SI 01120.225 Pooled Trusts Management Provisions

Citations: Social Security Act (Act) as amended, Section 1917(d)(4)(C)(42 U.S.C. § 1396p(d)(4)(C)).

A. How to determine when to apply the policies in this section

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

A trust that is either newly formed or not previously excepted from resource counting must meet all of the criteria set forth in SI 01120.199 through SI 01120.203 and SI 01120.225 through SI 01120.227 to be excepted under section 1917(d)(4)(A) or (C). Do not except such a trust from resource counting unless the trust meets all of these requirements.

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

A trust that was previously determined to be excepted from resource counting under section 1917(d)(4)(A) or (C) continues 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 in order to continue qualifying for the exception under section 1917(d)(4)(A) or (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 the expiration of the 90-day amendment period, begin counting the trust under normal resource counting rules.
NOTE: Each previously excepted trust is permitted only one 90-day amendment period.

B. Background of pooled trusts management

To qualify for exception under the provisions of section 1917(d)(4)(C), a pooled trust must be managed by a non-profit association. By law, each trust beneficiary must have a separate account, but the non-profit manager can pool these funds with the funds of other members of this communal trust. In some instances, the non-profit manager(s) may employ the services of a for-profit entity to manage some of the financial activities of the trust.

C. Case processing alert

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

D. Policy on use of for-profit entities

If a non-profit association employs the services of a for-profit entity, the non-profit association must maintain ultimate managerial control over the trust. The for-profit entity may handle certain trust functions on behalf of the non-profit association; however, the use of a for-profit entity must always be subordinate to the non-profit managers of a pooled trust under section 1917(d)(4)(C).

For example, the non-profit association must be responsible for:

- determining the amount of the trust corpus to invest;
- removing or replacing the trustee; and
- making the day-to-day decisions regarding the health and well-being of the pooled trust beneficiaries.

NOTE: This list is not intended to be exhaustive. These are a few examples of the type of authority that must vest in the non-profit association.

E. Procedure for determining management control of the pooled trusts

Do not routinely question the relationship between the non-profit association and for-profit entities used by the pooled trust.

However, before excepting a pooled trust under section 1917(d)(4)(C), review the trust for any provisions that indicate the non-profit association has not retained sufficient authority over the pooled trust to meet the criteria in section 1917(d)(4)(C).

For example, a pooled trust may not meet the criteria in section 1917(d)(4)(C) if the trust includes a provision that allows the for-profit entity to determine whether to make discretionary disbursements from the trust.

Refer the pooled trust document to the regional office for evaluation if it appears that the non-profit organization may not have sufficient control over the management of the trust for the trust to be excepted under section 1917(d)(4)(C).