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TN 40 (01-09)

SI 01120.201 Trusts Established with the Assets of an Individual on or after 1/1/00

Citations:

Social Security Act as amended in 1999, Section 1613(e); 42 U.S.C. 1382b; P.L. 106-169, Section 205

Topic	Reference
Background – Trusts	SI 01120.201A
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A. Background

1. Legislative Enactment

On 12/14/99, the President signed into law the Foster Care Independence Act of 1999 (P.L. 106-169). Section 205 of this law provides, generally, that trusts established with the assets of an individual (or spouse) will be considered a resource for Supplemental Security Income (SSI) eligibility purposes. It also addresses when earnings or additions to trusts will be considered income. The legislation also provides **exceptions to the statutory rules in Section 1613(e) of the Act** for counting trusts as resources and income (see [SI 01120.203](#)). These provisions are effective for trusts established on or after 1/1/00.

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

2. 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 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. Definitions -- Trusts

1. Corpus or Principal

The **corpus or principal** of the trust is all property and other interests held by the trust, including accumulated earnings and any other additions, such as new deposits, to the trust after its establishment. However, do not consider earnings or additions to be included in the corpus in the month they are credited or otherwise transferred to the trust.

NOTE: Earnings or additions are not included in the corpus in the month that they are credited or transferred into the trust because they are considered under income counting rules in that month (see [SI 00810.000](#)).

2. Asset

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

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

3. Trust Income

For purposes of this section, **trust income** includes any earnings of, and additions to, a trust established by an individual:

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

4. Spouse

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

5. Legal Instrument or Device Similar to a Trust

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

- a grantor (see [SI 01120.200B.2.](#)) or individual who provides the assets to fund the legal instrument, device, or arrangement (see [SI 01120.201B.7.](#)).
- who transfers property (or whose property is transferred by another).
- to an individual or entity with fiduciary obligations (considered a trustee for purposes of this section).

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

6. Trust Established by a Will

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

7. Trust Established with the Assets of an Individual

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

NOTE: The grantor (see [SI 01120.200B.2.](#)) named in the trust document who provided the assets funding the trust and the individual whose actions established the trust may not be the same. The trust may name the individual (e.g. a parent or legal guardian) who physically took action to establish the trust rather than the individual who provided the trust assets. This distinction is important, especially in developing Medicaid trust exceptions in [SI 01120.203](#).

8. Foreclosure

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

9. Other Definitions

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

C. Policy – Certain Trusts Established on or After 1/1/2000

1. Effective Date

- The trust provisions of P.L. 106-169 apply to certain trusts **established on or after 1/1/00**.
- The trust provisions of P.L. 106-169 do not apply to trusts established with the assets of an individual prior to 1/1/00, regardless of the individual's filing date. Trusts established prior to 1/1/00 are treated under instructions in [SI 01120.200](#).
- A trust established with the assets of an individual (see [SI 01120.201B.7.](#)) prior to 1/1/00 but added to or augmented on or after 1/1/00 is still considered to be established prior to 1/1/00. (However, additions to such a trust may be considered a transfer of resources, see [SI 01150.100](#) ff.)

Example 1: Emily Lombardozi, age 67, has a settlement agreement as a result of an automobile accident in 1994 in which she was paralyzed. Under the agreement, she receives a lump-sum payment in March of each year. Since 1995, the payments have been paid into an irrevocable trust. The payments received in 3/00 and following are not considered to be establishment of a trust for purposes of these provisions. They are additions to a trust established prior to 1/1/00 and are evaluated under [SI 01120.200](#).

Example 2: Same situation as example 1 except that Ms. Lombardozi receives an inheritance of \$3,000 that she deposits into the trust. The trust is evaluated under the rules in [SI 01120.200](#), but the deposit of the inheritance is evaluated as a transfer of resources under [SI 01150.100](#) ff.

- The transfer of an individual's property to an existing trust is considered to be the establishment of a trust subject to the provisions of this section if:
 - the transfer occurs on or after 1/1/00; and
 - the corpus of the trust does not contain property transferred from the individual prior to 1/1/00.

Example: Robert Gates is a disabled child. His grandmother established an irrevocable \$2,000 trust, of which he is the beneficiary, in 12/97. Robert won a lawsuit in 2/00 and the money from the judgment (\$50,000) was placed in the trust his grandmother established. Since Robert transferred all of the money in the trust after 1/1/00, deposit of the judgment funds (\$50,000) is considered establishment of a trust on or after 1/1/00 for purposes of these provisions. However, the funds deposited by his grandmother are not subject to these provisions since they are funds of a third party and are subject to evaluation under [SI 01120.200](#).

- These provisions do not apply to trusts established **solely** with the assets of a third party, either before or after 1/1/00. (See [SI 01120.200](#) for development.) However, if at any point in the future the individual's assets are added to such a trust, the trust then becomes subject to development under [SI 01120.201-SI 01120.204](#).

2. Applicability

a. Trusts to Which This Provision Applies

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

(See [SI 01120.201B.2.](#) for a definition of an asset.)

b. Examples

- An individual who was the plaintiff in a medical malpractice lawsuit is the beneficiary of a trust. The trust states that the defendant doctor's insurance company established it so the settlement funds were never paid to the plaintiff directly. However, for SSI eligibility purposes, the trust was **established with the assets of the individual** because the trust contains assets of the individual (see [SI 01120.201B.2.](#)) which he or she did not receive because of action on behalf of, in the place of, at the direction of, or on the request of, the individual.
- Likewise, the same result would occur if a court had ordered the settlement to be placed in a trust, even if the individual was a child and whether State law did or did not require the settlement to be placed in a trust for the child.
- A disabled SSI recipient over age 18 receives child support which is assigned by court order directly into the trust. Since the child support is the SSI recipient's income, the recipient is the grantor of the trust and the trust is a resource unless it meets an exception in SSI 01120.203. If the trust meets an exception and is not a resource, the child support is income unless it is irrevocably assigned to the trust/trustee, per [SI 01120.201J.1.d.](#) In this example, the court ordered the child support to be paid directly into the trust, so we consider it to be irrevocably assigned to the trust/trustee.

c. Individual's Assets Form Only a Part of the Trust

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

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

d. Application of the Trust Provisions

These provisions apply to trusts without regard to:

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

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. No clause or requirement in the trust, no matter how specifically it applies to SSI or other Federal or State program (i.e., **exculpatory clause**), precludes a trust from being considered under the rules in this section. An exculpatory clause is one that attempts to exempt the trust from the applicability of these rules. For example, an

exculpatory clause would be one that states, “Section 1613(e) of the Social Security Act does not apply to this trust.” Such a statement has no effect as to whether these rules apply to the trust.

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

3. Income

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

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

(See [SI 01120.201J](#) for additional income instructions.)

D. Policy--Treatment Of Trusts

1. Revocable Trusts

a. General Rule Revocable Trusts

In the case of a revocable trust established with the assets of the individual, the entire corpus of the trust is a resource to the individual. However, certain exceptions may apply. (See [SI 01120.203A](#).)

NOTE: The exceptions in [SI 01120.203A](#) only apply to counting a trust under the statutory provisions of section 1613(e) of the Act. A trust that meets the definition of a resource is still countable and must be developed under [SI 01120.200](#).

b. Relationship to Transfer Penalty

Any disbursements from a trust that is a resource that are not made to, or for the benefit of, the individual ([SI 01120.201F.1](#).) are considered a transfer of resources. (See [SI 01150.100](#) ff. for transfer of resource provisions.)

c. Example

Willie Jones is a young adult with mental retardation. Mr. Jones had a revocable trust established after 1/1/00. All but \$5,000 of funds in the trust had been spent on Mr. Jones' behalf. His mother files for SSI for him and is told that he is not eligible because of the money in the trust. His mother takes \$4,500 of the money and makes a down payment on a new car that she says she will use to transport Mr. Jones. However, she registers the car in her own name. Even though his mother will use the car to transport Mr. Jones, the purchase of the car is a transfer of resources since the car does not belong to him. (See [SI 01120.201F.1](#) for policy on purchases for the benefit of the individual and titling of property.)

2. Irrevocable Trusts

a. General Rule – Irrevocable Trusts

In determining whether an irrevocable trust established with the assets of an individual is a resource, we must consider how payments from the trust can be made. If payments from the trust could be made to or for the benefit of the individual or individual's spouse ([SI 01120.201F.1.](#)), the portion of the trust from which payment could be made that is attributable to the individual is a resource. However, certain exceptions may apply (see [SI 01120.203](#)).

b. Circumstance under Which Payment Can or Cannot be Made

In determining whether payments can or cannot be made from a trust to or for the benefit of an individual ([SI 01120.201F.1.](#)), take into consideration any restrictions on payments. Restrictions may include use restrictions, exculpatory clauses, or limits on the trustee's discretion included in the trust. However, if a payment can be made to or for the benefit of the individual under **any** circumstance, no matter how unlikely or distant in the future, the general rule in [SI 01120.201D.2.a.](#) applies (i.e., the portion of the trust that is attributable to the individual is a resource, provided no exception from [SI 01120.203](#) applies).

c. Examples

- An irrevocable trust provides that the trustee can disburse \$2,000 to, or for the benefit of, the individual out of a \$20,000 trust. Only \$2,000 is considered to be a resource under [SI 01120.201D.2.a.](#) The other \$18,000 is considered to be an amount which cannot, under any circumstances, be paid to the individual and may be subject to the transfer of resources rule in [SI 01120.201E](#) and [SI 01150.100](#) ff.
- If a trust contains \$50,000 that the trustee can pay to the beneficiary only in the event that he or she needs a heart transplant or on his/her 100th birthday, the entire \$50,000 is considered to be a payment which could be made to the individual under some circumstance and is a resource.
- An individual establishes an irrevocable trust with \$10,000 of his assets. His parents contribute another \$10,000 to the trust. The trust only permits distributions to, or for the benefit of, the individual from the portion of the trust contributed by his parents. The trust is not subject to the rules of this section. The portion of the trust contributed by the individual is subject to evaluation under the transfer of resources rules in [SI 01150.100](#) ff. (see also [SI 01120.201E](#)). The portion of the trust contributed by his parents is subject to evaluation under [SI 01120.200](#).

3. Types of Payments from the Trust

a. Payments to an Individual

Payments are considered to be made **to the individual** when any amount from the trust, including amounts from the corpus or income produced by the trust, are paid directly to the individual or someone acting on his/her behalf, e.g., guardian or legal representative.

b. Payments on Behalf of/for the Benefit of an Individual

See [SI 01120.201F.1.](#) Also see [SI 01120.201I](#) for more instructions on disbursements from trusts.

4. Placing Excluded Resources in a Trust

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

5. Trust Rules Versus Transfer Rules for Assets in a Trust

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

E. Policy—Relationship To Transfer Penalty (Irrevocable Trust)

1. Trust Established with Individual's Resources

a. Foreclosure of Payment

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

The date of the transfer is considered to be:

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

In determining the value of the transfer, do not subtract the value of any disbursements made after the date determined above. Additions to the foreclosed portion of the trust after the above date may be new transfers that must be developed separately.

(See [SI 01150.100](#) ff. for instructions related to transfers of resources.)

b. Payment to or for the Benefit of Another

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

c. Examples

• Example 1

Millie Russell is an adult SSI recipient. Upon the death of her mother, Ms. Russell receives the proceeds of a life insurance policy in the amount of \$30,000. She uses the proceeds to establish an irrevocable trust solely to pay for the college expenses of her younger sister, in accordance with her mother's wishes. Receipt of the insurance proceeds is income to Ms. Russell. Establishment of the trust is a transfer of resources by Ms. Russell since payment to or for her own behalf is foreclosed by

terms of the trust. Even though establishing the trust was her mother's wish, she was not legally obligated to do so. Her mother could have established a trust in her will or named the younger sister as beneficiary of the insurance policy.

- **Example 2**

Same scenario as in Example 1 except that Ms. Russell establishes an irrevocable trust for the benefit of her sister and herself. The trust is a resource to Ms. Russell and makes her ineligible. The trust makes a \$5,000 payment to State College on behalf of her sister for tuition. The \$5,000 payment is a transfer of resources for Ms. Russell. Although counting the trust as a resource would make her ineligible, if the trust principal was spent down to the point where it would allow resource eligibility, we still have to consider the tuition payments or other payments to or on behalf of her sister made within the 36-month transfer look-back period. (See [SI 01150.100](#) ff. for more information on the transfer penalty.)

2. Trust Established with Individual's Non-Resource Assets

a. What Is a Non-Resource Asset?

A **non-resource asset** is an asset that meets the definition in [SI 01120.201B.2.](#), but that does not meet the definition of a resource ([SI 01110.100B.1.](#) and [SI 01110.115](#)).

b. Transfer Penalty

When all or a portion of the corpus of a trust established by an individual or spouse with the individual's or spouse's non-resource assets is considered to be a resource under the trust provisions of P.L. 106-169, the transfer of resources penalty may apply in the following circumstances:

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

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

(See [SI 01150.100](#) ff. for instructions related to transfers of resources.)

NOTE: If a trust established with the individual's non-resource assets is not a resource to the individual, payments to or for the benefit of another person or foreclosure of payment to the individual is not subject to the transfer of resources penalty because the trust was not a resource. For example, an individual has non-resource assets of \$10,000 that she places into an irrevocable trust for the benefit of her daughter. The trust is not a resource to the individual because nothing can be paid to or for her benefit. It is also not a transfer of resources subject to the penalty provision since the trust is not a resource and the trust was established with non-resource assets. Likewise, payments from the trust to or for the benefit of the daughter are not transfers of resources.

F. Policy—For The Benefit Of/On Behalf Of/For The Sole Benefit Of An Individual

1. Trust Established for the Benefit of/on Behalf of an Individual

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

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

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

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

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

2. Trust Established for the Sole Benefit of an Individual

Consider a trust established **for the sole benefit of** an individual if the trust benefits no one but that individual, whether at the time the trust is established or at any time for the remainder of the individual's life. However, the trust may provide for reasonable compensation for a trustee(s) to manage the trust, as well as reasonable costs associated with investment, legal or other services rendered on behalf of the individual with regard to the trust. In defining what is reasonable compensation, consider the time and effort involved in providing the services involved, as well as the prevailing rate of compensation for similar services considering the size and complexity of the trust.

NOTE: This should not routinely be questioned unless compensation is being provided to a family member or the adjudicator has some other reason to question reasonableness of the compensation.

Do not consider a trust that provides for the trust corpus or income to be paid to or for a beneficiary other than the SSI applicant/recipient to be established for the sole benefit of the individual. However, payments to a third party that result in the receipt of goods or services by the individual are considered for the sole benefit of the individual. The following disbursements or distributions are also permitted:

- reimbursement to the State, after the individual's death, for medical expenses paid on the individual's behalf (see [SI 01120.203B.1.f.](#) and [SI 01120.203B.2.g.](#));
- upon death of the beneficiary, retention of a certain percentage of the funds in a “pooled trust” established through the actions of a nonprofit association in accordance with the trust agreement (see [SI 01120.203B.2.](#)); and
- transfer of the remaining trust corpus to a residual trust beneficiary after the individual's death.

G. Policy—Legal Instrument Or Device Similar To A Trust

1. What Is a Legal Instrument or Device?

Consider under trust rules a legal instrument, device, or arrangement, which may not be called a trust under State law, but which is similar to a trust. We will consider such an instrument, device or arrangement as a trust if:

- it involves a grantor (see [SI 01120.200B.2.](#)) who transfers property (or whose property is

transferred by another);

- the property is transferred to an individual or entity with fiduciary obligations (considered a trustee for purposes of this section); and
- the grantor transfers the assets to be held, managed or administered by the individual or entity for the benefit of the grantor or others.

However, we will not consider these arrangements under trust rules if they would be counted as resources under regular SSI resource-counting rules.

2. Examples of a Legal Instrument or Device

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

- escrow accounts;
- investment accounts;
- conservatorship accounts ([SI 01140.215](#));
- pension funds ([SI 01120.210](#));
- annuities;
- certain Uniform Transfers to Minors Act (UTMA) accounts; and
- other similar devices managed by an individual or entity with fiduciary obligations.

H. Policy--Burial Trusts

It is important to determine whether a burial trust was established with the individual's funds or funds that have been irrevocably paid to the funeral director. Since the trust provisions of P.L. 106-169 apply without regard to the purpose for which the trust was established, burial trusts that may be irrevocable under State law may be countable resources for SSI resource-counting purposes if established with the individual's assets.

1. Burial Trusts to Which These Provisions Do Not Apply

a. Irrevocable Burial Contract

These provisions do not apply to a burial trust where:

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

b. Revocable Burial Contract

These provisions do not apply to a burial trust where:

- an individual revocably contracts with a provider of funeral goods and services; and

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

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

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

2. Burial Trusts to Which These Provisions Apply

The provisions of this section apply to a trust if:

- an individual does not enter into a pre-need funeral contract with a funeral provider, but establishes a burial trust with his/her own assets; or
- an individual enters into an irrevocable funeral contract with a funeral provider, but establishes a revocable trust to fund the contract; or
- an individual enters into a revocable funeral contract with a funeral provider, even if the funeral provider places the money in a trust (except as provided in [SI 01120.201H.1.b](#)).

3. Applicable Exclusions

If application of this provision results in the counting of a burial trust as a resource, the burial space and burial funds exclusions may apply.

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

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

I. Policy--Disbursements From Trusts

1. Trust Principal Is Not a Resource

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

a. Disbursements 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](#)).

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 in Receipt of In-kind Support and Maintenance

Food or shelter received as a result of disbursements from a trust by the trustee to a third party is income in the form of in-kind support (ISM) and maintenance and is 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

Disbursements from the trust that are not cash to the individual or are third party payments that do not result in the receipt of support and maintenance are not income. Such disbursements may take the form of 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 it would become a totally or partially excluded non-liquid resource if retained into the month after the month of receipt (see [SI 00815.550](#)).

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. Disbursements for Credit Card Bills

If a trust pays a credit card bill for the trust beneficiary, whether the individual receives income depends on what was on the bill. If the trust pays for food or shelter items on the bill, the individual will generally be charged with in-kind support and maintenance up to the PMV. If the bill includes non-food, non-shelter items, the individual usually does not receive income as the result of the payment unless the item received would not be a totally or partially excluded non-liquid resource the following month.

For example, if the credit card bill includes restaurant charges, payment of those charges results in ISM. If the bill also includes purchase of clothing, payment for the clothing is not income.

e. Disbursements for Gift Cards and Gift Certificates

Gift cards and gift certificates are considered cash equivalents. If a gift card/certificate can be used to buy food or shelter (e.g. restaurant, grocery store or VISA gift card), it is unearned income in the month of receipt. Any unspent balance on the gift card/certificate is a resource beginning the month after the month of receipt. If the store does not sell food or shelter items (e.g., bookstore or electronics store), but the card does not have a legally enforceable prohibition on the individual selling the card for cash, then it is still unearned income (see [SI 00830.522](#)).

2. Trust Principal Is a Resource

a. Disbursements to or for the Benefit of the Individual

If the trust principal (or a portion of the trust principal) is a resource to the individual, disbursements from the trust principal (or that portion of the principal) to or for the benefit of the individual are not income, but conversion of a resource. However, trust earnings, e.g., interest, are income. (See [SI 01110.100](#) for instructions pertaining to conversion of resources from one form to another and [SI 01120.201J.2.](#) and [SI 01120.201J.3.](#) for treatment of earnings/additions when the trust principal is a resource.)

b. Disbursements Not to or for the Benefit of the Individual

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

- a disbursement is made other than to or for the benefit of the individual, such a disbursement is considered to be a transfer of resources (see [SI 01150.100](#) ff.) as of the date of the payment; or
- no disbursement could be made to the individual under any circumstances, foreclosure of payment is considered to be a transfer of resources as of the date of the foreclosure.

(See [SI 01120.201F.1.](#) for a definition of “to or for the benefit of.”)

3. Mixed Trust—Part of Trust Is a Resource and Part Is Not a Resource

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

J. Policy--Earnings/Additions To Trusts

1. Trust Principal Is Not a Resource

a. Trust Earnings

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.

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.

b. Additions to Principal

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

c. Exceptions

Certain payments are not 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. Important examples of non-assignable payments include:

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

d. Assignment of Income

A legally assignable payment (see [SI 01120.201J.1.c.](#) for what is not assignable), that is assigned to a trust/trustee, is income for SSI purposes **unless** the assignment is irrevocable. If the assignment is revocable, the payment is income to the individual legally entitled to receive it.

2. Trust Principal Is a Resource--Revocable Trust

a. Trust Earnings

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

- the trust was established with the assets of an individual;
- the individual is a beneficiary of the trust; and
- the trust is a resource under this section (see [SI 00830.500](#) for exclusion of interest income).

b. Additions to Principal--Revocable Trust

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

- the trust was established with the assets of an individual,
- the individual is a beneficiary of the trust; and
- the trust is a resource under this section.

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

3. Trust Principal Is a Resource--Irrevocable Trust

a. Trust Earnings

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

- the trust was established with the assets of an individual;

- the individual is a beneficiary of the trust;
- the trust is a resource under this section; and
- circumstances exist under which payment from the trust earnings could be made to or for the benefit of the individual.

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

b. Additions to Principal--Irrevocable Trust

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

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

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

4. Individual's Assets Form Only a Part of the Trust

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

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

In determining income to the trust (see [SI 01120.201C.3.](#)), we must prorate the income in proportion to the percentage of funds placed in the trust by Mr. Smith. Since this is an irrevocable trust, we will count 1.96% (\$1,500/\$76,500) of the trust earnings as income and not count 98.04% (\$75,000/\$76,500) of the earnings. Disbursements from, or additions to, the trust may require recalculation of the percentages.

K. References

- Trusts – General, Including Trusts Established Prior to 1/1/00, Trusts Established with the Assets of Third Parties and Trusts Not Subject to Section 1613(e) of the Social Security Act, [SI 01120.200](#)
- Transfer of Resources for Less Than Fair Market Value, [SI 01150.100](#) ff
- Development and Documentation of Trusts Established on or after 1/1/00, [SI 01120.202](#)

- Exceptions to Counting Trusts Established on or after 1/1/00, [SI 01120.203](#)
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