

New 2018 SNT POMS – Section 201 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 01120.201 Trusts Established with the Assets of an Individual on or after 01/01/00

### Citations:

Social Security Act as amended, [Section 1613\(e\)](#)  
[P.L. 106-169, Section 205](#)

## A. Background for trusts established with assets of an individual on or after 01/01/00

### 1. Foster Care Independence Act of 1999

On 12/14/99, the President signed into law the Foster Care Independence Act of 1999 (P.L. 106-169). Section 205 of this law provides, generally, that we consider trusts established with the assets of an individual (or spouse) **as resources** for Supplemental Security Income (SSI) eligibility purposes. The law addresses when to consider earnings on or additions to trusts as income. The law also provides **exceptions to the statutory rules in Section 1613(e) of the Social Security Act (Act)** for counting trusts as resources and income. The provisions in the law are effective for trusts established on or after 01/01/00. [For information on exceptions to the statutory rules in Section 1613\(e\), see SI 01120.203.](#)

For trusts established prior to 01/01/00, trusts established with the assets of third parties, and trusts that meet an exception to the statutory provisions of Section 1613(e) but meet the definition of a resource in [SI 01110.100B.1](#), see [SI 01120.200](#).

### 2. Third party trusts

These provisions do not apply to trusts established solely with the assets of a third party, either before or after 01/01/00. For development of third party trusts, see [SI 01120.200](#).<sup>1</sup> However, if at any point the individual adds his or her assets to such a trust, then that portion of the trust becomes subject to development under [SI 01120.201](#). through [SI 01120.204](#).

### 3. Case processing alert

Trusts are often complex legal arrangements involving State [or Tribal laws](#) and legal principles that a Claims Specialist may not be able to apply without [advice from agency](#) counsel. Therefore, the following instructions may only be sufficient for you to recognize that an issue is present [and that you may need to consult with](#) your regional office (RO) [for possible referral](#). [The RO may refer the trust to](#)

<sup>1</sup> Given that the most frequent error made at SSA local offices is applying first party SNT rules to third party SNTs, this statement is much more important than it looks.

the Regional Chief Counsel. if necessary. When in doubt, discuss the issue with submit your question to the RO staff. Many issues can be resolved by phone using vHelp.

## B. Glossary of terms<sup>2</sup>

### 1. Asset

For purposes of this section, an **asset** is any income or resource of the individual or the individual's spouse, including:

- income excluded under section 1612(b) of the Act. For income exclusions in the Act, see [SI 00830.099](#) and [SI 00820.500](#);
- resources excluded under section 1613 of the Act. For resource exclusions in the Act, see [SI 01130.050](#);
- any other payment or property to which the individual or the individual's spouse is entitled but does not receive or have access to because of action by:
  - a. the individual or the individual's spouse;
  - b. a person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or the individual's spouse; or
  - c. a person or entity (including a court) acting at the direction of, or on the request of, the individual or the individual's spouse.

### 2. Corpus or principal

The **corpus or principal** of the trust is all property and other interests held by the trust, including accumulated earnings and any other additions, such as new deposits, on or to the trust after its establishment.

**NOTE:** Earnings or additions are not included in the corpus in the month the trust credits or receives them because we consider them under income counting rules in that month. For more information, see [SI 00810.000](#).

### 3. Foreclosure

For purposes of this section, **foreclosure** is an event that bars or prevents access to, or payment from, a trust to an individual now or in the future.

### 4. Legal instrument or device similar to a trust

A **legal instrument, device, or arrangement** may not be a trust under State or Tribal law but, even if it is not a trust, may nevertheless be similar to a trust in that it involves a grantor:

- who provides the assets to fund the legal instrument, device, or arrangement;
- who transfers property (or whose property is transferred by another) to an individual or entity with fiduciary obligations (considered a trustee for purposes of this section); and/or
- who makes the transfer with the intention that the individual or entity hold, manage, or administer the property for the benefit of the grantor or others.

Legal instruments or devices similar to a trust can include (but are not limited to) escrow accounts, investment accounts, conservatorship accounts, pension funds, annuities, certain Uniform Transfers to Minors Act (UTMA) accounts, and other similar devices managed by an individual or entity with fiduciary obligations.

For the definition of a grantor, see [SI 01120.200B.3](#). For trusts established with the assets of an individual, see [SI 01120.201B.8](#) in this section.

### 5. Spouse

For the purposes of this section, the individual's **spouse** is the individual we consider the spouse for normal SSI purposes. For determining marital status, see [SI 00501.150](#).

### 6. Terminate

A trust may **terminate** (or end) for different reasons. For example, the grantor may retain the right to terminate a trust, or another individual may have authority to exercise a right to terminate the trust. It is important to determine who receives the trust corpus upon **termination**.<sup>3</sup> The trust may terminate because its purpose is completed, it runs out of funds, or the beneficiary is no longer disabled or dies. Generally, provisions that permit the trust to terminate prior to the beneficiary's death are called early termination provisions. For more information on early termination provisions, see [SI 01120.199](#).

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<sup>2</sup> The Glossary terms are now helpfully arranged alphabetically.

<sup>3</sup> Early termination (during the beneficiary's lifetime) requires that any funds remaining after payment of debts and obligations must be go to the SSI claimant beneficiary.

## 7. Testamentary trust (a trust established by a will)

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.

## 8. Trust established with the assets of an individual<sup>4</sup>

A trust is considered to have been established with the assets of an individual if any assets of the individual (or spouse), regardless of how little, were transferred into the trust other than by a will.

**NOTE:** The grantor named in the trust document who provided the assets funding the trust and the individual whose actions established the trust may not be the same. The trust may name the individual (for example, a parent or legal guardian) who physically took action to establish the trust rather than the individual who provided the trust assets.<sup>5</sup> This distinction is important, especially in developing Medicaid trust exceptions in SI 01120.203. For a definition of a grantor, see SI 01120.200B.3. For examples of trusts established with the assets of an individual, see SI 01120.201C.2.b-c in this section.

## 9. Trust income

For purposes of this section, **trust income** includes any earnings on, and additions to, a trust established with the assets of an individual (or the individual's spouse):

- of which the individual is a beneficiary;
- to which the statutory trust provisions apply; and
- in the case of an irrevocable trust, if any circumstances exist under which payment from the earnings or additions could be made to or for the benefit of the individual.

## 10. Other definitions

For other definitions applicable to this section, see [SI 01120.200B](#).

## C. Policy for certain trusts established on or after 01/01/00

### 1. Effective date for trust provisions in [SI 01120.201](#).

The trust provisions in [SI 01120.201](#):

- apply to certain trusts established on or after 01/01/00.
- do not apply to trusts established with the assets of an individual prior to 01/01/00, regardless of the individual's filing date. We evaluate trusts established prior to 01/01/00 under instructions in [SI 01120.200](#).

A trust established with the assets of an individual prior to 01/01/00, but added to or augmented on or after 01/01/00, generally is still considered as established prior to 01/01/00. We consider the transfer of an individual's property to an existing trust as the establishment of a trust subject to the provisions of this section only if:

- the transfer occurs on or after 01/01/00; and
- the corpus of the trust does not include property that was transferred from the individual prior to 01/01/00.

However, additions to such a trust may be a transfer of resources. For instructions related to transfer of resources, see [SI 01150.100](#) and [SI 01150.110](#).

These provisions do not apply to trusts established solely with the assets of a third party, either before or after 01/01/00. For development of third party trusts, see [SI 01120.200](#)<sup>6</sup>. However, if at any point in the future the individual's own assets are added to a trust that previously contained only the assets of a third party, the portion of the trust funded with the individual's assets is subject to the rules in SI 01120.201, through [SI 01120.204](#).

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<sup>4</sup> Adding the phrase "established with the assets of the individual" again tries to emphasize that this POMS only applied to first party SNTs.

<sup>5</sup> Trusts may have many grantors. The person whose assets fund the trust is also a grantor even if they do not execute the SNT. If the SSI claimant's assets are used to fund the trust, the SSI claimant is a grantor, and the first party SNT rules apply, including Medicaid repayment at death.

<sup>6</sup> Again, another statement, that section 201 does NOT apply to third party funded SNTs only first party SNTs.

## 2. Application of the trust provisions in this section

### a. Trusts to which the provisions in this section apply

Except as provided in [SI 01120.203A](#), this section applies to trusts "established with the assets of an individual." A trust is considered to have been established with the assets of an individual if any assets of the individual (or spouse), regardless of how little, were transferred into the trust other than by a will. For the definition of an asset, see [SI 01120.201B.1](#), in this section.

These provisions apply to trusts without regard to:

- the purpose for which the trust was established;
- whether the trustees have or exercise any discretion under the trust;
- any restrictions on when or whether distributions may be made from the trust; or
- any restrictions on the use of distributions from the trust.

Therefore, any trust established with the assets of an individual on or after 01/01/00 will be subject to these provisions and may count in determining SSI eligibility.

### b. Exculpatory clauses

No clause or requirement in the trust, no matter how specifically it applies to SSI or another Federal or State program, can preclude a trust from being considered under the rules in this section. An **exculpatory clause** is one that attempts to exempt the trust from the applicability of these rules. For example, an exculpatory clause might state, "Section 1613(e) of the Social Security Act does not apply to this trust." Such a statement has no effect on whether these rules apply to the trust. The inclusion of an exculpatory clause in a trust does not itself make the trust a resource<sup>7</sup>.

**NOTE:** While exculpatory clauses, use restrictions, trustee discretion, and restrictions on distribution amounts, etc. do not necessarily affect a trust's [resource status](#), they do have an impact on how the various components of the trust are treated. For example, a provision in a discretionary irrevocable trust that limits the trustee to distributing no more than \$10,000 to an individual has no effect on whether the trust [itself is a resource](#) but does affect the amount that [would be](#) countable [as a resource](#).

### c. Individual's assets form only a part of the trust

In the case of an irrevocable trust into which the assets of the individual (or the individual's spouse), along with the assets of (an) other individual(s), are transferred, these provisions apply to the portion of the trust attributable to the assets of the individual (or spouse). Thus, in determining countable resources in the trust, you must prorate any amounts of resources, based on the proportion of the individual's assets in the trust.

**EXAMPLE:** Jimmy is an adult with cerebral palsy. His grandparents left \$75,000 in trust for him in their wills (third party testamentary trust). Recently (after 01/01/00), Mr. Jimmy won an employment discrimination lawsuit and received a \$1,500 judgment, which he deposited into the trust that his grandparents established. The \$1,500 award is countable income in the month Mr. Jimmy receives the judgment because it is not irrevocably assigned to the trust. The \$1,500 of Mr. Jimmy's funds are subject to these provisions and could be a resource if payment could be made to Mr. Jimmy or for his benefit (see SI 01120.201D.2. in this section). The \$75,000 with which Mr. Jimmy's grandparents established the trust, by will, for Mr. Jimmy's benefit is not subject to these provisions but must be evaluated under the instructions for third party trusts in SI 01120.200.<sup>8</sup>

## 3. Examples of trusts and the applicable provisions

### a. Examples of trusts to which the trust provisions in SI 01120.201 apply

The following are examples of trusts to which the trust provisions in this section apply:

- An individual who was the plaintiff in a medical malpractice lawsuit becomes the beneficiary of a trust under a settlement agreement. The agreement states that the defendant's insurance company established the trust instead of paying the settlement funds directly to the plaintiff. The settlement funds meet the definition of assets under SI 01120.201B.1. in this section because they are payments that the individual is entitled to but did not receive because they were made by an entity acting on behalf of or at the direction of the individual. Therefore, the trust was established with the assets of the individual.<sup>9</sup>

<sup>7</sup> The exculpatory statement is ignored both ways – to get out from under the SNT rules, but also to invalidate an otherwise valid SNT.

<sup>8</sup> This is a good citation to convince clients that they cannot add first party money, the SSI claimant's, to a third party SNT, a question that comes up fairly frequently.

<sup>9</sup> This is a good cite to defeat suggestions that third parties can direct the first party's money into a trust and avoid the first party SNT rules and Medicaid payback.

- The same result would occur if a court had ordered placement of the settlement in a trust<sup>10</sup>, or if the individual was a child, regardless of whether State law requires placement of the settlement in a trust for the child.
- A disabled SSI recipient over age 18 receives a settlement, which is deposited directly into a trust<sup>11</sup>. Because in this example, the settlement is the recipient's income. Since the settlement is the SSI recipient's income, the recipient is the grantor of the trust and the trust is a resource, unless it meets an exception in SI 01120.203

If the trust meets an exception and is not a resource, the settlement would still be considered income unless it is irrevocably assigned to the trust or trustee. So, for instance, if a court had ordered the settlement to be paid directly into an excepted trust, we would consider the settlement to be irrevocably assigned to the trust/trustee, and we would not count it as income<sup>12</sup>. Refer to SI 01120.201J.1.d. in this section regarding irrevocable assignment.

#### ***b. Examples of trusts to which the trust provisions in SI 01120.201 do not apply***

The following are examples of trusts where the trust provisions in SI 01120.201. do not apply:

- Emily Lombardozi, age 67, has a settlement agreement due to an automobile accident that left her paralyzed in 1994. Under the agreement, she receives a lump-sum payment in March of each year. Since 1995, the annual lump-sum payments have been deposited into an irrevocable trust. We do not consider the payments received in 03/00 and years thereafter to be for the establishment of a trust for purposes of these provisions. They are additions to a trust established prior to 01/01/00 and are evaluated under SI 01120.200.
- Same situation as the bullet above except that Ms. Lombardozi receives an inheritance of \$3,000 that she deposits into the trust. We evaluate the trust under the rules in SI 01120.200. and the deposit of the inheritance as a transfer of resources under SI 01150.100.
- Robert Gates is a disabled child. His grandmother established an irrevocable trust with \$2,000. of which he is the beneficiary, in 12/97. Robert won a lawsuit in 02/00 and placed the money from the judgment (\$50,000) in the trust that his grandmother established. Since Robert transferred money into the third party trust after 01/01/00, the deposit of the judgment funds (\$50,000) on or after 01/01/00 means that the individual's portion is evaluated under the provisions in this section. The funds deposited by his grandmother are not evaluated under these provisions since they are funds of a third party subject to evaluation under SI 01120.200.

## **D. Policy on the treatment of trusts**

### **1. Revocable trusts**

#### ***a. General rule for revocable trusts***

In the case of a revocable trust established with the assets of the individual, the entire corpus of the trust is a resource to the individual. However, certain exceptions may apply. For exceptions to counting trusts established on or after 01/01/00, see SI 01120.203. For instructions on revocability, see SI 01120.200D.1.b. and SI 01120.200D.3.

**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 definition of a resource is still countable, and you must develop it under [SI 01120.200](#).

#### ***b. Relationship to transfer penalty***

Any disbursements from a trust that is a resource that are not "to or for the benefit of" the individual are a transfer of resources. For information on payments for the benefit of or on behalf of the individual, see SI 01120.201F.1. in this section. For transfer of resource provisions, see [SI 01150.100](#).

#### ***c. Example of a transfer of resources from a revocable trust***

Willie Jones is a young adult with ~~mental retardation-intellectual disabilities~~. Mr. Jones had a revocable trust established after 01/01/00. His guardian spent all but \$5,000 of funds in the trust on Mr. Jones' behalf. His mother files for SSI for him, but he is not eligible because of the money in the trust. His mother takes a \$4,500 disbursement from the trust and makes a down payment on a new car that she says she will use to transport Mr. Jones. However, she registers the car in her own name. Even though his mother will use the

<sup>10</sup> And getting a state court order will not make a difference – it is still a first party SNT.

<sup>11</sup> And having settlement funds directly deposited into a trust does not evade the first party SNT requirements.

<sup>12</sup> But having a court order that settlement funds be deposited directly into the trust will avoid counting the funds as income for that one month.

car to transport Mr. Jones, the purchase of the car is a transfer of resources since the car does not belong to him. For policy on purchases for the benefit of the individual and titling of property, see [SI 01120.201F.1](#), in this section.<sup>13</sup>

## 2. Irrevocable trusts

### a. General rule for irrevocable trusts

In determining whether an irrevocable trust established with the assets of an individual is a resource, we must consider how the trust can [make payments](#). If [the trustee can make any](#) payments to or for the benefit of the individual or individual's spouse, the portion of the trust from which [the trustee can make payments and](#) that is attributable to the individual is a resource. However, certain exceptions may apply. [For possible exceptions, see SI 01120.203. For information on payments for the benefit of or on behalf of the individual, see SI 01120.201F.1. in this section. For information on revocability, see SI 01120.200D.1.b.](#)

### b. Circumstances under which payment can or cannot be made

Take into consideration any restrictions on payments [to determine whether the trustee can make payments to or for the benefit of the individual](#). Restrictions [included in the trust](#) may include use restrictions, exculpatory clauses, or limits on the trustee's discretion. However, if [the trust can make](#) a payment to or for the benefit of the individual under **any** circumstance, no matter how unlikely or distant in the future, the general rule in [SI 01120.201D.2.a](#), in this section applies: the portion of the trust [from which payment can be made to or for the benefit of the individual and](#) that is attributable to the individual is a resource, provided that no exception from [SI 01120.203](#) applies. [For information on payments for the benefit of or on behalf of the individual, see SI 01120.201F.1. in this section.](#)

### c. Examples of irrevocable trusts and their resource treatment

[The following are examples of irrevocable trusts and their resource treatment:](#)

An irrevocable trust provides that the trustee can make a one-time disbursement that totals \$2,000 to, or for the benefit of, the individual out of a trust with \$20,000 in assets. Only \$2,000 is considered a resource under [SI 01120.201D.2.a](#), in this section. The other \$18,000 is considered to be an amount that cannot, under any circumstances, be paid to the individual and may be subject to the transfer of resources provisions in [SI 01120.201E](#), in this section, [SI 01150.100](#), and [SI 01150.121](#).

- A trust contains \$50,000 that the trustee can pay to the beneficiary only in the event that he or she needs a heart transplant or on his or her 100<sup>th</sup> birthday. The entire \$50,000 could be paid to the individual under these specific circumstances and [therefore is considered](#) a resource.
- An individual establishes an irrevocable trust with \$10,000 of his assets. His parents contribute another \$10,000 to the trust. The trust permits distributions to, or for the benefit of, the individual only from the portion of the trust contributed by his parents. The trust is not [a resource under](#) the [provisions in](#) this section [because the portion attributed to the beneficiary is not available](#). The portion of the trust contributed by the individual is subject to evaluation under the transfer of resources provisions in [SI 01150.100](#) (see also [SI 01120.201E](#), in this section). The portion of the trust contributed by his parents is subject to evaluation under [SI 01120.200](#).

## 3. Types of payments from the trust

### a. Payments to an individual

We consider payments to be made **to the individual** when any amount from the trust, including amounts from the corpus or income produced by the trust, are paid directly to the individual or someone acting on his or her behalf, such as a guardian or legal representative.

### b. Payments on behalf of or for the benefit of an individual

For payments on behalf of or for the benefit of an individual, see [SI 01120.201F.1](#), in this section. Also, for more instructions on disbursements from trusts, see [SI 01120.201I](#), in this section.

## 4. Placing excluded resources in a trust

If an individual places an excluded resource in a trust and the trust is a countable resource, the resource exclusion may still apply to that resource. For example, if an individual transfers ownership of his or her excluded home to a trust and the trust is a countable resource, the home is still subject to exclusion under [SI 01130.100](#). For a discussion of ownership of a home by a trust and the effect of payment of home expenses by the trust, see [SI 01120.200F](#).

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<sup>13</sup> This example is from the old POMS, and review of the F.1. section referred to, would indicate that in all probability there could be a legal impediment to Willie owning the car in his name if Willie could not secure a driver's license. In that case, the explanations in the F section below may apply.

## 5. Trust instructions versus transfer instructions for assets in a trust

When an individual transfers assets into a trust, he or she generally transfers [ownership/legal title](#) of the asset to the trustee. In some cases, we could consider this a transfer of resources. To avoid both counting a trust as a resource and imposing a transfer of resources penalty for the same transaction, **the trust instructions take precedence over the transfer instructions. The transfer instructions may apply to** portions of the trust that we cannot count as a resource.

### E. Policy for relationship to transfer penalty (irrevocable trust)

#### 1. Trust established with individual's resources

##### a. Foreclosure of payment

When all or a portion of the corpus of a trust, established with the individual's or spouse's resources, cannot be paid to or for the benefit of the individual, the portion that cannot be paid is considered a transfer of resources for less than fair market value.

Consider the date of the transfer to be:

- the date the trust was established; or, if later,
- the date payment to the individual was foreclosed (i.e., an action was taken that precludes current or future payments from the trust).

In determining the value of the transfer, do not subtract the value of any disbursements made after the date [of the transfer, as determined according to the instructions in SI 01120.201E.1. in this section](#). Additions to the foreclosed portion of the trust after the date [of the transfer](#) may be new transfers that [you must develop](#) separately.

For instructions related to transfer of resources, see [SI 01150.001](#).

##### b. Payment to or for the benefit of another

When all or a portion of the corpus of a trust, established with the individual's or spouse's resources, is a resource to the individual and payment is made from that portion of the trust to or for the benefit of another, such a payment is a transfer of resources.

##### c. Examples of trusts where the transfer penalty applies

[The following are examples of trusts where the transfer penalty applies.](#)

- Millie Russell is an adult SSI recipient. Upon the death of her mother, Ms. Russell receives the proceeds of a life insurance policy in the amount of \$30,000. She uses the proceeds to establish an irrevocable trust solely to pay for the college expenses of her younger sister, in accordance with her mother's wishes. Receipt of the insurance proceeds is income to Ms. Russell. Establishment of the trust is a transfer of resources by Ms. Russell since [the terms of the trust foreclose payment to her](#) or for her benefit. Even though establishing the trust was her mother's wish, she was not legally obligated to do so. Her mother could have established a trust in her will or named the younger sister as beneficiary of the insurance policy.
- Same scenario as in [the first example](#), except that Ms. Russell establishes an irrevocable trust for the benefit of her sister and herself. The trust is a resource to Ms. Russell and makes her ineligible. The trust makes a \$5,000 tuition payment to State College on behalf of her sister. The \$5,000 payment is a transfer of resources for Ms. Russell. Although counting the trust as a resource would make her ineligible, if the trust principal were spent down to the point where it would allow resource eligibility, we would still have to consider any tuition payments or other payments to or on behalf of her sister made within the 36-month transfer look-back period. For more information on the transfer penalty, see [SI 01150.110](#).

#### 2. Trust established with individual's non-resource assets

##### a. What is a non-resource asset?

A **non-resource asset** is an asset that meets the definition in [SI 01120.201B.2](#) in this section but does not meet the definition of a resource in [SI 01110.100B.1](#) and [SI 01110.115](#). [For example, a non-resource asset may be a lawsuit settlement that a court orders to be paid into a trust. The individual was entitled to it but did not receive it because of action by the court.](#)

##### b. Transfer penalty

When we consider as a resource all or a portion of the corpus of a trust established by an individual or spouse with the individual's or spouse's non-resource assets under the trust provisions in [SI 01120.201](#), the transfer of resources penalty may apply in the following circumstances.

- If an event occurs that forecloses payment from the portion of the trust that is a resource, then such foreclosure is a transfer of resources as of the date [when payment is foreclosed. For the definition of foreclosure, see SI 01120.201B.8. in this section.](#)
- If payment to or for the benefit of another individual is made from the portion of the trust that is a resource, then such payment is a transfer of resources.



In determining the value of the transfer, do not subtract the value of any disbursements made after the date of foreclosure. Additions made by the individual to the foreclosed portion of the trust after the foreclosure date may be new transfers that you must develop separately.

For instructions related to transfers of resources, see [SI 01150.100](#).

**NOTE:** If a trust established with the individual's non-resource assets is not a resource to the individual, payment to or for the benefit of another person or foreclosure of payment to the individual is not subject to the transfer of resources penalty because the trust was not a resource. For example, an individual has non-resource assets of \$10,000 that she places into an irrevocable trust for the benefit of her daughter. The trust is not a resource to the individual because the trust cannot make payments to her or for her benefit. It is also not a transfer of resources subject to the penalty provision because the trust is not a resource and the trust was established with non-resource assets. Likewise, payments from the trust to or for the benefit of the daughter are not transfers of resources.

## F. Policy on trusts and/or payments for the benefit of, on behalf of, or for the sole benefit of an individual<sup>14</sup>

### 1. General rule regarding trusts established for the sole benefit of an individual

Consider a trust established for the sole benefit of an individual if the trust benefits no one but that individual, whether at the time the trust is established or at any time for the remainder of the individual's life.

Do not consider a trust that allows for the trust corpus or income to be paid to, or for the benefit of, a beneficiary other than the SSI applicant or recipient as a trust established for the sole benefit of the applicant or recipient, except as provided in SI 01120.201F.3 and SI 01120.201F.4. in this section.

### 2. Trust established for the benefit of or on behalf of the individual

Consider a trust established for the benefit of the individual, and consider payments to be on behalf of, or to or for the benefit of the individual, if the trustee makes payments of any sort from the corpus or income of the trust to another person or entity such that the individual derives some benefit from the payment.

For example, such payments could be for the purchase of food or shelter or household goods and personal items that count as income. The payments could also be for services for medical or personal attendant care that the individual may need, which do not count as income.

**NOTE:** We evaluate these payments under regular income-counting rules. However, they do not have to meet the definition of income for SSI purposes to be considered made on behalf of, or to or for the benefit of, the individual.

If the trustee uses funds from a trust that is a resource to purchase durable items, such as a car or a house, the deed or title must show the individual (or the trust) as the owner of the item in the percentage that the funds represent the value of the item. Failure to do so may constitute evidence of a transfer of resources.

### 3. Explanation of the sole benefit rule for third party payments

Consider the following disbursements or distributions to be for the sole benefit of the trust beneficiary:

#### a. Payments to a third party that result in the receipt of goods or services by the trust beneficiary

- ~~Payment of third party travel expenses which are necessary in order for the trust beneficiary to obtain medical treatment; and~~
- The key to evaluating this provision is that, when the trust makes a payment to a third party for goods or services, the goods or services must be for the primary benefit of the trust beneficiary<sup>15</sup>. You should not read this so strictly as to prevent any collateral benefit to anyone else. For example, if the trust buys a house for the beneficiary to live in, that does not mean that no one else can live there, or if the trust purchases a television, that no one else can watch it. On the other hand, it would violate the sole benefit rule if the trust purchased a car for the beneficiary's grandson to take her to her doctor's appointments twice a month, but he was also driving it to work every day.
- Purchased goods that require registration or titling, for example a car or real property, must be titled or registered in the name of the beneficiary or the trust(ee) unless State law does not permit it. For example, State law may not allow a car to be registered to the beneficiary, or may require a co-owner, if the beneficiary is a minor or an individual without a valid

<sup>14</sup> This whole subsection "F" is the heart of the liberalization of the trust disbursement rules.

<sup>15</sup> This is a key difference affecting the practice in the community by corporate and nonprofit trustees who struggled to apply a "sole benefit" standard not just when the trust is drafted, but in making distributions, rather than the "primary benefit" standard stated here. Clearly, a first party SNT as drafted has to name one, sole beneficiary, the SSI claimant who is funding the SNT. But in making distributions, as the next sentence says "You should not read this so strictly as to prevent any collateral benefit to anyone else."

driver's license. Some State Medicaid agencies may permit a car to be titled in a third party's name if the trustee holds a lien on the car. A lien guarantees that the trust receives the value of the car if it is sold and prevents the purchase from being considered a transfer of resources.

**NOTE:** Even if a person or entity other than the beneficiary or the trust(ee) is listed on the title of the purchased good, it must still be used for the sole benefit of the trust beneficiary.

- A third party service provider can be a family member, a non-family member, or a professional services company. The policy is the same for all.
- Payment for companion services can be a valid expense. For example, perhaps an Alzheimer's patient cannot be left alone and requires a sitter, or the beneficiary needs someone to drive her to the store and assist her with grocery shopping. Family members may normally do some of these things without compensation, but that does not prohibit the trust from paying for these services. Additionally, some incidental expenses for the companion can be payable. For example, if the trust pays a companion to take the beneficiary to a museum, the trust can pay for the admission of the companion to the museum, as this cost is part of providing the service. For payment of travel expenses for a companion, see SI 01120.201F.3.b. in this section.
- You should not request evidence of medical training or certification for family members who receive payment to provide care.
- Do not request income tax information or similar evidence from a service provider to establish a business relationship. If a family member service provider's income is relevant to the beneficiary's SSI eligibility or payment amount (for example, his or her income is part of the beneficiary's deeming computation as a deemor or ineligible child), request normal evidence of wages per SI 00820.130.

**NOTE:** You should not routinely question the reasonableness of a service provider's compensation. However, if there is a reason to question the reasonableness of the compensation, you should consider the time and effort involved in providing the services as well as the prevailing rate of compensation for similar services in the geographic area.

**b. *Payment of third party travel expenses to accompany the trust beneficiary and provide services or assistance that is necessary due to the trust beneficiary's medical condition, disability, or age***

Apply the following instructions in evaluating whether travel expenses are allowable and do not violate the sole-benefit rule:

- Travel expenses are transportation, lodging, and food<sup>16</sup>.
- Providing services or assistance necessary due to the trust beneficiary's age means that the beneficiary is a minor and cannot travel unaccompanied.
- Absent evidence to the contrary, accept a statement from the trustee that the service or assistance provided is necessary to permit the trust beneficiary to travel. Do not request a physician statement concerning medical necessity. You should not request evidence of medical training or certification for the person accompanying the trust beneficiary.
- Use a reasonableness test in evaluating the number of people the trust is paying to accompany the beneficiary. For example, it is reasonable for a trust to pay for other individuals, such as parents or caretakers, to accompany a disabled minor child on vacation to provide supervision and assistance. Travel without this support would not be possible. However, it would violate the sole benefit rule if the trust paid for other individuals who are not providing services or assistance necessary for the beneficiary to travel.

**NOTE:** In this example, the fact that the parents or caretakers cannot afford to pay for their other children's trip, or cannot leave them at home, is not a consideration relevant to the sole-benefit requirement.

**c. *Payment of third party travel expenses to visit a trust beneficiary***

The following travel expenses to ensure the safety or medical well-being of the trust beneficiary are allowable and do not violate the sole-benefit rule:

- Travel for a service provider to oversee the trust beneficiary's living arrangements when the beneficiary resides in an institution, nursing home, other long-term care facility (for example, group homes and assisted living facilities), or other supported living arrangement in which a non-family member or entity is being paid to provide or oversee the individual's living arrangement. The travel must be for the purpose of ensuring the safety and/or medical well-being of the individual<sup>17</sup> arrangements.

**NOTE:** Travel for a trustee, trust advisor named in the trust, or successor to exercise his or her fiduciary duties or to ensure the well-being of the beneficiary when the beneficiary does not reside in an institution.

<sup>16</sup> The phrase follows the IRS rules on reimbursing travel.

<sup>17</sup> This overly restrictive phrase has been removed. The whole area of reasonableness of travel has been improved.

**NOTE:** A third party can be a family member, non-family person, or another entity. If you have questions about whether a disbursement is permissible, please request assistance from your regional office.

#### 4. Exceptions to the sole benefit rule for administrative expenses

The trust may also provide for reasonable compensation for (a) trustee(s) to manage the trust and reasonable costs associated with investment, legal, or other services rendered on behalf of the individual with regard to the trust. In evaluating what is reasonable compensation, consider the time and effort involved in providing the services and the prevailing rate of compensation for similar services considering the size and complexity of the trust.

**NOTE:** You should not routinely question the reasonableness of a trustee's compensation. However, you should consider the factors above to determine if there is a reason to question the reasonableness of the fees or compensation.

#### ¶ 5. Trusts that previously met the requirements to be excepted under section 1917(d)(4)(A) or (C) of the Act

If a trust that was previously determined to be exempt from resource counting under section 1917(d)(4)(A) or (C) contains (a) third party travel expense provision(s) that must be amended to conform with the third party travel expense provisions in [SI 01120.201F.3.b](#), and [SI 01120.201F.3.c](#), in this section, it must be amended within 90 days. The 90-day period begins on the day we inform the applicant, recipient, or representative payee (using the notice date) that the trust contains (a) third party travel expense provision(s) that must be amended to continue qualifying for the exception under section 1917(d)(4)(A) or (C).

Do not count a previously exempted trust as a resource, and do not impose an overpayment, during the 90-day period. If the trust still fails to meet the requirements of this section after expiration of the 90-day amendment period, begin counting the trust as a resource under normal resource counting rules. The trust principal becomes a countable resource beginning with the later of (1) the date when the policy change or clarification first affects the resource determination or (2) the earliest date as of which the prior determination or decision is reopened and revised.

All trust determinations made at the end of the 90-day amendment period are subject to the rules of administrative finality. For general administrative finality instructions, see SI 04070.00.

**NOTE:** Each previously excepted trust is permitted only one 90-day amendment period to conform with the third party travel expense provisions in [SI 01120.201F.3.b](#), and [SI 01120.201F.3.c](#), in this section.

#### G. Policy for a legal instrument or device similar to a trust

##### 1. What is a legal instrument or device?

We generally will use trust instructions to evaluate a legal instrument, device, or arrangement, even if it is not a trust under State or Tribal law, if it is similar to a trust in that:

- it involves a grantor who transfers his or her own property (or whose property is transferred by another). For the definition of a grantor, see SI 01120.200B.3.
- the property is transferred to an individual or entity with fiduciary obligations (considered a trustee for purposes of this section); and
- the grantor transfers the assets to be held, managed, or administered by the individual or entity for the benefit of the grantor or others.

However, NOTE: We will not consider these arrangements under trust instructions if they would count as resources under regular SSI resource-counting rules.

##### 2. Examples of a legal instrument or device

A legal instrument or device similar to a trust can include (but is not limited to):

- escrow accounts;
- investment accounts;
- conservatorship accounts. For information on conservatorship accounts, see SI 01140.215.;
- pension funds. For information on retirement funds, see SI 01120.210.;
- annuities;
- certain Uniform Transfers to Minors Act (UTMA) accounts; and
- other similar devices managed by an individual or entity with fiduciary obligations.

## H. Policy for burial trusts

It is important to determine whether a burial trust was established with the individual's funds or funds that have been irrevocably paid to the funeral director. Because the trust provisions in [SI 01120.201](#), apply without regard to the purpose for which the trust was established, burial trusts that may be irrevocable under State law may be countable resources for SSI purposes if established with the individual's assets.

### 1. Burial trusts to which these provisions apply

The provisions of this section apply to a trust if:

- an individual does not enter into a pre-need funeral contract with a funeral provider but establishes a burial trust with his or her own assets;
- an individual enters into an irrevocable funeral contract with a funeral provider but establishes a revocable trust to fund the contract; or
- an individual enters into a revocable funeral contract with a funeral provider, even if the funeral provider places the money in a trust (except as provided in [SI 01120.201H.2.b](#) in this section).

### 2. Burial trusts to which these provisions do not apply

#### *a. Irrevocable burial contract*

These provisions rules do not apply to a burial trust where:

- an individual irrevocably contracts with a provider of funeral goods and services for a funeral; and
- the individual funds the contract by prepaying for the goods and services; and [either](#)
- the funeral provider subsequently places the funds in a trust; or
- the individual establishes an irrevocable trust, naming the funeral provider as the beneficiary.

#### *b. Revocable burial contract*

These provisions do not apply to a burial trust where:

- an individual revocably contracts with a provider of funeral goods and services; and
- the individual subsequently funds the contract by irrevocably assigning ownership of a life insurance policy to the provider; and
- State law does not prohibit the individual from irrevocably assigning ownership of a life insurance policy to the funeral provider; and
- the funeral provider subsequently places the life insurance policy in an irrevocable trust.

These transactions constitute a purchase of goods and services by the individual and the establishment of a trust with the funeral provider's funds, not with the funds of the individual.

Evaluate these arrangements under regular resource rules. Specifically, see the burial contract instructions in [SI 01130.420](#) through [SI 01130.425](#). However, if the individual who purchased the funeral was named as the beneficiary of the burial trust that the funeral provider established, and thus retains an equitable interest, see the instructions applicable to third-party trusts in [SI 01120.200](#).

### 3. Applicable exclusions

If application of the provisions in [SI 01120.201H](#), in this section results in the counting of a burial trust as a resource, the burial space and burial funds exclusions may apply. We may exclude:

- (Burial spaces) without limit for an individual, spouse, and members of the individual's immediate family. For a definition of burial spaces and applicable policy, see [SI 01130.400](#).
- (Burial funds) up to \$1,500 each for an individual and spouse. For applicable instructions, see [SI 01130.409](#) through [SI 01130.425](#).

The [trust](#) undue hardship waiver may also apply (see [SI 01120.203C](#)).

## I. Policy for disbursements from trusts<sup>18</sup>

### 1. Trust principal is not a resource

If the trust principal (or a portion of the trust principal) is not a resource, disbursements from the trust (or that portion) may be income to the individual, depending on the nature of the disbursements. Regular rules apply to determine when income is available.

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

Cash paid directly from the trust to the individual is unearned income. We treat disbursements from the trust to the trust beneficiary's personal debit card the same as cash disbursements. We count the disbursement as unearned income for the month the disbursement is received or added to the debit card.

If disbursements from the trust to third parties result in the beneficiary's receiving non-cash items (other than food or shelter), the non-cash items are in-kind income if the items would not be a partially or totally excluded non-liquid resource if retained into the month after the month of receipt. For instructions on receipt of certain non-cash items, see SI 00815.550.

For example, if a trust buys a car for the beneficiary and the beneficiary's spouse already has a car that is excluded for SSI purposes, the second car is income in the month of receipt, since it would not be an excluded resource in the following month.

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

Food or shelter received as a result of disbursements from a 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](#).

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

Disbursements from the trust that are not cash to the individual or are third party payments that do not result in the receipt of support and maintenance are not income. Such disbursements may include, but are not limited to, those made for educational expenses, some travel expenses, therapy, medical services not covered by Medicaid, phone bills, recreation, and entertainment (see [SI 00815.400](#)).

Disbursements made from the trust to a third party that result in the beneficiary's receipt of a non-cash item (other than food or shelter) are not income if the non-cash item would become a totally or partially excluded non-liquid resource if retained into the month after the month of receipt. For instructions on receipt of certain non-cash items, see SI 00815.550.

For example, a trust purchases a computer for the beneficiary. Since we would exclude the computer from resources as a household good in the following month, the computer is not income. For instructions on household goods, personal effects, and other personal property, see SI 01130.430.

Funds transferred from the trust into an account established by the trust beneficiary under the Achieving a Better Life Experience (ABLE) Act are excluded from income to the trust beneficiary. For treatment of deposits into an ABLE account, see SI 01130.740.<sup>19</sup>

#### *d. Disbursements for credit card bills*

If a trust pays a credit card bill for the trust beneficiary, whether the individual receives income depends on the list of itemized charges on the bill. If the trust pays for food or shelter items on the bill, we will generally charge the individual with ISM for those items up to the PMV. If the bill includes non-food, non-shelter items, the individual does not receive income as a result of the payment, unless the items received would not be totally or partially excluded non-liquid resources the following month.

**EXAMPLE:** If the credit card bill includes restaurant charges, payment of those charges results in ISM. If the bill also includes the purchase of clothing, payment for the clothing is not income.

#### *e. Administrator-managed prepaid cards<sup>20</sup>*

Administrator-managed prepaid cards, such as True Link cards, are a type of restricted debit card that can be customized to block the cardholder's access to cash, specific merchants, or entire categories of spending. Typically, the trustee is the account owner and administrator, and the trust beneficiary is the cardholder. To evaluate the income and resource implications of trust disbursements to administrator-managed prepaid cards, we must determine who owns the prepaid card account.

If the **trustee** is the owner of the prepaid card account:

<sup>18</sup> This section is the nuts and bolts of how to make trust distributions that have limited adverse impact on the trust beneficiary.

<sup>19</sup> This is specific, direct permission to transfer SNT funds to an IRS-approved ABLE account. Doing so is the key to eliminating the food and shelter PMV ISM reduction in triggering the beneficiary's full SSI monthly check for those who qualify for ABLE accounts. ABLE accounts also put additional control in the hands of the SSI beneficiary and ease SNT administration.

<sup>20</sup> This is huge for fans of True Link cards. This language establishes that True Link managed cards can work, subject to the analytical steps required on a case by case basis as outlined in this paragraph.

- Whether the trust beneficiary receives income from trust disbursements depends on the type of purchase reflected in the card statement. Treat purchases in the following manner:
  - If the administrator-managed prepaid card is used to obtain cash, such as at an ATM, the withdrawal counts as unearned income.
  - If the administrator-managed prepaid card pays for food or shelter items, such as charges at a restaurant, the individual will generally be charged with ISM up to the PMV.
  - If the administrator-managed prepaid card pays for non-food, non-shelter items, such as for clothing at a department store, the individual usually does not receive income unless the item received would not be a totally or partially excluded non-liquid resource the following month.
- The administrator-managed prepaid card is not the trust beneficiary's resource.
- If the trust beneficiary is the owner of the prepaid card account:
- Count all disbursements from the trust onto the card as unearned income; and
- Count any unspent balance on the card as a resource as of the beginning of the month after funds are loaded onto the card.

***f. Disbursements for gift cards and gift certificates***

Consider gift cards and gift certificates purchased by the trust for the individual's use to be cash equivalents. If the individual can use a gift card or certificate to buy food or shelter (such as a restaurant, grocery store, or VISA gift card), it is unearned income in the month of receipt. Any unspent balance on the gift card or certificate is a resource beginning the month after the month of receipt. If the store does not sell food or shelter items (such as a flower shop or electronics store), but the card does not have a legally enforceable prohibition on the individual's selling the card for cash, then it is still unearned income. For general policy on gift cards and gift certificates, see [SI 00830.522](#).

***g. 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. In addition, reimbursements from the trust to pay a credit card belonging to a third party for purchases made for the trust beneficiary are not income.

Existing 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.

***h. Disbursements transferred into an ABLE account***

Funds transferred from the trust into an account established by the trust beneficiary under the ABLE Act are excluded from income to the trust beneficiary. For treatment of deposits into an ABLE account, see [SI 01130.740](#).<sup>21</sup>

## 2. Trust principal is a resource

***a. Disbursements to or for the benefit of the individual***

If the trust principal (or a portion of the trust principal) is a resource to the individual, disbursements from the trust principal (or that portion of the principal) to or for the benefit of the individual are not income but conversion of a resource. However, we exclude from income any interest that the countable trust principal earns, per [SI 00830.500](#).

For instructions pertaining to conversion of resources from one form to another, see [SI 01110.100](#).

For instructions on treatment of earnings or additions when the trust principal is a resource, see [SI 01120.201J.2](#), and [SI 01120.201J.3](#), in this section.

***b. Disbursements not to or for the benefit of the individual***

In the case of a trust established with the assets of an individual (or his or her spouse), if from the trust, or portion of the trust, that is a resource:

- a disbursement is made other than to or for the benefit of the individual, consider such a disbursement a transfer of resources as of the date of the payment. For instructions on transfer of resources, see [SI 01150.110](#);
- no disbursement could be made to the individual under any circumstances, consider the foreclosure of payment a transfer of resources as of the date of the foreclosure.

For a definition of "to or for the benefit of," see [SI 01120.201F.1](#), in this section.

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<sup>21</sup> This is a second clear statement that transfers from trusts to ABLE accounts are permitted.

### 3. Mixed trust—part of the trust is a resource and part is not a resource

If part of the trust was established with assets of the individual (or spouse) and part was established with the assets of other individuals, consult the trust document to determine from which portion of the trust disbursements were made. If the trust document does not specify, a written statement from the trustee regarding the source of the disbursements will be determinative. If the trustee is unable to provide a statement, presume that disbursements were made first from the portion of the trust established with the funds of other individuals. When that portion is depleted, then presume that disbursements were made from the portion of the trust established with funds of the individual.

## J. Policy for earnings on and additions to trusts

For purposes of the SSI program, income includes any earnings on or additions to a trust:

- that is established with the assets of an individual;
- of which the individual is a beneficiary;
- that is a resource under these trust provisions; and
- in the case of an irrevocable trust, that can, under any circumstances, make payments from the earnings or additions to or for the benefit of the individual.

### 1. Trust principal is not a resource

#### a. Trust earnings

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

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 instance, as fees payable to the trustee or interest payable to the grantor.

#### b. Additions to principal

Additions to the trust principal made directly to the trust are not income to the grantor, trustee, or beneficiary. Exceptions to this rule are noted in [SI 01120.201J.1.c.](#) and [SI 01120.201J.1.d.](#) in this section.

#### c. Payments not assignable by law

Certain payments are not assignable by law and, 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 for Needy Families (TANF);
- 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\(d\)](#)).

**NOTE:** SSI payments do not count as unearned income. Therefore, SSI payments deposited into an SSI recipient's trust do not count as unearned income to the recipient.<sup>22</sup> For more information on direct deposit to trusts, see SI 01120.201J.1.f. in this section.

#### d. Assignment of income

A legally assignable payment to a trust or trustee is income for SSI purposes, **unless** the assignment is irrevocable. If the assignment is revocable, the payment is income to the individual legally entitled or eligible to receive the payment. 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>23</sup>

<sup>22</sup> In some scenarios of extended litigation to win SSI disability payments, the amount of retroactive SSI benefits owed are \$80,000 or more. This statement provides that an SNT can be a repository for the SSI checks if the SSI claimant cannot or does not want to spend down the retroactive award to less than \$2,000 within the 9 months given to do so by regulation.

<sup>23</sup> We no longer have to modify family court orders to secure the words “irrevocably assigns” the child support to the trust. A child support court order is sufficient.

Also, Survivor Benefit Plan (SBP) payments assigned to a special needs trust are not income because assignment of SPB annuities is irrevocable.

For examples of payments that are not assignable by law, see SI 01120.201J.1.c. in this section.

#### ***e. U.S. Military Survivor Benefit Plans***

The Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 gives military members and retirees the option to irrevocably direct payment of a Survivor Benefit Plan (SBP) annuity for a dependent child to a special needs trust for the benefit of a disabled child. Since the SBP annuity is irrevocably assigned to the special needs trust, the monthly annuity payments are not income to the trust beneficiary. Accept an assignment made in accordance with the applicable policies of the Department of Defense. For more information on special needs trusts, see SI 01120.203., and for more information on assignment of income, see SI 01120.201J.1.d. in this section.

#### ***f. Direct deposit of non-assignable payments***

Although an individual cannot assign a non-assignable payment to a trust, he or she may have a payment direct deposited into the trust. Such an arrangement means that the payment is still income to the person entitled or eligible to receive it. For SSI and Title II payments, per GN 02402.060D, SSA will not approve any direct deposit into a trust agreement account. Since direct deposit into a trust turns legal ownership and control of the funds over to the trustee and not the Title II/SSI beneficiary/recipient, such an arrangement violates the assignment of benefits provision(s) of sections 207 and 1631(d)(1) of the Act.<sup>24</sup>

## **2. Trust principal is a resource--revocable trust**

### **a. Trust earnings *and additions to principal--revocable trust***

Any earnings on and additions to a revocable trust are unearned income to the individual if:

- the trust was established with the assets of an individual;
- the individual is a beneficiary of the trust; and
- the trust is a resource under this section. For instructions on exclusion of interest income on earnings, see SI 00830.500.

**EXCEPTION:** If the source of any additions is the individual's resources, the additions are not income but conversion of a resource.

## **3. Trust principal is a resource--irrevocable trust**

### **a. Trust earnings**

Any earnings on an irrevocable trust are unearned income to the individual in the percentage that he or she provided the assets that constitute the corpus of the trust.

This is the case if:

- the trust was established with the assets of the individual;
- the individual is a beneficiary of the trust;
- the trust is a resource under this section; and
- circumstances exist under which the trust can make payment from the trust earnings to or for the benefit of the individual.

For example, if the individual's assets constitute 75% of the trust corpus and the trust earns \$100 interest in April, \$75 of interest is income to the individual if the trust can pay the interest to or for the benefit of the individual. For instructions on exclusion of interest income, see [SI 00830.500](#).

### **b. Additions to principal--irrevocable trust**

Any additions to an irrevocable trust are unearned income to the individual if:

- the trust was established with the assets of the individual;
- the individual is a beneficiary of the trust;
- the trust is a resource under this section; and
- circumstances exist under which the trust can make payment from the trust additions to or for the benefit of the individual.

**EXCEPTION:** If the source of the additions to the trust is the individual's other resource, then the additions are not income but conversion of a resource.

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<sup>24</sup> In other words, the SSI claimant can receive the SSI payment and then place it in the SNT, but he cannot direct by assignment that the SSI check goes to the trustee of the SNT.



## 4. Individual's assets form only a part of the trust

In the case of an irrevocable trust where the assets of the individual (or the individual's spouse) were transferred along with the assets of (an)other individual(s), these provisions apply to the portion of the trust attributable to the assets of the individual (or spouse). Thus, in determining income to the trust, you must prorate any amounts of income, based on the proportion of the individual's assets in the trust.

**EXAMPLE:** Jimmy is an adult with cerebral palsy. His grandparents left \$75,000 in trust for him in their wills. Recently (after 01/01/00), Mr. Smith won an employment discrimination lawsuit and received a \$1,500 judgment, which went into the trust that his grandparents established. The \$1,500 of Mr. Jimmy's funds are subject to the provisions [of an irrevocable trust](#) and could be a resource if payment could be made to or for Mr. Smith's benefit. [For treatment of irrevocable trusts, see SI 01120.201D.2](#) in this section). The \$75,000 deposited by his grandparents is not subject to these provisions and is not a resource. [For third party trusts, see SI 01120.200](#).

In determining income to the trust, we must prorate the income in proportion to the percentage of funds placed in the trust by Mr. Jimmy. For income of a trust, see [SI 01120.201J](#), in this section. Since this is an irrevocable trust, we will count 1.96% (\$1,500/\$76,500) of the trust earnings as income and not count 98.04% (\$75,000/\$76,500) of the earnings. Disbursements from or additions to the trust may require recalculation of the percentages.

## K. Posteligibility changes in trust resource status

If due to a 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 is determined to be a resource (or vice-versa), apply the following rules.

### 1. New trusts and trusts that have not been previously excepted under section 1917(d)(4)(A) or (C) of the Act

A trust that either is newly formed or was not previously excepted from resource counting must meet all of the criteria set forth in [SI 01120.199](#) through [SI 01120.203](#), [SI 01120.225](#), and [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.

For a trust that was previously established, but is newly discovered, reopen the prior resource determination back to the trust establishment date, subject to the rules of administrative finality. For more information on SSI administrative finality, see [SI 04070.001](#).

**NOTE:** Do not impose an overpayment unless you determine that the trust is countable.

### 2. Trusts that previously met the requirements to be excepted under section 1917(d)(4)(A) or (C) of the Act

A trust that was previously determined to be exempt from resource counting under section 1917(d)(4)(A) or 1917(d)(4)(C) shall continue to be excepted from resource counting, provided the trust is amended to conform with the policy requirements within 90 days. That 90-day period begins on the day SSA informs the recipient or representative payee that the trust contains provisions that must be amended in order to continue qualifying for the exception under section 1917(d)(4)(A) or (C).

#### a. Existing situations prior to XX/XX/XX<sup>25</sup>

Prior to XX/XX/XX, there were only four instances where you could offer a 90-day amendment period:

- Early Termination Provisions and Trusts ([SI 01120.199](#));
- Sole Benefit Requirement and Third Party Travel Expenses ([SI 01120.201F.2](#) in this section);
- Pooled Trusts Management Provisions ([SI 01120.225](#)); and
- Null and Void Clauses in Trusts Documents ([SI 01120.227](#)).

Continue to apply these policies, where applicable.

#### b. Situations on or after XX/XX/XX

Effective XX/XX/XX, if due to a change in policy, a policy clarification, or the reopening of a prior erroneous trust determination, a trust that was previously determined to be exempt from resource counting under Section 1917(d)(4)(A) or (C) is determined to be a resource, offer a 90-day amendment period.

#### c. During the 90-day period

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

#### d. Good cause extension

We permit each previously excepted trust only one 90-day amendment period. However, you may grant an extension request to the 90-day amendment period for good cause if the recipient requests it and provides evidence that the disqualifying issue cannot be

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<sup>25</sup> It appears someone at SSA failed to insert the date.

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 in the file the grant of an extension, the time allowed, and the reason. Diary (or tickle) the case for follow-up.

**e. 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 to be excepted from resource counting.

If the trust still fails to meet the policy requirements after the expiration of the 90-day amendment period (plus any extension), begin counting the trust as a resource under normal resource counting rules. The trust principal becomes a countable resource beginning with the later of (1) the date when the policy change or clarification first affects the resource determination 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 (FO) 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](#).

**L. References**

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

[SI 01120.200](#) Trusts – General, Including Trusts Established Prior to 1/1/00, Trusts Established with the Assets of Third Parties, and Trusts Not Subject to Section 1613(e) of the Social Security Act

[SI 01120.202](#) Development and Documentation of Trusts Established on or after 1/1/00

[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 01150.100 Processing Resource Transfers Occurring Before 12/14/99](#)

[SI 01150.121 Exceptions — Transfers to a Trust](#)

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*SI 01120.201 - Trusts Established with the Assets of an Individual on or after 1/1/00 - 05/17/2012*  
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