adjust the SSI checks retroactively for the entire calendar year, even if the business was only in operation for part of that year. This means beneficiaries will have some amount of money that has to be adjusted as Social Security will either have paid them too little SSI or too much SSI based upon the projections and the number of months the business was in operation. Social Security will take the NESE amount from that first year of operations and use that to estimate the earnings for the coming year so that the SSI check can be reduced moving forward. SSI beneficiaries who are self-employed need to keep a careful watch on their accumulated profits to make sure that the estimate of NESE they are providing to SSA is accurate!

QUESTION - Are there ways to reduce the income SSA counts for an SSI beneficiary's business when they are calculating the adjusted SSI check?

Yes, as mentioned earlier, the SSA disability programs include numerous special provisions for beneficiaries who are employed or self-employed that are intended to encourage work and to ease the transition from dependence on benefits to greater self-sufficiency. SSA refers to these special rules as "work incentives." The work incentives that apply to the SSI program are the same regardless of whether the beneficiary is in wage employment or self-employment. A brief description of the SSI work incentives is provided below.

Plans for Achieving Self-Support (PASS) – As noted above, under an approved PASS beneficiaries may set aside income and/or resources over a reasonable time that will enable them to reach a work goal to become financially self-supporting. Beneficiaries then can use the income and/or resources which were set aside to obtain occupational training or education, purchase occupational equipment, and establish a business. SSA does not count the income and resources that a beneficiary sets aside under a PASS when they determine SSI eligibility or calculate payment amount. Beneficiaries may find out if they are a good candidate for a PASS by contacting the local WIPA provider for a thorough benefits analysis!

Impairment Related Work Expenses (IRWEs) – SSA deducts the cost of items and services that beneficiaries need to work because of their impairment (e.g., attendant care services, medical devices) from NESE when they calculate the adjusted SSI payment. By deducting IRWEs from NESE, beneficiaries are able to keep more of the SSI payment. It is important to remember that IRWEs often meet the IRS rules as regular business expenses and can be used to reduce net income. This reduces tax liability as well as allows the beneficiary to keep more of their SSI payment! Even when a beneficiary has an IRWE that does not meet the IRS rules for an allowable business expense, he/she may still be able to deduct these expenses from the personal income under another set of tax rules. Check with a knowledgeable tax advisor for more information about tax deductions for expenses related to disability.

Blind Work Expenses (BWEs) – For individuals receiving SSI because of blindness, when SSA determines SSI eligibility and payment amount they will not count any earned income that the blind individual uses to meet expenses incurred in earning the income. Blind Work Expenses do NOT need to be related to the disability or blindness in any way – they simply need to be expenses incurred by working or being self-employed. Just like with IRWEs, some expenses that qualify as BWEs can be used as regular business expenses to reduce net income. Others should be applied as BWEs.

1619(b) Extended Medicaid Coverage - A beneficiary's Medicaid coverage can continue even if wages or NESE along with other income becomes too high to allow an SSI cash payment. To qualify for and retain this special extended Medicaid coverage, beneficiaries must continue to meet SSA's disability requirement, demonstrate that they need Medicaid in order to continue working, have countable NESE of less than the current state "threshold amount," and otherwise meet all of the SSI requirements for unearned income and resources. There is no time limit on 1619(b) extended Medicaid coverage. It is available to beneficiaries as long as they meet all of the eligibility criteria.

Beneficiaries may apply one or more of these work incentives by writing a letter to the local SSA field office indicating which work incentives they wish to claim and providing an explanation of what expenses will be incurred and why. There are no required forms or formats to use when making requests for approval of work incentives. Individuals who need assistance requesting a work incentive should contact the local WIPA provider.

QUESTION – I get Social Security Disability Insurance (SSDI) and Medicare. What will happen to my benefits and my Medicare if I become self-employed?

SSDI is one of the Social Security disability programs authorized under Title II of the Social Security Act. This program applies an entirely different set of policies for self-employment income than is applied in the SSI program. First, it is important to understand that SSDI is an all-or-nothing benefit. This means that benefit payments are not reduced incrementally like SSI checks are. In the SSDI program, beneficiaries are either eligible for a full payment or no payment at all. Second, while SSDI still works off of net self-employment income (NESE) like SSI does, income is not averaged and spread out in equal increments over an entire year – at least

initially. For the Title II disability benefits, SSA needs to be able to see exactly how much NESE the business generated on a month-by-month basis in the beginning. This is because countable wages or NESE are measured against certain earnings guidelines which determine whether or not the individual enters the first phase of work incentives known as the Trial Work Period.

In the SSDI program there are specific phases of work incentives that occur more or less sequentially. Each phase offers less and less protocol to the beneficiary in terms of a safety net which guards against benefit loss. The first work incentive phase is called the TWP. A TWP month is counted when an individual earns NESE of more than a certain amount within a calendar month (\$720 in 2010) or when an individual works for 80 hours or more in the business in a month. The Trial Work Period allows beneficiaries to test their ability to work for at least 9 months. During the TWP, individuals will receive full disability benefit regardless of how much they earn as long as the work activity has been reported and the individual continues to have a disabling impairment. The 9 months does not need to be consecutive and the TWP will last until the beneficiary accumulates 9 months within a rolling 60-month period.

When beneficiaries complete the TWP, SSA looks to see if the level of countable earnings generated by the business represents “substantial gainful activity” (SGA). Substantial gainful activity is measured against established earnings guidelines. In 2010, the SGA guideline for net self-employment earnings (or gross wages) is \$1,000 per month for non-blind individuals and \$1,640 for blind individuals. For non-blind individuals receiving SSDI, it equals only \$12,000 per year in net self-employment income. For blind individuals the limit is \$19,680 in net self-employment income. If the beneficiary is not engaging in SGA, he/she will continue to receive SSDI payments and Medicare without interruption. If the business is consistently showing SGA level NESE after the TWP, the beneficiary will be afforded three more months of benefits and then payments will stop. If SSDI payments are stopped due to SGA level work or self-employment income, SSA can automatically reinstate benefits without a new application for any months in which net earnings from self-employment drop below the SGA level. This reinstatement period lasts for 36 consecutive months following the end of the Trial Work Period and is called the Extended Period of Eligibility (EPE).

Obviously, the decision about whether a small business owner on SSDI is demonstrating the ability to engage in SGA level work is critically important since this determination may lead to benefit cessation. In determining whether a self-employed individual is engaging in SGA, SSA considers many factors in addition to looking at the net earnings such as the individual’s activities and their value to the business. SSA does not consider the business income alone to be a reliable factor in determining SGA, since it is influenced not only by the individual’s work but also by such things as market conditions, capital investments, the services of other people, and agreements on distribution of profits. This means that SGA determinations can be very complex for people who own small businesses.

It is important for beneficiaries of the Title II disability programs to meet with the local WIPA project prior to initiating a business in order to carefully plan for the impact self-employment will have upon the SSA benefits. Not only are the SSDI work incentive phases difficult to understand, but the intricacies of SGA determinations in self-employment situations can be quite confusing.

QUESTION - Are there ways that a beneficiary can reduce the income SSA counts from the business when they are deciding the beneficiary is engaging in Substantial Gainful Activity (SGA)?

Yes, there are several SSDI work incentives available for beneficiaries who own small businesses that can help reduce countable earnings for SGA determinations. The local WIPA professionals can help determine which work incentives will be most useful for a beneficiary given their unique circumstances and self-employment goals. As mentioned earlier, the SSA disability programs include numerous special provisions for beneficiaries who are employed or self-employed which are intended to encourage work and to ease the transition from dependence on benefits to greater self-sufficiency. SSA refers to these special rules as “work incentives.” Some of the work incentives that apply to the Social Security disability programs (SSDI, CDB, DWB) are applied in the same manner regardless of whether the beneficiary is in wage employment or self-employment – others are applied differently in self-employment situations. A brief description of the Social Security disability benefit work incentives is provided below.

Impairment Related Work Expenses (IRWEs) – As noted above, SSA deducts the cost of items and services that a beneficiary needs to work because of his/her impairment (e.g., attendant care services, medical devices, etc.) from NESE when making SGA determinations. Unfortunately, IRWEs may not be used to reduce countable NESE when SSA is counting Trial Work Period months. Using the IRWE work incentive means that a small business owner may actually have more than the current SGA guideline in NESE and still not be determined to be engaging in SGA. An important thing to remember about IRWEs is that they often meet the IRS rules as regular business expenses and can be used to reduce net income. This is positive because it reduces tax liability as well as allows beneficiaries to keep more of their SSI payment! Even when a beneficiary has an IRWE which does not meet the IRS rules for an allowable business expense, he/she may still be able to deduct these expenses from personal income under another set of tax rules. Check with a knowledgeable tax advisor for more information about tax deductions for expenses related to disability.

Subsidy for Self-Employment – Subsidy is a term SSA uses to refer to support a person receives on the job that results in more pay being received than the actual value of services performed. SSA considers the value of subsidies when they determine whether or not a person is engaging in SGA. Subsidy is applied differently in self-employment than wage employment. First, in determining “countable income” from self-employment, the reasonable monetary value of any significant amount of unpaid help furnished by a spouse, children, or others is deducted from net income. In estimating the value of unpaid help, SSA considers the prevailing wage rate in the community for similar services. Only the pro-rata value attributable to the services actually performed (as compared with those that a full-time employee would perform) may be deducted. Secondly, when determining countable NESE, SSA deducts any business expenses which were incurred and paid by another person or agency. This deduction is made even though no actual expense was incurred by the beneficiary. The item or service must meet the IRS definition of

legitimate business expense. A variety of methods are used to determine the value of these expenses.

Extended Period of Medicare Coverage (EPMC) – Even if NESE causes the loss of Social Security disability payments, most individuals with disabilities who work will continue to receive at LEAST 93 consecutive months of hospital and supplementary medical insurance under Medicare, after the nine month trial work period. Beneficiaries do not pay a premium for hospital insurance (Medicare Part A), but SSA will bill individuals on a quarterly basis for the Part B premium at the same rates paid by SSDI beneficiaries. Although cash benefits may cease due to work, beneficiaries have the assurance of continued health insurance. Many people keep premium free Medicare Part A coverage substantially longer than 93 months!

Beneficiaries may apply one or more of these work incentives by writing a letter to the local SSA field office indicating which work incentives they wish to claim and providing an explanation of what expenses will be incurred and why. There are no required forms or formats to use when making requests for approval of work incentives. Beneficiaries who need assistance requesting a work incentive should contact the local WIPA provider.

Source: Assets For Independence Resource Center