

New 2018 SNT POMS – Section 200 with substantive **additions** and **deletions** (removing mere grammatical changes) as selected by David Lillesand, with some footnotes and inserting a Table of Contents. May 6, 2018.

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# SI 01120.200 Information on Trusts, Including Trusts Established Prior to January 01, 2000, Trusts Established with the Assets of Third Parties, and Trusts Not Subject to Section 1613(e) of the Social Security Act

## A. Introduction to trusts

A trust is a legal arrangement involving property and ownership interests. Property held in trust may or may not be considered a resource for SSI purposes.<sup>1</sup> The general rules concerning resources apply when evaluating the resource status of property held in trust.

### 1. Applicability of ~~policy instructions~~<sup>2</sup>

Generally, ~~this section applies~~these instructions apply to trusts not subject to the trust provisions in Section 1613(e) of the Social Security Act, which we evaluate using instructions in [SI 01120.201](#) through [SI 01120.204](#). However, trusts that meet the requirements of SI 01120.203 must also meet the requirements of this section.<sup>3</sup> Use these instructions to evaluate the following types of trusts:

#### a. Trusts established prior to January 01, 2000 that contain assets of the individual

This includes trusts established before January 01, 2000 that contain assets of the individual, any of which were transferred before January 01, 2000.

If the trust was established prior to January 01, 2000, but no assets of the individual were transferred to the trust prior to January 01, 2000, see [SI 01120.201](#).

#### b. Trusts that contain assets of third parties

This includes trusts that are:

- established before January 01, 2000 that contain assets of third parties;
- established on or after January 01, 2000 that contain only assets of third parties, or the portion of a commingled trust attributable to assets of third parties; and
- Indian Gaming Regulatory Act (IGRA) trusts established by the Indian tribes that meet the criteria in SI 01120.195F.

**NOTE:** Trusts established on or after January 01, 2000 that contain assets of a Supplemental Security Income (SSI) applicant, recipient, or spouse (or the portion of a commingled trust attributable to assets of an SSI applicant, recipient, or spouse) must be evaluated under [SI 01120.201](#) through [SI 01120.204](#).

#### c. Other trusts not subject to Section 1613(e) of the Social Security Act

Trusts established on or after January 01, 2000 to which the instructions in [SI 01120.201](#) through [SI 01120.204](#) do not apply. When it is determined that a special needs trust or a pooled trust exception is met, the trust must still be evaluated under the rules of SI 01120.200.<sup>4</sup>

**NOTE:** The instructions in those sections generally will refer you back to this section, where applicable.

## 2. Case processing alert

Trusts are often complex legal arrangements involving State law, Tribal law, and legal principles ~~that a claims representative (CR) whose evaluation~~ may not be able to apply without legal require input from agency counsel. Therefore, these instructions may only be sufficient for you to recognize that an issue is present that ~~should be referred~~ needs referral to your regional office (RO) for possible referral to the Regional Chief Counsel: (RCC). When in doubt, discuss the submit your question or issue with the RO staff. Many issues can be resolved by phone via vHelp.

<sup>1</sup> There are still some SSA local offices who believe that ALL SNTs that have more than \$2,000 in them eliminate SSI eligibility. This statement suggests there is more to it for the staff to review.

<sup>2</sup> This is useful change to emphasize this is SSA "Policy" may help counter the SSI SNT "expert" Claims Specialist who told me that the national POMS don't apply because "we have our own policies in the Delray Beach SSA office."

<sup>3</sup> Several times throughout the new POMS there is emphasis that meeting the specialized rules in section 201 and 203 is insufficient; the trust also has to meet the rules in section 200, which basically requires that the beneficiary not have the power to terminate the trust, revoke the trust, or direct the use of trust proceeds.

<sup>4</sup> Another reference to having to meet the rules in section 200 even when the trust complies with 201 and 203.

## B. Glossary of terms<sup>5</sup>

This glossary is intended for general reference and does not override or replace applicable State law with respect to matters such as establishment, operation, and termination.

### 1. Discretionary trust

A **discretionary trust** is a trust in which the trustee has full discretion as to the time, purpose, and amount of all distributions. The trustee may pay all or none of the trust as he or she considers appropriate to, or for the benefit of, the trust beneficiary. The trust beneficiary has no control over the trust.<sup>6</sup>

### 2. Fiduciary duty

A **fiduciary duty** is the obligation of the trustee in dealing with the trust property and income. The trustee holds the property, with due care, solely for the benefit of the trust beneficiary. The trustee owes duties of good faith and loyalty to exercise reasonable care and skill, to preserve the trust property and make it productive, and to account for it. A trustee is a fiduciary but generally is not an agent of the trust beneficiary.

### 3. Grantor (settlor or trustor)

A **grantor** (sometimes also called a **settlor** or **trustor**) is the person who provides property to the trust principal (or corpus). The grantor must be the owner of, or have legal right to the property, or be otherwise qualified to transfer the property into the trust. A person may be a grantor even if an agent or ~~other individual~~another person, legally empowered to act on the first person's behalf (a legal guardian, representative payee for Title II or XVI benefits, person acting under a power of attorney, or conservator), establishes the trust with funds or property that belong to the ~~individual~~first person. The ~~individual~~person funding the trust is the grantor, even in situations where the trust agreement ~~shows~~refers to a person legally empowered to act on the ~~individual's~~first person's behalf as the grantor. Where more than one person provides property to the trust, there may be multiple grantors. The terms grantor, trustor, and settlor are sometimes interchangeable.

### 4. Grantor trust (first-party or self-funded trust)<sup>7</sup>

A **grantor trust** (also called a **first-party trust** or **self-funded trust**) is a trust in which the grantor of the trust is also the sole beneficiary of the trust. For information on who may be a grantor, see SI 01120.200B.3. in this section. State law on grantor trusts varies. Consult with your regional office, if necessary.

### 5. Indian Gaming Regulatory Act (IGRA) trust<sup>8</sup>

An **IGRA trust** is a trust that an Indian tribe establishes under IGRA, regulations promulgated by the BIA, and the tribe's BIA-approved revenue allocation plan. The tribe establishes the trust to receive and invest per capita payments for its members, some of whom are minors or legally incompetent adults, pending distribution of the trust assets to those members after they attain the age of majority or cease to be legally incompetent.

### 6. Inter vivos trust (living trust)

An **inter vivos trust** (also called a **living trust**) is a trust established during the lifetime of the grantor.

### 7. Mandatory trust

A **mandatory trust** is a trust that requires the trustee to pay trust earnings or principal to or for the benefit of the trust beneficiary at certain times. The trust may require disbursement of a specified percentage or dollar amount of the trust earnings, or it may obligate the trustee to spend income and principal, as necessary, to provide a specified standard of care. The trustee has no discretion as to the amount of the payment or party receiving distribution.

### 8. Medicaid trust or Medicaid qualifying trust

For definitions of a **Medicaid trust** or **Medicaid qualifying trust**, see [SI 01730.048](#). For additional guidance on these trusts, see [SI 01120.200H](#). For SSI treatment of Medicaid trust exceptions, see [SI 01120.203](#).

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<sup>5</sup> The old trust glossary section was not alphabetical.

<sup>6</sup> The lack of control over the trust, and the trustee, means that if the Trustee were to make a distribution that violated the sole benefit rule, there would be no SSI-imposed penalty because the act was committed by a third party, not the SSI claimant.

<sup>7</sup> Equating "first party" and "self-funded trust" may help prevent the most frequent cause of improper rejection of third party trusts – the confusion that all SNTs have to have a Medicaid payback.

<sup>8</sup> IGRA trusts are a new creature, but mainly apply to native American tribes in the Western United States.

## 9. Pooled trust

A **pooled trust** is a trust that is established and managed by an organization and that contains and pools the assets of multiple individuals in separate accounts for investment and management purposes. This section contains information on reviewing third party pooled trusts. For information on pooled trusts in which the individual account is funded with the beneficiary's own assets, see [SI 01120.203](#).

## 10. Residual beneficiary (contingent beneficiary or remainderman)

A **residual beneficiary** (also called a **contingent beneficiary** or **remainderman**) is not a current beneficiary of a trust, but he or she will receive the residual benefit of the trust contingent upon the occurrence of a specific event, such as the death of the primary beneficiary.

## 11. Revoke

The grantor of a trust may have the power or authority to **revoke** (reclaim or take back) the assets deposited in the trust. If the individual at issue (an applicant, recipient, or deemor) is the grantor of the trust, the trust is usually a resource to that individual if he or she can revoke the trust and reclaim the trust assets. For the definition of a deemor, see [SI 01310.127](#).

However, if a third party is the grantor of the trust, and the individual at issue (an applicant, recipient, or deemor) is the beneficiary of the trust, the trust is not a resource to the beneficiary merely because the trust is revocable by the grantor. In a third party trust situation, the focus should be on whether the individual at issue (applicant, recipient, or deemor) can terminate the trust and obtain the assets for himself or herself.

## 12. Special or supplemental needs trust

A **special needs trust**, also known as a **supplemental needs trust**, may be set up to provide for a disabled individual's extra and supplemental needs other than food, shelter, and health care expenses that may be covered by public assistance benefits that the trust beneficiary may be eligible to receive under various programs. For more information on special needs trusts containing the assets of the individual, see [SI 01120.203](#).

## 13. Spendthrift clause or spendthrift trust

A **spendthrift clause** or **spendthrift trust** generally prohibits both involuntary and voluntary transfers of the trust beneficiary's interest in the trust income or principal. This means that the trust beneficiary's creditors must wait until the trust pays out money to the trust beneficiary before they can attempt to claim it to satisfy debts.

It also means that, for example, if the trust beneficiary is entitled to \$100 a month from the trust, the beneficiary cannot sell his or her right to receive the monthly payments to a third party for a lump sum. In other words, a valid spendthrift clause would make the value of the trust beneficiary's right to receive payments not countable as a resource.

However, not all States recognize spendthrift trusts, and States that do recognize spendthrift trusts often do not allow a grantor to establish a spendthrift trust for the grantor's own benefit. In those States that do not recognize spendthrift trusts (whether at all or because the trust is a grantor trust), we would count the value of the trust beneficiary's right to receive monthly payments as a resource because it may be sold for a lump sum.

We do not require trusts to include a spendthrift clause. If the trust provides for mandatory periodic payments to the beneficiary, then the trust may need a spendthrift clause for the trust not to count as a resource.

## 14. Terminate

In some instances, a trustee or beneficiary of a third party trust can **terminate** (or end) a trust and obtain the assets for himself or herself. For more information on Termination as it relates to self-settled trusts, see [SI 01120.201B.6](#).

## 15. Testamentary trust

A **testamentary trust** is a trust that is established under the terms of a will and that is effective only upon the death of the individual who created the will (the testator). Sometimes third party inter vivos trusts (trusts created during the lifetime of the grantor) serve as wills. A trust into which property is transferred under the terms of a will, and during the life (inter vivos) of the testator, is not a testamentary trust for the purposes of this section because it is not effective only upon the testator's death, even if the will transfers additional property into the trust upon the testator's death. When evaluating testamentary trusts, field offices should obtain and review a copy of the last will and testament.

## 16. Third-party trust

A **third-party trust** is a trust established with the assets of someone other than the trust beneficiary (or his or her spouse). For example, a grandparent can establish a third party trust using his or her assets, with a grandchild as the trust beneficiary. Be alert for situations where a trust is allegedly established with the assets of a third party but in reality is created with the trust beneficiary's property. In such cases, the trust is a grantor trust, not a third party trust.

## 17. Totten trust (bank account trust)

A **Totten trust** (also called a **bank account trust**) is a tentative trust in which a grantor makes himself or herself trustee of his or her own funds for the benefit of another. Typically, the grantor deposits funds in a savings account and indicates, either by the account titling or by filing a writing with the bank, that the grantor is trustee of the account for another person. The trustee can revoke a Totten trust at any time. Should the trustee die without revoking the trust, ownership of the principal passes to the trust beneficiary. Totten trusts are valid in most jurisdictions, but other jurisdictions have held them invalid because they are too tentative. In particular, they generally lack formal requirements and do not state a trust intent or purpose.

## 18. Trust

A **trust** is a property interest held by an individual or entity (such as a bank), called the trustee, who or which is subject to a fiduciary duty to use the property for the benefit of another (the beneficiary).

## 19. Trust beneficiary

A **trust beneficiary** is a person for whose benefit a trust exists. A trust beneficiary does not hold legal title to trust property but has an equitable ownership interest in it. As an equitable owner, the trust beneficiary has certain rights that a court can enforce, because the trust exists for his or her benefit. The beneficiary receives the benefits of the trust, while the trustee holds the title and duties. A beneficiary has certain rights ~~of the beneficiary, and includes any trust earnings paid into the trust and left to accumulate. Also called "the corpus of the trust," relative to the trust, such as to enforce mandatory provisions of the trust, to demand an accounting, and to sue to remove the trustee. The trustee owes certain duties, such as loyalty and attention, to the beneficiary.~~

## 20. Trust earnings (income)

~~Trust earnings or (also called trust income) are amounts earned by the trust principal. They may take such forms as interest, dividends, royalties, and rents. These amounts are unearned income to any person legally able to use them for personal support and maintenance. If the trust beneficiary has no right to receive or demand the earnings, trust income is not countable to him or her.<sup>9</sup>~~

## 21. Trust principal (corpus)

The **trust principal** (also called the **corpus** of the trust) is the property placed in the trust, which the trustee holds subject to the rights of the beneficiary. It includes any earnings on the trust.

## 22. Trustee

A **trustee** is a person or entity that holds legal title to property in trust for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for the trustee's own benefit. The trustee owes a fiduciary duty to the beneficiary.

## C. Policy for accounts that may or may not be trusts

### 1. Accounts that are not trusts

Although titled as trusts, some types of accounts and "trust-like" instruments are not trusts, and generally we should not evaluate them under these instructions for SSI purposes:

#### a. Conservatorship accounts

A conservatorship account generally is established by a court and administered by a court-appointed conservator for the benefit of an individual. A conservatorship account differs from a trust in that the "beneficiary" of the conservatorship account retains legal ownership of all of the account assets, although in some cases the assets may not be available for support and maintenance. For instructions pertaining to conservatorship accounts, see SI 01140.215.

#### b. Patient trust accounts

Many nursing homes, institutions, and government social services agencies maintain so-called "patient trust accounts" for individuals to provide them with toiletries, candy, and sundries. Although titled as trust accounts, they are not. For example, the individual might legally own the money in the account, which the institution is merely holding while a social services agency holds the money for him or her the individual and making disbursements on his or her behalf disburses it as necessary. (See SI 01120.020, SI 00810.120 and GN 00603.020 for for the individual's benefit. For more information on transactions involving agents,) see:

GN 00603.020 Collective Savings and Checking Accounts

SI 00810.120 Income Determinations Involving Agents

SI 01120.020 Transactions Involving Agents

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<sup>9</sup> This addition may help avoid the frequent mistake of counting trust earnings as income to the SSI claimant.

### [c. Achieving a Better Life Experience \(ABLE\) accounts<sup>10</sup>](#)

An ABLE account is a type of tax-advantaged account that an eligible individual can use to save funds for his or her disability-related expenses. The eligible individual, who is also the designated beneficiary of the ABLE account, must be blind or disabled by a condition that began before the individual's 26th birthday. A State (or a State agency or an instrumentality of a State) can establish an ABLE program. An eligible individual can open an ABLE account through the ABLE program in any State, if the State permits it. ABLE accounts are not trusts, and you should not evaluate them under trust instructions. For more information on ABLE accounts, see SI 01130.740.

## 2. "In trust for" financial accounts

These accounts may or may not be trusts depending on the circumstances in the individual case. Representative payee accounts and Totten accounts are the most common examples.

### [a. Representative payee accounts](#)

One of the most common types of "in trust for" accounts is the representative payee account. A representative payee account is not a trust. However, its title may misleadingly suggest that the representative payee is the legal owner of the account principal. If a representative payee deposits current or conserved benefits in an account, the titling of the account should reflect the beneficiary's ownership interest in the account. For instructions pertaining to transactions or determinations involving agents, see [SI 01120.020](#) and [SI 00810.120](#). For instructions pertaining to the titling of accounts established by representative payees, see [GN 00603.010](#).

### [b. Totten trusts](#)

An "in trust for" financial institution account may be a Totten trust if an individual deposits his or her own funds in an account and holds the account as owner for the benefit of another individual(s).

A **Totten trust** is a revocable trust<sup>11</sup> created by the depositing of money, usually in a savings account at a bank, in the depositor's name as trustee for another. (It may have the phrase "in trust for" in the title.) The typical Totten trust is a kind of "pay on death" account. That is, the depositor names a beneficiary who inherits the funds in the account upon the depositor's death.

## D. Policy for trusts as resources

### 1. Trusts that are resources

#### [a. When trusts are resources](#)

Trust principal is a resource for SSI purposes if a trust beneficiary (applicant<sup>12</sup> recipient, or deemor) has legal authority to revoke or terminate the trust and then use the funds to meet his or her food or shelter needs. The trust principal is also a resource for SSI purposes if the trust beneficiary can direct the use of the trust principal for his or her support and maintenance under the terms of the trust. For the definition of revoke, see [SI 01120.200](#).B.11. in this section.

Additionally, if the trust beneficiary can sell his or her beneficial interest in the trust, that interest is a resource. For example, if the trust provides for payment of \$100 per month to the trust beneficiary for spending money, and the trust does not have a valid spendthrift clause, then the trust beneficiary may be able to sell the right to future payments for a lump-sum settlement. The present value of the future payments counts as a resource<sup>13</sup>. For more information on spendthrift clauses, see SI 01120.200B.13. in this section.

#### [b. Authority to revoke or terminate trust or use assets](#)

##### 1. Grantor

In some cases, the grantor has the authority to revoke a trust. Even if the grantor does not specifically retain the power to revoke a trust, a trust may be revocable in certain situations. (For information on grantor trusts, see [SI 01120.200B.4](#), and [SI 01120.200D.3](#). in this section.

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<sup>10</sup> References to ABLE accounts appear throughout the POMS changes because the prior POMS were written before the ABLE Act (IRC §529A) was passed.

<sup>11</sup> Referencing that the ITF account is revocable by the depositor is helpful because we've had to appeal to ALJs denials of SSI eligibility for claimants who were named as death beneficiaries because staff believed the SSI claimant could access the funds during the life of the depositor.

<sup>12</sup> SSI "applicant" rather than just SSI claimant or "recipient" indicates that the new POMS control at the time of application for benefits, not just afterwards.

<sup>13</sup> For structured settlement annuities, failure to irrevocably assign the annuity payments to the SNT would make the SSI claimant ineligible not just on an income basis, but because the "future payments" are a determinable resource.

Additionally, State law may contain presumptions as to the revocability of trusts. If the trust principal reverts to the grantor upon revocation and he or she can use it for support and maintenance, then the principal is a resource to the grantor.

Additionally, State law may contain presumptions as to the revocability of trusts. If the trust principal reverts to the grantor upon revocation and he or she can use it for support and maintenance, then the principal is a resource to the grantor.

## 2. Trust beneficiary

A trust beneficiary generally does not have the power to terminate a trust. However, in some instances, the trust beneficiary may have the authority to terminate the trust and gain access to the trust assets or direct the use of the trust principal. Specific trust provisions may allow the trust beneficiary to act on his or her own or to order actions by the trustee. The trust beneficiary's ability to use the trust principal for support and maintenance, together with his or her equitable ownership in the trust principal, makes the trust principal a resource to the trust beneficiary.

The trust beneficiary's right to mandatory periodic payments may be a resource equal to the present value of the anticipated payments, unless a valid spendthrift clause or other provision prohibits transfer or sale of the beneficiary's interest in such anticipated payments. For more information on spendthrift clauses, see SI 01120.200B.13. in this section.

While a trustee may have discretion to use the trust principal for the benefit of the trust beneficiary, the trustee is a third party and not an agent of the trust beneficiary. The actions of the trustee generally are not considered to be the actions of the trust beneficiary, unless the trust specifically states otherwise<sup>14</sup>.

## 3. Trustee

Occasionally, a trustee may have the legal authority to terminate a trust. However, the trust generally is not a resource to the trustee unless he or she becomes the owner of the trust principal upon termination. The trustee is a third party. Although the trustee has access to the trust principal for the benefit of the trust beneficiary, this does not mean that the trust principal is the trustee's resource. If the trustee has the legal authority to withdraw the trust principal and use it for his or her own support and maintenance, the amount of the trust principal that he or she can withdraw and use is the trustee's resource for SSI purposes.

**NOTE: We are not responsible for developing or reporting claims or allegations of trustee misuse of trust funds. We will get involved only if the individual or entity allegedly misusing the funds is also the representative payee. For misuse of SSI funds, see GN 00604.001.**<sup>15</sup>

## 4. Totten trust

The grantor of a Totten trust has the authority to revoke the financial account trust at any time. Therefore, the funds in the account are his or her resource

## 2. Trusts that are not resources

If an individual does not have the legal authority to revoke or terminate the trust or to direct the use of the trust assets for his or her own support and maintenance,<sup>16</sup> the trust principal **is not** the individual's resource for SSI purposes.

The revocability of a trust and the ability to direct the use of the trust principal depend on the terms of the trust agreement and on State (or Tribal) law. If a trust is irrevocable by its terms and under State law, and the trust beneficiary cannot control or direct use of the trust assets for the trust beneficiary's support and maintenance, the trust **is not** a resource.

## 3. Revocability of grantor trusts

Some States follow the general principle of trust law that if a grantor is also the sole beneficiary of a trust, the trust is **revocable** regardless of language in the trust to the contrary.

However, many of these States recognize that the grantor cannot unilaterally revoke the trust if the trust document names a "residual beneficiary" who would receive the trust principal upon the grantor's death or the occurrence of some other specific event.

Under the modern view, residual beneficiaries are assumed to be created, absent evidence of a contrary intent. When a grantor names heirs, next of kin, or similar groups/individuals to receive the assets remaining assets in the trust upon the grantor's death, assume that they are residual beneficiaries, absent regional instructions to the contrary. In such a case, the trust generally is irrevocable, subject to the NOTE.

When a trust is established for a beneficiary who is a minor, or if a court has ordered the establishment of a trust for an incompetent beneficiary, assume absent regional instructions and subject to the NOTE, that it is acceptable for "the estate of the beneficiary" to be named as the residual beneficiary without causing the trust to be considered ~~to be irrevocable~~revocable.

<sup>14</sup> Another statement that insulates the SSI claimant from the transfer of resources penalty if the Trustee violates the sole benefit rule.

<sup>15</sup> SSA will get involved to protect an SSI claimant's rights as a beneficiary of an SNT; likewise, the Trustee has no duty to report to SSA any infractions by the SSI claimant, such as failure to report other income.

<sup>16</sup> This phrase should appear clearly and unequivocally in every first or third party SNT.



A trust may state that it is a "Grantor Trust" for tax purposes. Such a designation does not necessarily mean that it is a countable resource for SSI purposes. You must still develop the trust under these instructions to determine resource status for SSI eligibility purposes.

**NOTE:** The policies regarding grantor trusts may or may not apply in your particular State<sup>17</sup>. Field offices should consult regional Program Operations Manual System (POMS) instructions or your regional office program staff if in doubt.

## E. Policy for disbursements from trusts

### 1. Trust principal is not a resource

If the trust principal is not a resource, disbursements from the trust may be income to the SSI applicant or recipient, depending on the nature of the disbursements. Regular rules to determine when income is available apply. For general income rules, see SI 00810.005.

#### *a. Disbursements that are income*

- Cash paid directly from the trust to the individual is unearned income.
- Disbursements from the trust to third parties that result in the trust beneficiary's receiving non-cash items (other than food or shelter) are in-kind income if the items would not be partially or totally excluded non-liquid resources if retained into the month after the month of receipt.
- For example, if a trust buys a car for the trust beneficiary and the trust beneficiary's spouse already has an excluded car for SSI purposes, the disbursement to purchase the second car is income in the month of receipt since it would not be an excluded resource in the following month.

For receipt of certain noncash items, see SI 00815.550. For a list of resource exclusions, see SI 01110.210.

#### *b. Disbursements that result in receipt of in-kind support and maintenance*

Food or shelter received by the trust beneficiary as a result of disbursements from the trust to a third party is income in the form of in-kind support and maintenance (ISM) and is valued under the presumed maximum value (PMV) rule. For instructions pertaining to the PMV rule, see SI 00835.300. For rules pertaining to a home, see SI 01120.200F. in this section.

#### *c. Disbursements that are not income*

Generally, disbursements from the trust to a third party are not income to the trust beneficiary, unless otherwise stated in SI 01120.200E.1.a. and SI 01120.200E.1.b. in this section. Disbursements that do not count as income may include those made for educational expenses, therapy, transportation, professional fees, medical services not covered by Medicaid, phone bills, recreation, and entertainment. This list is illustrative and does not limit the types of distributions that a trust may permit. For bills paid by a third party, see SI 00815.400.

Disbursements made from the trust to a third party that result in the trust beneficiary's receiving non-cash items (other than food or shelter) are not income if those items would become a totally or partially excluded non-liquid resource if retained into the month after the month of receipt. For example, if a trust purchases a computer for the trust beneficiary, the computer is not income, since we would exclude the computer from resources as a household good in the following month. For resource treatment of household goods, personal effects, and other personal property, see SI 01130.430. For receipt of certain non-cash items, see SI 00815.550. For a list of resource exclusions, see SI 01110.210.

#### *d. Reimbursements to a third party*

Reimbursements made from the trust to a third party for funds expended on behalf of the trust beneficiary are not income.

Regular income and resource rules apply to items that a trust beneficiary receives from a third party. If a trust beneficiary receives a non-cash item (other than food or shelter), it is in-kind income if the item would not be a partially or totally excluded non-liquid resource if retained into the month after the month of receipt. If a trust beneficiary receives food or shelter, it is income in the form of ISM.

### 2. Trust principal is a resource

#### *a. Disbursements to or for the benefit of the trust beneficiary*

If the trust principal is a resource to the individual, disbursements from the trust principal received by the individual or that result in receipt of something by the individual are not income, but conversion of a resource. However, trust earnings may be income. For

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<sup>17</sup> There are SSA Regional Chief Counsel Precedents (opinion letters) in the POMS for nearly every state that describe whether a particular state has abandoned the Doctrine of Worthier Title. Florida has done so by specific statute, and the SSA Atlanta Regional Chief Counsel has amended the federal regional POMS to so state. Failure to name a specific individual as a residual beneficiary used to be a source of SNT denials in Florida.

instructions pertaining to the conversion of resources from one form to another, see [SI 01110.100](#). For treatment of income when the trust principal is a resource, see [SI 01120.200G.2](#), in this section. For treatment of dividends and interest as income, see [SI 00830.500](#).

#### ***b. Disbursements not to or for the benefit of the trust beneficiary***

If the trust is established with the assets of an individual or his or her spouse and the trust (or portion of the trust) is a resource to the individual:

- any disbursement from the trust (or from the portion of the trust that is a resource) that is not made to, or for the benefit of, the individual is considered a transfer of resources as of the date of the payment and is not considered income to the individual (see [SI 01150.110](#)); and
- any foreclosure of payment (an instance in which no disbursement can be made to the individual under any circumstances) is considered to be a transfer of resources as of the date of the foreclosure. Such foreclosure is not considered income to the individual.

## **F. Policy for home ownership and purchase of a home by a trust**

### **1. Home as a resource**

~~If the trustee of a trust which is not a resource for SSI purposes purchases and holds title to a house as a home for the beneficiary, the house would not be a resource to the beneficiary. It would also not be a resource if the beneficiary moved from the house. The trust holds legal title to the house, therefore, the eligible individual would be considered to be living in his or her own home based on having an "equitable ownership under a trust."~~

~~If the trust is a resource to the individual, the home, the property at issue is subject to exclusion as a home under [SI 01130.100](#). Even though the trust holds legal title to the property, the individual, as trust beneficiary, still has an (equitable) ownership interest in it. Therefore, the property's possibly being excluded as a home under [SI 01130.100](#) likely will depend on whether the property serves as the individual's principal place of residence.~~

~~If the trust is not a resource to the individual, then the property also is not a resource to the individual, regardless of whether the property serves as the individual's principal place of residence (that is, regardless of possible exclusion as a home under [SI 01130.100](#)), because the property is part of the trust principal that is not a resource to the individual.~~

### **2. Rent-free shelter**

An eligible individual does not receive ISM in the form of rent-free shelter while living in a home in which he or she has an ownership interest. Accordingly, an individual with an "equitable ownership interest in the trust principal" does not receive rent-free shelter. ~~Also, because we consider such an individual to have an ownership interest, payment of rent by the beneficiary to the trust has no effect on the SSI payment. (see [SI 01120.200F.1](#) in this section).~~

### **3. Receipt of income from a home purchase**

Because the purchase of a home by a trust for the trust beneficiary establishes an equitable ownership interest for the trust beneficiary, the purchase results in the receipt of ISM, in the form of shelter, in the month of purchase<sup>18</sup> ~~that is income in the form of ISM (see [SI 00835.400](#)).~~ This ISM is valued at no more than the presumed maximum value (PMV). For ISM to one person, see [SI 00835.400](#).

Even if the trust beneficiary has an ownership interest in the home that he or she resides in, and is not receiving ISM in the form of rent-free shelter ~~(because shelter is rent-free when no household member has any ownership interest in, or rental liability for, the residence, see [SI 00835.370B.1](#)).~~ The purchase of the home or payment of the monthly mortgage by the trust is a disbursement from the trust to a third party that results in the receipt of ISM<sup>19</sup> in the form of shelter. (see [SI 01120.200E.1.b](#) in this section).

#### ***a. Outright purchase of a home***

If the trust, whose principal is not a resource, purchases the home outright and the trust beneficiary lives in the home in the month of purchase, the home is income in the form of ISM, and reduces the trust beneficiary's payment no more than the PMV **in the month of purchase only**, regardless of the value of the home (see [SI 01120.200E.1.b](#) in this section).

#### ***b. Purchase by mortgage or similar agreement***

If the trust, whose principal is not a resource, purchases the home with a mortgage and the trust beneficiary lives in the home in the month of purchase, the home would be ISM in the month of purchase. Each of the subsequent monthly mortgage payments results

<sup>18</sup> Note that the ISM reduction in the SSI payment occurs ONLY once, in the month of purchase. Thereafter, there is no ISM reduction for living rent-free in one's own home.

<sup>19</sup> Buying and paying lump sum for the SSI claimant's home causes one month's ISM reduction; but the trustee or any third party paying a monthly mortgage on the SSI claimant's home DOES result in continuing ISM reductions capped by the PMV rule.

in the receipt of income in the form of ISM to the trust beneficiary living in the house, each valued at no more than the PMV (see [SI 01120.200E.1.b. in this section](#)).

### *c. Additional household expenses*

If the trust pays for other shelter or household operating expenses, these payments are income in the form of ISM in the month of the trust beneficiary's use. For computations of ISM from outside the household, see [SI 00835.350](#). For countable shelter expenses, see [SI 00835.465D](#).

If the trust pays for repairs, maintenance, improvements, or renovations to the home, e.g., such as renovations to the bathroom, to make it handicapped accessible or, installation of a wheelchair ramp or assistive devices, or replacement of a roof, the trust beneficiary does not receive income. Disbursements from the trust for improvements increase the value of the resource and, unlike household operating expenses, do not provide ISM. (See For computations of ISM from outside the household, see SI 01120.200E.1.c.) in this section.<sup>20</sup>

## G. Policy for earnings and additions to trusts

### 1. Trust principal is not a resource

#### *a. Trust earnings*

Trust earnings are not income to the trustee or grantor **unless** designated as belonging to the trustee or grantor under the terms of the trust; for example, as fees payable to the trustee or interest payable to the grantor.

Trust earnings are not income to the SSI applicant or recipient who is a trust beneficiary **unless** the trust directs, or the trustee makes, payments from the trust to the trust beneficiary.

#### *b. Additions to principal*

Additions to trust principal made directly to the trust are not income to the grantor, trustee, or trust beneficiary. For exceptions to this rule, see [SI 01120.200G.1.c.](#) and [SI 01120.200G.1.d.](#) in this section.

#### *c. Payments not assignable by law*

Certain payments are non-assignable by law; therefore, are income to the individual entitled or eligible to receive the payments under regular SSI income rules, unless an exclusion applies. Although a trust may be structured such that it appears that non-assignable payments are made directly into the trust, non-assignable payments may not be made directly into a trust, to avoid income counting or for any other reason.

Important examples of non-assignable payments include:

- Temporary Assistance to Needy Families (TANF)/Aid to Families with Dependent Children (AFDC);
- Railroad Retirement Board-administered pensions;
- Veterans' pensions and assistance;
- Federal employee retirement payments (CSRS, FERS) administered by the Office of Personnel Management;
- Social Security Title II and SSI payments; and
- Private pensions under the Employee Retirement Income Security Act (ERISA) [29 U.S.C.A., Section 1056\(d\)](#).

#### *d. Assignment of income*

A legally assignable payment that is assigned to a trust or trustee is income for SSI purposes, to the individual entitled or eligible to receive the payment, **unless** the assignment is irrevocable. We consider assignment of payment by court orders to be irrevocable. For example, child support or alimony payments paid directly to a trust or trustee because of a court order are considered irrevocably assigned and thus not income.<sup>21</sup> Also, U.S. Military Survivor Benefit Plan (SBP) payments assigned to a special needs trust are not income because the assignment of an SPB annuity is irrevocable. For more information on SPB annuities, see [SI 01120.201J.1.e.](#)<sup>22</sup>

If the assignment is revocable, the payment is income to the individual legally entitled or eligible to receive it, unless an SSI income exclusion applies. For **non-assignable payments**, see [SI 01120.200G.1.c.](#) in this section.

<sup>20</sup> This is a frequent question and often incorrectly assessed. Improvements (and maintenance, repairs, replacements) are NOT operational expenses. It is only the latter which can cause an ISM reduction.

<sup>21</sup> It appears that we no longer have to amend court orders to state that, for example, "the child support is irrevocably assigned" to the SNT. The POMS creates that presumption that it is irrevocable.

<sup>22</sup> This sentence was added to conform to the new statute on Military Survivor Benefit Plan annuities.

## 2. Trust principal is a resource

### a. Trust earnings

Trust earnings are income to the individual for whom the trust principal is a resource, unless the terms of the trust make the earnings the property of another. For when to count income, see [SI 00810.030](#).

### b. Additions to principal

Additions to principal may be income or conversion of a resource, depending on the source of the funds. If a third party deposits funds into the trust, the funds are income to the [trust beneficiary](#). If [the trust beneficiary transfers funds into the trust](#) from an account [that he or she owns](#), the funds are not income, but a [converted](#) resource.

## H. Policy for Medicaid trusts and Medicaid qualifying trusts

### 1. Medicaid Trusts

#### a. General

Medicaid trusts are trusts that are established by an individual ([by a means other than a will](#)) on or after August 11, 1993 and that are made up, in whole or in part, of assets of that individual. We consider a trust as established by an individual if it was established by:

- the individual;
- the individual's spouse; or
- a person (or a court or administrative body) with legal authority to act for the individual or spouse or who acts at the direction or request of the individual or spouse.

Medicaid trusts may contain terms such as "OBRA 1993 pay-back trust" or "trust established in accordance with 42 USC 1396" or may be mislabeled as an "MQT." Medicaid ~~trust law affects the individual's eligibility for Medicaid only, and has no effect on the SSI income and trusts must be evaluated under SI 01120.201 to determine whether they are a~~ resource ~~determination for SSI purposes.~~

For additional information and procedures for coding and referring these trusts to the State Medicaid agencies, see [SI 01730.048](#).

#### b. State reimbursement provisions

Medicaid trusts generally have a payback provision stating that upon termination of the trust, or the death of the beneficiary, the trust will reimburse the State Medicaid agency for medical assistance paid on behalf of the individual. According to the law in most States, the State is not the residual or contingent beneficiary but is a creditor, and [we consider](#) the reimbursement [to be](#) payment of a debt, unless the trust instrument reflects a clear intent that the State is a beneficiary rather than a creditor.<sup>23</sup> This law may or may not apply in your State, so consult your regional instructions or regional office.

### 2. Medicaid Qualifying Trusts (MQT)

An MQT is a trust or similar legal device established prior to October 1, 1993, other than by a will, under which the grantor (or spouse of the grantor) may be the beneficiary of all or part of the trust. The amount in the MQT considered available as a resource to the individual for Medicaid purposes, is the maximum amount that may be distributed under the terms of the trust to the individual by the trustee. This **Medicaid-only** provision has no effect on the income and resource determination for SSI purposes. [MQTs must be evaluated under SI 01120.200 to determine whether they are a resource for SSI purposes.](#)

**NOTE:** The last date to establish an MQT was September 30, 1993. Congress repealed section 1902(k) of the Social Security Act on October 01, 1993.

## I. Policy for representative payees and trusts

If a representative payee funds a trust with an underpayment or conserved funds, see [GN 00602.075](#) for additional rules that may apply. [Additionally, representative payees may not deposit dedicated account funds in a trust.](#)<sup>24</sup>

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<sup>23</sup> FYI - The U.S. Eleventh Circuit Court of Appeals previously ruled that for Florida, the Medicaid agency is NOT a beneficiary but a mere creditor of the SNT at the death of the SSI claimant.

<sup>24</sup> "Dedicated account funds" refer to a specific statute and regulation that applies to only some retroactive awards of SSI benefits to children under age 18, and already requires that the parent/rep payee get specific item-by-item approval to withdraw money from the child's "dedicated account" to pay child's expenses.

## J. Procedure for development and documentation of trusts

### 1. Written trust

#### a. Review the trust document<sup>25</sup>

Obtain a copy of the trust document (the original trust document is not required)<sup>26</sup> and related documents and, if possible, review the document to determine whether the:

- individual (~~claimant~~applicant, recipient, or deemor) is the grantor, trustee, or trust beneficiary;
- trust was established on or after January 01, 2000;
- trust was funded with assets of the individual or third parties or both;
- trust is revocable or can be terminated and, if so, whether the individual has authority to revoke or terminate the trust and to use the principal for his or her own support and maintenance;
- individual has ~~unrestricted~~ access to the trust principal;
- trust provides for or permits payments for the benefit of the individual, to the individual or on ~~his or her~~the individual's behalf;
- trust principal generates income (earnings) and, if so, whether the individual has the right to any of that income;
- trust provides for mandatory periodic payments and, if so, whether the trust contains a spendthrift clause that is valid under State law and prohibits the voluntary and involuntary alienation of any interest of the trust beneficiary in the trust payments; and
- trust is receiving payments from another source.

#### b. Which instructions apply when determining the resource status and income treatment of a trust<sup>27</sup>

Depending on the trust's date of establishment and whose funds the trust principal contains, follow these instructions to determine the resource status and income treatment of the trust:

| <b>If the trust was established...</b> | <b>and contains...</b>   | <b>follow instructions in:</b>   |
|--|--|--|
| on or after January 01, 2000,          | any assets of the individual,  | <a href="#">SI 01120.199</a> ,<br><a href="#">SI 01120.201</a> through<br><a href="#">SI 01120.204</a> ,<br><a href="#">SI 01120.225</a> and<br><a href="#">SI 01120.227</a>   |
|  | only assets of third parties,  | <a href="#">SI 01120.200</a>   |
| before January 01, 2000,               | assets of the individual transferred before January 01, 2000,          | <a href="#">SI 01120.200</a>   |
|  | any assets of the individual transferred on or after January 01, 2000, | <a href="#">SI 01120.199</a> ,<br><a href="#">SI 01120.201</a> through<br><a href="#">SI 01120.204</a> ,<br><a href="#">SI 01120.225</a> , and<br><a href="#">SI 01120.227</a> |

<sup>25</sup> This paragraph tells us exactly what the Claims Specialist at the local SSA office will need to evaluate the SNT.

<sup>26</sup> Apparently some local SSA offices were demanding the original SNT document. A copy is all that's required to be provided to SSA.

<sup>27</sup> When funding third party SNTs, and submitting them for SSA review, it would be wise to cut and paste this table in the cover letter to SSA, highlighting the second row that clearly states that if the trust contains assets only of third parties, the staff should ONLY look to the requirements of SI 01120.200, and not look for Medicaid payback and other limitations in section 201 and 203.

| If the trust was established... | and contains...               | follow instructions in:      |
|---------------------------------|-------------------------------|------------------------------|
|                                 | only assets of third parties, | <a href="#">SI 01120.200</a> |

**NOTE:** If the trust beneficiary adds his or her own assets to an existing third-party trust, on or after January 01, 2000, redevelop the trust under the instructions in [SI 01120.199](#), [SI 01120.201](#) through [SI 01120.204](#), [SI 01120.225](#), and [SI 01120.227](#). For more information on mixed trusts, see [SI 01120.200A.1.b](#) and [SI 01120.201.3](#).

**c. Consult regional instructions**

Consult any regional instructions that pertain to trusts to see if there are State or Tribal laws to consider on such issues as revocability or irrevocability and grantor trusts.

**d. Referring a trust issue to the regional office**

If there are any unresolved issues that prevent you from determining the resource status of a trust, or there are issues for which you believe you need a legal opinion, follow your regional instructions or consult with your regional office (RO) program staff: via vHelp. The RO staff can resolve many issues via vHelp. If necessary, the RO staff will tell you to refer seek guidance from the document with any relevant information central office (CO) or statements to your Assistant Regional Commissioner, Management and Operations Support (ARC, MOS) for possible referral to the Regional Chief Counsel (RCC). Do not contact or refer materials to the RCC directly.

**NOTE:** When referring a trust to the RO, make sure to include all documentation, identify the applicant or recipient, identify the source of funds or assets, and explain relevant relationships of others named in the trust.

## 2. Oral trusts

**a. State recognizes as binding**

If the State in question recognizes oral trusts as binding (see regional instructions):

- record all relevant information;
- obtain from all parties signed statements describing the arrangement; and
- unless regional instructions specify otherwise, refer the case, through the Assistant Regional Commissioner, Management and Operations Support (ARC, MOS), to the RCC.

**b. State does not recognize as binding**

If the State does not recognize oral trusts as binding (see regional instructions), determine whether an agency relationship (a person acting as an agent of the individual) exists and develop under regular resource-counting rules or transfer of resources rules, as applicable. For transactions involving agents, see [SI 01120.020](#).

## 3. Determining the nature and value of trust property (written or oral trust)

To determine whether the trust is a resource, apply the policies in [SI 01120.200D in this section](#) and in any applicable regional instructions.

**NOTE:** When you are unsure about any relevant issue, do not make a determination, but discuss the case with the RO programs staff. They will refer the case to the RCC, if necessary.

When trust principal is a resource and its value is material to eligibility, determine the nature of the principal and establish its value by:

- contacting the holder of the funds, if cash; or
- developing as required under the applicable POMS section for the specific type(s) of property, if the trust principal is not cash.

## 4. Documentation for trust evidence<sup>28</sup>

Record all information used in determining whether the trust is a resource or generates income on the Trust (RTRS) page in the SSI Claims System. For more information on what trust information to record, see MS INTRANET/SSI 013.005. Record your rationales, summary of supporting documentation, and conclusions on the Report of Contact (DROC) (and subsequently lock the DROC) or the Evidence (EVID) screen. When a certified electronic folder (EF) exists, fax the following into Section D: (Non-Disability Development) of the Electronic Disability Collect System (EDCS):

<sup>28</sup> This paragraph is the list of documents that the local SSA Claims Specialist is required to secure when reviewing the SNT for compliance with the rules.

- a copy of the trust document (original not required), along with trust attachments, amendments (if any), and exhibits;
- copies of any signed agreements between organizations making payments to the individual and the individual legally entitled to such payments, if the payments have been assigned to the trust/or trustee;
- records of payments from the trust, as necessary; and
- any other pertinent documents, such as court orders, and the Form SSA-5002 (Report of Contact) that indicates the trust resource determination.

In the case of a paper folder, fax these materials into the Non-Disability Repository for Evidentiary Documents (NDRed), or record any development electronically in EVID.

For more information on trust documentation and development, see the trust review process in SI 01120.200L in this section.

**NOTE:** The SSI applicant or recipient as trust beneficiary generally has the right to request an accounting from the trustee to provide information about trust disbursements.

## 5. Medicaid trust and Medicaid qualifying trust determination

For information regarding Medicaid trusts and MQTs and the procedure to follow, consult [SI 01730.048](#).

## 6. Systems input for trusts

Make the appropriate entries on the SSI Claims System Trust (RTRS) page. For more information on the SSI Claims System Trust page, see MS INTRANETSSI 013.005. You may also make a CG field entry (RE06 or RE07) per SM 01301.820. In non-SSI Claims System cases or where otherwise warranted, use Remarks (see MS MSSICS 023.003).

## K. Posteligibility changes in trust resource status

If due to a trust-change in policy, a policy clarification, or the reopening of a prior erroneous determination, a trust that was previously determined not to be a resource, but because of policy clarifications you now determine that it is- is determined to be a resource (or vice-versa), apply the following rules.

### 1. New trusts and trusts that have not previously been determined not to be a resource

A trust that either is newly created or has not previously been determined not to be a resource must meet the criteria set forth in SI 01120.200D.2. in this section for SSA to determine that it is not a resource. Do not determine that such a trust is not a resource unless the trust meets these criteria.

For a trust that was previously established but is newly discovered, reopen the prior resource determination back to the trust establishment date,<sup>29</sup> subject to the rules of administrative finality. ~~(See the-~~ (applying the shorter of the two periods). For more information on SSI administrative finality, see [SI 04070.001](#).

A trust must have been previously determined not to be a resource in order for the 90-day amendment period to apply. If a 90-day amendment period is not applicable, then any future amendments to the trust will take effect the month following the month of amendment.

For overpayment waiver rules, see [SI 02260.001](#).

### 2. Trusts that were previously determined not to be a resource under SI 01120.200

A trust that was previously determined not to be a resource under [SI 01120.200](#) shall continue not to be a resource, provided that the trust is amended to conform with the policy requirements within 90 days. That 90-day period begins on the day SSA informs the individual or representative payee that the trust contains provisions that would require amendment in order to continue not to count as a resource under [SI 01120.200](#).

#### *a. New situations*

Effective 04/27/18, if due to a change in policy, a policy clarification, or reopening of a prior erroneous determination, a trust that was previously determined not to be a resource under [SI 01120.200](#) is now determined to be a resource, offer a 90-day amendment period.

#### *b. During the 90-day period*

Diary the case for follow-up in 90 days. If a trust was not previously counted as a resource, do not count the trust as a resource and do not impose an overpayment pending possible amendment within the 90-day period.

#### *c. Good cause extension*

We permit each trust that was not previously determined to be a resource only one 90-day amendment period. However, you may grant a request for an extension to the 90-day amendment period for good cause, if the individual requests it and provides evidence

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<sup>29</sup> This new statement is going to catch all the attorneys who did not submit the SNT to SSA timely, and potentially put at risk the claimant and the attorney.

that the disqualifying issue cannot be resolved within the 90-day period: for example, if a court must amend the trust and there is a wait to get on the court docket. Document on the DROC screen the decision to grant the extension, the time allowed, and the reason. Diary the case for follow-up. Field office staff have discretion to provide a reasonable time period for a good cause extension depending on the situation.

#### **d. End of the 90-day amendment period**

If the trust is amended to be policy-compliant within the 90-day period (plus any extension), the trust continues not to be a resource for SSI purposes.

If the trust still fails to meet the policy requirements after expiration of the 90-day amendment period (plus any extension), count the trust as a resource beginning with the later of (1) the date when the policy change or clarification first applies to the trust or (2) the earliest date as of which the prior determination or decision is reopened and revised.

**NOTE:** All trust determinations made at the end of the 90-day amendment period are subject to the rules of administrative finality.

### **3. Reopening trust determinations**

The field office may receive a request by any party to the determination, including SSA, questioning the correctness of the trust determination. The request to reopen a determination must be in writing and within the applicable time limit (see [SI 04070.015](#), Reopening SSI Determinations).

## **L. Trust review process**

Claims Specialists evaluate all trusts **that need a resource determination** (such as a new or amended trust) in all initial claims (IC) and posteligibility (PE) events. For PE events, do not reevaluate trusts that already have a resource determination, unless there is:

- an amendment to the trust,
- a change of or clarification in policy that affects the resource determination,
- a request for reopening, or
- a situation where you become aware of a prior erroneous determination. For resource status changes in PE events, see [SI 01120.200K](#) in this section.

To ensure accurate and consistent trust resource determinations:

- Claims Specialists submit their trust resource determinations and any related documentation to the Regional Trust Review Team (RTRT) for review using the Supplemental Security Income Trust Monitoring System (SSITMS) website.
- The RTRT review all trust determinations and provide a decision and any feedback to the Claims Specialists via the SSITMS website.

Claims Specialists and RTRT members can use this SSITMS (<http://oestweb.ba.ad.ssa.gov/SSITM/>) link to access the website. For instructions on using the SSITMS website, visit the user guide located under the Help link on the SSITMS website.

**NOTE:** It is important to remember that trust determinations are subject to the rules of administrative finality. For more information on administrative finality, see [SI 04070.040](#).

The following steps describe the trust review process for the Claims Specialists and RTRT members.

### **1. Claims Specialist actions**

For all IC and PE cases where an applicant, recipient, or deemor alleges an interest in a trust that needs a resource determination, determine whether the trust is a countable resource. To make the trust resource determination, follow trust policy in [SI 01120.200D](#) in this section.

After making a trust resource determination:

- a. Document the determination along with any references and rationale used in the decision-making process:
  - For SSI Claims System cases, use the Report of Contact (DROC) screen; and
  - For non-SSI Claims System cases, use a Form SSA-5002 (Report of Contact) and fax it into the electronic folder (EF) or Non-Disability Repository for Evidentiary Document (NDRED).
- b. Fax the initial trust resource determination, trust document, and any pertinent information into the appropriate EF.

Then follow these trust review process steps:

#### **a. Submitting trust determinations for RTRT review**

Follow these procedures:

- Access the SSITMS website and select the "Add New" tab. Add the applicant's or recipient's name, representative payee's name (if any), social security number, and all other relevant trust information;



- Select the appropriate type of trust in SSITMS (third party trust, special needs trust, etc.); and
- Submit the trust resource determination for RTRT review.

#### **b. Reviewing the RTRT responses**

SSITMS sends an email notification after the RTRT or regional trust lead (RTL) reviews the trust and makes a decision. To view the RTRT's response:

- Access SSITMS and select the case from the Summary page listing or use the link in the email to access the case, and
- Click on the "Details/Update" tab.

The Results field will show that the RTRT member either agreed or disagreed with the trust resource determination. When the Claims Specialist is ready to process the case, change the trust status to "FO Effectuated" using the Edit function.

**NOTE:** Select "FO Effectuated" only after completing all case development. Changing the Trust Status to "FO Effectuated" **locks** the case in SSITMS. Only the Remarks field will be accessible for additional comments.

#### **c. Reevaluations of trust determinations**

To request a reevaluation of a trust resource determination, access SSITMS and:

- change the Trust Status to "Referred to RTL" using the Edit function; and
- provide the rationale, a summary of supporting documentation, and appropriate references in SSITMS Remarks and select "Submit."

The RTL will select the case for review and determine if the central office (CO) or the Office of the General Counsel (OGC) needs to review the case. The RTL will respond to the request via the SSITMS website, and SSITMS will send an email notification when the RTL completes the reevaluation process.

#### **d. Appeals of trust determinations**

When the applicant or recipient appeals the trust resource determination, the RTL must review the Claims Specialist's reconsideration decision. To request a review of the trust reconsideration determination, access SSITMS and:

- select "Recon Pending" from the Recon Trust Status dropdown using the Edit function; and
- provide pertinent information about the reason for the appeal in Claims Specialist remarks and select "Submit."

**NOTE:** Do not enter RO Recon Trust Determination in SSITMS Claims Specialist remarks. SSITMS will send an email notification when the RTL completes the FO reconsideration review. Do not load a recon into SSITMS until you have made a trust recon determination.

**NOTE:** Goldberg-Kelly payments may apply during trust reconsiderations only when the SSI recipient is already in pay.

#### **e. RTRT return cases for further FO development**

When the RTRT require additional information from the FO, they will return the case for further development. SSITMS will send to the FO mailbox an email notification about the further development requested. To view the RTRT's request, access SSITMS and:

- select the case from the Summary page listings or use the link in the email to access the case; and
- click on the "Details/Update" tab.

View the request for additional information in the Remarks field. After completing the development requested, update the Trust Status to "FO Development Completed" using the Edit button and submit.

## **2. Trust Reviewer (TR) actions**

TRs review the Claims Specialist's trust resource determination along with any pertinent documentation in the SSI Claims System and the Claims File User Interface (CFUI). When TRs receive a trust resource determination for review in SSITMS, they select the case with "Pending" trust status from the SSITMS summary listing and:

- review the trust and associated information;
- provide feedback in the Remarks field in SSITMS;
- document the concurrence decision in a DROC screen or SSA-5002;
- indicate "agree" or "disagree" with the Claims Specialist's trust resource determination in Results;
- change the trust status to "Review Completed" after making a decision on the trust resource determination; and
- submit the response to the Claims Specialist.

Additionally, TRs refer:

- trusts back to the Claims Specialist when the case needs further development; and
- trusts established outside their region to the RTL. The RTL will refer the trust to the appropriate region.

### 3. Regional Trust Lead (RTL) actions

Regional Trust Leads (RTL) review trust resource determinations for all new or not previously evaluated pooled trusts, IGRA trusts, reevaluations, and appeals. When needed, RTLs request guidance from CO or the RCC and refer trusts to other regions for their input or decision. RTLs also refer trusts back to the FO when the case needs further development. Additionally, RTLs monitor the SSITMS website and add pooled trust precedents to the SSITMS SharePoint Repository for Precedents. For the pooled trust review process, see [SI 01120.202C](#). For information on IGRA trusts, see [SI 01120.195](#).

Follow these steps for the trust review process:

#### a. Reviewing trust resource determinations

Select the case from the SSITMS Summary listing page or by using the link in the email notification, and:

- click the "Details/Update" tab;
- review information provided by the Claims Specialist technician;
- determine if consultation with CO or the RCC is necessary;
- provide the review results in the Remarks field;
- update Trust Status to "Completed by RTL"; and
- indicate "agree" or "disagree" with the Claims Specialist's determination in Results and click "Submit."

#### b. Email notifications for reevaluation requests

RTLs will receive an email notification whenever a trust resource determination needs reevaluation. To view the reevaluation request, access the case from the SSITMS Summary page listing.

#### c. Reevaluate trust resource determinations

To reevaluate the trust resource determination, follow steps listed in [SI 01120.200L.3.a](#) in this section. The specialist who submitted the case and the specialist's FO mailbox will receive an automated email notification when the RTL makes a decision. The subject line will show "Response to Trust for Reevaluation."

#### d. Appeal requests

SSITMS sends the RTL an email notification when he or she needs to review an FO determination on a trust reconsideration. To view appeal requests, access the case from the SSITMS Summary page listing or from the link in the email notification. To review the reconsideration determination, follow steps listed in [SI 01120.200L.3.a](#) in this section. To address the appeal request, follow steps listed in [SI 01120.200L.3.a](#) in this section. The specialist who submitted the case and the specialist's FO mailbox will receive an automated email notification when the RTL makes a decision. The subject line will show "Response to SSI Trust Recon for Review."

## M. Procedure for discussing SSI trust policy with the public

### 1. What to discuss

When you discuss SSI trust policy with a member of the public, follow this guidance:

- a. Do not advise ~~a claimant, an applicant~~, recipient, ~~deemor~~, representative payee, ~~or~~ legal guardian, ~~or any other party~~ on how to invest funds or hold property in trust. Remember that you ~~cannot provide the kind of financial guidance that attorneys, accountants, and financial advisors are usually able to provide. Do not attempt permitted~~ to provide legal ~~or financial~~ advice.  
Never recommend to an individual that he or she set up a trust or suggest that you think ~~that~~ a trust would be beneficial to him or her. ~~Be aware that by not knowing all of the legal implications of such an action, you could endanger their eligibility for other programs or benefits (e.g., Medicaid).~~  
Be aware that a trust ~~allowing eligibility for SSI does not mean that the trust will~~ may allow eligibility for SSI but not eligibility for Medicaid. Suggest that the individual check with the State Medicaid office.
- b. Explain how trusts may affect SSI eligibility and payment amount, in general terms or in terms specific to a particular trust arrangement. In the latter case, examine the trust document or a draft of the proposed trust provisions, as necessary. ~~Do not, however,~~ You can identify problematic provisions in the document and refer the individual to the POMS section related to the issue. Do not advocate specific changes to a trust.
- c. Remember that an individual's ability to access and use the trust principal depends on the terms of the trust document and on State ~~or Tribal~~ law. ~~Since~~ The State ~~or Tribal trust~~ laws ~~in this area~~ may be complex. Discuss the individual's documents with your regional office if you are unable to make a determination.

## 2. Use “SSI Spotlight” on trusts

Consider giving the individual a copy of the “SSI Spotlight” on trusts. You can get a copy of the **Spotlight on trusts** online: (<http://www.socialsecurity.gov/ssi/spotlights/spot-trusts.htm>).

## N. Examples of trusts

The following examples are illustrative of situations that you may encounter. You should not rely solely on the analysis given in the examples in making determinations in a specific case, as State (or Tribal) laws vary and the language of individual trust documents may warrant different results from those given in the example. You can refer to regional instructions, if any, and consult your regional office, as necessary. You should also be aware of the possible implications the trust may have for Medicaid eligibility. For instructions on trusts and Medicaid, see [SI 01730.048](#).

### 1. Trust principal is a resource

#### *a. Example of a trust that is a countable resource*

##### **Situation**

The claimant is a child and the beneficiary of a trust established on her behalf by her mother, who is her legal guardian. The money used to establish the trust was inherited by the claimant directly from her grandmother, making the beneficiary the grantor. The mother is also the trustee. The trust document clearly indicates that the trust may be revoked at any time by the grantor.

##### **Analysis**

Since the grantor may revoke the trust at any time, the trust is a resource to the grantor. In this situation, the child is the grantor and the trust is her resource. This is the case because the actions of the mother, as legal guardian, are taken as an agent for the child. Be aware of situations in which the same person may serve multiple functions (such as parent, guardian, and trustee), and distinguish which specific function the person is not performing in order to determine whether the person is acting as an agent for the claimant. Note that it is allowable for the same person to perform multiple functions independently of each other without acting as an agent of the claimant. For the definition of a grantor, see SI 01120.200B.3. in this section.<sup>30</sup>

#### *b. Example of a grantor trust that is a countable resource*

##### **Situation**

On April 21, 1998, the trust beneficiary, a 17-year-old SSI recipient, received a \$125,000 judgment as the result of a car accident that left him disabled. His mother, as his legal guardian, placed the money in an irrevocable trust for the sole benefit of the recipient with his sister as trustee. The trustee has absolute discretion as to how the trust funds are to be spent, and the trust has a prohibition against the trustee's spending funds in a way or amount that would make the recipient ineligible for Federal or State assistance payments. There is no named residual beneficiary. Under the State law, if an individual is both the grantor of a trust and the sole beneficiary, the trust is revocable, regardless of language in the trust to the contrary.

##### **Analysis**

Since the recipient's mother, as his legal guardian, established the trust with funds that belonged to the recipient, we treat the recipient as having established the trust himself. Therefore, he is the grantor of the trust. Since he is also the sole beneficiary of the trust, the trust is revocable under the State law and is the recipient's resource, regardless of the language in the trust document. The recipient is ineligible due to excess resources.

### 2. Trust principal is not a resource

#### *a. Example of a trust that is not a countable resource*

##### **Situation**

The SSI recipient is the beneficiary of an irrevocable trust created and funded by her deceased parents. Her brother is the trustee. The terms of the trust give the brother full discretionary power to withdraw funds for his sister's educational expenses. The trustee uses these funds to pay the recipient's tuition and room and board at a boarding school. The trust pays \$25 of monthly interest income into a separate account that designates the recipient as owner. She has the right to use these funds in any way she wishes. The trust also contains a valid spendthrift clause that prohibits the trust beneficiary from transferring her interest in the trust payments prior to receipt.

##### **Analysis**

Since the recipient, as trust beneficiary, has no authority to terminate the trust established with her parents' assets or to access the principal directly, the trust principal is not her resource. While trust disbursements for the beneficiary's benefit may be income to her, the disbursements for tuition are not income since they do not provide food or shelter in any form. However, the trust disbursements

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<sup>30</sup> One of the hesitations in appointing a parent as trustee is the failure of the SSA staff to do just what this addition to the POMS says – “note that it is allowable for the same person to perform multiple functions independently.”

for room and board are in-kind support and maintenance valued under the PMV rule. The \$25 monthly deposits of trust earnings are income when deposited into the recipient's personal account and are resources to the extent retained into the following month. The trust beneficiary's right to the stream of \$25 monthly payments is not a resource because she cannot sell or assign it prior to receiving the payments because of the valid spendthrift clause. For a definition of spendthrift clauses, see SI 01120.200B.13. in this section.

**NOTE:** If the SSI recipient is the beneficiary of an unfunded third- party trust; for example, the trust will be funded upon the death of a parent. It is not necessary to review and submit the unfunded trust to SSITMS for SSI eligibility purposes until it is funded.<sup>31</sup>

***b. Example of a trust that is not a countable resource***

**Situation**

The claimant is a minor and the beneficiary of an irrevocable trust established in 1997 with the child's annuity payment by his father, who is his representative payee. The father is also the trustee. The claimant's brothers and sisters will become the trust beneficiaries in the event of the claimant's death. In the State where the claimant lives, the grantor can revoke the trust if he is also the sole beneficiary. The brothers and sisters are "residual beneficiaries" who become the beneficiaries upon the prior beneficiary's death or occurrence of another event.

**Analysis**

The trust principal is not a resource to the claimant. The trust document provides that the trust is irrevocable under the general rule in SI 01120.200D.2. in this section. Although the claimant is the grantor of the trust (because the actions of the father as payee are as an agent of the claimant), the trust is not revocable under the rule for grantor trusts because the claimant is not the sole beneficiary, see SI 01120.200D.3. in this section.

### 3. Trust requires legal review

***a. Example of a trust that requires legal input***

**Situation**

The SSI claimant is the beneficiary of a revocable trust established with her father's assets for her future care. Her father is her legal guardian. The claimant, as trust beneficiary, has no authority to terminate the trust. The claims specialist (CS) reviews the trust document to see if the claimant, through her legal guardian, has unrestricted access to the trust principal, whether the trust provides for payments on her behalf, and whether the trust principal generates income.

The trust document is very complex, and the fact that the claimant's father is grantor, trustee, and her legal guardian further complicates the situation. The CS cannot determine whether the trust principal is available to the trust beneficiary through the grantor or trustee.

**Analysis**

Because it is not clear from the trust document whether the father, as legal guardian, "stands in the claimant's shoes" and controls the trust, the CS consults with the RO staff for possible referral through the ARC, MOS, to the RCC for an opinion.

***b. Example of a trust that requires legal review***

**Situation**

The recipient is the beneficiary of an irrevocable trust. The trust document indicates that the recipient is the sole named beneficiary and also the grantor of the trust. The document also indicates that there are unnamed residual beneficiaries, the recipient's "heirs."

**Analysis**

The adjudicator consults regional instructions on State law pertaining to grantor trusts. According to those instructions, a grantor trust may be a resource to the recipient, but the State law is unclear about the effect of the unnamed residual beneficiaries. The adjudicator consults with the RO staff for possible referral through the ARC, MOS, to the Regional Chief CounselRCC.

## O. References

[SI 00810.120 Income Determinations Involving Agents](#)

[SI 00835.360 When to Charge In-Kind Support and Maintenance \(ISM\) from Third-Party Vendor Payments](#)

[SI 01110.210 Excluded Resources](#)

[SI 01120.020 Transactions Involving Agents](#)

[SI 01120.195 Trusts Established under the Indian Gaming Regulatory Act \(IGRA\) for Minor Children and Legally Incompetent Adults \(IGRA Trusts\)](#)

[SI 01120.201](#) Trusts Established with the Assets of an Individual on or After January 01, 2000

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<sup>31</sup> A contrary answer from an SSA representative was provided at a Stetson SNT Conference to the question whether an unfunded third party SNT should be submitted to SSA for review. It's gratifying to have the answer that no, submit it only when it is funded.

[SI 01140.200](#) Checking and Savings Accounts

[SI 01140.215](#) Conservatorship Accounts

[SI 01150.001](#) What is a Resource Transfer

[SI 01730.048](#) Medicaid Trusts

MS INTRANETSSI 013.005 Trust

*To Link to this section - Use this URL:*

<http://policy.ssa.gov/poms.nsf/lnx/0501120200>

*SI 01120.200 - Information on Trusts, Including Trusts Established Prior to January 01, 2000, Trusts Established with the Assets of Third Parties, and Trusts Not Subject to Section 1613(e) of the Social Security Act -*

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