

Social Security (Family Law Affected Income Streams) Principles 2022

I, Caitlin Delaney, Acting Group Manager of the Pensions, Housing and Homelessness Group of the Department of Social Services, make the following Principles.

Dated 28 March 2022

Caitlin Delaney

Acting Group Manager of the Pensions, Housing and Homelessness Group of the Department of Social Services

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Part 1—Preliminary

1 Name

This instrument is the *Social Security (Family Law Affected Income Streams) Principles 2022*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument. | The day after this instrument is registered. |  |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 1099DD and subsection 1120A(5) of the Act.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

1. ***assessment day***;
2. ***asset-test exempt income stream***;
3. ***asset***-***tested income stream (long term)***;
4. ***asset***-***tested income stream (lifetime)***;
5. ***commencement day***;
6. ***deductible amount***;
7. ***defined benefit income stream***;
8. ***family law affected income stream***;
9. ***income***;
10. ***income stream***;
11. ***original family law affected income stream***;
12. ***primary FLA income stream***;
13. ***purchase amount***;
14. ***purchase price***;
15. ***relevant number***;
16. ***residual capital value***;
17. ***reversionary partner***;
18. ***secondary FLA income stream***;
19. ***superannuation fund***;
20. ***threshold day***.

(1) In this instrument:

***Act*** means the *Social Security Act 1991*.

***allocated pension*** has the meaning given by regulation 3 of the *Family Law (Superannuation) Regulations 2001*.

***asset value*** has the meaning given by regulation 3A.05 of the SIS Regulations.

***base amount allocated to the non-member spouse*** has the meaning given by regulation 45 of the *Family Law (Superannuation) Regulations 2001*.

***base amount payment split*** has the meaning given by subregulation 1.03(1) of the SIS Regulations.

***market linked pension*** has the meaning given by regulation 3 of the *Family Law (Superannuation) Regulations 2001*.

***percentage payment split*** has the meaning given by subregulation 1.03(1) of the SIS Regulations.

***SIS Regulations*** means the *Superannuation Industry (Supervision) Regulations 1994*.

*Note*   The definitions of ***assessment day*, *purchase amount*** and ***threshold day*** adopt formula and calculation methods in sections 1120AA and 1120AB of the Act for the purpose of defining terms as they are used in this instrument. Sections 1120AA and 1120AB of the Act do not apply to family law affected income streams.

(2) A term used in this instrument and in Part VIIIB of the *Family Law Act 1975* has the same meaning in this instrument as it has in that Part.

*Note*   See section 90XD of the *Family Law Act 1975* for the meanings of the following terms:

• flag lifting agreement

• member spouse

• non-member spouse

• operative time

• payment split

• reversionary beneficiary

• RSA

• splittable payment

• splitting order

• superannuation agreement

• superannuation interest

• trustee.

5 Purpose

This instrument sets out decision-making principles with which the Secretary must comply in making decisions under the following provisions of the Act:

1. paragraph 1099DB(1)(a);
2. paragraph 1099DB(1)(b);
3. paragraph 1099DC(1)(a);
4. paragraph 1099DC(1)(b);
5. subsection 1099DCA(1);
6. subsection 1120A(2); and
7. subsection 1120A(3).

*Note*    These provisions apply when working out a person’s annual rate of ordinary income, or asset value, of different types of family law affected income stream.

6 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Income from asset-test exempt income streams

7 Application of Part

This Part applies to a family law affected income stream that is an asset-test exempt income stream.

8 Income stream that is not a defined benefit income stream

(1) This section applies if the family law affected income stream is not a defined benefit income stream.

(2) For paragraph 1099DD(a) of the Act, the Secretary must have regard to the following matters in making decisions under paragraph 1099DB(1)(a) of the Act:

(a) the matters mentioned in items 1 to 10 and 14 to 23 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (2) that applies to each payment split.

9 Income stream that is a defined benefit income stream

(1) This section applies if the family law affected income stream is a defined benefit income stream.

(2) For paragraph 1099DD(b) of the Act, the Secretary must have regard to the following matters in making decisions under paragraph 1099DB(1)(b) of the Act:

(a) the matters mentioned in items 1 to 12 and 14 to 23 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (2) that applies to each payment split.

Part 3—Income from asset-tested income streams (long term)

10 Application of Part

This Part applies to a family law affected income stream that is an asset‑tested income stream (long term).

11 Income stream that is not a defined benefit income stream

(1) This section applies if the family law affected income stream is not a defined benefit income stream.

(2) For paragraph 1099DD(c) of the Act, the Secretary must have regard to the following matters in making decisions under paragraph 1099DC(1)(a) of the Act:

(a) the matters mentioned in items 1 to 10 and 13 to 23 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (2) that applies to each payment split.

12 Income stream that is a defined benefit income stream

(1) This section applies if the family law affected income stream is a defined benefit income stream.

(2) For paragraph 1099DD(d) of the Act, the Secretary must have regard to the following matters in making decisions under paragraph 1099DC(1)(b) of the Act:

(a) the matters mentioned in items 1 to 23 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (2) that applies to each payment split.

Part 4—Asset value of asset-tested income streams (other than lifetime)

13 Application of Part

This Part applies to a family law affected income stream that is an asset‑tested income stream (long term) or an asset-tested income stream (short term).

14 Income stream that is not a defined benefit income stream

(1) This section applies if the family law affected income stream is not a defined benefit income stream.

(2) For paragraph 1120A(5)(a) of the Act, the Secretary must have regard to the following matters in making decisions under subsection 1120A(2) of the Act:

(a) the matters mentioned in items 1 to 23 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (2) that applies to each payment split.

15 Income stream that is a defined benefit income stream

(1) This section applies if the family law affected income stream is a defined benefit income stream.

(2) For paragraph 1120A(5)(b) of the Act, the Secretary must have regard to the following matters in making decisions under subsection 1120A(3) of the Act:

(a) the matters mentioned in items 1 to 23 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(3) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (2) that applies to each payment split.

Part 5—Income from asset-tested income streams (lifetime)

16 Application of Part

This Part applies to a family law affected income stream that is an asset-tested income stream (lifetime).

17 Income stream that is a family law affected income stream that is an asset-tested income stream (lifetime)

(1) For paragraph 1099DD(e) of the Act, the Secretary must have regard to the following matters in making decisions under subsection 1099DCA(1) of the Act:

(a) the matters mentioned in items 1 to 4 and 14 to 23 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(2) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (1) that applies to each payment split.

Part 6—Asset value of asset-tested income streams (lifetime)

18 Application of Part

This Part applies to a family law affected income stream that is an asset-tested income stream (lifetime).

19 Income stream that is a family law affected income stream that is an asset-tested income stream (lifetime)

(1) For paragraph 1120A(5)(a) of the Act, the Secretary must have regard to the following matters in making decisions under subsection 1120A(2) of the Act:

(a) the matters mentioned in items 1 to 4 and 14 to 25 of Schedule 1;

(b) any other matter that the Secretary considers relevant in the circumstances.

(2) If payments are being made from the income stream under more than one payment split, the Secretary must have regard to each matter mentioned in subsection (1) that applies to each payment split.

Schedule 1—Matters to which the Secretary must have regard

(paragraphs 8(2)(a), 9(2)(a), 11(2)(a), 12(2)(a), 14(2)(a)   
and 15(2)(a), 17(1)(a) and 19(1)(a))

| Item | Matter to which the Secretary must have regard |
| --- | --- |
| 1 | The commencement day of the original family law affected income stream |
| 2 | The operative time for the payment split under the superannuation agreement, flag lifting agreement or court order |
| 3 | The date when the first splittable payment became payable in respect of the original family law affected income stream of the member spouse |
| 4 | The amount payable to the member spouse from the original family law affected income stream immediately before the operative time for the payment split |
| 5 | The purchase price of the original family law affected income stream at its commencement day |
| 6 | The relevant number in relation to the original family law affected income stream at its commencement day |
| 7 | The term (if any) that applies to the original family law affected income stream at its commencement day |
| 8 | The amount of the initial annual payment from the original family law affected income stream at its commencement day |
| 9 | The indexation rate (if any) that applies to payments from the original family law affected income stream at its commencement day |
| 10 | Details of the primary beneficiary’s reversionary partner (if any) or any reversionary beneficiaries for the original family law affected income stream at its commencement day |
| 11 | The deductible amount for the original family law affected income stream at its commencement day |
| 12 | Details of the entitlement of each of the member spouse and the non-member spouse under the payment split for the deductible amount |
| 13 | The residual capital value (if any) of the original family law affected income stream at its commencement day |
| 14 | The asset value of the original family law affected income stream immediately before the operative time for the payment split |
| 15 | The asset value of the original family law affected income stream immediately before the first splittable payment became payable |
| 16 | The amount of the payment to the non-member spouse from the original family law affected income stream immediately before the first splittable payment became payable for the member spouse’s superannuation interest after the operative time for the payment split |
| 17 | The amount payable to the member spouse from the primary FLA income stream |
| 18 | The amount payable to the non-member spouse from the secondary FLA income stream |
| 19 | If the original family law affected income stream, the primary FLA income stream or the secondary FLA income stream is commuted — the total commuted amount |
| 20 | If the payment split is a percentage payment split — the amount of the first splittable payment made from the original family law affected income stream after the operative time for the payment split |
| 21 | If the payment split is a percentage payment split — the percentage of the splittable payment that each of the member spouse and non-member spouse is entitled to be paid under the payment split |
| 22 | If the payment split is a base amount payment split:  (a) the value of the base amount allocated to the non-member spouse for the non-member spouse’s entitlement under the payment split; and  (b) the value of the superannuation interest, being:  (i) if a splitting order applies to the superannuation interest — the value determined by the court; or  (ii) if a superannuation agreement applies to the superannuation interest — the value provided by the trustee of the superannuation fund from which the income stream was acquired or purchased; and |
|  | (c) details of any amounts of income paid from the original family law affected income stream on or after the operative time for the payment split and before the time of the first splittable payment for the payment split; and |
|  | (d) the amount of the first splittable payment from the original family law affected income stream after the operative time for the payment split; and |
|  | (e) the proportion of the first splittable payment paid to each of the member spouse and the non-member spouse from the original family law affected income stream after the operative time for the payment split; and  (f) details of any second and subsequent payments to the non-member spouse from the original family law affected income stream, after the first splittable payment is made, to give effect to the non-member spouse’s entitlement under the payment split, including lump sum payments and amounts paid from the secondary FLA income stream; and |
|  | (g) details of any payments to the member spouse from the primary FLA income stream; and |
|  | (h) if the income stream is paid as an allocated pension or a market linked pension:  (i) the value of the original family law income stream immediately before the time of the first splittable payment for the payment split; and  (ii) the value of the first splittable payment for the payment split to the non-member spouse from the original family law income stream; and  (iii) the value of the primary FLA income stream immediately after the payment split |
| 23 | If the non-member spouse’s entitlement under the payment split is satisfied by the creation of a new interest for the non-member spouse, or the rollover or transfer to another superannuation fund or RSA of an amount to be held for the benefit of the non-member spouse:  (a) the amount of the first payment to the member spouse from the primary FLA income stream after the new interest is created, or the amount is rolled over or transferred; and |
|  | (b) the amount that would have been payable to the member spouse from the original family law affected income stream if the new interest had not been created, or the amount had not been rolled over or transferred; and |
|  | (c) for an entitlement being paid as an allocated pension — the value of the member spouse’s entitlement from the original family law affected income stream immediately before the new interest was created, or the amount was rolled over or transferred |
| 24 | If the member spouse has reached the assessment day in relation to the original family law affected income stream: |
|  | (a) the member spouse’s assessment day in relation to the original family law affected income stream; and  (b) the purchase amount of the original family law affected income stream; and  (c) the member spouse’s threshold day in relation to the original family law affected income stream. |
| 25 | If the member spouse has not reached the assessment day in relation to the original family law affected income stream:  (a) whether the non-member spouse has reached their assessment day in relation to the secondary FLA income stream; and  (b) whether the non-member spouse has reached their threshold day in relation to the secondary FLA income stream; and  (c) the purchase amount of the original family law affected income stream. |

Schedule 2—Repeals

Social Security (Family Law Affected Income Streams) (FaHCSIA) Principles 2011

1 The whole of the instrument

Repeal the instrument