

New 2018 SNT POMS – Section 202 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.

Table of Contents

SI 01120.202 Development and Documentation of Trusts Established on or After 01/01/00.....	2
1. General development for written trusts	2
2. General development for oral trusts	3
3. Determining whether a trust is revocable or irrevocable.....	4
4. Determining if a self-funded trust established on or after 01/01/00 is a resource.....	4
5. Developing legal instruments and devices similar to a trust	4
<i>B. Trust review process for trusts established on or after 01/01/00</i>	<i>4</i>
1. Claims Specialists actions	5
2. Trust Reviewer (TR) actions	6
3. Regional Trust Lead (RTL) actions	6
<i>C. Procedure for reviewing pooled trusts and establishing precedent files.....</i>	<i>7</i>
1. Procedure for reviewing pooled trusts that have not been amended and amended pooled trusts whose amendment applies to all prior versions	7
2. Procedure for reviewing amended pooled trusts whose amendment does not apply to all prior versions	8
3. Procedure for RTLs for establishing pooled trust precedents	8
<i>D. Summary for trust development.....</i>	<i>9</i>
1. Trust development.....	9
2. FO actions during the trust review process	10
3. RTRT actions during the trust review process.....	10
4. RTL actions during the trust review process	11
<i>E. Procedure for documenting trusts.....</i>	<i>12</i>
1. Documenting trusts in the SSI Claims System	12
2. Documenting trust on paper forms	12
3. Documentation requirements in all cases	12
<i>F. Procedure for coding trusts.....</i>	<i>12</i>
1. Coding Medicaid trusts on paper	12
2. Coding the CG field	13
<i>G. Procedure for Medicaid determination.....</i>	<i>13</i>
1. When not to make Medicaid eligibility determination.....	13
2. Prepare manual notice.....	13
3. Send trust information to State.....	13
<i>H. Examples of trust evaluations.....</i>	<i>13</i>
1. Example of when the trust principal is a resource	13
2. Example of when the individual's assets form only part of the trust.....	13
3. Example of when part of the individual's assets in the trust is countable	13
4. Example of when a third party trust is not a resource	14
5. Example of when the trust is self-established but no payment can be made to or for the benefit of the individual	14

6. Example of a burial trust	14
7. Example of a trust that includes an excluded resource.....	15
8. Examples of pooled trusts	15
<i>I. References.....</i>	<i>16</i>

SI 01120.202 Development and Documentation of Trusts Established on or After 01/01/00

A. Procedure for trust development

1. General development for written trusts

a. When to evaluate trust documents

Evaluate all trusts where an applicant, recipient, or spouse alleges an interest in a trust that needs 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 the trust resource determination (of a trust that has previously been reviewed) unless there is new and material evidence, such as an amendment to the trust or a clarification or change in policy that may affect the trust resource determination. However, evaluate all potential income implications, such as those of trust distributions and payments. For resource status changes in PE events, see SI 01120.201K.

b. Review the trust document

Obtain a copy of the trust document (the original trust document is not required) and related documents and review the document to determine whether the:

- individual is the grantor, trustee, or trust beneficiary;
- trust was established before, on, or after 01/01/00;
- assets were transferred into the trust before, on, or after 01/01/00;
- trust ~~contains~~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 access to the trust principal;
- trust provides for or permits payments to the individual or on the individual's behalf for the benefit of the individual;
- 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.

c. Which instructions apply when determining the resource status and income treatment of a trust

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:

If the trust was established...	And contains...	Then follow instructions in:
On or after 01/01/00	Any assets of the individual	SI 01120.199, SI 01120.201 through SI 01120.204, SI 01120.225 and SI 01120.227
	Only assets of third parties	SI 01120.200

If the trust was established...	And contains...	Then follow instructions in:
Before 01/01/00	Assets of the individual transferred before 01/01/00	SI 01120.200
	Any assets of the individual transferred on or after 01/01/00	SI 01120.199 , SI 01120.201 through SI 01120.204 , SI 01120.225 , and SI 01120.227
	Only assets of third parties	SI 01120.200

NOTE: If the trust beneficiary adds his or her own assets to an existing third party trust on or after 01/01/00, 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.](#)

d. Consult regional instructions

Consult any regional instructions that pertain to trusts to see if there are any State or Tribal laws to consider on such issues as revocability or irrevocability and grantor trusts. You may also consult the Title XVI Regional Chief Counsel (RCC) Precedents. For RCC precedents on trusts, see [PS 01825.000](#).

e. Referring a trust issue to the Regional Office (RO)

If there are unresolved issues that prevent you from determining the resource status of a trust, or there are issues that you believe need a legal opinion, follow your regional instructions or consult with your RO program staff via vHelp. If necessary, the RO staff will seek guidance from the central office (CO) or the Regional Chief Counsel (RCC). Do **not** contact or refer materials to the RCC directly.

NOTE: When referring a trust issue to the RO, make sure to include all documentation and an SSA-5002 (Report of Contact), if necessary, identifying the individual, source of the funds or assets, relevant relationships of others named in the trust, and a brief summary of the unresolved issue(s).

f. 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. For information on reopening SSI determinations, see SI 04070.015.

g. Manual notices

When applicable, issue a manual notice for trusts established with an individual's assets on or after 01/01/00 as required per SI 01120.204. For such notices, specify using free-form text each reason the trust is countable (that is, why it does not meet the relevant exception(s) or requirements). In the notice, you must cite:

- the applicable section of the trust (or any joinder agreement, if applicable) containing the problematic language or issue; and
- the Program Operations Manual System (POMS) citation that contains the policy requirements on that subject.

Additionally, provide the following language indicating where the POMS can be found on-line: "You can find the Program Operations Manual System (POMS) on the Social Security website at <https://secure.ssa.gov/poms.nsf/Home?readform>." For examples of manual notice language, see SI 01120.204.

NOTE: You should not provide legal advice or attempt to explain how to remedy the problem. For guidance on discussing trust policy with the public, see SI 01120.200M.

2. General development for oral trusts

a. State recognizes as binding

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

- record all relevant information ~~about the trust~~;
- obtain from all parties signed statements describing the arrangement; and
- unless regional instructions specify otherwise, refer the case to your RO staff. The RO will refer the case, through the Assistant Regional Commissioner, Management and Operations Support (ARC, MOS), to the Regional Chief Counsel.

NOTE: The special needs trust and pooled trust exceptions do not apply in the case of an oral trust since these exceptions require written evidence as part of the trust document. For more information on the special needs trust and pooled trust exceptions, see [SI 01120.203](#).

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 or entity 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 whether a trust is revocable or irrevocable

Determine whether a trust is revocable or irrevocable based on the terms of the trust and State [or Tribal](#) law considerations (grantor trust rules). For revocability of grantor trusts, see [SI 01120.200D.1.b](#) and [SI 01120.200D.3](#).

4. Determining if a ~~trust~~ self-funded trust established on or after 01/01/00 is a resource

When determining whether a trust is a resource, apply the policies in regional instructions and [SI 01120.201C](#) and [SI 01120.201D](#): [For instructions on determining the resource status of third party trusts and self-funded trusts established prior to 01/01/00, see SI 01120.200. If the individual used his or her assets to establish a trust on or after 01/01/00, and the trust is:](#)

- revocable, count the trust corpus as a resource unless one of the exceptions in [SI 01120.203](#) applies.
NOTE: The exceptions in [SI 01120.203A](#) only apply to counting a trust under the statutory provisions of section 1613(e) of the Act. A trust that meets the exception to counting for SSI purposes under the statutory trust provisions of Section 1613(e) must still be evaluated under the instructions in [SI 01120.200](#) to determine if it is a countable resource.
- irrevocable, count as a resource any portion of the trust attributable to the individual's assets and from which the trust can make payments to or for the benefit of the individual or the individual's spouse under any circumstance **unless one of the exceptions in [SI 01120.203](#) applies.**
- irrevocable, and if the trust cannot make payments to or for the benefit of the individual or the individual's spouse under any circumstance, develop the establishment of the trust for a potential transfer of resources penalty using instructions in [SI 01150.100](#).

NOTE: If you determine that the trust is a resource, you must determine if an exception or waiver in [SI 01120.203](#) applies.

5. Developing legal instruments and devices similar to a trust

a. Which ~~arrangements~~ legal instruments and devices to develop

Obtain any written documentation and review the legal instrument or device to determine if it meets the requirements in [SI 01120.201G](#).

If it does, determine whether the arrangement created by the legal instrument or device is a countable resource under regular SSI resource counting rules. If the resource is:

- countable, develop the legal instrument or device under the other applicable resource rules.
- not countable, develop the legal instrument or device following the procedures for developing trusts.

NOTE: Review only a legal instrument or device established with the individual's assets on or after 01/01/00. Do **not** develop legal instruments and devices similar to a trust established with the individual's assets prior to 01/01/00 under instructions in [SI 01120.200](#). However, transfers to such arrangements created by a legal instrument or device may be subject to the transfer of resources provisions. For instructions on transfer of resources, see [SI 01150.100](#).

b. Referral to the RO

If you are unsure of whether the arrangement is one that you should develop as a legal instrument or device similar to a trust, refer the matter to the RO via the vHelp system. If necessary, the RO staff will seek guidance from the central office (CO) or the RCC. ~~As we resolve cases over time, we develop precedents that make resolution of these issues easier.~~

B. Trust review process [for trusts established on or after 01/01/00](#)

Claims Specialists evaluate all trusts **that need a resource determination** (such as a new or amended trust) in all IC and PE events. For PE events, do not reevaluate trusts that 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](#).

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 reviews all trust determinations and ~~provides a decision~~provide concurrence and any feedback to the Claims Specialists via the SSITMS website. After the Field Office (FO) receives the RTRT concurrence, Claims Specialists can adjudicate the case.

Claims Specialists and RTRT members can use this SSITMS (<http://oestweb.ba.ad.ssa.gov/SSITM/default.aspx>) link to access the website. SSITMS is a tool for SSA internal communication. Do not share information, including the precedents, with non-SSA personnel. 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 for reviewing trusts established with the assets of an individual on or after 01/01/00.

For the trust review process for trusts established prior to 01/01/00, third party trusts, or trusts not subject to Section 1613(e) of the Act, see SI 01120.200L. For instructions on the trust review process of Indian Gaming Regulatory Act (IGRA) trusts, see SI 01120.195.

1. Claims Specialists actions

For all IC and PE cases in which an individual alleges an interest in a trust established on or after 01/01/00 with his or her own (or spouse's) funds and which needs a resource determination, determine whether the trust is a countable resource. To make the trust resource determination, follow the appropriate trust policies in [SI 01120.199](#), [SI 01120.201](#), [SI 01120.203](#), [SI 01120.204](#), [SI 01120.225](#), and [SI 01120.227](#). Additionally, for pooled trusts follow instructions in [SI 01120.202C](#). in this section.

After making a trust resource determination:

- Document the determination along with any references and rationale used in the decision-making process.
 - Ø For SSI Claims System cases, use the Report of Contact (DROC) screen.
 - Ø For non-SSI Claims System cases, use a Report of Contact form (SSA-5002) and fax it into the electronic folder (EF) or Non-Disability Repository for Evidentiary Document (NDRED).
- Fax the initial trust resource determination, trust document, and any pertinent information into the appropriate EF.
- Follow the trust review process steps in [SI 01120.202B.1.a.](#) through [SI 01120.202B.1.e.](#) in this section.

a. Submitting trust determinations for RTRT review

To submit your trust determination for RTRT review:

- Access the SSITMS website and select the "Add New" tab. Add the claimant/applicant 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 (for example, third party trust or special needs trust).
- Add remarks describing your determination and rationale.
- Submit the trust resource determination for RTRT review.

b. Reviewing the RTRT responses

SSITMS sends an email notification after the trust reviewer (TR) or regional trust lead (RTL) reviews the trust and provides a decision response. 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. The RTRT member may provide feedback in the remarks field.

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.
- 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 General Regional Chief Counsel \(OGCRCC\)](#) 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 FO's reconsideration determination. 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 FO remarks and select "Submit."

NOTE: Do not [load a recon into SSITMS until you have made a trust recon determination](#). SSITMS will send an email notification when the RTL completes the FO reconsideration determination review.

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

e. RTRT returns 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 an email notification about the further development requested to the FO mailbox. 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" function and submit.

2. Trust Reviewer (TR) actions

Trust reviewers (TR) review the Claims Specialist's trust resource determination along with any pertinent documentation in the Supplemental Security Income Claims System (SSI Claims System), eView, and the Claims File User Interface (CFUI). When TRs receive a trust resource determination for review in SSITMS, TRs select the case with "Pending" trust status from the SSITMS Summary listing or from the link in the email notification, and:

- Review the trust and associated information.
- Provide feedback in the Remarks field in SSITMS.
- [Document the decision in a Report of Contact \(DROC\) 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.
- Submit the response to the FO.

Additionally, TRs refer:

- trusts back to the FO when the case needs further development.
- [pooled trusts to the RTL for review and inclusion in the precedent file.](#)
- trusts established outside their region, [including pooled trusts with a precedent established in another 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 pooled trusts, reevaluations, and appeals. When needed, RTLs request guidance from CO or [OGCthe 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 instructions on establishing pooled trust precedents, see SI 01120.202C.3. in this section.](#)

RTLs follow the trust review process steps in [SI 01120.202B.3.a.](#) to [SI 01120.202B.3.d.](#) in this section.

a. Reviewing pooled trust resource determinations

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

- Click the "Details/Update" tab.
- Review information provided by the Claims Specialist.
- Determine if consultation with CO or the RCC is necessary.
- Submit pooled trust documents to the RCC for a legal opinion when necessary.
- Provide the review results in the Remarks field.

- Update Trust Status to “Completed by RTL.”
- Indicate “agree” or “disagree” with the FO’s determination in Results and click “Submit.”

NOTE: Add a precedent to the SSITMS SharePoint Repository for Precedents for all pooled trusts that do not have a precedent on file. Use the SSITMS “Help” link to access the precedent library on the SharePoint site.

For instructions on referring pooled trusts to the RCC and establishing and managing pooled trust precedent files, see [SI 01120.202C.3](#) in this section.

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 the steps listed in [SI 01120.202B.3.a](#) in this section. The Claims Specialist who submitted the case and the Claims 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. [An RTL who did not review the initial trust determination should review the FO reconsideration determination.](#) To view appeal requests, access the case from the SSITMS Summary page listing or from the link in the email notification. [To address the appeal request, follow the steps listed in SI 01120.202B.3.a.](#) in this section.

The Claims Specialist who submitted the case and the Claims 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.”

C. Procedure for reviewing pooled trusts and establishing precedent files

To determine the resource status of a pooled trust, review the most recent version available of the master pooled trust for compliance with the requirements of [section 1917\(d\)\(4\)\(C\) of the Act](#). Do not review prior versions of the master pooled trust agreement.

EXCEPTION: If the master trust has been amended, but the amendment does not cover the entire period of review, you may need to review the prior version(s) of the trust. See examples in [SI 01120.202H.8.d](#) in this section.

For all IC and PE cases where an individual alleges establishment of a pooled trust subject to [SI 01120.203](#):

- Review a copy of the master trust agreement, associated documents (such as any amendments) and his or her joinder agreement; and
- Determine whether a precedent for the pooled trust exists. Use the SSITMS “Help” link to access the SSI Trust Precedent SharePoint site that houses the precedent library.
- Review the precedent, if one exists. Trust precedents contain information to help you with evaluation of the pooled trust.

IMPORTANT: Do not share copies of trust precedents, RCC opinions, or other materials in the SSITMS SharePoint precedent file with the public, attorneys, or non-SSA personnel. The only precedents available to the public are in the PS part of the POMS instructions.

1. Procedure for reviewing pooled trusts that have not been amended and amended pooled trusts whose amendment applies to all prior versions

a. The pooled trust precedent is current and there has not been a policy change since the precedent was established

If the precedent in SSITMS SharePoint is for the most current version of the master pooled trust, and the applicant or recipient submits a trust agreement that is the same version or an older version of the master agreement amended by the current version, you do not need to review the master agreement submitted to make your determination. Use the resource determination in the precedent file. However, review the joinder agreement for [SI 01120.203](#) compliance. Additionally, note that, before using the resource determination in the precedent file, you should check to make sure that there have been no policy changes since the precedent determination that would affect the trust resource determination.

After determining the resource status of the master pooled and joinder agreements:

- Document your determination and fax the master agreement and joinder agreement into the appropriate EF.
- Continue the trust review process in [SI 01120.202B](#) in this section. See the example of a current precedent for a pooled trust in [SI 01120.202H.8.a](#) in this section.

b. The pooled trust precedent is current but there has been a policy change since the precedent was established

If the precedent in SSITMS SharePoint is for the most current version of the master pooled trust, but there has been a policy change since the precedent was established that may affect the resource determination for the master pooled trust, review the master agreement and joinder agreement for [SI 01120.203](#) compliance, and take the following actions:

- Document your determination and fax the master agreement and joinder agreement into the appropriate EF.
- Continue the trust review process in [SI 01120.202B](#). See the example of a current precedent for a pooled trust in [SI 01120.202H.8.a](#) in this section.

c. The pooled trust precedent is not for the current version of the trust or there is no precedent

If the applicant or recipient submits a new or amended version of a pooled trust master agreement and/or the precedent in the SSITMS SharePoint is not for the most current version of the trust or no precedent exists, review the master pooled agreement and joinder agreement for [SI 01120.203](#) compliance. Then take the following actions:

- Document your determination and fax the master agreement and joinder agreement to the appropriate EF.
- Continue the trust review process in [SI 01120.202B](#) in this section. See the example of an outdated precedent for a pooled trust in [SI 01120.202H.8.b](#) in this section.

NOTE: RTLs submit the pooled trust documents to the Regional Chief Counsel (RCC) for a trust resource evaluation and update or establish a precedent in SSITMS SharePoint.

2. Procedure for reviewing amended pooled trusts whose amendment does not apply to all prior versions

If you encounter a situation where an applicant or recipient submits a pooled trust and the pooled trust manager established a new version of the master agreement that does not amend prior versions, take the following actions:

- If there is a precedent for the version of the agreement submitted, follow instructions in [SI 01120.202C.1.a](#) in this section.
- If there is not a precedent for the version of the agreement submitted, follow instructions in [SI 01120.202C.1.b](#) and [SI 01120.202C.3](#) in this section. See example [SI 01120.202H.8.c](#) in this section.
- Submit all versions of the pooled trust to the RTL by using SSITMS, including those with precedents.

3. Procedure for RTLs for establishing pooled trust precedents

a. Information in pooled trust precedents

Before adding or updating a pooled trust precedent in SSITMS SharePoint, RTLs must consult with the RCC. After the RCC evaluates the pooled trust documents, RTLs upload the trust precedent and related documents to the SharePoint site. Pooled trust precedents in SSITMS must contain the following information:

- A copy of the master trust agreement;
- A sample of a joinder agreement;
- A copy of the RCC evaluation of the pooled trust; and
- A precedent summary sheet containing the following information:
 - a. Title of the pooled trust.
 - b. Establishment date.
 - c. Amendment dates.
 - d. Resource determination (whether the master pooled trust agreement meets the requirements for exception) and date.
 - e. Evaluation of whether the master pooled trust meets each of the requirements in [SI 01120.203B.2](#). State in the summary the specific reason why the pooled trust does not meet any requirement.
 - f. Conflicting trust provisions that render the trust countable: for example, a noncompliant early termination provision.

IMPORTANT: Do not share copies of trust precedents, RCC opinions, or other materials in the SSITMS SharePoint precedent file with the public, attorneys, or non-SSA personnel. The only precedents that are available to the public are in the PS Part of the POMS instructions.

b. Regional Chief Counsel (RCC) reviews all pooled trusts

RTLs must consult with the RCC before establishing and updating trust precedents in SSITMS SharePoint. The RCC reviews all pooled trusts and provides a written evaluation on whether they meet the requirements for exception in [section 1917\(d\)\(4\)\(C\) of the Act](#).

c. RTLs manage the precedent files on the SSITMS SharePoint site

After consulting with the RCC, RTLs add precedents to SSITMS SharePoint for all pooled trusts that do not have a precedent on file and update the precedents when pooled trusts have been amended.

Amended trusts that amend all prior versions

For amended trusts that amend all prior versions, update the precedent summary sheet with the most recent information for the pooled trust and note that the amendments apply to all prior versions of the trust. For example:

- Add an amendment date and any reasons why the amended pooled trust is or is not in compliance.
- Add to SSITMS the most recent versions of the master pooled trust and joinder agreement.
- Do not delete prior versions of the pooled trust. Instead, identify them as “for historical purposes only.”

Amended trusts that do not amend all prior versions

For amended trusts that do not amend all prior versions, keep a precedent for each version of the master agreement. For example, keep and update the prior version of a precedent summary sheet, a copy of the master trust agreement, and a copy of the RCC evaluation for each version of the pooled trust.

D. Summary for trust development

1. Trust development

The following is a summary of trust development presented in step-action format (for full development instructions, see [SI 01120.202A](#) in this section):

STEP	ACTION
1	Obtain and review a copy of the trust and all related documents. For instructions on the trust review process for Indian Gaming Regulatory Act (IGRA) trusts, see SI 01120.195 .
2	Does the trust contain any assets of the individual? <ul style="list-style-type: none"> • If no, follow instructions in SI 01120.200. STOP. <p>NOTE: If the individual adds any of his or her assets to a third party trust on or after 01/01/00, redevelop the trust per SI 01120.201 through SI 01120.204.</p> <ul style="list-style-type: none"> • If yes, go to Step 3.
3	Determine the date the individual transferred his or her assets to the trust. To know which instruction to follow, see SI 01120.201C.1 and SI 01120.202A.1.c in this section. <ul style="list-style-type: none"> • If the individual transferred any of his or her assets prior to 01/01/00, follow instructions in SI 01120.200. STOP. • If the individual transferred his or her assets in the trust only on or after 01/01/00, go to Step 4.
4	Consult national and regional instructions to determine if the trust is revocable or irrevocable (for determining revocability of a trust, see SI 01120.202A.3 in this section and SI 01120.200D): <ul style="list-style-type: none"> • If you are unable to make a determination, consult with your RO programs staff. • If the trust is revocable, go to Step 5. • If the trust is irrevocable, go to Step 6. For policy on irrevocable trusts, see SI 01120.201D.2.
5	The trust is a resource unless an exception applies. To see if an exception applies, go to SI 01120.203 . For treatment of revocable trusts, see SI 01120.201D.1 . Issue a manual notice per SI 01120.204 and include the following information: <ul style="list-style-type: none"> • The applicable section of the trust (or any joinder agreement, if applicable) containing the problematic language or issue; • The POMS citation that contains the policy requirements on that subject; and • The following language indicating where the POMS can be found on-line – “You can find the Program Operations Manual System (POMS) on the Social Security website at https://secure.ssa.gov/poms.nsf/Home?readform.”

STEP	ACTION
6	<p>For the policy on irrevocable trusts see SI 01120.201D.2.</p> <p>Does the trust also contain assets of a third party?</p> <ul style="list-style-type: none"> • If yes, determine the amounts in the trust attributable to the individual and the third party. Develop resource treatment of the portion attributable to the third party under SI 01120.200. Go to Step 7 for the portion of the trust attributable to the individual. • If no, go to Step 7.
7	<p>Are there any circumstances that would allow payment from the trust to or for the benefit of the individual?</p> <ul style="list-style-type: none"> • If no, the trust is not a resource. To see if a transfer penalty is applicable, refer to SI 01150.100. • If yes, the trust is a resource in the amount that the trust can pay out from the portion attributable to the individual unless an exception applies. To see if an exception applies, go to SI 01120.203. Issue a manual notice as instructed in Step 5 in this table.

2. FO actions during the trust review process

The following is a summary of FO actions during the trust review process presented in step-action format (for full development instructions, see [SI 01120.202A](#) and [SI 01120.202B.1](#) in this section):

Step	Action
1	<p>Determine whether the trust is a countable resource. To help you evaluate the trust, follow the steps in SI 01120.202D.1 in this section. Additionally, for pooled trusts, follow instructions in SI 01120.202C in this section.</p> <p>Go to step 2.</p> <p>For instructions on the trust review process for Indian Gaming Regulatory Act (IGRA) trusts, see SI 01120.195.</p>
2	<p>Submit your trust resource determination to the RTRT for review using the SSITMS website. Follow instructions in SI 01120.202B.1.a in this section.</p> <p>Go to step 3.</p>
3	<p>When SSITMS sends the automated notification that the RTRT completed review of the trust, access SSITMS to review the results.</p> <p>Go to step 4</p>
4	<p>Do you agree with the RTRT’s review of the trust?</p> <ul style="list-style-type: none"> • If yes, change the trust status in SSITMS to “FO effectuated” at the point when you are ready to adjudicate the IC or close the PE event. Do not change the status until all issues within the IC or PE event are resolved. STOP. • If not, request a reevaluation of the trust. For information on how to request a reevaluation, see SI 01120.202B.1.c in this section. <p>NOTE: You have to wait for the reevaluation’s results to adjudicate your claim event.</p>

3. RTRT actions during the trust review process

The following is a summary in step-action format indicating the RTRT’s actions in the trust review process (for full development instructions, see [SI 01120.202B.2](#) in this section):

STEP	ACTION
1	<p>Access SSITMS to select the case with “pending” trust status or from the link in the email notification.</p> <p>Go to step 2.</p> <p>For instructions on the trust review process for Indian Gaming Regulatory Act (IGRA) trusts, see SI 01120.195.</p>
2	<p>Is the trust a pooled trust?</p>

STEP	ACTION
	<ul style="list-style-type: none"> • If yes, refer to RTL for review. STOP. • If not, go to step 3.
3	<p>Review the FO's trust resource determination. Use information documented in the SSI Claims System, eView, and CFUI to help with your review of the trust.</p> <p>Go to step 4.</p>
4	<p>Determine whether you agree or disagree with the FO's determination and provide feedback in the remarks section of SSITMS and document the decision on a DROC or SSA-5002.</p> <p>Go to step 5.</p>
5	<p>Select "Edit" to change the trust status to "Review Completed" and indicate in "Results" whether you agree or disagree with the Claims Specialist's trust resource determination.</p> <p>Go to step 6.</p>
6	<p>Submit your response.</p> <p>STOP.</p>

4. RTL actions during the trust review process

The following is a summary in step-action format indicating the RTL's actions in the trust review process (for full development, see [SI 01120.202B.3](#), and [SI 01120.202C](#) in this section):

STEP	ACTION
1	<p>Access SSITMS to select the case from the SSITMS listing or from the link in the email notification.</p> <p>Go to step 2.</p> <p>For instructions on the trust review process for Indian Gaming Regulatory Act (IGRA) trusts, see SI 01120.195.</p>
2	<p>Is this a reevaluation request?</p> <p>If yes, go to step 3.</p> <p>If no, go to step 6.</p>
3	<p>A RTL who did not review the initial determination reviews the FO and TR determinations and the remarks section to see the reason for the disagreement.</p> <p>Go to step 4.</p>
4	<p>Determine if CO or RCC consultation is necessary to resolve the disagreement.</p> <p>Contact CO or the RCC if necessary and go to step 5 once you are ready to make a decision.</p> <p>If CO or RCC input is not necessary, go to step 5.</p>
5	<p>Make a determination on the reevaluation and submit your response via SSITMS.</p> <p>STOP.</p>
6	<p>Is the trust established outside your region?</p> <ul style="list-style-type: none"> • If yes, refer the trust to the appropriate region for input. • If not, go to step 7.
7	<p>Review the FO's trust resource determination for the pooled trust.</p>

STEP	ACTION
	<p>NOTE: If the trust determination is for a new pooled trust, add a new precedent to SharePoint. For pooled trusts, you must consult with the RCC before establishing and updating a precedent in SharePoint.</p> <p>Contact the RCC or CO if you need input while evaluating the trust.</p> <p>Go to step 8.</p>
8	<p>Determine whether you agree or disagree with the FO's determination and provide feedback in the remarks section of SSITMS and document the decision on a DROC or SSA-5002.</p> <p>Go to step 9.</p>
9	<p>Select "Edit" to change the status to "Completed by RTL" and indicate in "Results" whether you agree or disagree with the Claims Specialist's trust resource determination.</p> <p>Go to step 10.</p>
10	<p>Submit your response.</p> <p>STOP.</p>

E. Procedure for documenting trusts

1. Documenting trusts in the SSI Claims System

Document the existence of a trust in the SSI Claims System by answering **Yes** on the Resource Selection (RMEN) page to the **Trusts** question. A **Yes** answer will bring the **Trust (RTRS) page** into the path.

- Complete the applicable trust questions on the Trust page.
- Enter the value of a trust that does not count as a resource in **excluded amount**, if an exception applies, and select the exclusion type, for example, meets special needs trust requirements or undue hardship, from the **exclusion reason** drop down menu.
- Record all information used in determining whether the trust is a resource and whether it generates income in the Trust page in the SSI Claims System. For more information on what information to record, see MS INTRANETSSI 013.005.
- Record your conclusion and rationale on the **DROC** screen or SSA-5002 and fax to NDRED.

2. Documenting trust on paper forms

Document the existence of a trust on the appropriate resources question on the form or in Remarks.

Record all information used in determining whether the trust is a resource and whether it generates income. Record your rationale and determination on an SSA-5002, and fax to NDRED. For non-SSI Claims Systems cases, document evidence on the **EVID** screen. For information on electronic evidence documentation and retention, see [GN 00301.286](#).

3. Documentation requirements in all cases

Include in the file:

- A copy of the trust document;
- Copies of any signed documents between organizations making payments to the individual and the individual legally entitled to such payments, if the payments have been assigned, either revocably or irrevocably, to the trust or trustee;
- Source of assets funding the trust;
- Records of any payments or disbursements ([such as ledgers and bank statements](#)) from the trust, as necessary; and
- Any other pertinent documents, [such as court documents](#).

F. Procedure for coding trusts

1. Coding Medicaid trusts on paper

Code a **Q** and the date of establishment of the trust in the Third party Liability (PT) field of the Supplemental Security Record (SSR) if the trust qualifies as a Medicaid Trust.

2. Coding the CG field

Code **RE06** or **RE07**, as applicable in the CG (case characteristics) field to indicate a revocable or irrevocable trust, respectively. (For a list of CG code entries, see SM 01301.820-).

G. Procedure for Medicaid determination

1. When not to make Medicaid eligibility determination

If the individual resides in a section 1634 State (in which SSA makes Medicaid determinations on behalf of the State), do not attempt to make a Medicaid eligibility determination since the Medicaid determination regarding the trust may differ from the SSI eligibility determination. For a discussion of Section 1634 States, see [SI 01715.010A.3](#).

2. Prepare manual notice

Posteligibility discovery of a trust in a section 1634 State will not result in a correct automated notice paragraph. Suppress any automated notice and prepare a manual notice using Medicaid Paragraph 1147 in [NL 00804.110](#).

NOTE: If the individual is blind or visually impaired, see instructions on the special blind or visually impaired notice options in [NL 01001.010](#).

3. Send trust information to State

a. 1634 States

Copy the trust information and send it to the same address used for assignment of rights (AOR) and third party liability (TPL) information. See regional instructions or contact your RO staff for the correct address.

b. 209(b) and SSI criteria States

In States where SSA does not have an agreement to make the Medicaid eligibility determination:

- copy the trust information and see, as applicable, regional instructions [SI NY01150.110](#), [SI DEN01150.110](#), and [SI BOS01150.110](#); or
- contact your RO staff for the correct address to send the information. For a discussion of section 209(b) and SSI criteria States, see [SI 01715.010A.1](#) and [SI 01715.010A.2](#).

H. Examples of trust evaluations

1. Example of when the trust principal is a resource

a. Situation

A 20-year-old SSI claimant is the beneficiary of an irrevocable trust. The court established the trust in 02/2014 with the proceeds of the settlement of a lawsuit. The claimant lives with her parents, who support her fully. Her parents filed a medical malpractice suit on her behalf against her doctor. The doctor's insurance company settled the lawsuit before it went to trial for \$400,000. The court approved the settlement agreement, whereby the insurance company placed the money in an irrevocable trust for the claimant, naming her parents as trustees. The trust permits payments for the claimant's special needs other than support and maintenance. The trust does not provide for reimbursement of Medicaid expenditures to the State on behalf of the claimant.

b. Analysis

The trust was established with assets of the claimant. Although she never received them directly, the settlement proceeds meet the definition of assets in [SI 01120.201B.2](#). Her parents, acting on her behalf, approved/agreed to the settlement that established the trust. The court directed the proceeds to establish the trust after 01/01/00-; so the instructions in SI 01120.201 apply. Although the trust is legally irrevocable under State law, it may be a resource because it permits disbursement of all the funds in the trust to or for the benefit of the claimant. The trust does not meet the exception for a special needs trust under SI 01120.203 because it does not require reimbursement of expenditures to the State(s) that provided medical assistance. Therefore, the trust is a resource in its full amount, \$400,000. The claimant is ineligible due to excess resources.

2. Example of when the individual's assets form only part of the trust

See the example of when the individual's assets form only a part of the trust in [SI 01120.201C.2.c](#).

3. Example of when part of the individual's assets in the trust is countable

a. Situation

Bill Murray is an SSI recipient. His wife, who is not eligible, won \$150,000 in the State lottery, of which she received \$85,000. She used the money to establish the Murray Family Irrevocable Trust. The trust stipulates that she can-~~only~~must use \$40,000 for their daughter's

college education. She can use the remainder of the money for a number of purposes ~~at the discretion of the trustee~~, including supplemental needs for Bill and income payments to ~~his wife~~herself, at the discretion of the trustee.

b. Analysis

Since Mrs. Murray established the trust with her assets and she can only pay \$45,000 to or for the benefit of; Mr. Murray, we will count \$45,000 as a resource. We consider the remaining \$40,000 in the trust a transfer of resources that we must evaluate under [SI 01150.100](#).

4. Example of when a third party trust is not a resource

a. Situation

Woody King is a disabled young adult. In 08/2014, his parents established an irrevocable special needs trust on his behalf with \$100,000 of their own funds. Prior to attaining age 18, he was ineligible because of the income and resources of his parents through deeming. Now that he has attained age 18, he is reapplying for SSI.

b. Analysis

Mr. King's resources do not include the trust established by his parents since he was not the grantor of the trust and it is irrevocable. ~~As long as his other income and resources are within the limits, he is eligible for SSI. However, since~~The trust is not a countable resource; ~~for SSI purposes. However,~~ payments from the trust, to or for the trust beneficiary benefit of Mr. King, may be income.

NOTE: A third party trust can be revocable and not count as a resource as long as the trust beneficiary does not have the legal authority to revoke the trust or direct the use of the trust assets.

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.

5. Example of when the trust is self-established but no payment can be made to or for the benefit of the individual

a. Situation

Arnie Becker is permanently disabled due to an injury he suffered in an automobile accident. Mr. Becker received a \$3.5 million dollar insurance settlement that he put into two irrevocable trusts. The first trust is a discretionary trust providing \$2.5 million for the education and welfare of his children. The second trust is a charitable trust containing \$1 million. The trustee must distribute annually the earnings on the trust in the form of scholarships for students at a nearby college.

b. Analysis

Although Mr. Becker's trusts constitute a very large amount of money, none of the trust assets can be disbursed to him or to provide for his or his spouse's needs. SSA does not count the trusts as resources for SSI purposes. However, the establishment of the trusts is a transfer of resources under [SI 01150.100](#). Mr. Becker will likely be ineligible for SSI for at least 36 months.

6. Example of a burial trust

a. Situation

Mattie Walker, an SSI recipient, wishes to plan her funeral through a prepaid agreement. In the State where she lives, recipients of public assistance, including SSI, must place the funds for their prepaid agreement into a funeral trust. Ms. Walker enters into a contract for a casket and vault valued at \$5,000, and the funeral services she wants are valued at \$1,500. She places the full amount in a revocable trust. As required by State law, the trust shows Ms. Walker as the grantor and the funeral home as the trust beneficiary.

b. Analysis

The revocable funeral trust is a resource under SSI burial trust policy in [SI 01120.201H.2](#). This is the case because Ms. Walker is the grantor of the trust and the trust is revocable. The purpose of the trust is irrelevant for purposes of trust policy (see [SI 01120.201C.2.d.](#)). However, since the trust is a resource, the SSI resource exclusions for burial spaces and funds apply. We exclude the vault and the casket as burial spaces. We exclude the \$1,500 for funeral services under the \$1,500 burial funds exclusion. Therefore, we exclude the total value of the trust. If the amount of funds for funeral services exceeds \$1,500 (other than interest or appreciation), we would exclude up to \$1,500, and the remaining amount would be countable.

For the burial space exclusion, see [SI 01130.400](#), and for the burial fund exclusion, see [SI 01130.409](#) through [SI 01130.425](#).

NOTE: If a trust does not permit the use of the funds in the trust for burial, the burial exclusions are generally not applicable. Upon the individual's death, the individual would no longer be a beneficiary of the trust, unless the trust specifically provides otherwise. Therefore, individuals cannot designate \$1,500 of an otherwise countable trust as a burial fund, unless the trust permits such a use. If you are unable to make this determination, consult with your RO programs staff using vHelp.

7. Example of a trust that includes an excluded resource

a. Situation

Armand Gonzales is a disabled adult SSI recipient. Mr. Gonzales received an award of \$250,000 in a lawsuit in 06/2010 and the money went directly into a trust for his benefit. The trust does not meet any of the exceptions to the general SSI trust policy, so the trust would be a countable resource for SSI purposes. As a result, Mr. Gonzales has excess resources in 07/2010 (the month after the month in which the trust was established). The trustee uses all of the money in the trust to purchase a house for Mr. Gonzales (the trust holds the property title), and he moves into the home in 01/2011, when construction is completed. He contacts SSA and informs us of what has happened.

b. Analysis

Mr. Gonzales is ineligible due to excess income in 06/2010 and excess resources from 07/2010 to 01/11. When he moves into the house in 01/2011, we consider him to be living in his own home because he has an equitable ownership interest under a trust. The house qualifies for the home exclusion as of 02/2011, and if Mr. Gonzales meets all other SSI eligibility requirements, we will reinstate his benefits. For information on the home resource exclusion, see [SI 01120.200F.1](#).

8. Examples of pooled trusts

a. Pooled trust precedent is current

Andy Smith filed for SSI benefits on 04/21/09. During his initial interview, he provided The Brothers of Townsville Master Pooled Trust and his joinder agreement for our evaluation. The master agreement states that the trust was established on 11/12/07 and there is no evidence that it has been amended.

The precedent summary sheet in SSITMS SharePoint shows that the trust was established on 11/12/07 and that it does not have any amendment dates. It also states that the master pooled trust meets the requirements of SI 01120.203 for exception.

Since SSITMS SharePoint has a current precedent on file for The Brothers of Townsville Master Pooled Trust, and there have not been any trust policy changes since 11/12/07 that would affect the resource determination in the precedent, we adopt the precedent determination for Mr. Smith's pooled trust, evaluate the joinder agreement for compliance, document the DROC, and submit our request for RTRT review via SSITMS.

b. Pooled trust precedent is not current

During Paul Baker's redetermination (RZ) on 06/02/10, he provided The Brothers of Townsville Master Pooled Trust and his joinder agreement for our evaluation.

The master agreement states the trust was established on 11/12/07 and amended on 10/24/09.

The precedent summary sheet in SSITMS SharePoint shows the trust was established on 11/12/07, but does not indicate any amendments.

The precedent in SSITMS SharePoint is not up-to-date. Therefore, we evaluate the master and joinder agreements for compliance, document our determination, and submit our determination via SSITMS for review.

Once the RCC evaluates the amended trust agreement, the RTL updates the precedent summary sheet in SSITMS SharePoint with the new determination information and a copy of the amended trust and updates all other trust-related documents.

c. No pooled trust precedent on file

Janet Moore reports during her RZ interview on 10/08/15 that she is a trust beneficiary of the Greater Los Angeles Master Pooled Trust. Her account was established in 07/2015. Ms. Moore submits her trust documents for our evaluation. We do not have a precedent in SSITMS SharePoint for the Greater Los Angeles Master Pooled Trust.

The Greater Los Angeles Master Pooled Trust was established on 05/15/08 and amended 06/04/12. The amendments do not apply to the prior version. We do not need to evaluate the 05/15/08 version of the master agreement to make a determination in Ms. Moore's case, because her trust was established under the 06/04/12 amended version of the trust. Therefore, we evaluate the 06/04/12 amended master trust agreement and joinder agreement for compliance and submit our determination via SSITMS for review.

Once the RCC evaluates the trust, the RTL creates a precedent for the Greater Los Angeles Master Pooled Trust that includes all the items listed in SI 01120.202C.3. in this section.

If another applicant who has a trust established under the original 2008 version of the trust submits a copy later (because the 2012 amendments do not apply to the 2008 version), establish a separate precedent for the 05/15/08 version of the trust.

d. Reviewing the most recent version of a master pooled trust

Scenario A: trust precedent is not current and 90-day trust amendment period does not apply

Gary Thompson has been a trust beneficiary of The Brothers of Townsville Master Pooled Trust since 02/01/08 and an SSI recipient since 2003. He reported the trust for the first time during an RZ interview in 08/20/15 and submitted his master and joinder trust documents. The Brothers of Townsville Master Pooled Trust has been amended three times, on 10/24/09, 03/18/12, and 02/15/13, and

the amendments apply to prior versions. Our precedent file is not current because it shows that the master trust meets the requirement for exception based on the amended version of 03/18/12.

During Mr. Thompson's RZ, we evaluate the 02/15/13 amended version of the master pooled trust, because it is the most recent, and his joinder agreement. The RCC finds that the 02/15/13 version does not meet the requirements for exception. We document the trust determination and count the balance of the trust as a resource back to the start of the period of review based on administrative finality.

NOTE: Mr. Thompson does not qualify for a 90-day trust amendment period because his trust was not previously excepted from resource counting. A trust that either is newly formed or was not previously excepted from resource counting for that individual must meet all of the criteria in SI 01120.199 through SI 01120.203 and SI 01120.225 through SI 01120.227, to be excepted under section 1917(d)(4)(A) or 1917(d)(4)(C). Do not except such a trust from resource counting unless the trust meets all of these requirements.

Scenario B: trust precedent is not current and 90-day trust amendment period applies

Gary Thompson has been a trust beneficiary of The Brothers of Townsville Master Pooled Trust since 02/01/08 and an SSI recipient since 2003. We first excepted his pooled trust from resource counting in 03/2008. During an RZ interview on 08/20/15, Mr. Thompson submitted a copy of 02/15/13 amended master and joinder trust documents. The Brothers of Townsville Master Pooled Trust has been amended three times, on 10/24/09, 03/18/12, and 02/15/13, and the amendments apply to prior versions. Our precedent file is not current because it shows that the trust meets the requirements for exception as a resource based on the amended version of 10/24/09.

During Mr. Thompson's RZ, we evaluate the 02/15/13 version of the master pooled trust, because it is the most recent, and his joinder agreement. The RCC finds that the 02/15/13 version does not meet the requirements for exception because the early termination provision is noncompliant.

Since we had previously excepted The Brothers of Townsville Master Pooled Trust in Mr. Thompson's record (in 03/2008), we follow instructions in SI 01120.199 and offer him 90 days to amend the trust. On 11/11/15, the trust is amended and becomes compliant. Since the trust was amended during the amendment period, the trust remains excepted from resource counting during the amendment period and continuing.

Scenario C: trust amendments do not cover the entire period of review

Gary Thompson has been a trust beneficiary of The Brothers of Townsville Master Pooled Trust since 02/16/08 and an SSI recipient since 2003. We first excepted his pooled trust from resource counting in 03/2008. During an RZ interview on 08/20/15, Mr. Thompson submitted a copy of 12/15/13 amended master and joinder trust documents. The Brothers of Townsville Master Pooled Trust has been amended three times, on 10/24/09, 03/18/12, and 12/15/13. Our precedent file is not current because it shows that the trust meets the requirements for exception as a resource based on the amended version of 10/24/09.

Mr. Thompson's RZ period of review is 08/13 through 08/15. We evaluate the 12/15/13 version of the master pooled trust because it is the most recent and covers the period 12/13 to 08/15 and the 03/18/12 version of the trust because it is applicable to the other part of the period of review (08/13 – 12/13). (The 12/15/13 version of the trust amended the 03/18/12 version of the trust, but only after 12/15/13. The 12/15/13 amendment is not retroactive to 03/18/12.) We also evaluate his joinder agreements. The RCC finds that the 03/18/12 version of the trust is compliant, but the 12/15/13 version does not meet the requirements for exception because the early termination provision is noncompliant.

Since we had previously excepted The Brothers of Townsville Master Pooled Trust in Mr. Thompson's record (in 03/2008), we follow instructions in SI 01120.199, and offer him 90 days to amend the trust. On 11/11/15, the trust is amended and becomes compliant. Since the trust was amended during the amendment period, the trust remains excepted from resource counting during the amendment period and continuing.

I. References

SI 01120.199 Early Termination Provisions and Trusts

SI 01120.201 Trusts established with the assets of an individual on or after 1/1/00

SI 01120.202 Development and Documentation of Trusts Established on or After 01/01/00

SI 01120.203 Exceptions to Counting Trusts Established on or after 1/1/00

SI 01120.204 Notices for Trusts Established on or after 1/1/00

SI 01120.225 Pooled Trusts Management Provisions

SI 01120.227 Null and Void Clauses in Trust Documents

To Link to this section - Use this URL:
<http://policy.ssa.gov/poms.nsf/lnx/0501120202>

SI 01120.202 - Development and Documentation of Trusts Established on
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