

Effective Dates: ~~12/11/2013~~04/30/2018 - Present [Previous](#) | [Next](#)

TN ~~47-02-1351~~ (04-18)

## SI 01120.200 **Information on Trusts— General, Including Trusts Established Prior to ~~1/1/00~~January 01, 2000**, Trusts Established with the Assets of Third Parties, and Trusts Not Subject to Section 1613(e) of the Social Security Act

Topic	Reference
<a href="#">Introduction to Trusts</a>	<a href="#">SI 01120.200A</a>
<a href="#">Glossary of Terms—Trusts</a>	<a href="#">SI 01120.200B</a>
<a href="#">Policy—Accounts That May Or May Not Be Trusts</a>	<a href="#">SI 01120.200C</a>
<a href="#">Policy—Trusts As Resources</a>	<a href="#">SI 01120.200D</a>
<a href="#">Policy—Disbursements From Trusts</a>	<a href="#">SI 01120.200E</a>
<a href="#">Policy—Home Ownership/Purchase Of A Home By A Trust</a>	<a href="#">SI 01120.200F</a>
<a href="#">Policy—Earnings/Additions To Trusts</a>	<a href="#">SI 01120.200G</a>
<a href="#">Policy—Medicaid Trusts And Medicaid Qualifying Trusts</a>	<a href="#">SI 01120.200H</a>
<a href="#">Policy—Representative Payees And Trusts</a>	<a href="#">SI 01120.200I</a>
<a href="#">Procedure—Development And Documentation of Trusts</a>	<a href="#">SI 01120.200J</a>

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Topic	Reference
Procedure—Discussing SSI Trust Policy With The Public	SI 01120.200K
Examples of Trusts	SI 01120.200L
References	SI 01120.200M

## A. A. Introduction to trusts

### 1. General

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

### 2. 1. Applicability of this section policy instructions

Generally, this section applies these instructions apply to trusts not subject to the statutory trust provisions in Section 1613(e) of the Social Security Act, instructions for which are found we evaluate using instructions in SI 01120.201- through SI 01120.204. Use the instructions in this section However, trusts that meet the requirements of SI 01120.203 must also meet the requirements of this section. Use these instructions to evaluate the following types of trusts:

#### a. Trusts established prior to 1/1/00 January 01, 2000 that contain assets of the individual

Trusts This includes trusts established before 1/1/00 January 01, 2000 that contain assets of the individual, any of which were transferred before 1/1/00- January 01, 2000. If the trust was established prior to 1/1/00 January 01, 2000, but no assets of the individual were transferred to the trust prior to 1/1/00 January 01, 2000, see SI 01120.201.

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

Trusts This includes trusts that are:

- established before 1/1/00 January 01, 2000 that contain assets of third parties;

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- ~~Trusts~~ established on or after ~~1/1/00~~[January 01, 2000](#) that contain only assets of third parties, or the portion of a commingled trust attributable to assets of third parties ~~;~~ [and](#)
- [Indian Gaming Regulatory Act \(IGRA\) trusts established by the Indian tribes that meet the criteria in SI 01120.195F.](#)
- **NOTE:** Trusts established on or after ~~1/1/00~~[January 01, 2000](#) that contain assets of a Supplemental Security Income (SSI) ~~claimant or applicant,~~ recipient, ~~or spouse~~ (or the portion of a commingled trust attributable to assets of an SSI ~~claimant or applicant,~~ recipient, ~~or spouse~~) must be evaluated under ~~SI 01120.201-~~ [through SI 01120.204.](#)

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

Trusts established on or after ~~1/1/00~~[January 01, 2000](#) to which the instructions in ~~SI 01120.201-~~ [through SI 01120.204-](#) do not apply. ~~(When it is determined that a special needs trust or a pooled trust exception is met, the trust must still be evaluated under the rules of SI 01120.200.~~

**NOTE:** The instructions in those sections [generally](#) will refer you back to this section, where applicable~~;~~.

### ~~3-2.~~ Case processing alert

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

## ~~B.~~ Glossary of terms — ~~Trusts~~

### ~~1.~~ Trust

A ~~trust~~ is a property interest, whereby, property is held by an individual or entity ~~(This glossary is intended for general reference and does not override or replace applicable State law with respect to matters~~ such as [establishment, operation, and termination](#).

#### ~~1.~~ Discretionary trust

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A **discretionary trust** is a bank-called trust in which the trustee, subject has full discretion as to a fiduciary duty, to use the time, purpose, and amount of all distributions. The trustee may pay all or none of the property trust as he or she considers appropriate to, or for the benefit of another, the trust beneficiary. The trust beneficiary has no control over the trust.

## **2. Fiduciary duty**

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

## **3. Grantor**

A **grantor** (also called a **settlor or trustor**) is the individual

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

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## **4. Grantor trust (first-party or self-funded trust)**

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

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## **5. Indian Gaming Regulatory Act (IGRA) trust**

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

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

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

## **7. Mandatory trust**

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

## **8. Medicaid trust or Medicaid qualifying trust**

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

## **9. Pooled trust**

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

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

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

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## **11. Revoke**

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

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

## **12. Special or supplemental needs trust**

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

## **13. Spendthrift clause or spendthrift trust**

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

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

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

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

#### **14. Terminate**

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

#### **15. Testamentary trust**

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

#### **16. Third-party trust**

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

#### **17. Totten trust (bank account trust)**

[A \*\*Totten trust\*\* \(also called a \*\*bank account trust\*\*\) is a tentative trust in which a grantor makes himself or herself trustee of his or her own funds for the benefit of another. Typically, the grantor deposits funds in a savings account and indicates, either by the account titling or by filing a writing with the bank, that the grantor is trustee of the account for another person. The trustee can revoke a Totten trust at any time. Should the trustee die without revoking the trust, ownership of the ~~3-~~ principal passes to the trust beneficiary. Totten trusts are valid in most jurisdictions, but other jurisdictions have](#)

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held them invalid because they are too tentative. In particular, they generally lack formal requirements and do not state a trust intent or purpose.

## 18. Trust

### Trustee

A ~~trustee~~ **trust** is a ~~person~~ property interest held by an individual or entity ~~who holds~~ legal title to property for the use or benefit of another. In most instances, (such as a bank), called the trustee ~~has no legal right, who or which is subject to revoke the trust or a fiduciary duty to~~ use the property for ~~his or her own~~ the benefit.

~~1. 4. of another (the~~ **Trust beneficiary**

A ~~trust~~ beneficiary-).

## 19. Trust beneficiary

A **trust beneficiary** is a person for whose benefit a trust exists. A **trust** beneficiary does not hold legal title to trust property but ~~does have~~ **has** an equitable ownership interest in it. As **an** equitable owner, the **trust** beneficiary has certain rights that ~~will be enforced by~~ a court **can enforce**, because the trust exists for his or her benefit. The beneficiary receives the benefits of the trust, while the trustee holds the title and duties.

## 5. Trust principal

The ~~trust principal~~ is the property placed in trust by the grantor which the trustee holds, subject to the. A beneficiary has certain rights ~~of the beneficiary, and includes any trust earnings paid into the trust and left to accumulate. Also called "the corpus of the trust."~~ relative to the trust, such as to enforce mandatory provisions of the trust, to demand an accounting, and to sue to remove the trustee. The trustee owes certain duties, such as loyalty and attention, to the beneficiary.

## 6-20. Trust earnings (income)

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

## 7. Totten trust

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~~A **Totten trust** or “**bank account trust**” is a tentative trust in which a grantor makes himself or herself trustee of his or her own funds for the benefit of another. Typically this is done by an individual depositing funds in a savings account and either titling the account or filing a writing with the bank indicating he or she is trustee of the account for another person. The trustee can revoke a Totten trust at any time. Should the trustee die without revoking the trust, ownership of the~~ **21. Trust principal (corpus)**

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

## **22. Trustee**

~~money passes to the beneficiary. Totten trusts are valid in most jurisdictions, but other jurisdictions have held them invalid because they are too tentative, i.e., they lack formal requirements and do not state a trust intent or purpose.~~

## **8. Grantor trust**

Subject to State law, a **grantor trust** is a trust in which the grantor of the trust is also the sole beneficiary of the trust. See SI 01120.200B.2. for who may be a grantor. A **trustee** is a person or entity that holds legal title to property in trust for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for the trustee's own benefit. The trustee owes a fiduciary duty to the beneficiary.

~~State law on grantor trusts varies. Consult with your regional office, if necessary.~~

## **9. Mandatory trust**

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

## **10. Discretionary trust**

A **discretionary trust** is a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions. The trustee may pay to, or for the benefit of,

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the beneficiary, all or none of the trust as he or she considers appropriate. The beneficiary has no control over the trust.

### **11. Medicaid trust or Medicaid-qualifying trust**

See SI-01730.048 for definitions of a **Medicaid trust** or a **Medicaid-qualifying trust**, and see SI-01120.200H for additional guidance on these trusts. See SI-01120.203 for SSI treatment of Medicaid trust exceptions.

### **12. Residual beneficiary**

A **residual beneficiary** (also referred to as a **contingent beneficiary**) is not a current beneficiary of a trust, but will receive the residual benefit of the trust contingent upon the occurrence of a specific event, e.g., the death of the primary beneficiary.

### **13. Supplemental needs trust**

A **supplemental needs trust** is a type of trust that limits the trustee's discretion as to the purpose of the distributions. This type of trust typically contains language that distributions should supplement, but not supplant, sources of income including SSI or other government benefits.

### **14. Inter Vivos Trust**

An **inter vivos trust** is a trust established during the lifetime of the grantor. It may also be called a living trust.

### **15. Testamentary trust**

A **testamentary trust** is a trust established by a will and effective at the time of the testator's death.

### **16. Spendthrift clause or spendthrift trust**

A **spendthrift clause or trust** prohibits both involuntary and voluntary transfers of the beneficiary's interest in the trust income or principal. This means that the beneficiary's creditors must wait until money is paid from the trust to the beneficiary before they can attempt to claim it to satisfy debts. It also means that, for example, if the beneficiary is entitled to \$100 a month from the trust, the beneficiary cannot sell his or her right to receive the monthly payments to a third party for a lump sum. In other words, a valid spendthrift clause would make the value of the beneficiary's right to receive payments

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not countable as a resource. However, spendthrift clauses are not recognized in all States. Additionally, States that recognize spendthrift trusts generally do not allow a grantor to establish a spendthrift trust for his or her own benefit, i.e., as a beneficiary. Thus, using the example from above, in those States where spendthrift clauses are not recognized (whether at all or because the trust is a grantor trust), the value of the beneficiary's right to receive monthly payments should be counted as a resource because it may be sold for a lump sum.

### 17. Third-party trust

A **third-party trust** is a trust established with the assets of someone other than the beneficiary. For example, a third-party trust may be established by a grandparent for a grandchild. Be alert for situations where a trust is allegedly established with the assets of a third party, but in reality is created with the beneficiary's property. In such cases, the trust is a grantor trust, not a third-party trust.

### 18. Fiduciary duty

**Fiduciary duty** is the obligation of the trustee in dealing with the trust property and income. The trustee holds the property solely for the benefit of the beneficiary with due care. The trustee owes duties of good faith and loyalty to exercise reasonable care and skill, to preserve the trust property and make it productive and to account for it. Because the trustee is a fiduciary does not mean that he or she is an agent of the beneficiary. The person who establishes a trust should not be confused with the grantor, who provides the assets that form the principal of the trust.

### 19. Revoke

The grantor of a trust may have the power or authority to **revoke** (i.e., reclaim or take back) the assets deposited in the trust. If the individual at issue (a claimant, recipient, or deemor (see SI 01310.127)) is the grantor of the trust, the trust will generally be a resource to that individual if that individual can revoke the trust and reclaim the trust assets. However, if a third party is the grantor of the trust, the trust will not be a resource to the beneficiary of the trust merely because the trust is revocable by the grantor. In a third-party trust situation, the focus should be on whether the individual (claimant, recipient, or deemor) can terminate the trust and obtain the assets for himself or herself.

### 20. Terminate

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~~In rare instances, a trustee or beneficiary of a third-party trust (i.e., a trust established with the assets of a third party) can terminate (i.e., end) a trust and obtain the assets for himself or herself.~~

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

### **1. Accounts that are not trusts**

~~The following~~ Although titled as trusts, some types of accounts and “trust-like” instruments are ~~similar to~~ not trusts, and ~~may be titled as trusts, but should~~ generally we should not ~~be developed~~ evaluate them under these instructions for SSI purposes.

#### **a. Conservatorship accounts**

~~These accounts,~~ A conservatorship account generally is established by a court, ~~are usually and~~ administered by a court-appointed conservator for the benefit of an individual. ~~They differ~~ A conservatorship account differs from a trust in that the “beneficiary” of the conservatorship account retains legal ownership of all of the account assets, although in some cases ~~they~~ the assets may not be available for support and maintenance. ~~(See SI 01140.215 for~~ For instructions pertaining to conservatorship accounts~~).~~ , see SI 01140.215.

#### **b. Patient trust accounts**

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

- GN 00603.020 Collective Savings and Checking Accounts
- SI 00810.120 Income Determinations Involving Agents
- SI 01120.020 Transactions Involving Agents

#### **c. Achieving a Better Life Experience (ABLE) accounts**

An ABLE account is a type of tax-advantaged account that an eligible individual can use to save funds for his or her disability-related expenses. The eligible individual, who is

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also the designated beneficiary of the ABLÉ account, must be blind or disabled by a condition that began before the individual's 26th birthday. A State (or a State agency or an instrumentality of a State) can establish an ABLÉ program. An eligible individual can open an ABLÉ account through the ABLÉ program in any State, if the State permits it. ABLÉ accounts are not trusts, and you should not evaluate them under trust instructions. For more information on ABLÉ accounts, see SI 01130.740.

## 2.- "In Trust For trust for" financial accounts

These accounts may or may not be trusts depending on the circumstances in the individual case. ~~Examples of~~ Representative payee accounts and Totten accounts are the most common ~~situations follow:~~ examples.

### a.- Representative payee accounts

One of the most common types of "in trust for" accounts ~~are~~ is the representative payee accounts. ~~These accounts are account. A representative payee account is not trusts, but improperly titled accounts~~ a trust. However, its title may misleadingly suggest that ~~are misleading as to the actual~~ the representative payee is the legal owner of the ~~funds.~~ account principal. If a representative payee deposits current or conserved benefits in an account, the ~~titling of the~~ account ~~must be titled to~~ should reflect the beneficiary's ownership interest. ~~(See SI 01120.020 and SI 00810.120 for in the account. For instructions pertaining to agency accounts. See GN 00603.010 for transactions or determinations involving agents, see SI 01120.020 and SI 00810.120. For instructions pertaining to the titling of accounts established by representative payees,~~ see GN 00603.010.

### b.- Totten trusts

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

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

## D.- Policy ~~for~~ trusts as resources

### 1.- Trusts ~~which~~ that are resources

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## **a.-a. When trusts are resources**

Trust principal is a resource

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~~If an individual (claimant for SSI purposes if a trust beneficiary (applicant, recipient, or~~ deemor) has legal authority to revoke or terminate the trust and then use the funds to meet his or her food or shelter needs, ~~or. The trust principal is also a resource for SSI purposes~~ if the individual trust beneficiary can direct the use of the trust principal for his or her support and maintenance under the terms of the trust, ~~the trust principal is a resource for SSI purposes. For the definition of revoke, see SI 01120.200B.11. in this section.~~

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Additionally, if the individual trust beneficiary can sell his or her beneficial interest in the trust, that interest is a resource. For example, if the trust provides for payment of \$100 per month to the trust beneficiary for spending money, ~~absent a prohibition to and the contrary (e.g., trust does not have~~ a valid spendthrift clause; see SI 01120.200B.16.), the, then the trust beneficiary may be able to sell the right to future payments for a lump-sum settlement. The present value of the future payments counts as a resource. For more information on spendthrift clauses, see SI 01120.200B.13. in this section.

## **b.- Authority to revoke or terminate trust or use assets**

### **•1. Grantor**

In some cases, the grantor has the authority to revoke a trust ~~is held by the grantor.~~ Even if the grantor does not specifically retain the power to revoke a trust ~~is not specifically retained,~~ a trust may be revocable in certain situations. ~~(See SI 01120.200B.8. For information on grantor trusts, see SI 01120.200B.4. and SI 01120.200D.3. for information on grantor trusts.) in this section.~~

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

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

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### **2. Trust beneficiary**

#### **• Beneficiary**

A trust beneficiary generally does not have the power to terminate a trust. However, in some instances, the trust ~~may be a resource to the~~ beneficiary in the rare instance where he or she has ~~may have~~ the authority to terminate the trust

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and gain access to the trust assets. ~~In addition, the beneficiary may, in rare instances, have the authority under the trust to or~~ direct the use of the trust principal. ~~(The authority to control the trust principal may be either specific~~ Specific trust provisions ~~allowing may allow~~ the trust beneficiary to act on his or her own or ~~by permitting the beneficiary to order actions by the trustee.) In such a case, the, The trust~~ beneficiary's ~~ability to use the trust principal for support and maintenance, together with his or her~~ equitable ownership in the trust principal ~~and his or her ability to use it for support and maintenance means it is a resource, makes the trust principal a resource to the trust beneficiary.~~

The trust beneficiary's right to mandatory periodic payments may be a resource equal to the present value of the anticipated ~~string of~~ payments, unless a valid spendthrift clause (~~see SI 01120.200B.16.)~~ or other ~~language provision~~ prohibits ~~anticipation of transfer or sale of the beneficiary's interest in such anticipated~~ payments. ~~For more information on spendthrift clauses, see SI 01120.200B.13. in this section.~~

While a trustee may have discretion to use the trust principal for the benefit of the trust beneficiary, the trustee ~~should be considered is~~ a third party and not an agent of the trust beneficiary, ~~i.e., the, The~~ actions of the trustee ~~generally~~ are not ~~considered to be~~ the actions of the trust beneficiary, unless the trust specifically states otherwise.

### •3. Trustee

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

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

### •4. Totten trust

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

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## 2.- Trusts ~~which~~that are not resources

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

The revocability of a trust and the ability to direct the use of the trust principal depend on the terms of the trust agreement and ~~or~~ on State [\(or Tribal\)](#) law. If a trust is irrevocable by its terms and under State law, and [the trust beneficiary](#) cannot ~~be used by an individual~~ [control or direct use of the trust assets](#) for [the trust beneficiary's](#) support and maintenance ~~(e.g., it contains a valid spendthrift clause; see SI 01120.200B.16.)~~, it, [the trust](#) is ~~not~~ a resource.

## 3.- Revocability of grantor trusts

Some States follow the general principle of trust law that if a grantor is also the sole beneficiary of a trust, the trust is ~~revocable regardless~~ [revocable regardless](#) of language in the trust to the contrary.

However, many of these States recognize that the grantor cannot unilaterally revoke the trust if ~~there is~~ [the trust document names](#) a ~~named~~ "residual beneficiary" ~~in the trust document~~ who would, ~~for example~~, receive the [trust](#) principal upon the grantor's death or the occurrence of some other specific event.

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

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

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

**NOTE:** The policies regarding grantor trusts may or may not apply in your particular State. Field offices should consult regional [POMS Program Operations Manual System \(POMS\) instructions](#) or your regional office program staff if in doubt.

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## **E. Policy – Disbursements for disbursements from trusts**

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### **1. Trust principal is not a resource**

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

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

Cash paid directly from the trust to the individual is unearned income.

Disbursements from the trust to third parties that result in the [beneficiary trust beneficiary's](#) receiving non-cash items (other than food or shelter) are in-kind income if the items would not be a partially or totally excluded non-liquid ~~resource~~resources if retained into the month after the month of receipt. ~~(see SI 00815.550 and SI 01110.210).~~

For example, if a trust buys a car for the [trust](#) beneficiary and the [trust](#) beneficiary's spouse already has ~~a car which is an~~ excluded [car](#) for SSI purposes, the disbursement to [purchase](#) the second car is income in the month of receipt since it would not be an excluded resource in the following month.

[For receipt of certain noncash items, see SI 00815.550. For a list of resource exclusions, see SI 01110.210.](#)

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

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

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

~~Disbursements~~Generally, disbursements from the trust ~~other than those described to a third party are not income to the trust beneficiary, unless otherwise stated in-~~SI 01120.200E.1.a.- and- SI 01120.200E.1.b.- are in this section. Disbursements that do not count as income. ~~Such disbursements may take the form of~~include those made for educational expenses, therapy, [transportation, professional fees,](#) medical services not covered by Medicaid, phone bills, recreation, [and](#) entertainment, ~~etc., (see-~~ This list is

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illustrative and does not limit the types of distributions that a trust may permit. For bills paid by a third party, see [SI 00815.400](#).

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

~~For example, a trust purchases a computer for the beneficiary. Since the computer would be excluded from resources as household goods in the following month, the computer is not income (see SI 01130.430).~~

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

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

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

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

### **a.- Disbursements to or for the benefit of the [trust](#) beneficiary**

If the trust principal is a resource to the individual, disbursements from the trust principal received by the individual or that result in receipt of something by the individual are not income, but conversion of a resource. ~~(However, trust earnings are~~[may be](#) income. ~~See SI 01110.100 for~~[For](#) instructions pertaining to [the](#) conversion of resources from one form to another. ~~See, see SI 01110.100. For treatment of income when the trust principal is a resource, see SI 01120.200G.2, for treatment of income when the trust principal is a resource and SI 00830.500 for~~ [in this section. For](#) treatment of dividends and interest as income, ~~see SI 00830.500.~~

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### **b.- Disbursements not to or for the benefit of the [trust](#) beneficiary**

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

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

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## **F.- Policy -~~Home~~for home ownership/ and purchase of a home by a trust**

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

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

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

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

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

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An eligible individual does not receive ~~in-kind support and maintenance (ISM)~~ in the form of rent-free shelter while living in a home in which he or she has an ownership interest. Accordingly, an individual with [an](#) "equitable ~~home~~-ownership ~~under a interest~~

~~in the trust” (see SI 01120.200F.1.) principal” does not receive rent-free shelter. Also, because we consider such an individual to have an ownership interest, payment of rent by the beneficiary to the trust has no effect on the SSI payment. (see SI 01120.200F.1. in this section).~~

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

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

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

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

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

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

If the trust, ~~which~~whose principal is not a resource, purchases the home with a mortgage and the ~~individual~~trust beneficiary lives in the home in the month of purchase, the home would be ISM in the month of purchase. Each of the subsequent monthly mortgage payments ~~would result~~results in the receipt of income in the form of ISM to the trust beneficiary living in the house, each valued at no more than the PMV (see SI 01120.200E.1.b.) in this section).

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#### **c.- Additional household expenses**

If the trust pays for other shelter or household operating expenses, these payments ~~would be~~are income in the form of ISM in the month ~~the individual has use of the item~~

~~(trust beneficiary's use. For computations of ISM from outside the household, see- SI 00835.350)-~~ Countable. ~~For countable~~ shelter expenses ~~are listed at-, see SI 00835.465D.~~

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

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## **G. Policy –for earnings and additions to trusts**

### **1.- Trust principal is not a resource**

#### **a.- Trust earnings**

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

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

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

Additions to trust principal made directly to the trust are not income to the grantor, trustee, or trust beneficiary. ~~Exceptions~~ For exceptions to this rule ~~are listed in-, see SI 01120.200G.1.c.- and- SI 01120.200G.1.d. in this section.~~

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#### **c.- Exceptions**

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

Certain payments are non-assignable by law ~~and;~~ therefore, are income to the individual entitled or eligible to receive the ~~payment~~ payments under regular SSI income rules. ~~They may not be paid directly into-, unless an exclusion applies. Although~~ a trust, ~~but individuals may attempt to structure trusts so may be structured such~~ that it appears that ~~they~~ non-assignable payments are ~~so paid. Non~~ 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:

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

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#### **d.- Assignment of income**

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A legally assignable payment ~~(see SI 01120.200G.1.c. for what is not assignable)~~, that is assigned to a trust ~~/or~~ trustee, is income for SSI purposes ~~, to the individual entitled or eligible to receive the payment.~~ **unless** the assignment is irrevocable. We consider assignment of payment by court orders to be irrevocable. For example, child support or alimony payments paid directly to a trust ~~/or~~ trustee ~~as a result~~because of a court order, are considered irrevocably assigned and thus not income. Also, U.S. Military Survivor Benefit Plan (SBP) payments assigned to a special needs trust are not income ~~because the assignment of an SPB annuity is irrevocable.~~ For more information on SPB annuities, see SI 01120.201J.1.e.

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

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

### **a.- Trust earnings**

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

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

Additions to principal may be income or conversion of a resource, depending on the source of the funds. If ~~funds from~~ a third party ~~are deposited~~ deposits funds into the trust, the funds are income to the ~~individual~~ trust beneficiary. If the trust beneficiary transfers funds ~~are transferred into the trust~~ from an account ~~owned by the individual to the trust that he or she owns~~, the funds are not income, but ~~conversion of a~~ converted resource ~~from one account to another~~.

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

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### 1. Medicaid Trusts

#### a. General

Medicaid trusts are trusts that are established by an individual (by a means other than a will) on or after 8/August 11/93, 1993 and that are made up, in whole or in part, of assets (income and/or resources) of that individual. These trusts are created by a means other than a will. AWe consider a trust is considered as established by an individual if it was established by:

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

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

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See SI 01730.048 forFor additional information and procedures for coding and referring these trusts to the State Medicaid agencies, see SI 01730.048.

#### b. State reimbursement provisions

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

### 2. Medicaid Qualifying Trusts (MQT)

An MQT is a trust or similar legal device established prior to 10/October 1/93, 1993, other than by a will, under which the grantor (or spouse of the grantor) may be the

beneficiary of all or part of the ~~payments from the~~ trust. The amount ~~from~~ the MQT considered available as a resource to the individual for Medicaid purposes, is the maximum amount ~~of payments~~ that may be distributed under the terms of the trust to the individual by the trustee. This ~~-Medicaid-only-~~ provision has no effect on the income and resource determination for SSI purposes.

**NOTE:** An MQT ~~MQTs~~ must ~~have been established prior to 10/1/93, when~~ be evaluated under SI 01120.200 to determine whether they are a resource for SSI purposes.

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

## I. ~~-~~Policy ~~-for~~ representative payees and trusts

If a ~~trust was established by a~~ representative payee ~~funds a trust~~ with an underpayment or conserved funds, see ~~-GN 00602.075-~~ for additional rules that may apply. ~~Additionally,~~ ~~representative payees may not deposit dedicated account funds in a trust.~~

## J. ~~-~~Procedure ~~-for~~ development and documentation of trusts

### 1. ~~-~~Written trust

#### a. ~~-~~Review the trust document

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

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

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voluntary and involuntary alienation of any [interest of the trust beneficiary in the trust payments](#); and

- trust is receiving payments from another source.

**b.- [Which instructions apply when determining the resource status and income treatment of a trust](#)**

[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:](#)

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

**NOTE:** [If the trust beneficiary adds his or her own assets to an existing third-party trust, on or after January 01, 2000, redevelop the trust under the instructions in SI 01120.199, SI 01120.201 through SI 01120.204, SI 01120.225, and SI 01120.227. For more information on mixed trusts, see SI 01120.200A.1.b and SI 01120.201I.3.](#)

**c. [Consult regional instructions](#)**

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

#### **c. Referral to. Referring a trust issue to the regional office**

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

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

## **2.- Oral trusts**

### **a.- State recognizes as binding**

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

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

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

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

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

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

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**NOTE:** When you are unsure about any relevant issue, do not make a determination; but discuss the case with the RO programs staff. They will refer the case to the [Regional Chief Counsel](#) [RCC](#), if necessary.

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

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

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#### 4. [Documentation](#) ~~for~~ trust evidence

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

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

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

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

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

#### 5. [Medicaid](#) ~~Trust~~ [trust](#) and Medicaid qualifying trust determination

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

## 6. ~~Systems input~~ for trusts

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

## ~~7. Post-eligibility change in~~ **K. Posteligibility changes in trust resource status**

~~If a trust~~ 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, but because of policy clarifications you now ~~is~~ is determined to be a resource (or vice-versa), apply the following rules.

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

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

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

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

For overpayment waiver rules ~~in~~, see SI 02260.001.

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

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

#### **a. New situations**

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

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

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

#### **c. Good cause extension**

We permit each trust that was not previously determined to be a resource only one 90-day amendment period. However, you may grant a request for an extension to the 90-day amendment period for good cause, if the individual requests it and provides evidence that the disqualifying issue cannot be resolved within the 90-day period: for example, if a court must amend the trust and there is a wait to get on the court docket. Document on the DROC screen the decision to grant the extension, the time allowed, and the reason. Diary the case for follow-up. Field office staff have discretion to provide a reasonable time period for a good cause extension depending on the situation.

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

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

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

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

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

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

## **L. Trust review process**

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

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

To ensure accurate and consistent trust resource determinations:

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

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

**NOTE:** It is important to remember that trust determinations are subject to the rules of administrative finality. For more information on administrative finality, see SI 04070.040. The following steps describe the trust review process for the Claims Specialists and RTRT members.

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

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

After making a trust resource determination:

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

Then follow these trust review process steps:

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

Follow these procedures:

- Access the SSITMS website and select the "Add New" tab. Add the applicant's or recipient's name, representative payee's name (if any), social security number, and all other relevant trust information;
- Select the appropriate type of trust in SSITMS (third party trust, special needs trust, etc.); and
- Submit the trust resource determination for RTRT review.

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

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

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

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

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

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

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

- change the Trust Status to "Referred to RTL" using the Edit function; and

- [provide the rationale, a summary of supporting documentation, and appropriate references in SSITMS Remarks and select "Submit."](#)

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

#### **[d. Appeals of trust determinations](#)**

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

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

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

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

#### **[e. RTRT return cases for further FO development](#)**

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

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

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

## **[2. Trust Reviewer \(TR\) actions](#)**

[TRs review the Claims Specialist's trust resource determination along with any pertinent documentation in the SSI Claims System and the Claims File User Interface \(CFUI\). When](#)



[TRs receive a trust resource determination for review in SSITMS, they select the case with "Pending" trust status from the SSITMS summary listing and:](#)

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

[Additionally, TRs refer:](#)

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

### **[3. Regional Trust Lead \(RTL\) actions](#)**

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

#### **[a. Reviewing trust resource determinations](#)**

[Select the case from the SSITMS Summary listing page or by using the link in the email notification, and:](#)

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

#### **b. Email notifications for reevaluation requests**

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

#### **c. Reevaluate trust resource determinations**

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

#### **d. Appeal requests**

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

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

#### **1.- What to discuss**

When you discuss SSI trust policy with a member of the public, ~~consider the following points in your discussion, as applicable~~ follow this guidance:

- ~~a.~~ Do not advise ~~a claimant an applicant~~, recipient, ~~deemor~~, representative payee, or legal guardian, ~~or any other party~~ on how to invest funds or hold property in trust. Remember that you ~~cannot provide the kind of financial guidance that attorneys, accountants, and financial advisors are usually able to provide. Do not attempt~~ are not permitted to provide legal ~~or financial~~ advice.

Never recommend to an individual that he or she set up a trust or suggest that you think ~~that~~ a trust would be beneficial to him or her. ~~Be aware that by not knowing all of the legal implications of such an action, you could endanger their eligibility for other programs or benefits (e.g., Medicaid).~~

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Be aware that a trust ~~allowing eligibility for SSI does not mean that the trust will~~ may allow eligibility for SSI but not eligibility for Medicaid. Suggest that the individual check with the State Medicaid office.

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- b. Explain how trusts may affect SSI eligibility and payment amount; in general terms or in terms specific to a particular trust arrangement. In the latter case, examine the trust document or a draft of the proposed trust provisions, as necessary. ~~Do not, however, You can identify problematic provisions in the document and refer the individual to the POMS section related to the issue. Do not~~ advocate specific changes to a trust.

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- c. Remember that an individual's ability to access and use the trust principal depends on the terms of the trust document and on State or Tribal law. ~~Since The~~ State or Tribal trust laws ~~in this area~~ may be complex, ~~discuss, Discuss~~ the individual's documents with your regional office if you are unable to make a determination.

## 2.- Use "SSI Spotlight" on trusts

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Consider giving the individual a copy of the "SSI Spotlight" on trusts. ~~A~~You can get a copy of the- Spotlight is available on the Internet at: trusts online: (<http://www.socialsecurity.gov/ssi/spotlights/spot-trusts.htm>).

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## L.N. Examples of trusts

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

### 1.- Trust principal is a resource

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

##### • Situation

The claimant is a child and the beneficiary of a trust established on her behalf by her mother, who is her legal guardian. The money used to establish the trust was inherited by the claimant directly from her grandmother, making the beneficiary the grantor. The

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mother is also the trustee. The trust document clearly indicates that the trust may be revoked at any time by the grantor.

- **b. Analysis**

Since the grantor may revoke the trust at any time, the trust is a resource to the grantor. In this situation, the child is the grantor (see SI 01120.200B.2.) and the trust is her resource. This is the case because the actions of the mother, as her legal guardian, are taken as an agent for the child.

**2. Trust principal** Be aware of situations in which the same person may serve multiple functions (such as parent, guardian, and trustee), and distinguish which specific function the person is not performing in order to determine whether the person is acting as an agent for the claimant. Note that it is allowable for the same person to perform multiple functions independently of each other without acting as an agent of the claimant. For the definition of a grantor, see SI 01120.200B.3. in this section.

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

**a. Example 1**

- **Situation**

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

- **Analysis**

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

**2. Trust principal is not a resource**

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

- **Situation**

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

- **Analysis**

- **Analysis**

Since the recipient, as trust beneficiary, has no authority to terminate the trust established with her parents' assets or to access the principal directly, the trust principal is not her resource. While trust disbursements ~~on a beneficiary's behalf for the~~ beneficiary's benefit may be income to her, the disbursements for tuition are not income since they do not provide food or shelter in any form. However, the trust disbursements for room and board are in-kind support and maintenance valued under the PMV rule. The \$25 monthly deposits of trust earnings are income when deposited into the recipient's personal account ~~are income when the deposit is made~~ and are resources to the extent retained into the following month. The trust beneficiary's right to the stream of \$25 monthly payments is not a resource because she cannot sell or assign ~~them~~ it prior to receiving ~~them~~ the payments because of the valid spendthrift clause. ~~(See SI 01120.200B.16. for~~ For a definition of spendthrift clauses), see SI 01120.200B.13. in this section.

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

## **b.- Example 2 of a trust that is not a countable resource**

- **Situation**

### **Situation**

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

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## • Analysis

### Analysis

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

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### 3. Principal held in a grantor trust is a resource

#### a. Situation

~~The trust beneficiary, a 17-year-old SSI recipient, received a \$125,000 judgment as the result of a car accident that left him disabled. His mother, as his legal guardian, placed the money in an irrevocable trust for the sole benefit of the recipient with the recipient's sister as trustee. The trustee has absolute discretion as to how the trust funds are to be spent and the trust has a prohibition against the trustee spending an amount of funds that would make the recipient ineligible for Federal or State assistance payments. Applicable State law recognizes the principle that if an individual is both the grantor of a trust and the sole beneficiary, the trust is revocable, regardless of language in the trust to the contrary.~~

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#### b. Analysis

~~Since the recipient's mother, as his legal guardian, established the trust with funds that belonged to the recipient, it is treated as if the recipient established the trust himself. Therefore, he is considered the grantor of the trust. Since he is also the sole beneficiary of the trust, the trust is revocable and is the recipient's resource, regardless of the language in the trust document. The recipient is ineligible due to excess resources.~~

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### 4. Trust requires legal review

#### a. Example ~~1~~ of a trust that requires legal input

##### • Situation

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

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

- **Analysis**

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

**b.- Example 2 of a trust that requires legal review**

- **Situation**

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

- **Analysis**

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

## **M. O. References**

- SI 00810.120 Income Determinations Involving Agents
- SI 00835.360 When to Charge In-Kind Support and Maintenance (ISM) from Third-Party Vendor Payments
- SI 01110.210 Excluded Resources
- SI 01120.020 Transactions Involving Agents
- SI 01120.195 Trusts Established under the Indian Gaming Regulatory Act (IGRA) for Minor Children and Legally Incompetent Adults (IGRA Trusts)
- SI 01120.201 Trusts Established with the Assets of an Individual on or After 1/1/00 ~~SI 01120.201 SI 01120.204 January 01, 2000~~
- ~~Conservatorship Accounts SI 01140.215~~
- ~~Agency Relationships SI 01120.020, SI 00810.120~~
- SI 01140.200 Checking and Savings Accounts ~~SI 01140.200~~

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- ~~Medicaid Qualifying Trusts — SI 01730.048~~
- ~~When to Charge ISM from Third-Party Vendor Payments — SI 00835.360~~
- ~~Transfer of Resources for Less Than Fair Market Value — SI 01150.100~~
- ~~Excluded Resources — SI 01110.210~~
- ~~MSOM~~SI 01140.215 Conservatorship Accounts
- SI 01150.001 What is a Resource Transfer
- SI 01730.048 Medicaid Trusts
- MS INTRANETSSI 013.005 Trust

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To Link to this section - Use this URL:  
<http://policy.ssa.gov/poms.nsf/lnx/0501120200>

*SI 01120.200 - Information on Trusts, Including Trusts Established Prior  
to January 01, 2000, Trusts Established with the Assets of Third Parties,  
and Trusts Not Subject to Section 1613(e) of the Social Security Act -  
04/30/2018  
Batch run: 04/30/2018  
Rev:04/30/2018*



**TN 48-05-1352 (04-18)**

# **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 the assets of an individual on or after 01/01/00**

**1/1/00**

### **[Foster Care Independence Act of 1999](#)**

**Citations:** [Social Security Act as amended in 1999, Section 1613\(e\); 42 U.S.C. 1382b; P.L. 106-169, Section 205](#)

Topic	Reference
<a href="#">Background—Trusts</a>	<a href="#">SI-01120.201A</a>
<a href="#">Definitions—Trusts</a>	<a href="#">SI-01120.201B</a>
<a href="#">Policy—General</a>	<a href="#">SI-01120.201C</a>
<a href="#">Policy—Treatment-Of-Trusts</a>	<a href="#">SI-01120.201D</a>
<a href="#">Policy—Relationship-To-Transfer-Penalty-(Irrevocable-Trust)</a>	<a href="#">SI-01120.201E</a>
<a href="#">Policy—For-The-Benefit-Of-/On-Behalf-Of-/For-The-Sole-Benefit-Of-An-Individual</a>	<a href="#">SI-01120.201F</a>
<a href="#">Policy—Legal-Instrument-Or-Device-Similar-To-A-Trust</a>	<a href="#">SI-01120.201G</a>
<a href="#">Policy—Burial-Trusts</a>	<a href="#">SI-01120.201H</a>
<a href="#">Policy—Disbursements-From-Trusts</a>	<a href="#">SI-01120.201I</a>
<a href="#">Policy—Earnings/Additions-To-Trusts</a>	<a href="#">SI-01120.201J</a>
<a href="#">References</a>	<a href="#">SI-01120.201K</a>

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## A. Background

### 1. Legislative enactment

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) will be considered a resource as resources for Supplemental Security Income (SSI) eligibility purposes. It also The law addresses when to consider earnings on or additions to trusts will be considered as income. The legislation 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 (see SI 01120.203). These The provisions in the law are effective for trusts established on or after 1/01/01/00. For information on exceptions to the statutory rules in Section 1613(e), see SI 01120.203.

For trusts established prior to 1/01/01/00, 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. 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 law or Tribal laws and legal principles that a claims representative Claims Specialist may not be able to apply without legal advice from agency counsel. Therefore, the following instructions may only be sufficient for you to recognize that an issue is present and that should be referred you may need to consult with your regional office (RO) for possible referral. The RO may refer the trust to 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. Definitions Glossary of trust terms

### 1. Asset

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-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. ~~However, do not consider earnings or additions to be included in the corpus in the month they are credited or otherwise transferred to the trust.~~

**NOTE:** Earnings or additions are not included in the corpus in the month ~~that they are credited or transferred into~~ the trust credits or receives them because ~~they are considered we consider them~~ under income counting rules in that month. ~~For more information, see SI 00810.000.~~

## 3. Foreclosure

### 2. Asset

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

- income excluded under section 1612(b) of the Social Security Act (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 that are found in the Act, see SI 01130.050);
- any other payment or property to which the individual or individual's spouse is entitled, but does not receive or have prevents access to because of action by:
  - a. the individual or individual's spouse;
  - b. or payment from, a person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or spouse; or trust to an individual now or in the future.

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#### 4. Legal instrument or entity (including a court) acting as a device similar to a trust

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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 direction of, or on assets to fund, the request of, the legal instrument, device, or arrangement;
- who transfers property (or whose property is transferred by another) to an individual or spouse 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.

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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

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#### 3. For the Trust income

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For 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.

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#### 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. 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.

#### 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**

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. 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**

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

- of which the individual is a beneficiary;
- to which the ~~new~~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.

**4-10. Spouse**

For the purposes of this section, the individual's **spouse** is the individual we consider to be the spouse for normal SSI purposes (see SI 00504.450B).

**5. Legal instrument or device similar to a trust**

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This is a legal instrument, device, or arrangement, which may not be called a trust under State law, but is similar to a trust. That is, it involves:

- a grantor (see SI 01120.200B.2.) or individual who provides the assets to fund the legal instrument, device, or arrangement (see SI 01120.201B.7. in this section);
- 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);

The grantor makes the transfer with the intention that it be held, managed or administered by the individual or entity for the benefit of the grantor or others. A legal instrument or device similar to a trust can include (but, is not limited to) escrow accounts, investment accounts, conservatorship accounts (SI 01140.215), pension funds, annuities, certain Uniform Transfers to Minors Act (UTMA) accounts and other similar devices managed by an individual or entity with fiduciary obligations.

## 6. Trust established by a will

A trust established by a will or a testamentary trust (see SI 01120.200B.15.) is a trust established under the terms of a will and which is only effective upon the individual's death. A trust to which property is transferred during the life of the individual who created the will is not a trust established by a will, even if the will transfers additional property to that trust. Field offices should obtain and review a copy of the last will and testament.

## 7. Trust 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 to a trust other than by a will.

**NOTE:** The grantor (see SI 01120.200B.2) 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 (e.g., a parent or legal guardian) who physically took action to establish the trust rather than the individual who provided the trust assets. This distinction is important, especially in developing Medicaid trust exceptions in SI 01120.203.

## 8. 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.

## 9. Other definitions

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

# C.- Policy for certain trusts established on or after 1/1/200001/01/00

## 1.- Effective date

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The trust provisions in SI 01120.201.:

- These provisions do not apply to trusts established solely with the assets of a third party, either before or after 1/1/01. ~~For development of third party trusts, see SI 01120.200.~~ However, if at any point in the future the ~~individual's~~ individual's own assets are added to ~~such a trust, the trust then becomes subject to development under SI 01120.201 a trust~~

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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.

**2. Applicability**

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

**a. Trusts to which the provisions in this provision applies 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 ~~to a~~into the trust other than by a will. ~~(For the definition of an asset, see SI 01120.204B.2.~~ SI 01120.201B.1. in this section).

**b. Examples of 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;  
orAn individual who was the plaintiff in a medical malpractice lawsuit is the beneficiary of a trust. The trust states that the defendant doctor's insurance company established it so the settlement funds were never paid to the plaintiff directly. However, for SSI eligibility purposes, the trust was established with the assets of the individual because the trust contains assets of the individual (see SI 01120.201B.2. in this section), which he or she did not receive because of action on behalf of, in the place of, at the direction of, or on the request of, the individual.
- Likewise, the same result would occur if a court had ordered the settlement to be placed in a trust, even if the individual was a child and whether State law did or did not require the settlement to be placed in a trust for the child.
- A disabled SSI recipient over age 18 receives child support which is assigned by court order directly into the trust. Since the child support 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 child support is income, unless it is irrevocably assigned to the trust or trustee, per SI 01120.201J.1.d. in this section. In this example, the court ordered the child support to be paid directly into the trust, so we consider it to be irrevocably assigned to the trust/trustee.
- 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

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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.

**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 ~~whereinto which~~ the assets of the individual (or the individual's ~~individual's~~ spouse) ~~were transferred~~, along with the assets of ~~another(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 ~~Smith~~ is an adult with cerebral palsy. His grandparents left \$75,000 in trust for him in their wills: ~~(third party testamentary trust)~~. Recently (after ~~4/01/01/00~~), Mr. ~~Smith~~ Jimmy won an employment discrimination lawsuit and ~~was awarded~~ received a \$1,500 judgment, which ~~was 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. ~~Smith's~~ Jimmy's funds are subject to these provisions and could be a resource if payment could be made to ~~Mr. Jimmy~~ or for ~~Mr. Smith's~~ his benefit (see ~~SI 01120.201D.2.~~ in this section). The \$75,000 ~~deposited by his with which Mr. Jimmy's~~ grandparents established the trust, by will, for Mr. Jimmy's benefit is not subject to these provisions (~~see SI 01120.200~~).

### d. Application of the trust provisions

These provisions apply to trusts without regard to:

- ~~but must be evaluated the purpose for which the trust was established;~~
- ~~whether the trustees have or exercise any discretion under the trust; instructions for third party trusts in SI 01120.200.~~

- ~~3. Examples any restrictions on when or whether distributions may be made from the trust; or~~

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- any restrictions on the use of distributions from the trust.

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This means that any trust established with the assets of an individual on or after 1/1/00 will be subject to these provisions**trusts and** may be counted in determining SSI eligibility. No clause or requirement in the trust, no matter how specifically it applies to SSI or other Federal or State program (i.e., exculpatory clause), precludes 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 would be one that states, "Section 1613(e) of the Social Security Act does not apply to this trust." Such a statement has no effect as to whether these rules apply to the trust.**the applicable provisions**

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#### **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.**
- The same result would occur if a court had ordered placement of the settlement in a trust, 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. 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. 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.

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Robert Gates is a disabled child. NOTE: While exculpatory clauses, use clauses, trustee discretion and restrictions on distributions, etc., do not affect a trust's countability, they do have an impact on how the various components are treated. For example, a prohibition in a discretionary irrevocable trust that limits the trustee to distributing no more than \$10,000 to an individual has no effect on whether or not the trust is countable, but does affect the amount that is countable.

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### 3. Income

For purposes of the SSI program, income includes any earnings or additions to a trust established with the assets of an individual; of which the individual is a beneficiary; and

- which is a resource under these trust provisions; 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.

(For additional income instructions, see SI 01420.201J in this section).

- 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.

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## 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. ~~(See SI 01120.203A).~~ 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 ~~be developed~~ develop it under ~~SI 01120.200~~.

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

Any disbursements from a trust that is a resource that are not ~~made~~ to, or for the benefit of, the individual ~~(SI 01120.201F.1. in this section)~~ are ~~considered~~ 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 ~~4/4~~ 01/01/00. ~~At~~ His guardian spent all but \$5,000 of funds in the trust ~~had been spent~~ on Mr. Jones' behalf. His mother files for SSI for him ~~and is told that, but~~ he is not eligible because of the money in the trust. His mother takes a \$4,500 ~~of~~ disbursement from the ~~money~~ 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 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 see SI 01120.201F.1. in this section).~~

## **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 ~~payments from~~ the trust can ~~be made~~ make payments. If ~~the trustee can make any~~ payments ~~from the trust could be made~~ to or for the benefit of the individual or individual's spouse ~~(SI 01120.201F.1. in this section)~~, the portion of the trust from which ~~payment could be made~~ 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 Circumstances under which payment can or cannot be made**

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In determining whether payments can or cannot be made from a trust to or for the benefit of an individual (SI 01120.201F.1.), 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 included in the trust. However, if the trust can make a payment ~~can be made~~ 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 (i.e., 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 ~~disburse~~ make a one-time disbursement that totals \$2,000 to, or for the benefit of, the individual out of a trust with \$20,000 ~~trust~~ assets. Only \$2,000 is considered to be a resource under SI 01120.201D.2.a. in this section. The other \$18,000 is considered to be an amount ~~which that~~ cannot, under any circumstances, be paid to the individual and may be subject to the transfer of resources ~~rule~~ provisions in SI 01120.201E. in this section ~~and SI 01150.100. and SI 01150.121.~~
- If 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 is considered to be a payment which could be made paid to the individual under ~~some circumstance~~ 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 ~~only~~ 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 ~~subject to a resource under the rules~~ 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 ~~rule~~ 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

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~~Payments are considered~~ **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, ~~e.g., such as a~~ guardian or legal representative.

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

~~See~~ **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 ~~can may~~ still ~~be applied~~ **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.~~

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

~~When an individual transfers assets to~~ **into** a trust, he or she generally transfers ~~ownership~~ **legal title** of the asset to the trustee. In some cases, ~~this we~~ could ~~be considered~~ **consider this** a transfer of resources. ~~In order to~~ **To** avoid both counting a trust as a resource and imposing a transfer of resources penalty for the same transaction, ~~the trust provisions~~ **instructions take precedence over the transfer provisions**. ~~If there are instructions. The transfer instructions may apply to portions of the trust that we cannot be counted~~ **count** as a resource, ~~then the transfer rules may apply to that portion of the trust.~~

### **~~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 ~~assets of an individual (individual's or spouse) with the individual's (or spouse's)~~ **spouse's** resources, cannot be paid to

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or for the benefit of the individual, the portion ~~which that~~ cannot be paid is considered a transfer of resources for less than fair market value.

~~The~~ Consider the date of the transfer ~~is considered~~ to be:

- the date the trust was established; or
- if later,
- the date ~~on which~~ payment to the individual was foreclosed (i.e., an action was taken ~~which 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 above according to the instructions in SI 01120.201E.1. in this section. Additions to the foreclosed portion of the trust after the ~~above~~ date of the transfer may be new transfers that ~~you~~ must ~~be developed~~ develop separately.

~~For instructions related to transfers~~ transfer of resources, see ~~SI 01150.100.~~ 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, ~~if and~~ payment is made from ~~the that~~ portion of the trust ~~that is a resource to the individual to,~~ or for the benefit of another, ~~then~~ such a payment is a transfer of resources.

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

##### **EXAMPLE 1:**

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 ~~own behalf is foreclosed by terms of the trust~~ 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.

##### **EXAMPLE 2:**

- Same scenario as in EXAMPLE 1 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 ~~for tuition~~. The \$5,000

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payment is a transfer of resources for Ms. Russell. Although counting the trust as a resource would make her ineligible, if the trust principal ~~was~~were spent down to the point where it would allow resource eligibility, we would still have to consider ~~the 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 01150.100.~~ 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 ~~that~~ 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 is considered to be a resource under the trust provisions ~~of P.L. 106-169, in SI 01120.201.~~ the transfer of resources penalty may apply in the following circumstances:

- If an event occurs ~~which that~~ forecloses (see SI 01120.201B.8.) payment from the portion of the trust that is a resource, then such foreclosure is a transfer of resources as of the date ~~that payment was foreclosed.~~ 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 ~~to or for the benefit of another individual,~~ 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 be developed/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, ~~payments~~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

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resource to the individual because ~~nothing can be paid~~ the trust cannot make payments to her or for her benefit. It is also not a transfer of resources subject to the penalty provision ~~since 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 or, on behalf of, or for the sole benefit of an individual**

### **1. Trust established for the benefit of or on behalf of an individual**

Consider a trust established for the benefit of an individual if payments of any sort from the corpus or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment.

Likewise, consider payments to be made on behalf of, or to or for the benefit of an individual, if payments of any sort from the corpus or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment.

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

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

If funds from a trust that is a resource are used to purchase durable items, e.g., a car or a house, the individual (or the trust) must be shown as the owner of the item in the percentage that the funds represent the value of the item. When there is a deed or titling document, the individual (or trust) must be listed as an owner. **General rule regarding trusts:** Failure to do so may constitute evidence of a transfer of resources.

### **2. Trust established for the sole benefit of an individual**

#### **a. General rule regarding 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.

Except as provided in SI 01120.201F.2.b. in this section and SI 01120.201F.2.c. in this section, do not Do not consider a trust that provides 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 to be 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.

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## 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. 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

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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 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 deeming 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.
- 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 who**

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, or other long-term care facility (e.g., for example, group homes and assisted living facilities), or other supported living arrangement in which a non-family member or arrangements.
- 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.
- **NOTE:** A third party can be a family member, non-family person, or another 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.

**NOTE:** If you have questions about whether a disbursement is permissible, please request assistance from your regional office.

#### **e. 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, as well as and reasonable costs associated with investment, legal, or other services

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rendered on behalf of the individual with regard to the trust. In ~~defining~~evaluating what is reasonable compensation, consider the time and effort involved in providing the services ~~involved, as well as~~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 whether compensation is being provided to a family member or if there is some other reason to question the reasonableness of the compensation.~~

#### **4-5. 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 in order to conform with the third party travel expense provisions in SI 01120.201F.2.b., SI 01120.201F.3.b. and SI 01120.201F.3.c. in this section, it must be amended within 90 days. ~~That~~The 90-day period begins on the day we inform the applicant, recipient, or representative payee is informed that (using the notice date) that the trust contains (a) third party travel expense provision(s) that must be amended in order to continue qualifying for the exception under Section section 1917(d)(4)(A) or Section 1917(d)(4)(C).

Do not count a previously exempted trust as a resource, and do not impose an overpayment, during the 90-day ~~amendment~~period. If the trust still fails to meet the requirements of this section after ~~the~~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.2.b., 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?**

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~~Consider under~~We generally will use trust ~~rules~~instructions to evaluate a legal instrument, device, or arrangement, ~~which may even if it is not be called~~a trust under State or Tribal law, ~~but which if it is similar to a trust. We will consider such an instrument, device or arrangement as a trust if, in that:~~

- it involves a grantor ~~(see SI 01120.200B.2.)~~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, we~~**NOTE:** We will not consider these arrangements under trust ~~rules~~instructions if they would ~~be counted~~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. ~~Since~~Because the trust provisions ~~of P.L. 106-169 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 ~~resource-counting~~ purposes if established with the individual's assets.

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

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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.

These Evaluate these arrangements should be evaluated 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

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the burial trust that ~~the~~ funeral ~~director~~ provider established, and thus retains an equitable interest, see the ~~rules~~ instructions applicable to third-party trusts in ~~SI 01120.200~~.

## 2. 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; or
- 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.1.b.~~ in this section).

## 3. Applicable exclusions

If application of ~~the provisions in SI 01120.201H.~~ in this ~~provision~~ 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 may be excluded)~~ 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 may be excluded)~~ 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

## 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 ~~SSI recipient~~ individual, depending on the nature of the disbursements. Regular rules apply to determine when income is available.

### a. Disbursements ~~which 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.~~

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~~Disbursements~~ If disbursements from the trust to third parties ~~that~~ result in the ~~beneficiary~~ 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 ~~(see 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 ~~which 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 ~~which that~~ result in receipt of in-kind support and maintenance**

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

#### **c.- Disbursements ~~which 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 ~~take the form of~~ 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, etc., (see SI 00815.400).~~

Disbursements made from the trust to a third party that result in the ~~beneficiary~~ receiving beneficiary's receipt of a non-cash ~~item~~ 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 ~~(see 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 ~~would be excluded~~ from resources as a household ~~goods~~ 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.

#### **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 ~~what was~~ the list of itemized charges on the bill. If the trust pays for

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food or shelter items on the bill, we will generally charge the individual will generally be charged with in-kind support and maintenance ISM for those items up to the PMV. If the bill includes non-food, non-shelter items, the individual usually does not receive income as the result of the payment, unless the item items received would not be a totally or partially excluded non-liquid resource resources the following month.

For example, if **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**

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:

- 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**

~~Gift~~ Consider gift cards and gift certificates are considered purchased by the trust for the individual's use to be cash equivalents. If the individual can use a gift card or certificate

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~~can be used~~ to buy food or shelter (~~e.g., 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 (~~e.g., bookstore~~ such as a flower shop or electronics store), but the card does not have a legally enforceable prohibition on the ~~individual~~ 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.~~

#### **f.-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 ~~in-kind support and maintenance (ISM).~~ ISM.

#### **h. Disbursements transferred into an ABLÉ account**

Funds transferred from the trust into an account established by the trust beneficiary under the ABLÉ Act are excluded from income to the trust beneficiary. For treatment of deposits into an ABLÉ account, see SI 01130.740.

### **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, ~~trust earnings, e.g., we exclude from income any~~ interest, ~~are income.~~ 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 and for.

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.

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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, ~~e.g., for instance,~~ as fees payable to the trustee or interest payable to the grantor.

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

### c. Payments not assignable by law

- 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)). (29 U.S.C.A. section 1056(d)).

#### d. Assignment of income

A legally assignable payment (see [SI 01120.201-1.c](#) in this section for what is not assignable), ~~that is assigned~~ 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 to receive it, 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. 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.

**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 exclusion of interest income, see SI 00830.500).~~

**b. Additions to principal--revocable trust**

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Any 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 ~~the 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:

This is the case if:

- the trust was established with the assets of ~~an~~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 ~~could be made~~ 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 ~~could be paid~~ to or for the benefit of the individual ~~(for~~ [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 ~~an~~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 ~~could be made~~ to or for the benefit of the individual.

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

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

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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 another (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 Smith is an adult with cerebral palsy. His grandparents left \$75,000 in trust for him in their wills. Recently (after 4/01/00), Mr. Smith won an employment discrimination lawsuit and was awarded received a \$1,500 judgment, which was deposited went into the trust that his grandparents established. The \$1,500 of Mr. Smith's Jimmy's funds are subject to these 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 (see SI 01120.200) and is not a resource. For third party trusts, see SI 01120.200.

In determining income to the trust (see SI 01120.201C.3.), we must prorate the income in proportion to the percentage of funds placed in the trust by Mr. Smith 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.

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## **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**

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 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 04420.200~~ \[SI 01120.195 Trusts Established under the Indian Gaming Regulatory Act \\(IGRA\\) for Minor Children and Legally Incompetent Adults \\(IGRA Trusts\\)\]\(#\)](#)
- [• \[SI 01120.200\]\(#\) 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 01150.100 Transfer of Resources for Less Than Fair Market Value~~](#)
- [• ~~SI 04420.202~~ \[SI 01120.202\]\(#\) 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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*To Link to this section - Use this URL:*

<http://policy.ssa.gov/poms.nsf/lnx/0501120201>

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

*Batch run: 04/30/2018*

*Rev:04/30/2018*

Effective Dates: 05/14/2013 - Present

Effective Dates: 04/30/2018 - Present [Previous](#) | [Next](#)

TN 48-05-1353 (04-18)

# SI 01120.203 Exceptions to Counting Trusts Established on or after 1/1/00 January 1, 2000

Topic	Reference
Introduction to Medicaid Trust Exceptions	SI 01120.203A
Policy—Exception To Counting Medicaid Trusts	SI 01120.203B
Policy—Waiver For Undue Hardship	SI 01120.203C
Procedure—Developing Exceptions To Resource Counting	SI 01120.203D
Procedure—Development Of Undue Hardship Waiver	SI 01120.203E
Procedure—Nonprofit Associations	SI 01120.203F
Procedure—Follow Up To A Finding Of Undue Hardship	SI 01120.203G
Procedure—Reevaluating Revocable Trusts Processed Under The Policy In Effect From 1/1/2000 Through 1/31/2001	SI 01120.203H

## A. A. Introduction to Medicaid trust exceptions

We refer to the exceptions discussed in this section as **Medicaid trust exceptions** because ~~sections~~ [section](#) 1917(d)(4)(A) and (C) of the Social Security Act (~~the~~ Act) (42 U.S.C. § 1396p(d)(4)(A) and (C)) ~~set sets~~ forth exceptions to the general rule of counting trusts as income and resources for the purposes of Medicaid eligibility and can be found in the Medicaid ~~provisions~~ [title](#) of the Act. While these exceptions are also Supplemental Security Income (SSI) exceptions, we refer to them as Medicaid trust exceptions to distinguish them from other exceptions to counting trusts provided in the SSI ~~law~~ (e.g., ~~program~~ [such as](#) undue hardship) and because the term has become a term of common usage.

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~~Development~~ The type of trust under review dictates the development and evaluation of the Medicaid trust exceptions ~~are based on the type of trust under review.~~

There are two types of Medicaid trusts to consider:

- ~~1.~~ Special Needs Trusts; ~~and~~
- ~~2.~~ Pooled Trusts.

## **~~B. Policy for exception to counting Medicaid trusts~~**

~~1. Special~~ **CAUTION:** 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. If the trust meets the definition of a resource (see SI 01110.100B.1.), it will be subject to regular resource-counting rules.

## **~~B. Policy for special needs trusts established under Section~~ section 1917(d)(4)(A) of the Act before December 13, 2016**

### **~~a.~~ 1. General rules for special needs trusts**

**NOTE:** Although this exception is commonly referred to as the ~~special needs~~ trust exception, the exception applies to any trust meeting the following requirements and does not have established prior to be a strict ~~special needs~~ trust. December 13, 2016

The resource counting provisions of ~~Section~~ section 1613(e) do not apply to a trust ~~that~~:

- ~~Which~~ contains the assets of an individual who is under age 65 and ~~who is disabled; and~~
- ~~Which is~~ **established for the benefit of such individual through the actions of a parent, grandparent, legal guardian, or a court;** and
- ~~Which~~ provides that the **State(s) will receive all amounts remaining** in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State(s) Medicaid plan ~~-(s).~~

**NOTE:** Although this exception is commonly referred to as the ~~special needs~~ trust exception, the exception applies to any trust that meets the above requirements, even if it is not titled a special needs trust.

**CAUTION:** A trust ~~which~~ that meets the exception to counting ~~the trust for SSI purposes~~ under the ~~SSI~~ statutory trust provisions of ~~Section~~ section 1613(e) must still be evaluated under the instructions in ~~SI 01120.200~~ to determine if it is a countable resource. If the

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trust meets the definition of a resource ~~(see SI 01110.100B.1.)~~, it ~~would~~ will be subject to regular resource-counting rules.

## **b-2. Under age 65**

To qualify for the special needs trust exception, the trust must be established for the benefit of a disabled individual under age 65. This exception does not apply to a trust established for the benefit of an individual age 65 or older. If the trust was established for the benefit of a disabled individual prior to the date the individual attained age 65, the exception continues to apply after the individual reaches age 65.

## **c-3. Additions to trust after age 65**

Additions to or ~~augmentation~~ augmentations of a trust after age 65 (except as outlined below) are not subject to this exception. Such additions may be income in the month added to the trust, depending on the source of the funds (see SI 01120.201J) and may ~~be counted~~ count as resources in the following months under regular SSI trust rules.

Additions or ~~augmentation~~ augmentations do not include interest, dividends, or other earnings of the trust or any portion of the trust meeting the special needs trust exception. If the ~~trust contains the irrevocable assignment of the beneficiary's~~ right to receive payments from an annuity ~~or~~ support payments, or Survivor Benefit Plan (SBP) payments (see SI 01120.201J.1.e.), is irrevocably assigned to the trust, and such assignment is made when the trust beneficiary was less than 65 years of age, ~~annuity or support~~ treat the payments paid to a special needs trust ~~are treated~~ the same as payments made before the individual attained age 65 ~~and do~~. Do not disqualify the trust from the special needs trust exception.

## **d-4. Disabled**

To qualify for the special needs trust exception, the individual whose assets were used to establish the trust must be disabled for SSI purposes under section 1614(a)(3) of the Act ~~at the time the trust was established~~.

### **e. Established for the benefit of the individual**

In cases where you need to develop for disability (for example, a special needs trust beneficiary files for SSI aged benefits), obtain a disability determination from the disability determination services (DDS) following procedure in SI 01150.121D.2. Develop disability as of the date on which the trust was established (unless you need to develop for an earlier period for another purpose).

If DDS determines that the trust beneficiary was:

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- disabled as of the date the trust was established, the special needs trust meets the disability requirements for exception; or
- not disabled as of the date the trust was established, evaluate the trust under instructions in SI 01120.201. Since the trust provisions take precedence over the transfer provisions (see SI 01150.201D.5.), depending on the terms of the trust, the trust may count as a resource or the transfer penalty may apply (see SI 01150.121.).

## 5. Definition of established

Under section 1613(e) of the Act, a trust is considered to have been "established by" an individual if any of the individual's (or the individual's spouse's) assets are transferred into the trust other than by will. Alternatively, under the Medicaid trust exceptions in section 1917(d)(4)(A) and (C) of the Act, a trust can be "established by" an individual who does not provide the corpus of the trust, or transfer any of his or her assets into the trust, but who takes action to establish the trust. To avoid confusion, we use the phrase "established through the actions of" rather than "established by" when referring to the individual who physically takes action to establish a special needs or pooled trust.

## 6. Established for the benefit of the individual

Under the special needs trust exception, the trust must be established for and used for the benefit of the disabled individual. SSA has interpreted this provision to require that the trust be for the sole benefit of the individual, as described in: SI 01120.201F.2. Other than trust provisions for payments described in SI 01120.201F.2.b. and SI 01120.201F.2.c., any provisions that: SI 01120.201F.3. and SI 01120.201F.4., any provisions will result in disqualification from the special needs trust exception if they:

- provide benefits to other individuals or entities during the disabled individual's lifetime, or,
- allow for termination of the trust prior to the individual's death and payment of the corpus to another individual or entity (other than the State(s) or another creditor for payment for goods or services provided to the individual), will result in disqualification for the special needs trust exception.

Payments to third parties for goods and services provided to the trust beneficiary are allowed under the policy described in SI 01120.201F.2.b. SI 01120.201F.3.a.; however, such payments should be evaluated under SI 01120.200E. through SI 01120.200F. and SI 01120.201I. to determine whether the payments may be income to the individual.

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**NOTE:** A third party can be a family member, non-family member, or an entity. Do not differentiate between third parties; anyone other than the trust beneficiary (or spouse, guardian, or representative payee) is a third party.

## 7. Who established the trust

The special needs trust exception does not apply to a trust established through the actions of the disabled individual himself or herself. [\(Remember that this instruction applies specifically to special needs trusts established under section 1917\(d\)\(4\)\(A\) before December 13, 2016.\)](#) To qualify for the special needs trust exception, the assets of the disabled individual must be put into a trust established through the actions of ~~the disabled individual's~~ [the disabled individual's](#).

- the disabled individual's parent(s);
- the disabled individual's grandparent(s);
- the disabled individual's legal guardian(s); or,
- a court.

In the case of a legally competent, disabled adult, a parent or grandparent may establish a “seed” trust using a nominal amount of his or her own money, or, if State law allows, an empty or dry trust. After the seed trust is established, the legally competent, disabled adult may transfer his or her own assets into the trust, or another second individual with legal authority (e.g., for example, a power of attorney) may transfer the disabled individual's assets into the trust. [To determine if the second individual had legal authority, see SI 01120.203B.9. in this section.](#)

## 8. Court-established trusts

In the case of a trust established through the actions of a court, the creation of the trust must be required by a court order. Approval of for the exception in section 1917(d)(4)(A) of the Act to apply. The special needs trust exception can be met when a court approves a petition and establishes a trust by a court order, as long as the creation of the trust has not been completed before the order is issued by the court. Court approval of an already created special needs trust is not sufficient.

**NOTE:** Under 1613(e) of the Act, a trust is considered to have been “established by” an for the trust to qualify for the exception. The court must specifically either establish the trust or order the establishment of the trust. An individual if any of the individual's (or the individual's spouse) assets are transferred to the trust other by will. Alternatively, under the Medicaid trust exceptions in 1917(d)(4)(A) and (C) of the Act, a trust can be “established by” an individual who does not provide the corpus of the trust, or transfer any of his/her assets to the trust, but rather someone who took action to establish the trust. To avoid confusion, we use the phrase “established through the actions of” rather than “established by” when referring to the individual who physically took action to establish a special needs or pooled trust. is permitted to petition a court for the present establishment of a trust or

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may use an agent to do so. The court order establishes the trust, not the individual's petition. Petitioning a court to establish a trust is not establishment by an individual.

~~g-~~**NOTE:** An individual may petition the court with a draft document of a trust as long as it is **unsigned** and not legally binding.

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#### **a. Example of a court ordering the establishment of a trust**

John is a legally competent adult who inherited \$250,000 in January 2015, and is an SSI recipient. His sister, Justine, petitioned the court to create and order the funding of the John Special Needs Trust. Justine also provided the court with an unsigned draft of the trust document. A month later, the court approved the petition and issued an order requiring the creation and funding of the trust. This trust meets the requirement in SI 01120.203B.8. in this section. The fact that the trust beneficiary is a competent adult and could have established the trust himself, is not a factor in the resource determination.

#### **b. Example of a court-established trust**

Henry wins a lawsuit in the amount of \$50,000. As part of the settlement, the judge orders the creation of a trust in order for Henry to receive the \$50,000. As a direct result of this court order, a trust was created with Henry's settlement money. The trust document lists the \$50,000 as the initial principal amount in Schedule A of the trust. This trust meets the requirement for exclusion in SI 01120.203B.8.in this section.

#### **c. Example of a court-approved trust**

Jane is ineligible for SSI benefits because she has a self-established special needs trust that does not meet the requirements for exception in SI 01120.203 in this section. Jane petitioned the court to establish an amended trust and to make the order retroactive, so that her original trust would become exempt from resource counting from the time of its creation. The court approved the petition and issued a **nunc pro tunc** order stating that the court established the trust as of the date on which Jane had previously established the trust herself. The court did not establish a new trust; it merely approved a modification of a previously existing trust. The amended trust does not meet the requirement for exclusion in SI 01120.203B.8. in this section.

#### **d. Example of a court-approved trust**

Dan is the beneficiary of a special needs trust. His sister petitioned the court to establish the Dan's Special Needs Trust and submitted to the court along with the petition Dan's special needs trust that had already been signed and funded. Although the court order states that it approves and establishes the trust, the court simply approved the existence of the already established special needs trust. This trust does not meet the requirement



each State that provided medical assistance, the trust may reimburse the States on a pro-rata or proportional basis.

**NOTE:** Merely labeling the trust as a **Medicaid pay-back trust**, an **OBRA 1993 pay-back trust**, a **trust established in accordance with 42 U.S.C. § 1396p**, or as an **OBRA 1993 Medicaid qualifying trust** (MQT, etc.) is not sufficient to meet the requirements for this exception. The trust must contain **specific payback language** substantially similar to whose effect is consistent with the language requirements described above. An oral trust cannot meet this requirement.

**2. C. Policy for special needs trusts established under section 1917(d)(4)(A) of the Act on or after December 13, 2016**

**1. General rules for special needs trusts**

A pooled trust is a trust established on or after December 13, 2016

On December 13, 2016, the President signed into law the 21st Century Cures Act (Public Law 114-255). Section 5007 of this Act allows individuals to establish their own special needs trusts and administered by qualify for the exception to resource counting under Section 1917(d)(4)(A) of the Social Security Act.

The resource counting provisions of section 1613(e) do not apply to a trust that:

- contains the assets of an individual who is sometimes called a “master trust” because it **under age 65** and is **disabled**;
- is **established for the benefit of such individual through the actions of the individual, a parent, a grandparent, a legal guardian, or a court**; and
- provides that the **State(s) will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State Medicaid plan.**

**NOTE:** Although this exception is commonly referred to as the **special needs trust** exception, the exception applies to any trust meeting the above requirements, even if it is not titled as a special needs trust.

**CAUTION:** 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. If the trust meets the definition of a resource (see SI 01110.100B.1.), it will be subject to regular resource-counting rules.

**2. Who established the trust**

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The special needs trust exception applies to a trust established through the actions of:

- the individual;
- a parent(s);
- a grandparent(s);
- a legal guardian(s); or
- a court.

#### **a. Power of attorney**

We consider a trust established under power of attorney (POA) for the disabled individual to be established through the actions of the disabled individual because the POA establishes an agency relationship. For additional information on a POA, see SI 01120.203C.3 in this section.

#### **b. Use of a seed trust**

If the legally competent, disabled adult does not establish the trust, a parent or grandparent may establish a “seed” trust using a nominal amount of his or her own money or, if State law allows, an empty or dry trust. After the seed trust is established, the legally competent, disabled adult may transfer his or her own assets into the trust, or another individual with legal authority (such as a power of attorney) may transfer the individual's assets into the trust. To determine if the individual had legal authority, see SI 01120.203C.9. in this section.

**NOTE:** Under 1613(e) of the Act, a trust is considered to have been “established by” an individual if any of the individual's (or the individual's spouse's) assets are transferred into the trust other by will. Alternatively, under the Medicaid trust exceptions in 1917(d)(4)(A) and (C) of the Act, a trust can be “established by” an individual who does not provide the corpus of the trust, or transfer any of his or her assets into the trust, but who takes action to establish the trust. To avoid confusion, we use the phrase “established through the actions of” rather than “established by” when referring to the individual who physically takes action to establish a special needs or pooled trust.

### **3. Legal authority and trusts**

The person or entity establishing the trust with the assets of the legally competent, disabled individual or transferring the assets of the individual into the trust must have legal authority to act with respect to the assets of the individual. Attempting to establish a trust with the assets of another individual without proper legal authority to act with respect to the assets of the individual will generally result in an invalid trust under state law.

**NOTE:** If you question the validity of a trust, please consult with your Regional Trust Lead (RTL) or get a Regional Chief Counsel (RCC) Opinion.

For example, John, who is establishing with his own assets a seed trust for his adult child, has legal authority over his own assets to establish the trust. He needs legal authority over his child's assets only if he actually takes action with the child's assets, for instance by transferring them into a previously established trust.

A power of attorney (POA) can establish legal authority to act with respect to the assets of an individual. A trust established under a POA for the disabled individual will result in a trust that we consider to be established through the actions of the disabled individual himself or herself because the POA establishes an agency relationship. A third party can use the POA for the trust beneficiary as the legal authority to establish a trust or to transfer assets of the beneficiary into the trust, as long as the POA provides the proper authority to do so.

#### **4. Additional requirements for a trust established on or after December 13, 2016**

Except as noted in SI 01120.203C.1. through SI 01120.203C.3. in this section, the requirements for an exempt special needs trust remain the same as those for a trust established prior to December 13, 2016. For additional requirements and guidance, see SI 01120.203B.2.through SI 01120.203B.6., SI 01120.203B.8., and SI 01120.203B.10. in this section.

### **D. Policy for pooled trusts established under section 1917(d)(4)(C) of the Act**

#### **1. General rules for pooled trusts**

A pooled trust contains the assets of many different individuals, each held in separate trust accounts and established through the actions of individuals, and each with a beneficiary for separate beneficiaries. By analogy, the pooled trust is like a bank that holds the assets of individual account holders. A pooled trust is established and managed by a non-profit organization. The pooled trust instruments usually consist of an overarching "master trust" and a joinder agreement that contains provisions specific to the individual beneficiary.

Whenever you are evaluating the trust, it is important to distinguish between the master trust, which is established through the actions of the nonprofit association, and the individual trust accounts within the master trust, which are established through the

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actions of the individual or another person or entity for the individual, through a joinder agreement.

The resource-counting provisions of section 1613(e) of the SSI trust statute Act do not apply to a trust containing the assets of a disabled individual which individual that meets the following conditions:

- The pooled trust is established and maintained/managed by a nonprofit association;
- **Separate accounts** are maintained for each beneficiary, but assets are pooled for investing and management purposes;
- Accounts are established solely for the benefit of the disabled individuals;
- The account in the trust is established through the actions of the individual, a parent, a grandparent, a legal guardian, or a court; and
- The trust provides that, to the extent that any amounts remaining in the beneficiary's account, upon the death of the beneficiary, are not retained by the trust, the trust will pay to the State(s) the amount from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under State Medicaid plan(s).

**NOTE:** There is no age restriction under for this exception. However, a transfer of resources into a trust for an individual age 65 or over may result in a transfer penalty (see SI 01150.121).

**CAUTION:** A trust which that meets the exception to counting the trust for SSI purposes under the SSI statutory trust provisions of 1613(e) must still be evaluated under the instructions in SI 01120.200 to determine if it is a countable resource.

## **2. Disabled**

Under To qualify for the pooled trust exception, the individual whose assets were used to establish the trust account must meet the definition of be disabled for SSI purposes under section 1614(a)(3) of the Act at the SSI program time the trust was established. This also includes individuals age 65 and older.

In cases where you need to develop for disability (for example, a pooled trust beneficiary files for SSI aged benefits), obtain a disability determination from the Disability Determination Services (DDS) following procedure in SI 01150.121D.2. Develop disability as of the date on which the trust account was established (unless you need to develop for an earlier period for another purpose). If DDS determines that the trust beneficiary was:

- disabled as of the date the trust account was established, the trust account meets the disability requirement for exception; or

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- not disabled as of the date the trust account was established, evaluate the trust under instructions in SI 01120.201. Since trust provisions take precedence over the transfer provisions (see SI 01120.201D.5.), depending on the terms of the trust, the trust might count as a resource or the transfer of penalty may apply (see SI 01150.121.).

### 3. Nonprofit association

The pooled trust must be established through and maintained by the actions of a nonprofit association. For purposes of the pooled trust exception, a nonprofit association is an organization established and certified under a State nonprofit statute. (For development, see SI 01120.203F). For development of nonprofit associations, see SI 01120.203J. in this section. For more information on pooled trust management provisions, see SI 01120.225.

### d-4. Separate account

A separate account within the trust must be maintained for each beneficiary of the pooled trust. but. However, for purposes of investment and management of funds, the trust may pool the funds in the individual accounts. The trust must be able to provide an individual accounting for the each individual.

### e-5. Established for the sole benefit of the individual

Under the pooled trust exception, the individual trust account must be established for the sole benefit of the disabled individual. (For a definition of sole benefit, see SI 01120.201F.2.a). Other than the payments described in SI 01120.201F.2.b and SI 01120.201F.2.c, this exception does not apply if the trust account:

- provides a benefit to any other individual or entity during the disabled individual's lifetime; or
- allows for termination of the trust account prior to the individual's death and payment of the corpus to another individual or entity. For more information on early termination provisions and trusts, see SI 01120.199.

f-NOTE: In general, we do not limit master trusts to allow only sub-accounts that are established by parties listed in section 1917(d)(4)(C)(iii) of the Act. As pooled trusts can have SSI and non-SSI beneficiaries, we would not count a trust solely because the master trust agreement permitted a non-SSI trust to be established by someone other than those listed in section 1917(d)(4)(C)(iii).

### 6. Who established the trust account

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In order to qualify for the pooled trust exception, the trust ~~account~~ must have been established through the actions of:

- the disabled individual himself or herself ~~or through the actions of:~~

the disabled ~~individual's:~~

- ~~individual's~~ parent(s);
- ~~the disabled individual's~~ grandparent(s);
- ~~the disabled individual's~~ legal guardian(s); or
- a court.

A legally competent, disabled adult who is establishing or adding to a trust account with his or her own ~~funds/assets~~ has the legal authority to act on his or her own behalf. A third party establishing a trust account on behalf of ~~another a disabled~~ individual with that individual's assets must have legal authority to act with regard to the assets of the individual. An attempt to establish a trust account by a third party with the assets of ~~and a disabled~~ individual without the legal right or authority to act with respect to the assets of that individual will generally result in an invalid trust ~~under state law. If there is a question regarding authority, consult your precedents or regional chief counsel.~~

A power of attorney (POA) is legal authority to act with respect to the assets of an individual. A pooled trust account may be established under POA given by the individual, a parent, or a grandparent.

**NOTE:** A representative payee must have legal authority to establish a trust or transfer funds into a trust for the disabled individual. If a representative payee attempts to establish a trust account with the assets of a disabled individual without the legal right or authority to act with respect to the assets of that individual, this will generally result in an invalid trust under state law.

## 7. Court-established trusts

In the case of a trust ~~account~~ established through the actions of a court, the creation of the trust ~~account~~ must be required by a court order. ~~Approval of a trust by a~~ for the exception in section 1917(d)(4)(C) of the Act to apply. That is, the pooled trust exception can be met when courts approve petitions and establish trust accounts by court order, so long as the execution of the trust account joinder agreement and funding of the trust have not been completed before the order is issued by the court. Court approval of an already executed pooled trust account joinder agreement is not sufficient ~~for the trust account to qualify for the exception. The court must specifically either establish the trust account or order the establishment of the trust account.~~

### g-a. Example of a court ordering establishment of a trust account

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John is a legally competent adult who inherited \$250,000 and is an SSI recipient. His sister, Justine, petitioned the court to create and order the funding of an account in the Chesapeake Pooled Trust. Justine also provided the court with an unsigned draft of the trust document. A month later the court approved the petition and issued an order requiring the creation and funding of the trust account. This trust account meets the requirement in SI 01120.203D.6. in this section. The fact that the trust beneficiary is a competent adult and could have established the trust account himself, is not a factor in the resource determination.

#### **b. Example of a court-established trust account**

Mary, a legally incompetent SSI recipient, wins a lawsuit in the amount of \$50,000. As part of the settlement, the judge orders the creation of a pooled trust account in order for Mary to receive the \$50,000. As a direct result of this court order, a pooled trust account was created with Mary's settlement money. The pooled trust records and documentation of the initial deposit list the \$50,000 as the initial principal amount. This trust account meets the requirement in SI 01120.203D.6. in this section.

#### **c. Example of a court-approved trust account**

Jane is ineligible for SSI benefits because she has a self-established pooled trust account that does not meet the requirements for exception in SI 01120.203D stating the pooled trust has to be established and managed by a nonprofit association. A for-profit association is managing Jane's pooled trust. The pooled trust changed management to a nonprofit association to satisfy the requirement. Jane petitioned the court to establish an amended trust account joinder agreement and to make the order retroactive, so that her original trust account would become exempt from resource counting from the time of its creation. The court approved the petition and issued a **nunc pro tunc** order stating that the court established the trust account as of the date on which Jane had previously established the trust account herself. The amended trust account joinder agreement does not meet the requirement in SI 01120.203D.6. in this section. The court did not establish a new trust account; it merely approved a modification of a previously existing trust account joinder agreement.

**NOTE:** Please forward all **nunc pro tunc** orders to your Regional Office for additional review and final determination.

### **8. State Medicaid reimbursement provision**

To qualify for the pooled trust exception, the trust must contain specific language that provides that, to the extent that amounts remaining in the individual's account upon the death of the individual are not retained by the trust, the trust ~~pays~~will pay to the State(s)

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from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s). To the extent that the trust does not retain the funds in the account, the State(s) must be listed as the first payee(s) and have priority over payment of other debts and administrative expenses, except as listed in ~~SI 01120.203B.3.a.~~ SI 01120.203D.1. in this section.

The trust must provide payback ~~for to~~ any State(s) that ~~may~~ have provided medical assistance under the State Medicaid plan(s) and not be limited to any particular State(s). Medicaid payback ~~may~~ also ~~not~~ cannot be limited to any particular period of time, ~~i.e., for~~ example, payback cannot be limited to the period after establishment of the trust.

If the trust does not have sufficient funds upon the beneficiary's death to reimburse in full each State that provided medical assistance, the trust may reimburse the States on a pro-rata or proportional basis.

**NOTE:** ~~Labeling~~ Merely labeling the trust as a ~~Medicaid pay-back~~ payback trust, ~~an OBRA 1993 pay-back~~ payback trust, ~~a trust established in accordance with 42 U.S.C. § 1396p,~~ or ~~as an MQT, etc.,~~ is not sufficient to meet the requirements for this exception. The trust must contain specific payback language ~~substantially similar to the language whose effect is consistent with the requirements described~~ above. An oral trust cannot meet this requirement.

### **3. E. Allowable and prohibited expenses for special needs and pooled trusts established under section 1917(d)(4)(A) and (C) of the Act**

The following instructions, about trust expenses and payments, apply to Medicaid special needs trusts and to Medicaid pooled trusts.

#### **a. 1. Allowable administrative expenses**

Upon the death of the trust beneficiary, the trust may pay the following types of administrative expenses ~~may be paid~~ from the trust prior to reimbursement of ~~medical assistance to the State(s) for medical assistance;~~ medical assistance to the State(s);

- Taxes due from the trust to the State(s) or Federal government because of the death of the beneficiary;
- Reasonable fees for administration of the trust estate, such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust.

#### **b. 2. Prohibited expenses and payments**

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Upon the death of the trust beneficiary, the following ~~expenses and payments~~ are examples of some of the types of expenses and payments not permitted prior to reimbursement of the State(s) for medical assistance:

- Taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate;
- Inheritance taxes due for residual beneficiaries;
- Payment of debts owed to third parties;
- Funeral expenses; and
- Payments to residual beneficiaries.

**NOTE:** For the purpose of prohibiting payments prior to reimbursement of the State(s) for medical assistance ~~to the State(s)~~, a pooled trust is not considered a residual or remainder beneficiary. Remember that a pooled trust has the right to retain funds upon the death of the beneficiary.

### 3. Applicability

This restriction on payments from the trust applies upon the death of the beneficiary. Payments of fees and administrative expenses during the life of the beneficiary are allowable as permitted by the trust document and are not affected by the State Medicaid reimbursement requirement.

## 4. Reevaluate trusts processed under the policy in effect from 1/1/2000 through 1/31/01

### a. Applicability

~~Trusts evaluated under the policy in effect from 1/1/2000 through 1/31/2001, that were found to meet the requirements of a Medicaid special needs trust or a Medicaid pooled trust, must be reevaluated under these instructions.~~

### b. Policy change

~~These instructions contain a policy change that is effective prospectively from 2/1/2001. Under the prior policy, we did not count as a resource any trust meeting the requirements of a Medicaid special needs trust or a Medicaid pooled trust. Effective 2/1/2001, a trust determined to meet the requirements of a Medicaid special needs trust in SI 01120.203B.1. or Medicaid pooled trust in or SI 01120.203B.2. in this section must also be evaluated using the instructions in SI 01120.200. This is the case because even though a trust may meet the requirements for an exception to counting under Section 1613(e)(5) of the Act, a trust may still meet the definition of a resource and be countable. The special needs and pooled trust exceptions are **not** resource exclusions.~~

### c. Trusts that become countable

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**NOTE:** The undue hardship waiver in SI 01120.203C in this section does **not** apply to trusts counted as resources under SI 01120.200. The waiver only applies to trusts counted under section 1613(e) (SI 01120.201 through SI 01120.203).

## **5.F. Income trusts established under Section 1917(d)(4)(B) of the Act**

Income trusts, sometimes called *Miller trusts* (named after a court case), established under section 1917(d)(4)(B) of the Act are ~~not considered~~ **not considered** exceptions to trust rules for SSI ~~eligibility~~ purposes. However, some States may exclude these trusts from counting as a resource for Medicaid ~~eligibility~~ purposes. This type of trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust).

### ~~C.G.~~ **Policy for waiver for undue hardship**

## 1. Definitions

**a. Undue hardship**

- failure to receive SSI payments would deprive the individual of food or shelter; ~~and~~
- the individual's available funds do not equal or exceed the Federal benefit rate (FBR) plus any federally administered State supplement; ~~if any.~~

**NOTE:** Inability to obtain medical care does not constitute undue hardship for SSI purposes, although it may under a State Medicaid plan. Also, the undue hardship waiver does not apply to a trust counted as a resource under [SI 01120.200](#). It ~~only~~ applies [only](#) to trusts counted under section 1613(e) of the Act ~~(see [SI 01120.201](#) through [SI 01120.203](#))~~ [SI 01120.203](#)).

**b.- Loss of shelter**

For purposes of ~~this provision~~ undue-hardship waiver in the context of section 1613(e) of the Act, an individual would be deprived of shelter if:

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- he or she would be subject to eviction from ~~their~~his or her current residence, if SSI payments were not received; and
- there is no other affordable housing available, or there is no other housing available with necessary modifications for ~~at~~the disabled individual.

## 2.- Application of the undue hardship waiver

### a.- Applicability

We will consider the possibility of undue hardship under this provision only when:

- counting an ~~irrevocable~~ trust as a resource results in the individual's ineligibility for SSI due to excess resources;
- the individual alleges (or information in the file indicates) that not receiving SSI would deprive him or her of food or shelter; and
- the trust specifically prohibits disbursements, or prohibits the trustee from exercising his or her discretion to disburse funds, from the trust for the individual's support and maintenance.

**NOTE:** ~~Since an~~If the trust is revocable by the individual ~~may revoke a revocable trust and access the funds for his or her support and maintenance,~~ the requirements for undue hardship cannot be met ~~if~~because the individual ~~established a revocable can access the trust- funds for his or her support and maintenance,~~

### b.- Suspension of resource counting

~~The counting of an~~An irrevocable trust ~~is not counted~~ as a resource ~~is not applicable~~ in any month for which counting the trust would cause undue hardship.

### c.- Resource counting resumes

Resource counting of a trust resumes for any month(s) for which it would not result in undue hardship.

## 3.- Available funds

In determining the individual's available funds, we include:

### a.- Income

Income includes the following:

- All countable income received in the month(s) for which undue hardship is an issue.

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- All income excluded under the Act received in the month(s) for which undue hardship is an issue. ~~(See SI 00830.099 and SI 00820.500, respectively, for~~ For a list of unearned and earned income exclusions, ~~respectively, provided under the Act.)~~, see SI 00830.099. and SI 00820.500.; and
- The value of in-kind support and maintenance (ISM) being charged, i.e., the presumed maximum value (PMV), the value of the one-third reduction (VTR), or the actual lesser amount.

~~(Do not include SSI payments received or items that are not income, per-~~ SI 00815.000~~).~~

**NOTE:** The receipt of ISM, in and of itself, does not preclude a finding of undue hardship.

#### **b. Resources**

Resources include the following:

- All countable liquid resources as of the first moment of the month(s) for which undue hardship is at issue. ~~(For (for a definition of liquid resources, see-~~ SI 01110.300~~).~~); and
- All liquid resources excluded under the Act as of the first moment of the month(s) for which undue hardship is at issue. ~~(For (for a list of resource exclusions under the Act, see-~~ SI 01130.050~~).~~).

SSI benefits retained into the month following the month of receipt are counted as a resource for purposes of determining available funds.

~~(Do not include nonliquidnon-liquid resources or assets determined not to be a resource, per-~~ SI 01120.000~~).~~

#### **4. Example**

Frank ~~Williams~~ filed for SSI in 3/~~2008~~2017 as an aged individual. In 2/~~2008~~2017, he received an insurance settlement from an accident that was placed in an irrevocable trust. After determining that he met the other requirements for undue hardship (including a prohibition on the trustee from disbursing any funds for ~~Mr. Williams'Franks'~~ support and maintenance), the claims ~~representative (CR~~specialist (CS) determined ~~Mr. Williams'Franks'~~ available funds. He receives \$450 in title II benefits per month. His only liquid resource is a bank account that has \$500 in it. The total of \$950 in available funds (\$450 in title II benefits and \$500 in the bank account balance) means that undue hardship does not apply in 3/~~2008~~2017, because that amount exceeds the FBR of \$735. (His State has no federally-administered State supplement).

~~Mr. Williams~~Frank comes back into the office in 6/~~2008~~2017. He presents evidence that he has spent down the \$500 in his bank account on living expenses in the past ~~3~~three months. As of 6/~~2008~~2017, he has no liquid resources, and his income total of \$450 is

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below the ~~\$637~~ FBR. ~~Mr. Williams~~ Frank meets the undue hardship test for 6/~~2008~~2017 (which is his E02 month). The trust does not count as his resource in that month. If his situation does not change, he ~~will qualify~~ qualifies for an SSI payment in 7/~~2008~~2017.

## D. Procedure for developing Medicaid trust exceptions to resource counting

### 1. Special needs trusts under Section 1917(d)(4)(A) of the Act

The following is a summary of special needs trust development presented in a step action format. Refer to the policy cross references for complete requirements.

STEP	ACTION
1	Does the trust contain the assets of an individual who was under age 65 when the trust was established? (SI 01120.203B.1.b. in this section). <ul style="list-style-type: none"><li>• If yes, go to Step 2.</li><li>• If no, go to Step 8.</li></ul>
2	Does the trust contain the assets of a disabled individual? (SI 011203B.1.d.) <ul style="list-style-type: none"><li>• If yes, go to Step 3.</li><li>• If no, go to Step 8.</li></ul>
3	Is the disabled individual the sole beneficiary of the trust? (SI 01120.203B.1.e.) <ul style="list-style-type: none"><li>• If yes, go to Step 4.</li><li>• If no, go to Step 8.</li></ul>
4	Did a parent, grandparent, legal guardian or a court establish the trust? (SI 01120.203B.1.f. in this section). <ul style="list-style-type: none"><li>• If yes, go to Step 5.</li><li>• If no, go to Step 8.</li></ul>
5	Does the trust provide specific language to reimburse any State(s) for medical assistance paid upon the individual's death as required in SI 01120.203B.1.h. in this section? <ul style="list-style-type: none"><li>• If yes, go to Step 6.</li><li>• If no, go to Step 8.</li></ul>
6	The trust meets the special needs trust exception to the extent that the assets of the individual were put in trust prior to the individual attaining age 65. Any assets placed in the trust after the individual attained age 65 are not subject to this exception, except as provided in SI 01120.203B.1.c. in this section. Go to Step 7 for treatment of assets placed in trust prior to age 65. Go to Step 8 for treatment of assets placed in trust after attaining age 65.
7	Evaluate the trust under SI 01120.200D.1.a. to determine if it is a countable resource.
8	The trust (or portion thereof) does not meet the requirements for the special needs trust exception.

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Determine whether the pooled trust exception in SI-01120.203B.2. applies.

## 2. ~~Pooled trusts established under Section 1917(d)(4)(C) of the Act~~

The following is a summary of pooled trust development presented in a step-action format. **H. Refer to the policy cross-references for complete requirements.**

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STEP	ACTION
1	Does the trust account contain the assets of a disabled individual? (See SI-01120.203B.2.b. in this section). <ul style="list-style-type: none"><li>• If yes, go to Step 2.</li><li>• If no, go to Step 8.</li></ul>
2	Was the pooled trust established and maintained by a nonprofit association? (See SI-01120.203B.2.a., SI-01120.203B.2.c. and development instructions in SI-01120.203F in this section). <ul style="list-style-type: none"><li>• If yes, go to Step 3.</li><li>• If no, go to Step 8.</li></ul>
3	Does the trust pool the funds, yet maintain an individual account for each beneficiary, and can it provide an individual accounting? (SI-01120.203B.2.d. in this section). <ul style="list-style-type: none"><li>• If yes, go to Step 4.</li><li>• If no, go to Step 8.</li></ul>
4	Is the disabled individual the sole beneficiary of the trust account? (SI-01120.203B.2.e. in this section). <ul style="list-style-type: none"><li>• If yes, go to Step 5.</li><li>• If no, go to Step 8.</li></ul>
5	Did the individual, parent(s), grandparent(s), legal guardian(s) or a court establish the trust account? (SI-01120.203B.2.a. and SI-01120.203B.2.f. in this section). <ul style="list-style-type: none"><li>• If yes, go to Step 6.</li><li>• If no, go to Step 8.</li></ul>
6	Does the trust provide specific language to reimburse any State(s) for medical assistance paid upon the individual's death from funds not retained by the trust as required in SI-01120.203B.2.g. in this section? <ul style="list-style-type: none"><li>• If yes, go to Step 7.</li><li>• If no, go to Step 8.</li></ul>
7	The trust meets the Medicaid pooled trust exception, however, the trust still should be evaluated under SI-01120.200D.1.a. to determine if it is a countable resource.
8	The trust does not meet the requirements for the Medicaid pooled trust exception. Determine if the undue hardship waiver applies under SI-01120.203E in this section.



## E. Procedure for development of undue hardship waiver

The following is a summary of development instructions for undue hardship presented in a step-action format. Refer to cross-references for complete instructions

STEP	ACTION
1	Is the trust irrevocable? <ul style="list-style-type: none"><li>• If yes, go to Step 2.</li><li>• If no, go to Step 8.</li></ul>
2	Does counting the trust result in excess resources? <ul style="list-style-type: none"><li>• If yes, go to Step 3.</li><li>• If no, go to Step 8.</li></ul>
3	Does the individual allege (or information in the file indicate) that not receiving SSI would deprive him or her of food or shelter according to SI 01120.203C.1, in this section? <ul style="list-style-type: none"><li>• If yes, go to Step 4.</li><li>• If no, go to Step 8.</li></ul>
4	Obtain the individual's signed statement (on the DPST screen in MSSICS, or in non-MSSICS cases, on a SSA-795 faxed into NDRed) as to whether: <ul style="list-style-type: none"><li>• Failure to receive SSI payments would deprive the individual of food or shelter;</li><li>• The individual's total available funds are less than the FBR plus federally administered State supplement;</li><li>• The individual agrees to report promptly any changes in income and resources; and</li><li>• The individual understands that he or she may be overpaid if available funds exceed the FBR plus State supplement for any month, or other situations change.</li></ul> Go to Step 5.
5	Does the trust contain language that specifically prohibits the trustee from making disbursements for support and maintenance or that prohibits the trustee from exercising discretion to disburse funds for support and maintenance? <ul style="list-style-type: none"><li>• If yes, go to Step 6.</li><li>• If no, go to Step 8.</li></ul>
6	Add up all of the individual's income, both countable and excludable (see SI 01120.203C.3.a. in this section). Do not include any SSI payments received or items that are not income per SI 00815.000. If the individual is receiving ISM, include as income the ISM being charged (PMV, VTR, or actual amount, if less). Add up all of the individual's liquid resources, both countable and excludable (See SI 01120.203C.3.b. in this section). Does the total of the income and the liquid resources equal or exceed the FBR plus federally administered State supplement, if any? <ul style="list-style-type: none"><li>• If yes, go to Step 8.</li><li>• If no, go to Step 7.</li></ul>

7	<p>Suspend counting of the trust as a resource for any month in which all requirements above are met (SI 01120.203C.2 in this section).</p> <ul style="list-style-type: none"> <li>• In MSSICS, document the findings of undue hardship and applicable months in the <b>DROC</b> screen.</li> <li>• On paper forms, document the information in the <b>REMARKS</b> section. For further documentation, see SI 01120.202C and SI 01120.202D and for follow-up instructions, see SI 01120.203G in this section. <b>STOP</b>.</li> </ul>
8	<p>Undue hardship does not apply. However, in some instances where income and resource are currently too high, unless the trust is revocable, undue hardship may apply in future months.</p>

## F. Procedure for nonprofit associations

When a trust is alleged to be established through the actions of a nonprofit, or a tax-exempt organization, follow policy and procedure for verifying tax-exempt status of organizations found at SI 01130.689E ~~"Gifts to children with life-threatening conditions."~~

## G. Procedure for follow-up to a finding of undue hardship

### 1.- When to use this procedure

Use this procedure when it is necessary to determine whether an individual who established a trust continues to be eligible for SSI based on undue hardship. Since undue hardship is a month-by-month determination, recontact the individual to redevelop undue hardship periodically.

### 2.- Recontact period

The recontact period may vary depending on the individual's situation. If the individual alleges, and information in the file indicates, that the individual's income and resources are not expected to change significantly, and the individual is continuously eligible for SSI because of undue hardship, recontact the individual **no less than every six months**. If the individual's income and resources are expected to fluctuate, or the file indicates a history of such fluctuation, the recontact period should be shorter, even monthly in some cases.

### 3.- Documentation

At each recontact:

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Use the [Modernized Development Worksheet \(MDW\)](#) For SSI Claims System cases, use the [DWO1 and establish a tickle](#) to control the case for recontact when the individual is eligible for SSI based on undue hardship. [Set \(Use the Modernized Development Worksheet \(MDW\) for non-SSI Claims System cases.\)](#) If MDW is applicable, [set](#) up an MDW screen using instructions in MSOM MDW 001.001 and the following MDW inputs:

- ## H. I. Procedure for reevaluating revocable/developing exceptions to resource counting

The following is a summary of special needs trust development presented in step-action format. Refer to the policy cross-references for complete requirements:

<u>STEP</u>	<u>ACTION</u>
<u>1</u>	<p><u>Does the trust contain the assets of an individual who was under age 65 when the trust was established? (See SI 01120.203B.2. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 2</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 9</b>.</u></li> </ul>
<u>2</u>	<p><u>Does the trust contain the assets of a disabled individual? (See SI 01120.203B.4. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 3</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 9</b>.</u></li> </ul>
<u>3</u>	<p><u>Is the disabled individual the sole beneficiary of the trust? (See SI 01120.203B.5. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 4</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 9</b>.</u></li> </ul>
<u>4</u>	<p><u>Did a parent, grandparent, legal guardian, or court establish the trust? (See SI 01120.203B.6. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 5</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 9</b>.</u></li> </ul>
<u>5</u>	<p><u>Does the trust provide specific language to reimburse any State(s) for medical assistance paid upon the individual's death as required in SI 01120.203B.9. in this section?</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 6</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 9</b>.</u></li> </ul>
<u>6</u>	<p><u>Verify if the trust contains any early termination provisions as described within SI 01120.199. If the trust does not contain any early termination provisions, go to Step 7.</u></p> <p><u>If the trust contains any early termination provisions, does it meet the early termination criteria in SI 01120.199F that would make early termination acceptable?</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 7</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 9</b>.</u></li> </ul>
<u>7</u>	<p><u>The trust meets the special needs trust exception to the extent that the assets of the individual were put in trust prior to the individual's attaining age 65. Any assets placed in the trust after the individual attained age 65 are not subject to this exception, except as provided in SI 01120.203B.3. in this section.</u></p> <p><u>Go to <b>Step 8</b> for treatment of assets placed in trust prior to age 65.</u></p>

<u>STEP</u>	<u>ACTION</u>
	Go to <b>Step 9</b> for treatment of assets placed in trust after attaining age 65.
<u>8</u>	Evaluate the trust under SI 01120.200D.1.a. to determine if it is a countable resource.
<u>9</u>	The trust (or portion thereof) does not meet the requirements for the special needs trust exception. Consider if the pooled trust exception in SI 01120.203D in this section applies. If neither exception applies, determine whether the undue hardship waiver applies under SI 01120.203K in this section.

**2. Special needs trusts under Section 1917(d)(4)(A) of the Act on or after December 13, 2016**

<u>STEP</u>	<u>ACTION</u>
<u>1</u>	Does the trust contain the assets of an individual who was under age 65 when the trust was established? (See SI 01120.203B.2. in this section.) <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 2</b>.</li> <li>• If <b>no</b>, go to <b>Step 9</b>.</li> </ul>
<u>2</u>	Does the trust contain the assets of a disabled individual? (See SI 01120.203B.4. in this section.) <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 3</b>.</li> <li>• If <b>no</b>, go to <b>Step 9</b>.</li> </ul>
<u>3</u>	Is the disabled individual the sole beneficiary of the trust? (See SI 01120.203B.5. in this section.) <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 4</b>.</li> <li>• If <b>no</b>, go to <b>Step 9</b>.</li> </ul>
<u>4</u>	Did the individual, a parent, a grandparent, a legal guardian, or a court establish the trust? (See SI 01120.203B.6. in this section.) <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 5</b>.</li> <li>• If <b>no</b>, go to <b>Step 9</b>.</li> </ul>

<u>STEP</u>	<u>ACTION</u>
<u>5</u>	<p>Does the trust provide specific language to reimburse any State(s) for medical assistance paid upon the individual's death as required in SI 01120.203B.9. in this section?</p> <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 6</b>.</li> <li>• If <b>no</b>, go to <b>Step 9</b>.</li> </ul>
<u>6</u>	<p>Verify if the trust contains any early termination provisions as described in SI 01120.199. If the trust does not contain any early termination provisions, go to <b>Step 7</b>.</p> <p>If the trust contains any early termination provisions, does it meet the early termination criteria in SI 01120.199F that would make early termination acceptable?</p> <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 7</b>.</li> <li>• If <b>no</b>, go to <b>Step 9</b>.</li> </ul>
<u>7</u>	<p>The trust meets the special needs trust exception to the extent that the assets of the individual were put in trust prior to the individual's attaining age 65. Any assets placed in the trust after the individual attained age 65 are not subject to this exception, except as provided in SI 01120.203B.3. in this section.</p> <p>Go to <b>Step 8</b> for treatment of assets placed in trust prior to age 65.</p> <p>Go to <b>Step 9</b> for treatment of assets placed in trust after attaining age 65.</p>
<u>8</u>	<p>Evaluate the trust under SI 01120.200D.1.a. to determine if it is a countable resource.</p>
<u>9</u>	<p>The trust (or portion thereof) does not meet the requirements for the special needs trust exception.</p> <p>Consider if the pooled trust exception in SI 01120.203D in this section applies. If neither exception applies, determine whether the undue hardship waiver applies under SI 01120.203K in this section.</p>

### **3. Pooled trusts established under Section 1917(d)(4)(C) of the Act**

The following is a summary of pooled trust development presented in step-action format. Refer to the policy cross-references for complete requirements. **In effect From 1/1/2000**

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<u>STEP</u>	<u>ACTION</u>
<u>1</u>	<p><u>Does the trust account contain the assets of a disabled individual? (See SI 01120.203C.2. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 2</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 8</b>.</u></li> </ul>
<u>2</u>	<p><u>Is the pooled trust established and managed by a nonprofit association? (See SI 01120.203C.1., SI 01120.203C.3., and development instructions in SI 01120.203F in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 3</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 8</b>.</u></li> </ul>
<u>3</u>	<p><u>Does the trust pool the funds yet maintain an individual account for each beneficiary, and can it provide an individual accounting? (See SI 01120.203C.4. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 4</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 8</b>.</u></li> </ul>
<u>4</u>	<p><u>Is the disabled individual the sole beneficiary of the trust account? (See SI 01120.203C.5. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 5</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 8</b>.</u></li> </ul>
<u>5</u>	<p><u>Did the individual, (a) parent(s), (a) grandparent(s), (a) legal guardian(s), or a court establish the trust account? (See SI 01120.203C.1. and SI 01120.203C.6. in this section.)</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 6</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 8</b>.</u></li> </ul>
<u>6</u>	<p><u>Does the trust provide specific language to reimburse any State(s) for medical assistance paid upon the individual's death from funds not retained by the trust as required in SI 01120.203C.8. in this section?</u></p> <ul style="list-style-type: none"> <li>• <u>If <b>yes</b>, go to <b>Step 7</b>.</u></li> <li>• <u>If <b>no</b>, go to <b>Step 8</b>.</u></li> </ul>
<u>7</u>	<p><u>The trust meets the Medicaid pooled trust exception; however, the trust still should be evaluated under SI 01120.200D.1.a.to determine if it is a countable resource.</u></p>
<u>8</u>	<p><u>The trust does not meet the requirements for the Medicaid pooled trust exception. Determine if the undue hardship waiver applies under SI 01120.203I. in this section.</u></p>

## J. Procedure to verify nonprofit associations when evaluating pooled trusts

When a trust is alleged to be established through the actions of a nonprofit or a tax-exempt organization, consult the pooled trust precedent in SSITMS. If none exists, follow policy and procedure for verifying the tax-exempt status of organizations found at SI 01130.689E. "Gifts to children with life-threatening conditions." 1/31/2001.

### **1. Policy change**

These instructions represent a prospective policy change related to revocable Medicaid special needs trusts and Medicaid pooled trusts. The policy in effect from 1/1/2000 through 1/31/2001 provided for an exception to counting these trusts without regard to whether the trusts were resources under the general resource rules. Effective 2/1/2001, revocable Medicaid special needs trusts and Medicaid pooled trusts initially evaluated under the policy in effect 1/1/2000 through 1/31/2001 must be reevaluated under these instructions.

### **2. Identify trust cases**

Identify any cases processed under the 1/1/2000 through 1/31/2001 policy.

#### **a. Irrevocable trusts**

You do not need to do anything additional with these cases.

#### **b. Revocable trusts**

You must reevaluate these cases prospectively from 2/1/2001, following the instructions in SI 01120.200, to determine if they meet the definition of a resource. If the trust meets the definition of a resource, it is subject to regular resource counting rules as of 2/1/2001.

#### **c. Prior period**

You do not need to reopen any period prior to 2/1/2001 and no overpayments will result for the prior period as a result of the policy change.

## K. Procedure for development of undue hardship waiver

The following is a summary of development instructions for undue hardship presented in step-action format. Refer to cross-references for complete instructions:

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<u>STEP</u>	<u>ACTION</u>
<u>1</u>	<p>Is the trust irrevocable?</p> <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 2</b>.</li> <li>• If <b>no</b>, go to <b>Step 8</b>.</li> </ul>
<u>2</u>	<p>Would counting the trust result in excess resources?</p> <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 3</b>.</li> <li>• If <b>no</b>, go to <b>Step 8</b>.</li> </ul>
<u>3</u>	<p>Does the individual allege, or information in the file indicate, that not receiving SSI would deprive the individual of food or shelter according to SI 01120.203G in this section?</p> <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 4</b>.</li> <li>• If <b>no</b>, go to <b>Step 8</b>.</li> </ul>
<u>4</u>	<p>Obtain the individual's signed statement (on the DPST screen in the SSI Claims System or, in non-SSI Claims System cases, on a SSA-795 faxed into NDRed) as to whether:</p> <ul style="list-style-type: none"> <li>• Failure to receive SSI payments would deprive the individual of food or shelter;</li> <li>• The individual's total available funds are less than the FBR plus any federally administered State supplement;</li> <li>• The individual agrees to report promptly any changes in income and resources; and</li> <li>• The individual understands that he or she may be overpaid if, for any month, available funds exceed the FBR plus any State supplement or if other situations change.</li> <li>• Go to <b>Step 5</b>.</li> </ul>
<u>5</u>	<p>Does the trust contain language that specifically prohibits the trustee from making disbursements for the individual's support and maintenance or that prohibits the trustee from exercising discretion to disburse funds for the individual's support and maintenance?</p> <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 6</b>.</li> <li>• If <b>no</b>, go to <b>Step 8</b>.</li> </ul>
<u>6</u>	<p>Add up all of the individual's income, both countable and excludable (see SI 01120.203G.3.a. in this section). Do not include any SSI payments received or items that are not income, per SI 00815.000. If the individual is receiving ISM, include as income the ISM being charged (the PMV, VTR, or actual amount, if less).</p>

<u>STEP</u>	<u>ACTION</u>
	<p>Add up all of the individual's liquid resources, both countable and excludable (see SI 01120.203G.3.b. in this section).</p> <p>Does the total of the income and the liquid resources equal or exceed the FBR plus any federally administered State supplement?</p> <ul style="list-style-type: none"> <li>• If <b>yes</b>, go to <b>Step 8</b>.</li> <li>• If <b>no</b>, go to <b>Step 7</b>.</li> </ul>
<u>7</u>	<p>Suspend counting of the trust as a resource for any month in which all requirements above are met (see SI 01120.203G.2. in this section).</p> <ul style="list-style-type: none"> <li>• In the SSI Claims System, document the findings of undue hardship and applicable months on the <b>DROC</b> screen.</li> <li>• On paper forms, document the information in the <b>REMARKS</b> section. For further documentation, see SI 01120.202C and SI 01120.202D; and for follow-up instructions, see SI 01120.203H in this section. <b>STOP</b>.</li> </ul>
<u>8</u>	<p>Undue hardship does not apply. However, in some instances where income and resources are currently too high, unless the trust is revocable, undue hardship may apply in future months.</p>

To Link to this section - Use this URL:  
<http://policy.ssa.gov/poms.nsf/lnx/0501120203>

SI 01120.203 - Exceptions to Counting Trusts Established on or after  
1/1/00 - 02/07/2013  
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