

Update to the Social Security POMS

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SI 01120.200 pgs 1-40

SI 01120.201 pgs 41- 75

SI 01120.203 pgs 76-106

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Found at:
SpecialNeedsLawyers.com/blog/



SI 01120.200 — Trusts general

SI 01120.201 — Self-settled

SI 01120.203 — Exceptions to
general policy that all self-
settled trusts count

.200 pages 4 and 5

5. Indian Gaming Regulatory Act (IGRA) trust⁸

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

20. Trust earnings (income)

Trust earnings~~or~~ (also called **trust income**) are amounts earned by the trust principal. They may take such forms as interest, dividends, royalties, and rents. These amounts are unearned income to any person legally able to use them for personal support and maintenance. If the trust beneficiary has no right to receive or demand the earnings, trust income is not countable to him or her.⁹

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, candy, and sundries. Although titled as trust accounts, they are not. For example, the individual might legally own the money in the account, which the institution is merely holding while a social services agency holds the money for him or her the individual and making disbursements on his or her behalf disburses it as necessary. (See SI 01120.020, SI 00810.120 and GN 00603.020 for the individual’s benefit. For more information on transactions involving agents.) see:

3. **Trustee**

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

NOTE: We are not responsible for developing or reporting claims or allegations of trustee misuse of trust funds. We will get involved only if the individual or entity allegedly misusing the funds is also the representative payee. For misuse of SSI funds, see GN 00604.001.¹⁵

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3. Receipt of income from a home purchase

Because the purchase of a home by a trust for the trust beneficiary establishes an equitable ownership interest for the trust beneficiary, the purchase results in the receipt of ISM, in the form of shelter, in the month of purchase¹⁸ ~~that is income in the form of ISM (see SI 00835.400).~~ This ISM is valued at no more than the presumed maximum value (PMV). For ISM to one person, see SI 00835.400.

Even if the trust beneficiary has an ownership interest in the home that he or she resides in, and is not receiving ISM in the form of rent-free shelter (because shelter is rent-free when no household member has any ownership interest in, or rental liability for, the residence, see SI 00835.370B.1.). The purchase of the home or payment of the monthly mortgage by the trust is a disbursement from the trust to a third party that results in the receipt of ISM¹⁹ in the form of shelter. (see SI 01120.200E.1.b.) in this section).

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c. *Additional household expenses*

If the trust pays for other shelter or household operating expenses, these payments are income in the form of ISM in the month of the trust beneficiary's use. For computations of ISM from outside the household, see [SI 00835.350](#). For countable shelter expenses, see [SI 00835.465D](#).

If the trust pays for repairs, maintenance, improvements, or renovations to the home, ~~e.g., such as~~ renovations to the bathroom, to make it handicapped accessible ~~or~~ installation of a wheelchair ramp or assistive devices, or replacement of a roof, the trust beneficiary does not receive income. Disbursements from the trust for improvements increase the value of the resource and, unlike household operating expenses, do not provide ISM. ~~(See~~ For computations of ISM from outside the household, see SI 01120.200E.1.c.) in this section.²⁰

b. Which instructions apply when determining the resource status and income treatment of a trust

Depending on the trust's date of establishment and whose funds the trust principal contains, follow these instructions to determine the resource status and income treatment of the trust:

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

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Post Eligibility changes
Change in policy affects trust
90 day amendment periods

.200 pages 30-34

Trust review process

.200 pages 35-39

Lots of Examples

F. Policy on trusts and/or payments for the benefit of, on behalf of, or for the sole benefit of an individual¹⁴

1. General rule regarding trusts 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.

Do not consider a trust that allows for the trust corpus or income to be paid to, or for the benefit of, a beneficiary other than the SSI applicant or recipient as a trust established for the sole benefit of the applicant or recipient, except as provided in SI 01120.201F.3.and SI 01120.201F.4. in this section.

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2. Trust established for the benefit of or on behalf of the individual

Consider a trust established **for the benefit** of the individual, and consider payments to be **on behalf of**, or **to** or **for the benefit of** the individual, if the trustee makes payments of any sort from the corpus or income of the trust to another person or entity such that the individual derives some benefit from the payment.

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

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

If the trustee uses funds from a trust that is a resource to purchase durable items, such as a car or a house, the deed or title must show **the individual (or the trust) as the owner of the item** in the percentage that the funds represent the value of the item. Failure to do so may constitute evidence of a transfer of resources.

3. Explanation of the sole benefit rule for third party payments

Consider the following disbursements or distributions to be for the sole benefit of the trust beneficiary:

a. Payments to a third party that result in the receipt of goods or services by the trust beneficiary

- ~~• Payment of third party travel expenses which are necessary in order for the trust beneficiary to obtain medical treatment; and~~
- The key to evaluating this provision is that, when the trust makes a payment to a third party for goods or services, the goods or services must be for the primary benefit of the trust beneficiary¹⁵. You should not read this so strictly as to prevent any collateral benefit to anyone else. For example, if the trust buys a house for the beneficiary to live in, that does not mean that no one else can live there, or if the trust purchases a television, that no one else can watch it. On the other hand, it would violate the sole benefit rule if the trust purchased a car for the beneficiary's grandson to take her to her doctor's appointments twice a month, but he was also driving it to work every day.
- Purchased goods that require registration or titling, for example a car or real property, must be titled or registered in the name of the beneficiary or the trust(ee) unless State law does not permit it. For example, State law may not allow a car to be registered to the beneficiary, or may require a co-owner, if the beneficiary is a minor or an individual without a valid

driver's license. Some State Medicaid agencies may permit a car to be titled in a third party's name if the trustee holds a lien on the car. A lien guarantees that the trust receives the value of the car if it is sold and prevents the purchase from being considered a transfer of resources.

NOTE: Even if a person or entity other than the beneficiary or the trust(ee) is listed on the title of the purchased good, it must still be used for the sole benefit of the trust beneficiary.

- A third party service provider can be a family member, a non-family member, or a professional services company. The policy is the same for all.
- Payment for companion services can be a valid expense. For example, perhaps an Alzheimer's patient cannot be left alone and requires a sitter, or the beneficiary needs someone to drive her to the store and assist her with grocery shopping. Family members may normally do some of these things without compensation, but that does not prohibit the trust from paying for these services. Additionally, some incidental expenses for the companion can be payable. For example, if the trust pays a companion to take the beneficiary to a museum, the trust can pay for the admission of the companion to the museum, as this cost is part of providing the service. For payment of travel expenses for a companion, see SI 01120.201F.3.b. in this section.
- You should not request evidence of medical training or certification for family members who receive payment to provide care.
- Do not request income tax information or similar evidence from a service provider to establish a business relationship. If a family member service provider's income is relevant to the beneficiary's SSI eligibility or payment amount (for example, his or her income is part of the beneficiary's deeming computation as a deemor or ineligible child), request normal evidence of wages per SI 00820.130.

NOTE: You should not routinely question the reasonableness of a service provider's compensation. However, if there is a reason to question the reasonableness of the compensation, you should consider the time and effort involved in providing the services as well as the prevailing rate of compensation for similar services in the geographic area.

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b. Payment of third party travel expenses to accompany the trust beneficiary and provide services or assistance that is necessary due to the trust beneficiary's medical condition, disability, or age

Apply the following instructions in evaluating whether travel expenses are allowable and do not violate the sole-benefit rule:

- Travel expenses are transportation, lodging, and food¹⁶.
- Providing services or assistance necessary due to the trust beneficiary's age means that the beneficiary is a minor and cannot travel unaccompanied.
- Absent evidence to the contrary, accept a statement from the trustee that the service or assistance provided is necessary to permit the trust beneficiary to travel. Do not request a physician statement concerning medical necessity. You should not request evidence of medical training or certification for the person accompanying the trust beneficiary.
- Use a reasonableness test in evaluating the number of people the trust is paying to accompany the beneficiary. For example, it is reasonable for a trust to pay for other individuals, such as parents or caretakers, to accompany a disabled minor child on vacation to provide supervision and assistance. Travel without this support would not be possible. However, it would violate the sole benefit rule if the trust paid for other individuals who are not providing services or assistance necessary for the beneficiary to travel.

NOTE: In this example, the fact that the parents or caretakers cannot afford to pay for their other children's trip, or cannot leave them at home, is not a consideration relevant to the sole-benefit requirement.

c. Payment of third party travel expenses to visit a trust beneficiary

The following travel expenses **to ensure the safety or medical well-being of the trust beneficiary** are allowable and do not violate the sole-benefit rule:

- Travel for a service provider to oversee the trust beneficiary's living arrangements when the beneficiary resides in an institution, nursing home, other long-term care facility (for example, group homes and assisted living facilities), or other supported living ~~arrangement in which a non-family member or entity is being paid to provide or oversee the individual's living arrangement.~~ The travel must be for the purpose of ensuring the safety and/or medical well-being of the individual¹⁷ arrangements.

NOTE: Travel for a trustee, trust advisor named in the trust, or successor to exercise his or her fiduciary duties or to ensure the well-being of the beneficiary when the beneficiary does not reside in an institution.

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a. Disbursements that are income

Cash paid directly from the trust to the individual is unearned income. We treat disbursements from the trust to the trust beneficiary's personal debit card the same as cash disbursements. We count the disbursement as unearned income for the month the disbursement is received or added to the debit card.

If disbursements from the trust to third parties result in the beneficiary's receiving non-cash items (other than food or shelter), the non-cash items are in-kind income if the items would not be a partially or totally excluded non-liquid resource if retained into the month after the month of receipt. For instructions on receipt of certain non-cash items, see SI 00815.550.

For example, if a trust buys a car for the beneficiary and the beneficiary's spouse already has a car that is excluded for SSI purposes, the second car is income in the month of receipt, since it would not be an excluded resource in the following month.

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 the list of itemized charges on the bill. If the trust pays for food or shelter items on the bill, we will generally charge the individual with ISM for those items up to the PMV. If the bill includes non-food, non-shelter items, the individual does not receive income as a result of the payment, unless the items received would not be totally or partially excluded non-liquid resources the following month.

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

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f. Disbursements for gift cards and gift certificates

Consider gift cards and gift certificates purchased by the trust for the individual's use to be cash equivalents. If the individual can use a gift card or certificate to buy food or shelter (such as a restaurant, grocery store, or VISA gift card), it is unearned income in the month of receipt. Any unspent balance on the gift card or certificate is a resource beginning the month after the month of receipt. If the store does not sell food or shelter items (such as a flower shop or electronics store), but the card does not have a legally enforceable prohibition on the individual's selling the card for cash, then it is still unearned income. For general policy on gift cards and gift certificates, see [SI 00830.522](#).

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h. Disbursements transferred into an ABLE account

Funds transferred from the trust into an account established by the trust beneficiary under the ABLE Act are excluded from income to the trust beneficiary. For treatment of deposits into an ABLE account, see SI 01130.740.²¹

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4. Disabled

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

10. State Medicaid reimbursement requirement

To qualify for the special needs trust exception, the trust must contain specific language that provides that, upon the death of the individual, the State(s) will receive all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s). The State(s) must be listed as the first payee(s) and have priority over payment of other debts and administrative expenses, except as listed in [SI 01120.203D.1](#) in this section.

The trust must provide payback for any State(s) that may have provided medical assistance under the State Medicaid plan(s) and not be limited to any particular State(s). Medicaid payback ~~may~~ also ~~not~~cannot be limited to any particular period of time, ~~i.e.:~~ for example, payback cannot be limited to the period after establishment of the trust. If the trust does not have sufficient funds upon the beneficiary's death to reimburse in full each State that provided medical assistance, the trust may reimburse the States on a pro-rata or proportional basis.

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6....

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

Thank you.

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