



Fact Guide for National Trust Training

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A. KEY PLAYERS INVOLVED IN A TRUST

1. Beneficiary (defined) –

- A beneficiary is an individual who receives a benefit from something; the legal recipient of money or goods.
- For SSI purposes, a trust beneficiary is a named person for whose benefit a trust exists.
- A beneficiary does not hold legal title to trust property, but does have an equitable ownership interest in it.
 - As equitable owner, the beneficiary has certain rights that will be enforced by a court because the trust exists for his/her benefit.
- The beneficiary receives the benefits of the trust, while the trustee holds the title and must perform any and all duties related to the trust's administration.

2. Grantor (defined) –

- The grantor is the person who provides the trust principal to create the trust. The grantor then turns over to administration of the trust to the trustee.
- The grantor must be the owner of, or have legal right to, the property or be otherwise qualified to transfer it.
 - An individual may be a grantor even if an agent or other person legally empowered to act on his/her behalf establishes the trust with funds or property that belong to the individual.
- A grantor may also be referred to as: "settlor," "donor," or "trustor" – and, in the case of a deceased person's will, "testator."
- A trust has multiple grantors if more than one person provides the trust principal.
- In some cases, the grantor is **also** the beneficiary of the trust. This is true **if the beneficiary funds the trust using his/her own assets**. These trusts are commonly referred to as "Grantor Trusts" or "Self-Funded Trusts."

3. Trustee (defined) –

- The trustee is the person who holds legal title to, and administers the assets of the trust for the use and benefit of another.
- The trust document will clearly define the role of the trustee, including (but not limited to): duties, responsibilities, permitted activities, and prohibited activities.
- The trustee has no legal right to revoke the trust or use the property for his/her benefit.
 - **EXCEPTION:** If the trustee is serving a dual role as a grantor, their ability to revoke the trust would fall under their role as a GRANTOR.

4. Residual Beneficiary (defined) –

- A residual beneficiary is a person who receives the remainder of the trust's property upon termination of the trust, i.e., when the beneficiary dies.
 - There can be more than one residual beneficiary.
 - Residual beneficiaries are usually identified within the trust document, sometimes specifically by name (e.g., “my daughter, Mary Poppins”) or generally speaking in anticipation of a residual beneficiary (e.g., “any future children the beneficiary may have”)
- The trust may detail how the residual beneficiaries can receive the trust property following the death of the beneficiary. (e.g., the trustee must establish a new trust for each residual beneficiary, the trustee must make specific disbursements for specific purposes such as educational costs, the trustee must issue a lump sum, etc.)
- A residual beneficiary may also be referred to as a “remainderman” within the trust document. The two terms are synonymous.

HELPFUL HINTS

- Your key players (the grantor, the beneficiary, and the trustee) are typically identified in the beginning of the trust document within the first few paragraphs. If they are not, continue reading each article of the trust until you are able to define the roles of each key individual. The person filing for benefits (for himself/herself or others) should be able to confirm the parties involved.

POTENTIAL PITFALLS

- Look for situations where the **grantor** is also named the **trustee**. Just as the grantor can serve a dual role as the beneficiary, the grantor can also serve a dual role as trustee.
- Later in this package, we will discuss the distinction between the grantor who funds the trust, and the individual **who takes the action** to establish the trust. Sometimes, a trust will call the agent establishing the trust the “grantor” or the “settlor.” However, please be aware that the **true** grantor of a trust is the person that actually provides the funding for the trust.
- For SSI purposes, we are focused on the **BENEFICIARY's powers** within the trust when making a trust determination. Technicians may sometimes confuse the powers of the *trustee* with the powers of the beneficiary. The trust will specifically state what the trustee can/cannot do. However, it is not always as clear what the beneficiary can/cannot do. **Make sure to read the trust CAREFULLY and identify passages that clearly identify the BENEFICIARY'S role and what the BENEFICIARY can/cannot do.** There is no particular section in a trust that contains this information.

B. TRUST POLICY

1. Self-funded trusts established before 01/01/00 ([SI 01120.200](#))

- For SSI purposes, trusts established before 1/1/00 that contain the assets of the beneficiary, if any of the assets were transferred to the trust before 1/1/00, may be a resource if:
 - The beneficiary (claimant, recipient, or deemor) has legal authority to revoke or terminate the trust and then use the funds to meet his/her food or shelter needs, or
 - The beneficiary can direct the use of the trust principal for his/her support and maintenance under the terms of the trust.

POTENTIAL PITFALL

- If the trust was established prior to 1/1/00 **but no assets were transferred to the trust prior to 1/1/00**, the policy in [SI 01120.201](#) applies.

- If the beneficiary does not have the legal authority to revoke or terminate the trust or to direct the use of the trust assets for his/her own support and maintenance, the trust principal is not the beneficiary's resource for SSI purposes.
- If the beneficiary does have the legal authority to revoke or terminate the trust, the trust principal is a resource to the beneficiary.
- The trust must also contain a valid spendthrift clause IF the state of the trust's jurisdiction recognizes spendthrift clauses. Section H of this package describes the spendthrift clause.

2. Third party trusts established before, on, or after 01/01/00 ([SI 01120.200](#))

- A third-party trust is a trust established with the assets of someone other than the beneficiary. For example, a grandparent may use his assets to fund a trust for a grandchild.
- For SSI purposes, a third party trust may be a countable resource if the beneficiary (claimant, recipient, or deemor) can:
 - revoke or terminate the trust, and
 - obtain the assets for him or herself.
- If the trust is irrevocable, or if the trust may be revoked but the **beneficiary** cannot obtain the assets for him or herself, the trust does not count as a resource for SSI purposes.
- The trust must also contain a valid spendthrift clause IF the state of the trust's jurisdiction recognizes spendthrift clauses. Section H of this package describes the spendthrift clause.
- The date the third party trust was created is immaterial when making a resource determination as all third party trusts follow policy and procedure within [SI 01120.200](#), regardless of when the trust was created.

POTENTIAL PITFALL

- 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.

3. Self-funded trusts established on or after 01/01/00 ([SI 01120.201](#))

- For SSI purposes, a trust established on or after 1/1/00 that contains the assets of the individual (or spouse) is a **countable resource** regardless of:
 - the purpose for which the trust was established;
 - whether the trustees have or exercise any discretion under the trust;
 - any restrictions on when or whether distributions may be made from the trust; or
 - any restrictions on the use of distributions from the trust.

This means that any trust established with the assets of an individual on or after 1/1/00 will be subject to these provisions and may be counted in determining SSI eligibility.

POTENTIAL PITFALLS

- 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.**
 - *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.**
- Exceptions to this POMS section are: the “special needs trust” exception and the “pooled trust” exception. Section F of this package details both of these exceptions.

C. BASIC TRUST IDENTIFIERS

1. When was the trust established and funded?

- Funding the trust involves transferring legal title from the grantor to the trust.
- A trust can be considered funded **as of the date of the trust's signing**.
- A testamentary trust is a trust established by a will and effective at the time of the testator's death is a trust established by a will and **effective at the time of the testator's death**.
- **For self-funded trusts** (trusts established with the beneficiary's or spouse's assets), it is important to decipher whether the trust was established before, on, or after January 1, 2000. POMS has different rules and regulations for these trusts based on the effective date of the trust.

2. Who is the source of the trust principal, and who took the action to establish the trust?

- Anyone can fund a trust. For SSI purposes, we consider **who** funded the trust and **when** the trust was funded as factors when determining whether the trust is a countable or excluded resource.
- The trust principal can also be referred to as the "corpus" or "body" of the trust. This is the property the trust owns.
- The trust principal includes assets in the initial trust and any trust earnings and additions made to the trust after it is established.
- The grantor named in the trust document who provides/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 provides/provided the trust assets. This distinction is important, especially in developing Medicaid trust exceptions in [SI 01120.203](#).

HELPFUL HINTS

- Funds received by the beneficiary from a settlement are owned by the beneficiary.
- A trust may be established, signed, and dated *without* funds or with only a small amount of funds added to it. These are called “seed trusts” or “dry trusts” prepared in anticipation of future funds. We must still develop these trusts because assets may be added to the trust principal at any time in the future.
- Language in the body of the trust should indicate who is providing the funds to the trust, and a list of items in the trust. For example, “*Said property shall include, but shall not be limited to, the assets listed on Schedule A...*”.
- Work with the SSI recipient, representative payee, or the trustee to obtain the trust fund bank account information as well as information on assets such as real property and vehicles.

D. REVOCABLE VS. IRREVOCABLE

1. Revocable ([SI 01120.200.B.19](#))

- A trust is “revocable” if the grantor of a trust has the power or authority to revoke (i.e., reclaim or take back) the assets deposited in the trust.
- **If the individual (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.**
- **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, you should focus on whether the individual (claimant, recipient, or deemor) can terminate the trust and obtain the assets for him or herself.

POTENTIAL PITFALL

- For third party trusts: Do not assume a “revocable” trust is a countable trust. As a reminder, we look at the **BENEFICIARY’s** power within the trust. If the beneficiary can revoke the trust, it is a countable resource. If the beneficiary cannot revoke the trust, but a third party (grantor) CAN revoke the trust, we must continue to evaluate the trust based on the remaining criteria for that particular type of trust.
- **The revocability of a trust is critical in determining whether it is a resource to the SSI recipient.** If the recipient can revoke the trust, he or she can use its assets to pay for support and maintenance, thus making it a resource.

2. Irrevocable

- A trust is “irrevocable” if the grantor of a trust **CANNOT** revoke (i.e., reclaim or take back) the assets deposited in the trust.

POTENTIAL PITFALL

- Most states follow the general principle of trust law that, **if the grantor is the sole beneficiary of a trust**, the trust is revocable, even if the trust document states that it is irrevocable. However, if the trust names a residual (or contingent) beneficiary to receive the benefit of the trust interest after a specific event, usually the death of the primary beneficiary, the trust is irrevocable.
 - The primary beneficiary cannot unilaterally revoke the trust without the permission of the residual beneficiary. The definition of a residual beneficiary varies from State to State.
- It is **VERY IMPORTANT** that you review the Regional POMS to determine if a grantor trust, where the grantor is the sole beneficiary, is truly irrevocable.

E. COMMON TYPES OF TRUSTS

1. Self-Funded Trusts

- A self-funded trust is a trust that contains property that belonged to the beneficiary before the trust was created. In other words, the beneficiary is also the grantor.
- Generally, we consider trusts established on or after 1/1/00 with assets of the individual (or spouse) to be a resource for SSI purposes ([SI 01120.201](#)), unless they meet one of the special needs trust or pooled trust exceptions ([SI 01120.203](#)).

2. Third-Party Trusts ([SI 01120.200](#))

- A third-party trust is a trust established with the assets of someone other than the beneficiary. For example, a grandparent may establish a third-party trust for a grandchild.
- In order to be considered a third-party trust, the trust must contain the assets of the third party, not the assets of the beneficiary.
- **REMINDER:** 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.

3. Testamentary Trusts ([SI 01120.200](#))

- A testamentary trust is a trust established by a will.
- The trust is only effective at the time of the testator's death.
- We treat testamentary trusts similar to third party trusts ([SI 01120.200](#)).
- **NOTE:** If an individual receives an inheritance and a trust was **NOT established in the will**, the inheritance funds are not considered to be part of a "testamentary trust." If the individual gains access to the inheritance after the testator's death (i.e., the money changes hands between the deceased's estate and the individual), then this is considered to be the individual's funds.

4. Totten Trusts ([SI 01120.200](#))

- A totten trust or "bank account trust" is a tentative trust in which a grantor makes himself/herself trustee of his or her own funds for the benefit of another.
- Typically, the individual deposits funds in a savings account and indicates, either in the title of the account or by filing a writing with the bank, that he or she is the trustee of the account for another person.
- The trustee can revoke a totten trust at any time.
- Upon the trustee's death, ownership of the funds passes to the beneficiary of the trusts.
- Totten trusts are valid in most jurisdictions. However, some jurisdictions have held them invalid because they are too tentative.

- The grantor, who is also the trustee, of a totten trust retains the authority to revoke it at any time. Therefore, the funds in the account are the grantor's resource.

5. Tribal Trusts ([SI 01130.150](#))

NOTE: Tribal trusts do not follow the regular trust policy and procedure outlined in SI 01120.199 – SI 01120.203.

- Per [SI 01130.150](#), when determining the resources of an individual (and spouse, if applicable) who is of Indian descent from a federally recognized Indian tribe, **any interest of the individual (or spouse) in trust are excluded from resources.**
- If an individual Indian alleges an interest in a trust:
 - Obtain for the file a copy of any document(s) that might identify it as such; and/or
 - Verify the allegation with the appropriate Indian agency.
- If verification is by phone, document the file with a Report of Contact. Prepare a determination on the basis of the evidence.

POTENTIAL PITFALL

- You must identify whose assets are used to fund the trust, i.e., the Tribe's assets vs. the tribal member's assets. We consider trusts established with individual tribe member's per capita payments, which are paid directly from the net revenues of any tribal gaming activity, to be self-funded trusts and we follow policy in [SI 01120.201](#) to evaluate their resource status.

TREATMENT OF INCOME DERIVED FROM A TRIBAL TRUST

- As detailed in [SI 00830.850](#), the Omnibus Budget Reconciliation Act of 1993 provides for an exclusion of income derived from those individual interests in Indian trusts for purposes of determining SSI eligibility and payment amount. This income (called individual Indian trust or lease income) generally comes from interests in lands allotted to individual Indians many years ago. The income generated by those interests may be quite small, because many of the original interests in allotted lands have fractionated over time.
- **We can exclude up to \$2,000 per year in payments derived from individual interests in Indian trust or restricted lands from income.**
 - Such payments include any interest that accrues on funds while they are held by the Bureau of Indian Affairs (BIA) before being distributed or credited to an individual's account.
- This exclusion applies to the income of an ineligible spouse or ineligible parent(s) in the deeming process.
 - Does not apply to the income of a sponsor when deeming to an alien or to the income of an essential person.

- For purposes of applying the \$2,000 **annual** exclusion, for both eligible individuals and deemors, only payments received in months where the individual was/is SSI eligible count toward the \$2,000 annual exclusion.
- If tribal trust income exceeds \$2,000 per calendar year, determine the month in which the \$2,000 annual exclusion is exceeded, and **count the excess income as unearned income** in the months received.
 - FOs may keep track of the excluded income by any effective method.
- Per [SI 00830.830E](#), if there is an allegation or other indication that an individual received tribal trust funds:
 - Verify that the individual is a member of the relevant tribe by contacting the BIA, or tribal authorities, or by using an established precedent;
 - During your contact, develop the identity and amount of the excludable payment/distribution;
 - Document the casefile using a Report of Contact, an income report from a tribal authority, a signed statement from a tribal authority, or a copy of the pertinent local precedent.
 - **You must follow the procedures above regardless of the amount received and regardless of whether you will exclude the funds.**
- [SI 00830.850D](#) instructs that you must issue manual notices in all situations where the income derived from interests of individual Indians in trust affects payment amounts.
 - Suppress the systems-generated notice;
 - Include an explanation of the \$2,000 annual exclusion of income derived from an individual's Indian's interest in the trust AND a summary of date(s) and amount(s) of such income used in determining the individual's SSI payment amount.

F. EXCEPTIONS TO COUNTING SELF-FUNDED TRUSTS AS RESOURCES

1. Special Needs Trusts ([SI 01120.203](#))

A. REQUIREMENTS OF THE EXCEPTION

We can exclude a special needs trust established on or after January 1, 2000 as a resource if it contains ALL of the following criteria:

(Sections B-F below detail each element of the exception.)

- Trust must contain the assets of an individual under age 65; **and**
- Individual must be disabled; **and**
- Trust must be established for the sole benefit of the individual; **and**
- Trust must be established through actions of a parent, grandparent, legal guardian, or a court; **and**
- Trust must provide for reimbursement to the State(s), upon the individual's death, for medical assistance paid on the individual's behalf.

B. ASSETS OF INDIVIDUAL UNDER AGE 65

- Trust must contain the individual's assets.
- If the trust established before age 65, any exceptions continue to apply to the trust after individual reaches age 65;
- Additions/augmentations to a trust **at/after** age 65 DO NOT meet the exception.
 - Additions or augmentations do not include interest, dividends, or other earnings of the trust that previously met the special needs exemption criteria.

POTENTIAL PITFALLS

- If the trust is funded with a combination of the individual's assets and a third party's assets (e.g., 50% of the assets belong to the individual and 50% of the assets belong to the individual's relative), this section will apply to the portion of the trust principal comprised of the individual's assets. The third party's portion will be evaluated under third party guidelines in [SI 01120.200](#).

C. INDIVIDUAL MUST BE DISABLED

- Must meet SSA's definition of disability for SSI purposes.

D. SOLE BENEFIT OF THE INDIVIDUAL

- The trust must be established for and used for the benefit of the disabled individual.
- **No one but the individual** can benefit from the trust during the individual's lifetime.

- Trust CAN provide for reasonable compensation for a trustee(s) to manage or handle legal matters regarding the trust.
- Special needs exception **DOES NOT** apply if:
 - The trust provides benefit to any other individuals or entity during the disabled individual's lifetime; or
 - The trust allows for termination of the trust prior to the individual's death and payment of the principal/corpus to an individual or entity (other than the State).

E. WHO CAN ESTABLISH THE TRUST?

1. Parent or Grandparent

- ***For legally competent, disabled adults:*** A parent or grandparent may establish a "seed" trust to allow for the disabled individual to transfer his/her own assets into the trust.

2. Legal Guardian

- A person establishing the trust 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 an individual WITHOUT the legal right or authority to act with respect to the assets of that individual will generally result in an invalid trust.

3. Court

- Creation of the trust **MUST** be required by a **court order**.
- **Approval by the court is insufficient.**

POTENTIAL PITFALLS

- A parent may establish a "seed trust" for his/her disabled child in order to transfer the child's funds into the trust account at a later time. Technicians commonly mistake the parent as a third party and consider the trust to be a "third party trust" because the parent was the first to make a deposit. We must be very careful to distinguish between a seeded trust for the beneficiary's funds and a third-party trust that will *not* contain the beneficiary's funds, as POMS provides for different evaluation of the two categories of trusts.
- An appointed representative may petition the court to create a trust for the beneficiary. The court will approve the request and initiate creation of the trust. While it appears that the court "established" the trust, it was the appointed representative acting as an agent of the beneficiary who actually established the trust. In this case, we would consider the beneficiary to have established the trust.
- For SSI purposes, in order to find that the court created the trust, the trust must be the direct result of a **COURT ORDER**.
 - **Example:** A beneficiary 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 the beneficiary to receive the \$50,000. As a direct result of this court order, a trust was created with the beneficiary's settlement money. The trust document lists the \$50,000 as the initial principal amount in Schedule A of the trust. We would consider this trust to be established by the court because the beneficiary had no power to create the trust himself/herself.

F. STATE MEDICAID REIMBURSEMENT

- The State(s) **MUST** be listed as the **FIRST** payee and have priority over payment of other debts/administrative expenses.
 - **THESE ARE THE ONLY ALLOWABLE PRIMARY EXPENSES THAT MAY TAKE PRIORITY:**
 - Taxes due from the trust at the time of death;
 - Court/filing fees associated with the trust.
 - **IMPORTANT:** No other payments besides those mentioned above are allowed before State Medicaid reimbursement.
- The trust must repay ALL States that provided the beneficiary with Medicaid coverage;
 - Trust cannot limit reimbursement to one State.
- The trust cannot limit the Medicaid coverage period;
 - For example, the trust cannot stipulate that payback only applies to the period after the establishment of the trust.
- **Labeling the trust as a “Special Needs Trust” or a “Pay-Back Trust” is not sufficient.** A trust must meet all the aforementioned provisions to meet the special needs exception.

POTENTIAL PITFALLS

1. The presence of Medicaid payback language alone does not mean it qualifies under the special needs exception.

Example: The trust document states the following regarding repayment of expenses upon the death of the beneficiary:

“Upon the death of the beneficiary, the trustee must first reimburse any living family members who carried any debts on behalf of the beneficiary. This includes any money used to cover the beneficiary’s funeral and burial expenses. Also, the trustee must reimburse any and all state Medicaid agencies up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.”

Because Medicaid was not listed as the first payee, this trust would not qualify for the special needs exception.

2. The Medicaid pay-back provision must cover ALL States in which the beneficiary received assistance.

Example: Last year, Charlie Brown moved to a residential facility in the State of Rhode Island for better medical care. However, Charlie spent most of his life as a resident of the State of Connecticut. Medicaid has always covered more than 50% of Charlie Brown’s medical expenses. The trust document states the following:

“Upon the death of the beneficiary, the trustee must first reimburse the State of Connecticut up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary. If any trust assets remain after such reimbursement, such remaining assets shall be distributed

to his estate.”

Because the trust does not acknowledge repayment to the State of Rhode Island’s Medicaid program, this trust does not qualify for the special needs exception. If the clause states, “*The trustee must first reimburse the State of Connecticut **or any other state(s) that provided the beneficiary with medical assistance...***” then the exception would apply as the clause does not limit reimbursement to only one State.

G. ADDITIONAL CONSIDERATIONS

- Trusts that meet the special needs trust exception must also meet the SSI resource requirements in [SI 01120.200](#).

2. Pooled Trusts ([SI 01120.203](#))

A. REQUIREMENTS OF THE EXCEPTION

We can exclude a pooled trust established on or after January 1, 2000 as a resource if it contains ALL of the following criteria:

(Sections B-G below detail each element of the exception.)

- Trust must contain the assets of a disabled individual; **and**
- Trust must be established and maintained by a non-profit association; **and**
- Trust must have separate accounts maintained for each beneficiary, but the assets are pooled for investing and management purposes; **and**
- Trust must have individual trust accounts established for the sole benefit of the disabled individuals;
- Trust must have accounts established through actions of the individual, parent, grandparent, legal guardian, or a court; **and**
- Trust must require that, upon the individual’s death, any amounts remaining in the individual’s account that are not retained by the trust be reimbursed to the State(s) for medical assistance paid on the individual’s behalf.

B. INDIVIDUAL MUST BE DISABLED

- Must meet SSA’s definition of disability for SSI purposes.

C. NON-PROFIT ASSOCIATION

- The pooled trust must be established through 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.

D. SEPARATE ACCOUNT WITHIN THE TRUST

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

E. 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.
- 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 an individual or entity (other than the State).

F. WHO CAN ESTABLISH THE SEPARATE ACCOUNT WITHIN THE TRUST?

- **Legally competent, disabled adult**
 - A legally competent, disabled adult who is establishing or adding to a trust account with his/her own funds has the legal authority to act on his/her own behalf.
- **Parent or Grandparent**
 - A parent or grandparent may establish a “seed” trust to allow for the disabled individual to transfer his/her own assets into the trust.
- **Legal Guardian**
 - A person establishing the trust 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 an individual **WITHOUT** the legal right or authority to act with respect to the assets of that individual will generally result in an invalid trust.
- **Court**
 - Creation of the trust **MUST** be required by a **court order**.
 - **Approval by the court is insufficient.**

G. STATE MEDICAID REIMBURSEMENT

- The State(s) **MUST** be listed as the **FIRST** payee and have priority over payment of other debts/administrative expenses;
 - **THESE ARE THE ONLY ALLOWABLE PRIMARY EXPENSES THAT MAY TAKE PRIORITY:**
 - Taxes due from the trust at the time of death;
 - Court/filing fees associated with the trust.

- **IMPORTANT:** No other payments besides those mentioned above are allowed before State Medicaid reimbursement.
- The trust must repay ALL States that provided the beneficiary with Medicaid coverage;
 - Trust cannot limit reimbursement to one State.
- The trust cannot limit the Medicaid coverage period;
 - For example, the trust cannot stipulate that payback only applies to the period after the establishment of the trust.
- **Labeling the trust as a “Special Needs Trust” or a “Pay-Back Trust” is not sufficient.** A trust must meet all the aforementioned provisions to meet the pooled trust exception.

H. ADDITIONAL CONSIDERATIONS

- Trusts that meet the pooled trust exception must also meet the SSI resource requirements in [SI 01120.200](#).

HELPFUL HINTS

Key Differences Between a Pooled Trust and a Special Needs Trust:

- **No age restriction** to establish a trust within a pooled trust;
- A legally competent, disabled adult **has the legal authority** to establish a trust account under a pooled trust with his/her own funds (in addition to a parent, grandparent, legal guardian, or court.)
- Pooled trusts may retain amounts remaining in the beneficiary’s account upon his or her death.

G. HELPFUL REFERENCE TOOLS TO DETERMINE IF THE TRUST IS A COUNTABLE OR EXCLUDED RESOURCE

1. Chicago Trust Decision Tree

- After you have identified the key pieces of the trust and applied them to the trust policy in POMS, you may use the [Chicago Trust Decision Tree](#) that is approved for national use.
 - When answering questions contained in the Trust Decision Tree, **do not guess** if you are not sure. Making an uneducated guess within the decision tree may lead you to an incorrect conclusion. Instead, click on the “*Need More Information*” option for guidance.

2. POMS Reference Chart: Summary of Trust Development ([SI 01120.202](#))

STEP	ACTION
1	Obtain and review a copy of the trust and all related documents. (Refer to Section K of this document for additional reminders.)
2	Does the trust contain any assets of the individual? <ul style="list-style-type: none">• If no, follow instructions in SI 01120.200. (NOTE: If any assets of the individual are added to the trust at a later point in time, the trust must be redeveloped SI 01120.201-SI 01120.204.) STOP.• If yes, go to Step 3.
3	Determine the date the individual's assets were transferred to the trust (See SI 01120.201C.1. and SI 01120.202A.1.b.). <ul style="list-style-type: none">• If any of the individual's assets were transferred prior to 1/1/00, follow instructions in SI 01120.200. STOP.• If all of the individual's assets in the trust were transferred on or after 1/1/00, go to Step 4.
4	Consult national and regional instructions to determine if the trust is revocable or irrevocable (see SI 01120.202A.3.). <ul style="list-style-type: none">• If you are unable to make a determination, consult with your RO programs staff.• If the trust is revocable, go to Step 5.• If the trust is irrevocable, go to Step 6 (SI 01120.201D.2.).
5	The trust is a resource unless an exception applies. Go to SI 01120.203A to see if an exception applies. (Also see SI 01120.201D.1. for treatment of revocable trusts.)

6	<p>(See SI 01120.201D.2 for the policy on irrevocable trusts.) Does the trust also contain assets of a third party?</p> <ul style="list-style-type: none"> • If yes, determine the amounts in the trust attributable to the individual and the third party. Develop resource treatment of the portion attributable to the third party under SI 01120.200. Go to Step 7 for the portion of the trust attributable to the assets of the individual. • If no, go to Step 7.
7	<p>Are there any circumstances under which payment from the trust could be made to or for the benefit of the individual?</p> <ul style="list-style-type: none"> • If no, the trust is not a resource. Refer to SI 01150.100 ff. to see if a transfer penalty may be applicable. • If yes, the trust is a resource in the amount that could be paid from the portion attributable to the individual unless an exception applies. Go to SI 01120.203 to see if an exception applies.

3. POMS Reference Chart: Procedure for Developing Special Needs Trust/Medicaid Trust Exceptions to Resource Counting ([SI 01120.203D.1](#))

STEP	ACTION
1	<p>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).</p> <ul style="list-style-type: none"> • If yes, go to Step 2. • If no, go to Step 8.
2	<p>Does the trust contain the assets of a disabled individual? (SI 011203B.1.d.)</p> <ul style="list-style-type: none"> • If yes, go to Step 3. • If no, go to Step 8.
3	<p>Is the disabled individual the sole beneficiary of the trust? (SI 01120.203B.1.e.)</p> <ul style="list-style-type: none"> • If yes, go to Step 4. • If no, go to Step 8.
4	<p>Did a parent, grandparent, legal guardian or a court establish the trust? (SI 01120.203B.1.f. in this section).</p> <ul style="list-style-type: none"> • If yes, go to Step 5. • If no, go to Step 8.
5	<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.1.h. in this section?</p> <ul style="list-style-type: none"> • If yes, go to Step 6. • If no, go to Step 8.
6	<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 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.</p> <p>Go to Step 7 for treatment of assets placed in trust prior to age 65.</p> <p>Go to Step 8 for treatment of assets placed in trust after attaining age 65.</p>
7	<p>Evaluate the trust under SI 01120.200D.1.a. to determine if it is a countable resource.</p>
8	<p>The trust (or portion thereof) does not meet the requirements for the special needs trust exception.</p> <p>Determine whether the pooled trust exception in SI 01120.203B.2. applies.</p>

4. POMS Reference Chart: Pooled Trust Development ([SI 01120.203D.2](#))

STEP	ACTION
1	<p>Does the trust account contain the assets of a disabled individual? (See SI 01120.203B.2.b. in this section) .</p> <ul style="list-style-type: none"> • If yes, go to Step 2. • If no, go to Step 8.
2	<p>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).</p> <ul style="list-style-type: none"> • If yes, go to Step 3. • If no, go to Step 8.
3	<p>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).</p> <ul style="list-style-type: none"> • If yes, go to Step 4. • If no, go to Step 8.
4	<p>Is the disabled individual the sole beneficiary of the trust account? (SI 01120.203B.2.e. in this section).</p> <ul style="list-style-type: none"> • If yes, go to Step 5. • If no, go to Step 8.
5	<p>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).</p> <ul style="list-style-type: none"> • If yes, go to Step 6. • If no, go to Step 8.
6	<p>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?</p> <ul style="list-style-type: none"> • If yes, go to Step 7. • If no, go to Step 8.
7	<p>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.</p>
8	<p>The trust does not meet the requirements for the Medicaid pooled trust exception.</p>

	Determine if the undue hardship waiver applies under SI 01120.203E in this section.
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H. ADDITIONAL TRUST CONSIDERATIONS

1. Early Termination Provision in Special Needs Trusts and Pooled Trusts ([SI 01120.199](#))

- An early termination provision or clause would allow a trust to terminate before the death of the beneficiary. Such provisions or clauses may provide for termination of the trust when, for example, the beneficiary is no longer disabled or otherwise becomes ineligible for SSI and Medicaid, or when the trust fund no longer contains enough assets to justify its continued administration.
- A trust that was previously determined to be exempt from resource counting under Section 1917(d)(4)(A) or Section 1917(d)(4)(C) of the Act shall continue to be excepted from resource counting, provided the trust is amended to conform with the requirements of this section within 90 days. That 90-day period begins on the day the recipient or representative payee is informed that the trust contains provisions that must be amended to continue to qualify for the exception under Section 1917(d)(4)(A) or Section 1917(d)(4)(C).
- Do not count a previously excepted trust as a resource during the 90-day amendment period. If the trust still fails to meet the requirements of this section after expiration of the 90-day amendment period, begin counting the trust as a resource under normal resource counting rules.

NOTE: We permit each previously excepted trust only one 90-day amendment period.

Criteria for determining whether an early termination clause is acceptable

- For the purpose of SSI eligibility, a trust that contains an early termination provision or clause may not be excepted from the resource counting rules in Section 1613(e) of the Act unless it satisfies the requirements in Section 1917(d)(4)(A) or (C) of the Act. Additionally, a trust must also satisfy the resource counting rules found at [SI 01120.200D](#) and [SI 01110.100B](#) to not be a countable resource. To meet those requirements, all of the following criteria must be met:
 - Upon early termination (i.e., termination prior to the death of the beneficiary), the State(s), as primary assignee, must receive all amounts remaining in the trust at the time of termination up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s); **and**
 - Other than payment for those expenses listed in SI 01120.199F.3. in this section and [SI 01120.201F.2.c.](#), no entity other than the trust beneficiary may benefit from the early termination (i.e., after reimbursement to the State(s), **all** remaining funds are disbursed to the trust beneficiary); **and**
 - The early termination clause gives the power to terminate to someone other than the trust beneficiary.

2. Spendthrift Clause

[\(SI 01120.200B.16\)](#)

- A **spendthrift clause (or spendthrift 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 money from the trust to satisfy debts.**
- It also means that the beneficiary cannot, for example, sell or assign to a third party for a lump sum his/her right to receive monthly payments. In other words, a valid spendthrift clause would make the value of the beneficiary's right to receive payments 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/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.
 - Consult your Regional POMS for additional guidance on State-specific issues.
- **If the beneficiary CAN sell his/her beneficial interest in the trust, that interest is a RESOURCE.**

3. Null and Void Clauses

[\(SI 01120.227\)](#)

- State law determines the necessary elements of a legally valid trust. Commonly, trust documents contain “null and void” or “savings” clauses (hereafter “null and void”). These null and void clauses operate to cure defects in a trust and preserve the remaining provisions. They prevent the trust from being determined invalid by removing the offending sections from consideration.
- For SSI resource counting purposes, a null and void clause does **not** cure an otherwise defective trust instrument. Null and void clauses cannot overcome missing or conflicting trust provisions. Consider all of the provisions set forth in the trust document to determine whether the trust is a countable resource.
- To be excepted from resource counting under the provisions of Section 1917(d)(4)(A) or (C) of the Act, the trust must meet all of the criteria set forth in [SI 01120.199](#) through [SI 01120.203](#) and [SI 01120.225](#), without regard to the presence of a null and void clause. Trust provisions that fail to meet any of the required criteria must be amended or removed for the trust to be excepted from resource counting.

- A trust that does not purport to meet the criteria in section 1917(d)(4)(A) or (C) of the Act and that is formed after 01/01/00 must be considered under the criteria in [SI 01120.201](#), without regard to the presence of a null and void clause. Trust provisions that fail to meet the criteria in [SI 01120.201](#) must be amended or removed, or the trust is counted as a resource.

4. Exceptions Regarding Transfers to a Trust ([SI 01150.121](#))

- The period of ineligibility for transferring a resource at less than fair market value **does not apply** to an individual in the following situations:
 - The portion of the trust attributable to the transferred resources is a **COUNTABLE** resource;
 - Resource was transferred into a trust established **for the sole benefit of a blind/disabled child or adult under age 65**, including any trust meeting a “Medicaid trust exception.”
- The period of ineligibility **WILL apply** if:
 - The trust is **not** countable as a resource, money or property transferred by the individual into the trust is a transfer of resources that is subject to the period of ineligibility *unless* one of the exceptions mentioned above applies.
 - A disbursement is made from a trust that is counted as a resource (or would be counted as a resource but for the undue hardship provision applicable to trusts), and the disbursement is not made to the individual or for his/her benefit, then the disbursement is considered a transfer of resources for less than fair market value. Such a transfer of resources is subject to the period of ineligibility. The date of the disbursement is considered the date of the transfer.
 - The individual takes action so that **no disbursement can be made from a trust that is counted as a resource** to the individual for any reason, this action causes the trust to no longer be counted as a resource. Therefore, such an action is considered a transfer of resources for less than fair market value. Such a transfer of resources is subject to the period of ineligibility. The date of the action restricting disbursements is considered the date of the transfer.

5. Role of State Laws & Regulations

- It is **VERY IMPORTANT** that you consult any supplemental Regional POMS references to determine if there are additional State laws and regulations that may play a factor in their resource determination.
 - For example, a grantor trust that may be a countable trust in the State of Oklahoma may actually be an excludable trust in the State of New Hampshire.
- When deciding which State laws and regulations to apply, **the laws of the jurisdiction with the most significant relationship to the trust should govern.**
 - Specifically, we consider:
 - The State of the domicile of the grantor at the time of the creation of the trust;
 - The State of the domicile of the beneficiaries;
 - The State where the trust instrument was executed and delivered; and
 - The State where the trust assets were then located.
 - **IMPORTANT:** If you are unsure which jurisdiction applies to your trust, refer the trust through your region's Trust Review process. Your region's CPS will then refer the trust to your region's Office of General Counsel for a legal opinion.

I. DISBURSEMENTS

The SSI recipient or his/her representative payee is required to report the existence of a trust to the local SSA office. You will need the executed/signed document for review, along with any trust disbursements covering the period being developed/reviewed.

In addition to the trust document/will, the recipient must provide any account statements or disbursement reports. They need to show:

- The individual who received the payment (to whom it was made to),
- Date of the payment,
- Amount of the payment, and
- Purpose of the payment.

If the trust is an excluded resource, we must still evaluate any distributions made from the trust to determine whether they are income for SSI purposes. Further, we verify with the trustee periodically and may ask for a record of all disbursements in a specific period.

1. Trust is an excluded resource

If the trust is an excluded resource (meets the special needs trust or pooled trust exception or is discretionary for pre-2000 trusts or third party funded trusts/wills), the trust distributions may or may not be income for SSI purposes. The general income rules apply. Specifically:

- **Cash** paid directly from the trust to the individual **is unearned income**.
 - Gift cards and gift certificates are generally considered cash equivalents.
- **Food or shelter** received as a result of disbursements from a trust by a trustee to a third party is income in the form of **in-kind support and maintenance (ISM)** and is valued under the presumed maximum value (PMV) rule.
 - Remember that for SSI purposes, "shelter items" are:
 - Rent
 - Mortgage
 - Property taxes
 - Heating fuel
 - Gas
 - Electricity
 - Water
 - Sewerage
 - Garbage collection service

- Property taxes (or other household expenses), and outside in-kind support and maintenance are capped at the PMV. If an expense is for durations longer than a month:
 - Divide the total tax payment by the number of months in the payment cycle, and then divide by the number of household members.

- *Example:*

The beneficiary's house is assessed with a property tax of \$2,000 twice a year:
\$2,000 divided by 6 months = \$333.33 per month.

If there are two household members (including the trust beneficiary), then this is:
\$333.33 divided by 2 household members = \$166.67 per month per household member.

If only the trust beneficiary lived in the home, we would use the lesser of the PMV or the actual expense amount:

PMV for 2014 = \$260.33, which is lesser than the \$333.33. In this example, we would charge the PMV.

- Disbursements from the trust that are **NOT** cash to the individual or are third party payments that **do not** result in the receipt of ISM are **not** income.
 - Examples include (but are not limited to):
 - Educational expenses
 - Therapy
 - Medical services not covered by Medicaid
 - Phone Bills
 - Recreation
 - Entertainment

HELPFUL HINTS

- A trustee might make payments that we do not consider income, and that do not affect the SSI payment, such as: the *direct* purchase of household cleaning items, paper products, and other non-food items (no cash); *direct* payment for repairs or upkeep (lawn cutting, etc.); or *direct* payment of: phone and cable bills, prescription and nonprescription items, car insurance, or car repairs/maintenance, etc.

If the trust purchases durable items, e.g., a car or house, either the beneficiary or the trust must be the owner (a car title may show the trust as a lien holder).

- If the trust fails to name the beneficiary or trust as owner, this might constitute a transfer of resources that could affect eligibility for SSI, or result in a loss of the Medicaid exception.
- For the home, the beneficiary is considered to be living in his/her own home based on having an "equitable ownership" and cannot "rent."

For trusts that meet the special needs trust or pooled trust exceptions, review the account records and trust document (as applicable) to decide whether it is for the sole benefit of the trust beneficiary.

- Effective February 4, 2013, trustees may now reimburse third parties for items purchased for a trust beneficiary (including items purchased with the third-party's credit card). As a result, any impact on the SSI recipient depends on the item(s) originally purchased.
 - For example, purchase of personal items such as clothing, a computer, etc. would have no impact. However, if **food** or **shelter** items are purchased, we charge these purchases as ISM which is capped at the PMV using the date it is received by the claimant or recipient.

2. Trust is a countable resource

- Disbursements made to or for the benefit of the individual are considered to be **conversion of a resource**.
 - Any trust earnings, such as interest, would be considered income to the individual
- Disbursements NOT made to or for the benefit of the individual are considered to be a **transfer of resources** as of the date of the payment.

HELPFUL HINTS

- **It is very important that the electronic folder contain account records that show disbursements for the beneficiary** (which may need to be annotated to show to whom paid and purpose if not recorded on the actual account records).
 - Certain account statements may be extremely lengthy, as they may show other investment activity associated with the account.
 - If you find that a document is too large or contains too much information not material to the SSI claim, isolate the portion of the document related to disbursements. We suggest you annotate the file to show that the entire statement has been reviewed (identify the financial institution name, account number, and time period of the statement), but retain only the disbursement segments that are material to the SSI claim.

J. ROLE OF THE PUBLIC / ATTORNEYS

SSA does not have a process to review trust documents (or any other resource-related evidence) outside of the normal claims development process. Therefore, SSA neither approves nor disapproves trusts (as some State agencies do), changes of trustee or appropriate expenditures, etc. for any party outside of the SSA.

When you discuss SSI trust policy with a member of the public, consider (as applicable) the following points in your discussion:

- Explain how trusts affect SSI eligibility and payment amount, in general terms.
- Do not advise a claimant, recipient, representative payee, or legal guardian on how to invest funds or whether to hold property in a trust.
- Remember that you cannot provide the kind of financial guidance that attorneys, accountants, and financial advisors provide. Do not attempt to provide legal advice.
- Never recommend to an individual that he or she set up a trust or suggest that you think a trust would be beneficial to him/her. Be aware that by not knowing all of the legal implications of such an action, you could endanger the individual's eligibility for other programs or benefits (e.g., Medicaid).
- Be aware that a trust that allows eligibility for SSI might not allow eligibility for Medicaid. Therefore, suggest that the individual check with his/her State Medicaid office.
- Examine the trust document or a draft of the proposed trust provisions, as necessary.
 - You may need to explain to the public how SSI policies apply to the trust or identify the area within a trust that precludes it from meeting SSA's guidelines.
- Remember that an individual's ability to access and use the trust principal depends on the terms of the trust document and on State law. Since State laws in this area may be complex, discuss the individual's documents with your Regional Office if you are unable to make a determination.

HELPFUL HINTS

- **IMPORTANT!!** Do not advocate specific changes to a trust if you find that an element of the trust does not meet SSA's criteria. We cannot advise an individual on how to make a trust excludable for SSI purposes. Simply point out the discrepancy between the trust language and the particular policy reference.
- SSA cannot provide specific advice or facilitate family decisions regarding the individual's financial "safety net." There are organizations and attorneys that are familiar with the necessary financial planning for disabled individuals and government entitlement programs. The individual or family member needs to reach out to these types of contacts for such assistance.

K. REMINDER ITEMS & DOCUMENTATION

1. REMINDER ITEMS

Prior to reviewing any trust, you should have the following readily available to you:

- POMS references [SI 01120.199](#); [SI 01120.200](#); [SI 01120.201](#); [SI 01120.202](#); [SI 01120.203](#); [SI 01120.225](#); [SI 01120.227](#). Also, any applicable Regional POMS related to trusts.
- Development charts contained within Section G of this package and/or the [Chicago Trust Decision Tree](#).
- A signed and dated copy of the trust, along with any amendments to the trust.
- The source of the trust funds.
- A copy of the financial account ledgers/statements detailing the trust's assets.
- Information about any disbursements from the trust, including: the date of disbursements, amount of disbursements, to whom paid, and the purpose of the disbursements.
- *For trusts established by the **court**:* A copy of the court order.
- *For trusts established by a **legal guardian**:* Obtain the guardianship papers.
- *For **pooled trusts**:* Obtain a copy of the master trust and the joinder agreement.
- *For **testamentary trusts**:* Obtain proof of the decedent's death and obtain a copy of the last will & testament.
 - It is acceptable to use Numident to prove the decedent's death.

2. DOCUMENTATION

- Refer to [SI 01120.200J](#) to document **third-party** and **self-funded trusts created prior to 1/1/2000**.
- Refer to [SI 01120.202C](#) to document **self-funded trusts created on or after 1/1/2000**.
- You must fax ALL trust documentation into eView for initial claims or NDRed for post-entitlement issues.
- **MSSICS:** Technicians may now enter trust information using the new trust collection screen in the MSSICS Modernized resource path. In the past, trusts were lumped into the "Other Resources" category on the ROTH screen. Now, trusts have their own section within MSSICS for more accurate tracking and documentation.

Drafted on 12/16/2013

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