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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

Topic	Reference
Introduction to Trusts	SI 01120.200A
Glossary of Terms – Trusts	SI 01120.200B
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A. Introduction to ~~Trust~~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 to evaluating the resource status of property held in trust.

2. Applicability of this ~~Section~~section

Generally, this section applies to trusts not subject to the statutory trust provisions in Section 1613(e) of the Social Security Act, instructions for which are found in [SI 01120.201](#) – [SI 01120.204](#). Use the instructions in this section to evaluate the following types of trusts:

a. Trusts ~~Established~~established prior to 1/1/00 that ~~Contain Assets~~contain assets of the ~~Individual~~individual

Trusts established before 1/1/00 that contain assets of the individual, any of which were transferred before 1/1/00. If the trust was established prior to 1/1/00, but no assets of the individual were transferred to the trust prior to 1/1/00, see [SI 01120.201](#).

b. Trusts that ~~Contain Assets~~contain assets of ~~Third Parties~~third parties

- Trusts established before 1/1/00 that contain assets of third parties.
- Trusts established on or after 1/1/00 that contain only assets of third parties or the portion of a commingled trust attributable to assets of third parties. (Trusts established on or after 1/1/00 that contain assets of a Supplemental Security Income (SSI) claimant or recipient or the portion of a commingled trust attributable to assets of an SSI claimant or recipient must be evaluated under [SI 01120.201](#) through [SI 01120.204](#).)

c. Other Trusts ~~Not Subject~~not subject to Section 1613(e) of the Social Security Act

Trusts established on or after 1/1/00 to which the instructions in [SI 01120.201](#)–[SI 01120.204](#) do not apply. (The instructions in those sections will refer you back to this section where applicable.)

3. Case ~~Processing Alert~~processing alert

Trusts are often complex legal arrangements involving State law and legal principles that a claims representative (CR) may not be able to apply without legal counsel. Therefore, the following instructions may only be sufficient for you to recognize that an issue is present that should be referred to your regional office (RO) for possible referral to the Regional Chief Counsel. When in doubt, discuss the issue with the RO staff. Many issues can be resolved by phone.

B. Glossary of Terms -- Trusts

1. Trust

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

2. Grantor

A **grantor** (also called a settlor or trustor) is the individual who provides the trust principal (or corpus). The grantor must be the owner or have legal right to the property or be otherwise qualified to transfer it. Therefore, an individual may be a grantor even if an agent, or other individual legally empowered to act on his/her behalf (e.g., a legal guardian, representative payee for Title II/XVI benefits, person acting under a power of attorney, or conservator), establishes the trust with funds or property that belong to the individual. The individual funding the trust is the grantor, even in situations where the trust agreement shows a person legally empowered to act on the individual'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.

3. Trustee

A **trustee** is a person or entity who holds legal title to property 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 his/her own benefit.

4. Trust Beneficiary

A **trust beneficiary** is a 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 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 rights of the beneficiary, and includes any trust earnings paid into the trust and left to accumulate. Also called "the corpus of the trust."

6. Trust Earnings (Income)

Trust earnings or income are amounts earned by the trust principal. They may take such forms as interest, dividends, royalties, rents, etc. These amounts are unearned income to any person legally able to use them for personal support and maintenance.

7. Totten Trust

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 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 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. 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 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/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 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.

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 him or herself.

20. Terminate

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 him or herself.

C. Policy -accounts that may or may not be trusts

1. Accounts ~~That May Or May Not Be Trusts~~that are not trusts

~~1. Accounts That Are Not Trusts~~

The following accounts and instruments are similar to trusts and may be titled as trusts, but should generally not be developed under these instructions for SSI purposes:

a. Conservatorship Accounts

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

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 trust accounts, they are not; they are agency accounts. The individual owns the money in the account, which the institution is merely holding for him/her and making disbursements on his/her behalf as necessary. (See [SI 01120.020](#), [SI 00810.120](#) and [GN 00603.020](#) for information on transactions involving agents.)

2. “In Trust For” Financial Accounts

These accounts may or may not be trusts depending on the circumstances in the individual case. Examples of the most common situations follow:

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a. Representative Payee Accounts

One of the most common types of “in trust for” accounts are representative payee accounts. These accounts are not trusts, but improperly titled accounts that are misleading as to the actual owner of the funds. If a representative payee deposits current or conserved benefits in an account, the account must be titled to reflect the beneficiary's ownership interest. (See [SI 01120.020](#) and [SI 00810.120](#) for instructions pertaining to agency accounts. See [GN 00603.010](#) for instructions pertaining to titling of accounts established by representative payees.)

b. Totten Trusts

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

D. Policy - Trusts ~~As Resources~~ as resources

1. Trusts ~~Which Are Resources~~ which are resources

a. Trust Principal is a ~~Resource~~ resource

If an individual (claimant, recipient, or deemor) has legal authority to revoke or terminate the trust and then use the funds to meet his food or shelter needs, or if the individual can direct the use of the trust principal for his/her support and maintenance under the terms of the trust, the trust principal **is** a resource for SSI purposes.

Additionally, if the individual 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 beneficiary for spending money, absent a prohibition to the contrary (e.g., a valid spendthrift clause, see [SI 01120.200B.16.](#)), the beneficiary may be able to sell the right to future payments for a lump-sum settlement.

b. Authority to ~~Revoke~~ revoke or ~~Terminate Trust~~ terminate trust or ~~Use Assets~~ use assets

- **Grantor**

In some cases, the authority to revoke a trust is held by the grantor. Even if the power to revoke a trust is not specifically retained, a trust may be revocable in certain situations. (See [SI 01120.200B.8.](#) and [SI 01120.200D.3.](#) for information on grantor trusts.) Additionally, State law may contain presumptions as to the revocability of trusts. If the trust principal reverts to the grantor upon revocation and can be used for support and maintenance, then the principal **is** a resource to the grantor.

- **Beneficiary**

A beneficiary generally does not have the power to terminate a trust. However, the trust may be a resource to the beneficiary in the rare instance where he or she has the authority to terminate the trust and gain access to the trust assets. In addition, the beneficiary may, in rare instances, have

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the authority under the trust to direct the use of the trust principal. (The authority to control the trust principal may be either specific trust provisions allowing the beneficiary to act on his/her own or by permitting the beneficiary to order actions by the trustee.) In such a case, the beneficiary's equitable ownership in the trust principal and his/her ability to use it for support and maintenance means it **is** a resource.

The 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 prohibits anticipation of payments.

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

- **Trustee**

Occasionally, a trustee may have the legal authority to terminate a trust. However, the trust 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 a third party. Although the trustee has access to the principal for the benefit of the beneficiary, this does not mean that the principal is the trustee's resource. If the trustee has the legal authority to withdraw and use the trust principal for his/her **own** support and maintenance, the principal **is** the trustee's resource for SSI purposes in the amount that can be used.

- **Totten trust**

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

2. Trusts ~~Which Are Not Resources~~ which 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/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 law. If a trust is irrevocable by its terms and under State law and cannot be used by an individual for support and maintenance (e.g., it contains a valid spendthrift clause, see [SI 01120.200B.16.](#)), it **is not** a resource.

3. Revocability of Grantor Trusts

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

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

Under the modern view, residual beneficiaries are assumed to be created, absent evidence of a contrary intent, when a grantor names heirs, next of kin, or similar groups to receive the remaining assets in the trust upon the grantor's death. In such case, the trust is considered to be irrevocable.

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NOTE: The policies regarding grantor trusts may or may not apply in your particular State. Field offices should consult regional POMS or your regional office program staff if in doubt.

E. Policy - Disbursements ~~From Trusts~~from trusts

1. Trust ~~Principal Is Not~~principal is not a ~~Resource~~resource

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

a. Disbursements ~~Which Are Income~~which 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 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 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 beneficiary and the beneficiary's spouse already has a car which is excluded for SSI, 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 Result~~which result in Receipt of ~~In-kind~~in-kind ~~Support~~support and ~~Maintenance~~maintenance

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

c. Disbursements ~~Which Are Not Income~~which are not income

Disbursements from the trust other than those described in [SI 01120.200E.1.a.](#) and [SI 01120.200E.1.b.](#) are not income. Such disbursements may take the form of educational expenses, therapy, medical services not covered by Medicaid, phone bills, recreation, entertainment, etc., (see [SI 00815.400](#)).

Disbursements made from the trust to a third party that result in the beneficiary 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, 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

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

Existing income and resource rules apply to items 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).

2. Trust ~~Principal~~ Principal is a ~~Resource~~ resource

a. Disbursements to or for the ~~Benefit~~ benefit of the ~~Beneficiary~~ 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 income. See [SI 01110.100](#) for instructions pertaining to conversion of resources from one form to another. See [SI 01120.200G.2](#). for treatment of income when the trust principal is a resource and [SI 00830.500](#) for treatment of dividends and interest as income).

b. Disbursements ~~Not~~ not to or for the ~~Benefit~~ benefit of the ~~Beneficiary~~ 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 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 foreclosure. Such foreclosure is not considered income to the individual.

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F. Policy - ~~Home Ownership/Purchase Of A Home By A Trust~~ Ownership/purchase of a home by a trust

1. Home as a ~~Resource~~ 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/her own home based on having an "equitable ownership under a trust."

If the trust is a resource to the individual, the home is subject to exclusion under [SI 01130.100](#).

2. Rent-~~Free Shelter~~ free shelter

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 “equitable home ownership under a trust” (see [SI 01120.200F.1.](#)) 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.

3. Receipt of ~~Income~~income from a ~~Home Purchase~~home purchase

Since the purchase of a home by a trust for the beneficiary establishes an equitable ownership interest for the beneficiary of the trust, the purchase results in the receipt 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).

Even though the beneficiary has an ownership interest in the home and, if living in the home, does not receive ISM in the form of rent-free shelter, 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 [SI 01120.200E.1.b.](#))

a. Outright ~~Purchase~~purchase of a ~~Home~~home

If the trust, which is not a resource, purchases the home outright and the individual lives in the home in the month of purchase, the home would be income in the form of ISM and would reduce the individual's payment no more than the PMV **in the month of purchase only**, regardless of the value of the home. (See [SI 01120.200E.1.b.](#))

b. Purchase by ~~Mortgage~~mortgage or ~~Similar Agreements~~similar agreement

If the trust, which is not a resource, purchases the home with a mortgage and the individual 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 in the receipt of income in the form of ISM to the beneficiary living in the house, each valued at no more than the PMV (see [SI 01120.200E.1.b.](#)).

c. Additional ~~Household Expenses~~household expenses

If the trust pays for other shelter or household operating expenses, these payments would be income in the form of ISM in the month the individual has use of the item (see [SI 00835.350](#)). Countable shelter expenses are listed at [SI 00835.465D](#).

If the trust pays for improvements or renovations to the home, e.g., renovations to the bathroom to make it handicapped accessible or installation of a wheelchair ramp or assistance devices, etc., the individual 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 [SI 01120.200E.1.c.](#))

G. Policy -- Earnings/~~Additions To Trusts~~ and additions to trusts

1. Trust ~~Principal Is Not~~principal is not a ~~Resource~~resource

a. Trust ~~Earnings~~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., as fees payable to the trustee or interest payable to the grantor.

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

b. Additions to ~~Principal~~principal

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

c. Exceptions

Certain payments are non-assignable by law and, therefore, are income to the individual entitled to receive the payment under regular income rules. They may not be paid directly into a trust, but individuals may attempt to structure trusts so that it appears that they are so paid. Non-assignable payments include:

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

d. Assignment of ~~Income~~income

A legally assignable payment (see [SI 01120.200G.1.c.](#) for what is **not** assignable), that is assigned to a trust/trustee, is income for SSI purposes **unless** the assignment is irrevocable. For example, child support or alimony payments paid directly to a trust/trustee as a result of a court order, are not income. If the assignment is revocable, the payment is income to the individual legally entitled to receive it.

2. Trust ~~Principal Is~~principal is a ~~Resource~~resource

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a. Trust ~~Earnings~~earnings

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

b. Additions to ~~Principal~~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 into the trust, the funds are income to the individual. If funds are transferred from an account owned by the individual to the trust, the funds are not income, but conversion of a resource from one account to another.

H. Policy - Medicaid ~~Trusts And~~trusts and Medicaid ~~Qualifying Trusts~~qualifying trusts

1. Medicaid Trusts

a. General

Medicaid trusts are trusts established by an individual on or after 8/11/93, 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. A trust is considered established by an individual if it was established by:

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

Medicaid trusts may contain terms such as “OBRA 1993 pay-back trust,” “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 resource determination.

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

b. State ~~Reimbursement Provisions~~reimbursement provisions

Medicaid trusts generally have a payback provision stating that upon termination of the trust, or the death of the beneficiary, 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 a residual or contingent beneficiary, but is a creditor and the reimbursement is payment of a debt, unless the trust instrument reflects a clear intent that the State be considered 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.

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2. Medicaid Qualifying Trusts (MQT)

An MQT is a trust or similar legal device established prior to 10/1/93, other than by a will, under which the grantor (or spouse) 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 must have been established prior to 10/1/93, when section 1902(k) of the Social Security Act was repealed.

I. Policy - Representative ~~Payees~~payees and ~~Trusts~~trusts

If a trust was established by a representative payee with an underpayment or conserved funds, see [GN 00602.075](#) for additional rules that may apply.

J. Procedure - Development ~~And Documentation~~and documentation of ~~Trusts~~trusts

1. Written ~~Trust~~trust

a. Review the ~~Trust Document~~trust document

Obtain a copy of the trust document and related documents and, if possible, review it to determine whether the:

- individual (claimant, recipient or deemor) is grantor, trustee, or beneficiary;
- 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/her own support and maintenance;
- individual has unrestricted access to the trust principal;
- trust provides for payments to the individual or on his/her behalf;
- trust principal generates income (earnings) and, if so, whether the individual has the right to any of that income;
- trust contains a spendthrift clause that prohibits the voluntary and involuntary alienation of any trust payments; and
- trust is receiving payments from another source.

b. Consult ~~Regional Instructions~~regional instructions

Consult any regional instructions which pertain to trusts to see if there are State laws governing revocability or irrevocability; State laws governing grantor trusts or other State law issues to consider.

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c. Referral to ~~Regional Office~~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 RO program staff. Many issues can be resolved over the phone. If necessary, they will tell you to refer the document with any relevant information or statements to your Assistant Regional Commissioner, Management and Operations Support (ARC, MOS) for possible referral to the Regional Chief Counsel.

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

2. Oral ~~Trusts~~trusts

a. State ~~Recognizes~~recognizes as ~~Binding~~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 ARC, MOS, to the Regional Chief Counsel.

b. State ~~Does Not Recognize~~does not recognize as ~~Binding~~binding

If the State does not recognize oral trusts as binding (see regional instructions), see [SI 01120.020](#) if an agency relationship (i.e., a person is acting as an agent of the individual) is involved.

3. Determining the ~~Nature~~nature and ~~Value~~value of ~~Trust Property~~
~~(Written trust property (written or Oral Trust or oral trust))~~

Apply the policies in [SI 01120.200D](#) and in any regional instructions to determine whether the trust is a resource.

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, if necessary.

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

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

4. Documentation – ~~Trust Evidence~~trust evidence

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Record all information used in determining whether the trust is a resource or creates income. Record your conclusions on the DROC (and subsequently lock the DROC), or the EVID screen. When a certified electronic folder exists, fax the following into Section D. (Non-Disability Development) of the Electronic Disability Collect System (EDCS):

- a copy of the trust document;
- 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/trustee;
- records of payments from the trust, as necessary; and
- any other pertinent documents.

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

5. Medicaid Trust/ ~~and Medicaid~~ ~~Qualifying Trust Determination~~ qualifying trust determination

Consult [SI 01730.048](#) regarding Medicaid trusts and MQTS and the procedure to follow.

6. Systems ~~Input~~ ~~Trusts~~ input -- trusts

Make the appropriate entries to the MSSICS ROTH (other resources) screen. (See MSOM MSSICS 013.011.) You may also make a CG field entry (RE06 or RE07) per SM 01301.820. On non-MSSICS cases or where otherwise warranted, use Remarks (see MSSICS 023.003).

7. Post-eligibility ~~Change~~ change in Resource Status ~~resource status~~

If a trust was previously determined not to be a resource, but because of policy clarifications you now determine that it is a resource (or vice versa), reopen the prior determination subject to the rules of administrative finality. (See the overpayment waiver rules in [SI 02260.001](#).)

K. Procedure - Discussing SSI ~~Trust Policy With The Public~~ trust policy with the public

1. What to ~~Discuss~~ discuss

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

- ~~a.~~ a. Do not advise a claimant, recipient, representative payee, or legal guardian 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 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

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such an action, you could endanger their eligibility for other programs or benefits (e.g., Medicaid).

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

~~b.~~ **b.** Explain how trusts 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, advocate specific changes to a trust.

~~c.~~ **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 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.

2. Use “SSI Spotlight” on ~~Trusts~~trusts

Consider giving the individual a copy of the “SSI Spotlight” on trusts. A copy of the Spotlight is available on the Internet at: <http://www.socialsecurity.gov/ssi/spotlights/spot-trusts.htm> .

L. Examples of ~~Trusts~~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 laws vary from State to State and the language of individual trust documents may provide 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 should be aware of the implications the trust may have for Medicaid eligibility. [SI 01730.048](#) contains instructions on trusts and Medicaid.

1. Trust ~~Principal Is~~principal is a ~~Resource~~resource

a. Situation

The claimant is 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 from her grandmother. The 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 as an agent for the child.

2. Trust ~~Principal Is Not~~principal is not a ~~Resource~~resource

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a. Example 1

• Situation

The SSI recipient is the beneficiary of an irrevocable trust created 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 \$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 beneficiary from transferring her interest in the trust payments prior to receipt.

• Analysis

Since the recipient, as beneficiary, has no authority to terminate the trust established with her parents' assets or access the principal directly, the trust principal is not her resource. While trust disbursements on a beneficiary's behalf may be income, 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 deposits of trust earnings 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 beneficiary's right to the stream of \$25 monthly payments is not a resource because she cannot sell or assign them prior to receiving them because of the valid spendthrift clause. (See [SI 01120.200B.16](#) for a definition of spendthrift clauses.)

b. Example 2

• Situation

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

• Analysis

The trust principal is not a resource to the claimant. Under the general rule in [SI 01120.200D.2.](#), the trust document provides that the trust is irrevocable. Although the claimant can be considered 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 [SI 01120.200D.3.](#) because the claimant is not the sole beneficiary.

3. Principal ~~Held~~ in a ~~Grantor Trust Is~~ grantor trust is a ~~Resource~~ 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

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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.

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.

4. Trust ~~Requires Legal Review~~requires legal review

a. Example 1

• 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 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 whether the trust principal generates income.

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. The CR cannot determine whether the trust principal is available to the trust beneficiary through the grantor/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 CR consults with the RO staff for possible referral through the ARC, MOS, to the Regional Chief Counsel for an opinion.

b. Example 2

• 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.

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M. References

- Trusts Established with the Assets of an Individual on or After 1/1/00, [SI 01120.201-SI 01120.204](#)
- Conservatorship Accounts, [SI 01140.215](#)
- Agency Relationships, [SI 01120.020](#), [SI 00810.120](#)
- Checking and Savings Accounts, [SI 01140.200](#)
- 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](#) ff
- Excluded Resources, [SI 01110.210](#)

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