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**A Brief History of the Evolution of Supplemental
Security Income Trust Policy Through Instructions
1974 - 2017**

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Trust Policy Through Instructions 1974 -2017

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I. Introduction

The rules governing Federal programs generally fit within a three-tier scheme - statute, regulations and sub-regulatory instructions – with each tier having it’s own requirements regarding how those rules may be promulgated and the appropriate standard of review. Most Federal programs do not have a constitutional mandate and thus are statutory creations, having been approved by both the Congress and the President.

The Supplemental Security Income (SSI) program is a cash assistance program funded by the Federal Government and administered by the Social Security Administration (SSA). The program is authorized by Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. Beginning in January 1974, SSI replaced the Federal/State matching grant program of adult assistance to the aged, blind, and disabled.

Who is Eligible for SSI?

Anyone who is:

- aged (age 65 or older);
- blind; or
- disabled.

And, who:

- has limited income; and
- has limited resources; and
- is a U.S. citizen or national, or in one of certain categories of aliens; and
- is a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands; and
- is not absent from the country for a full calendar month or for 30 consecutive days or more; and
- is not confined to an institution (such as a hospital or prison) at the government's expense; and
- applies for any other cash benefits or payments for which he or she may be eligible, (for example, pensions, Social Security benefits); and
- gives SSA permission to contact any financial institution and request any financial records about you; and
- files an application; and
- meets certain other requirements.

Whether a person established or is a beneficiary of a trust is considered in determining SSI eligibility. A trust can affect an individual’s eligibility for SSI benefits in

a number of ways. First, the trust may be considered as a resource that counts toward the \$2,000 resource limit for an individual. In any month the value of an individual's resources exceed \$2,000, the individual is ineligible for SSI. Second, contributions to or distributions from a trust may be counted as income, which can reduce an individual's benefit amount or make the individual ineligible for benefits in a month. Third, establishing a trust may be considered to be a transfer of resources that invokes a penalty period during which an individual is ineligible for SSI benefits.

Following is a history of the evolution of SSI trust policy through a brief examination of the instructions (statutory, regulatory and sub-regulatory) governing the issue. This examination is in no sense comprehensive, but provides an overview of the basis for policy issuances and the evolution of the policy over time.

II. Trust Policy Prior to January 1, 2000

A. Statutory Law - The Social Security Act

Supplemental Security Income. Prior to January 1, 2000, there was no statutory provision regarding treatment of trusts in the SSI program. Trust policy was governed by the general regulatory provisions governing resources and income. It is also notable that the Social Security Act (the Act) does not define what constitutes a resource, but provides for certain exclusions that determine what should not be considered in determining an individual's countable resources. Likewise, the Act does not define what constitutes income. However, in addition to providing a long list of exclusions from income, the Act does define the differences between earned and unearned income.

Under Section 1612(a)(1) [42 U.S.C. 1382a], earned income means only:

(A) wages as determined under section 203(f)(5)(C) but without the application of section 210(j)(3) (and, in the case of cash remuneration paid for service as a member of a uniformed service (other than payments described in paragraph (2)(H) of this subsection or subsection (b)(20)), without regard to the limitations contained in section 209(d));

(B) net earnings from self-employment, as defined in section 211 (without the application of the second and third sentences following subsection (a)(11), the last paragraph of subsection (a), and section 210(j)(3)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) remuneration received for services performed in a sheltered workshop or work activities center; and

(D) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered.

Under Section 1612(a)(2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1611 shall be reduced by 33 1/3 percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph, (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief and Emergency Assistance Act, and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe;

(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(C) prizes and awards;

(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances;

(F) rents, dividends, interest, and royalties not described in paragraph (1)(E);

(G) any earnings of, and additions to, the corpus of a trust established by an individual (within the meaning of section 1613(e)), of which the individual is a beneficiary, to which section 1613(e) applies, and, in the case of an irrevocable trust, with respect to which circumstances exist under which a payment from the earnings or additions could be made to or for the benefit of the individual; [**NOTE:** added effective 01/01/2000] and

(H) payments to or on behalf of a member of a uniformed service for housing of the member (and his or her dependents, if any) on a facility of a uniformed service, including payments provided under section 403 of title 37, United States Code, for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 of such Code, or any related provision of law, and any such payments shall be treated as support and maintenance in kind subject to subparagraph (A) of this paragraph.

Medicaid

1. Federal Law Prior to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) (Medicaid –only)

Prior to 1985, there were no provisions in Federal statutory law or regulations that directly addressed the use of trusts in determining Medicaid (or SSI) eligibility.

Section 9506 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), effective with respect to medical assistance furnished after May 1986, added Section 1902(k) of the Social Security Act, which placed restrictions upon voluntary transfers of assets to trusts for the purpose of enabling persons to qualify for Medicaid. It called these trusts "Medicaid qualifying trusts" or "MQTs."

Under section 1902(k) of the Act, which was repealed effective October 1, 1993, for trusts established on or after August 11, 1993, an MQT is a trust or similar legal device established (other than by a will) by an individual (or spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The amount from the

MQT deemed available to the individual is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the individual by the trustee.

The Committee on Energy and Commerce strongly stated its position on the use of these trusts:

“It has come to the attention of the Committee that some attorneys and financial advisors have suggested to their affluent clients that, as a matter of estate planning, they consider placing most of their assets into a specially designed irrevocable trust.”

* * * * *

“The Committee feels compelled to state the obvious. Medicaid is, and always has been, a program to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves. When affluent individuals use Medicaid qualifying trusts and similar ‘techniques’ to qualify for the program, they are diverting scarce Federal and State resources from low-income elderly and disabled individuals, and poor women and children. This is unacceptable to the Committee.” (Committee Report, Committee on Energy and Commerce, H.R. 3101, page 71)

The Committee sought to prevent individuals and their spouses from transferring their own assets into trusts so that they could qualify for Medicaid. It indicated that it did not intend to disapprove of trusts set up solely for disabled children when those trusts were established by others and could not benefit the grantor. This situation would apply, for example, if grandparents who were under no obligation to provide support for the child established trusts to furnish additional benefits for their disabled relative.

The congressional purpose for prohibiting Medicaid qualifying trusts was the same as that behind banning transfers without fair consideration. The Congress sought to prevent wealthy individuals, otherwise ineligible for Medicaid benefits, from making themselves eligible by creating trusts that preserve assets for their heirs.

The Medicaid law dealt with trusts created by an individual or the individual’s spouse (other than by will) under which the individual was the beneficiary of all or part of the trust payments:

“...a ‘medicaid qualifying trust’ is a trust, or similar legal device, established (other than by will) by an individual (or an individual’s spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.” (Section 1902(k)(2) of the Act)

The law provided that for purposes of Medicaid eligibility the amount deemed available to the beneficiary from a Medicaid qualifying trust would be the maximum amount of payments that may be permitted under the terms of the trust, assuming the full exercise of discretion by the trustee (without regard to the actual distributions):

“In the case of a Medicaid qualifying trust...the amounts from the trust deemed available to a grantor...is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor.” (Section 1902(k)(1) of the Act)

2. Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Medicaid-only)

In response to perceived abuses in the use of trusts, in particular by elderly individuals and financial planners to obtain long term care under the Medicaid program, the Administration proposed to close the loophole that allowed recipients with certain trusts to be Medicaid eligible in the Fiscal Year (FY) 1993 Budget Bill (H.R. 2264). After extensive deliberations, the Congress repealed Section 1902(k) and provided in section 13611 of OBRA '93 that individuals would generally be unable to continue to use trusts to shield their assets and income in order to qualify for Medicaid, even when they are established by a third party, such as a court. However, section 13611(b) of OBRA '93 added two exceptions to such a rule for disabled individuals. The first exception applied to trusts established by a parent, grandparent, legal guardian or a court and which provide that upon the death of the individual the State would receive from any remaining trust assets the amount of the medical assistance payments it made on behalf of the recipient.

“(d)(4) This subsection shall not apply any the following trusts:

“(A) A trust containing assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3)) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.”

A second exception was granted if the trust was established and managed by a nonprofit association:

“(d)(4)(C) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3)) that meets the following conditions:

“(i) The trust is established and managed by a non-profit association.

“(ii) A separate account is maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust pools these accounts.

“(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled as defined in section 1614(a)(3) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

“(iv) To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title.”

The differences in the requirements of Sections 1917(d)(4)(A) and 1917(d)(4)(C) lead to decades of debate over whether the differences were intentional or drafting errors and the proper interpretation of the law.

Requirement	1917(d)(4)(A)	1917(d)(4)(C)
Age	Under age 65.	No restriction.
Disabled	Yes, as defined by SSACT.	Yes, as defined by SSACT.
Established by...	a parent, grandparent, legal guardian of the individual, or a court.	the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.
Trust management	No provision.	The trust is established and managed by a non-profit association.
Medicaid payback	... the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.	To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title.

While no official legislative history remains, it is alleged that, as initially drafted, there was only one exception with the same rules applicable to individual and pooled trusts. Under the ‘one rule’, individuals were supposedly permitted to establish their own

individual trusts and individuals age 65 and over were not permitted to establish pooled trusts.

Problems allegedly arose when advocates for pooled trusts lobbied for a different payback provision applicable to pooled trusts, as apparently it was a long-term common practice for pooled trusts to retain up to 50 percent of the trust corpus upon a beneficiary's death to cover expenses and provide other services. To accommodate the separate pooled trust payback rules, the provisions were split. Supposedly, in this redrafting effort, the word 'individual' was accidentally dropped from Section 1917(d)(4)(A) and the 'under age 65' restriction was accidentally dropped from Section 1917(d)(4)(C).

It is of interest to note that after being informed of the 'drafter's errors,' Congress took no action to revise or correct the alleged errors for 23 years, despite continual lobbying, when they added the word 'individual' to Section 1917(d)(4)(A) in 2016 through Section 5007 of the 21st Century Cures Act (P.L.114-255). Congress had ample opportunity to make these revisions in 1999, but failed to do so, when the Medicaid trust rules were made applicable to the SSI program under the Foster Care Independence Act of 1999 (P.L. 106-169) and in 2005 when Medicaid reimbursement rules were tightened up under the Deficit Reduction Act (DRA) of 2005 (P.L. 109-171). Congress has still not moved to restrict eligibility for the pooled trust exception under Section 1917(d)(4)(C) for individuals over age 65. This is unusual, especially in light of the other changes made to restrict eligibility for Medicaid long-term care under the DRA. So while the issue is now moot, it remained a point of contention for over two decades.

B. Code of Federal Regulations

Social Security Administration regulations affecting the SSI program are found in Section 20 of the Code of Federal Regulations (CFR), Chapter III (Social Security Administration). Part 416 of Section 20 contains the rules for the SSI program. Subpart K and Subpart L contain the rules related to treatment of Income and Resources, respectively.

The Center for Medicare and Medicaid Services (CMS) has not issued regulations dealing with trusts since passage of the Title XIX statutory provisions in 1993. CMS currently does not intend to promulgate regulations.

There were not then, and are not now, any specific regulations that deal with trusts in the SSI program. Treatment of trusts for resource and income purposes followed the general regulatory rules for resources and income. However, SSA does plan on issuing specific regulations on trusts in the future.

Resources. Prior to 2000, whether a trust was a resource for SSI depended on whether it met the regulatory definition of a resource found at 20 CFR 416.1201.

§ 416.1201. Resources; general.

(a) *Resources; defined.* For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

(1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

Rules governing resource determinations are found at 20 CFR 416.1207:

§ 416.1207. Resources determinations.

(a) *General.* Resources determinations are made as of the first moment of the month. A resource determination is based on what assets an individual has, what their values are, and whether or not they are excluded as of the first moment of the month.

(b) *Increase in value of resources.* If, during a month, a resource increases in value or an individual acquires an additional resource or replaces an excluded resource with one that is not excluded, the increase in the value of the resources is counted as of the first moment of the next month

(c) *Decrease in value of resources.* If, during a month, a resource decreases in value or an individual spends a resource or replaces a resource that is not excluded with one that is excluded, the decrease in the value of the resources is counted as of the first moment of the next month.

(d) *Treatment of items under income and resource counting rules.* Items received in cash or in kind during a month are evaluated first under the income counting rules and, if retained until the first moment of the following month, are subject to the rules for counting resources at that time.

(e) *Receipts from the sale, exchange, or replacement of a resource.* If an individual sells, exchanges or replaces a resource, the receipts are not income. They are still considered to be a resource. This rule includes resources that have never been counted as such because they were sold, exchanged or replaced in the month in which they were received. See § 416.1246 for the rule on resources disposed of for less than fair market value (including those disposed of during the month of receipt).

Example: Miss L., a disabled individual, receives a \$350 unemployment insurance benefit on January 10, 1986. The benefit is unearned income to Miss L. when she receives it. On January 14, Miss L. uses the \$350 payment to purchase shares of stock. Miss L. has exchanged one item

(cash) for another item (stock). The \$350 payment is never counted as a resource to Miss L. because she exchanged it in the same month she received it. The stock is not income; it is a different form of a resource exchanged for the cash. Since a resource is not countable until the first moment of the month following its receipt, the stock is not a countable resource to Miss L. until February 1.

These regulations continue to provide the authority for resource determinations of trusts not governed by the current statutory provisions at Section 1613(e) of the Social Security Act. These are primarily trusts established prior to January 1, 2000, trusts established by third parties and trusts not otherwise subject to Section 1613(e), i.e., trusts meeting the Section 1917(d)(4)(A) and (C) exceptions.

Income. Whether a distribution from a trust affected an individual's SSI eligibility or benefit amount depended on whether it met the definition of income and the rules on income counting.

§ 416.1102. What is income?

Income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter. Sometimes income also includes more or less than you actually receive (see § 416.1110 and § 416.1123(b)). In-kind income is not cash, but is actually food or shelter, or something you can use to get one of these.

§ 416.1103. What is not income?

Some things you receive are not income because you cannot use them as food or shelter, or use them to obtain food or shelter. In addition, what you receive from the sale or exchange of your own property is not income; it remains a resource. The following are some items that are not income:

(a) *Medical care and services.* Medical care and services are not income if they are any of the following:

- (1) Given to you free of charge or paid for directly to the provider by someone else;
- (2) Room and board you receive during a medical confinement;
- (3) Assistance provided in cash or in kind (including food or shelter) under a Federal, State, or local government program whose purpose is to provide medical care or medical services (including vocational rehabilitation);
- (4) In-kind assistance (except food or shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

(5) Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy (except cash to cover food or shelter) if the cash is either:

(i) Repayment for program-approved services you have already paid for; or

(ii) A payment restricted to the future purchase of a program-approved service.

Example: If you have paid for prescription drugs and get the money back from your health insurance, the money is not income.

(6) Direct payment of your medical insurance premiums by anyone on your behalf.

(7) Payments from the Department of Veterans Affairs resulting from unusual medical expenses.

(b) *Social services.* Social services are not income if they are any of the following:

(1) Assistance provided in cash or in kind (but not received in return for a service you perform) under any Federal, State, or local government program whose purpose is to provide social services including vocational rehabilitation (Example: Cash given you by the Department of Veterans Affairs to purchase aid and attendance);

(2) In-kind assistance (except food or shelter) provided under a nongovernmental program whose purpose is to provide social services; or

(3) Cash provided by a nongovernmental social services program (except cash to cover food or shelter) if the cash is either:

(i) Repayment for program-approved services you already have paid for; or

(ii) A payment restricted to the future purchase of a program-approved service.

Example: If you are unable to do your own household chores and a private social services agency provides you with cash to pay a homemaker the cash is not income.

(c) *Receipts from the sale, exchange, or replacement of a resource.* Receipts from the sale, exchange, or replacement of a resource are not income but are resources that have changed their form. This includes any

cash or in-kind item that is provided to replace or repair a resource (see subpart L) that has been lost, damaged, or stolen. Sections 416.1150 and 416.1151 discuss treatment of receipts to replace or repair a resource following a major disaster or following some other event causing damage or loss of a resource.

Example: If you sell your automobile, the money you receive is not income; it is another form of a resource.

(d) *Income tax refunds.* Any amount refunded on income taxes you have already paid is not income.

(e) *Payments by credit life or credit disability insurance.* Payments made under a credit life or credit disability insurance policy on your behalf are not income.

Example: If a credit disability policy pays off the mortgage on your home after you become disabled in an accident, we do not consider either the payment or your increased equity in the home to be income.

(f) *Proceeds of a loan.* Money you borrow or money you receive as repayment of a loan is not income. However, interest you receive on money you have lent is income. Buying on credit is treated as though you were borrowing money and what you purchase this way is not income.

(g) *Bills paid for you.* Payment of your bills by someone else directly to the supplier is not income. However, we count the value of anything you receive because of the payment if it is in-kind income as defined in § 416.1102.

Examples: If your daughter uses her own money to pay the grocer to provide you with food, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the grocer provides you with food; the food is in-kind income to you. Similarly, if you buy food on credit and your son later pays the bill, the payment to the store is not income to you, but the food is in-kind income to you. In this example, if your son pays for the food in a month after the month of purchase, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, it is not in-kind income as defined in § 416.1102.

(h) *Replacement of income you have already received.* If income is lost, destroyed, or stolen and you receive a replacement, the replacement is not income.

Example: If your paycheck is stolen and you get a replacement check, we count the first check as income. The replacement check is not income.

(i) *Weatherization assistance.* Weatherization assistance (Examples: Insulation, storm doors and windows) is not income.

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130 or food) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift is *not income* because the van does not provide you with food or shelter and will become an excluded nonliquid resource under § 416.1218 in the month following the month of receipt.

Example 2: You inherit a house, which is your principal place of residence. The value of this inheritance *is* income because the house provides you with shelter and shelter is income. However, we value the house under the rule in § 416.1140.

C. Program Operations Manual System (POMS)

The SSI regulatory provisions were further expounded upon in the Program Operations Manual System (POMS) to provide SSA field office personnel with operating instructions on evaluating trusts for eligibility purposes. Prior to January 1, 2000, the primary trust POMS instructions were found at SI 01120.200.

Current POMS instructions at SI 01120.200 continue to deal with trusts not governed by the current statutory provisions at Section 1613(e) of the Social Security Act. These are primarily trusts established prior to January 1, 2000, trusts established by third parties and trusts not otherwise subject to Section 1613(e), i.e., trusts meeting the Section 1917(d)(4)(A) and (C) exceptions.

The basic rules and instructions for determining whether a trust was a resource for SSI purposes were found at SI 01120.200D.

POMS SI 01120.200

D. Policy - trusts as resources

1. Trusts which are resources

a. Trust principal is a 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 or 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 or terminate trust or 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 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 or 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 or 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 or 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 or her resource.

2. Trusts 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 or 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.

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.

III. Trusts Established on or After January 1, 2000 - SSI

A. Statutory Law

Foster Care Independence Act of 1999. On December 14, 1999, President Clinton signed into law the Foster Care Independence Act of 1999 (P.L. 106-169). Section 205 of that act established Section 1613(e) of the Social Security Act, which provided 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 addressed when earnings or additions to trusts will be considered income. The legislation also provided exceptions to the statutory rules in Section 1613(e) of the Act for counting trusts as resources and income.

This legislation was in response to a legislative proposal previously advanced by SSA. The SSA proposal closely tracked the Medicaid statute at Section 1917(d) [42 U.S.C. 1396p(d)]. However, the proposal submitted to Congress did not contain any exceptions to counting a trust subject to the statute, that is, it did not contain the exceptions at Section 1917(d)(4). There were a number of reasons for this. First, it was felt that the exceptions were not appropriate for the SSI program. Individuals should not be allowed to place large sums of money and assets in trust in order to receive a relatively small government payment to cover monthly living expenses and, therefore, all trusts subject to the statutory guidelines should be counted for SSI purposes. Second, the estate recovery provisions in Section 1917(4)(4) allowed recovery by the Medicaid State agencies and not by SSA. There was no benefit to be gained by SSA or for the SSI program. The SSI program had never had an estate recovery provision. It was also felt that inserting competing recovery provisions might result in a ‘race to the courthouse’ and interagency fights over recovery. However, during congressional deliberations, disability trust advocates were able to persuade the committee to insert a cross reference to the Medicaid statutory exceptions at Section 1917(4)(4). SSA was not consulted regarding the addition of these exceptions and only became aware of them after passage. Those exceptions continued to provide for estate recovery from the corpus of a trust for the Medicaid programs, but not for the SSI program.

1. Resources

- Section 1613(e) [42 U.S.C. 1382b(e)]

Trusts

(e)(1) In determining the resources of an individual, paragraph (3) shall apply to a trust (other than a trust described in paragraph (5)) established by the individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or of the individual's spouse) are transferred to the trust other than by will.

(B) In the case of an irrevocable trust to which are transferred the assets of an individual (or of the individual's spouse) and the assets of any other person, this subsection shall apply to the portion of the trust attributable to the assets of the individual (or of the individual's spouse).

(C) This subsection shall apply to a trust without regard to—

(i) the purposes for which the trust is established;

(ii) whether the trustees have or exercise any discretion under the trust;

(iii) any restrictions on when or whether distributions may be made from the trust; or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust established by an individual, the corpus of the trust shall be considered a resource available to the individual.

(B) In the case of an irrevocable trust established by an individual, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual (or of the individual's spouse), the portion of the corpus from which payment to or for the benefit of the individual (or of the individual's spouse) could be made shall be considered a resource available to the individual.

(4) The Commissioner of Social Security may waive the application of this subsection with respect to an individual if the Commissioner determines that such application would work an undue hardship (as determined on the basis of criteria established by the Commissioner) on the individual.

(5) This subsection shall not apply to a trust described in subparagraph (A) or (C) of section 1917(d)(4).

(6) For purposes of this subsection—

(A) the term "trust" includes any legal instrument or device that is similar to a trust;

(B) the term "corpus" means, with respect to a trust, all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment (except that such term does not include any such earnings or addition in the month in which the earnings or addition is credited or otherwise transferred to the trust); and

(C) the term "asset" includes any income or resource of the individual (or of the individual's spouse), including—

(i) any income excluded by section 1612(b);

(ii) any resource otherwise excluded by this section; and

(iii) any other payment or property to which the individual (or of the individual's spouse) is entitled but does not receive or have access to because of action by—

(I) the individual or spouse;
(II) a person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or spouse; or
(III) a person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse.
[Current statute as of February 2018, as amended by P.L. 114-255.]

- Section 1917(d)(4)(A) and (C)

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3)) and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.

(C) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3)) that meets the following conditions:

(i) The trust is established and managed by a nonprofit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3)) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title.

2. Income - Additions to and earnings of a trust

The Foster Care Independence Act (P.L. 106-169) also contained a corresponding SSI income provision related to earnings and additions to a trust subject to Section 1613(e).

Section 1612. [42 U.S.C. 1382a] (a) For purposes of this title, income means both earned income and unearned income; and— (2) unearned income means all other income, including—

(G) any earnings of, and additions to, the corpus of a trust established by an individual (within the meaning of section 1613(e)), of which the individual is a beneficiary, to which section 1613(e) applies, and, in the case of an irrevocable trust, with respect to which circumstances exist under which a payment from the earnings or additions could be made to or for the benefit of the individual;

21st Century Cures Act. On December 13, 2016, President Obama signed into law the 21st Century Cures Act (P.L.114-255). Section 5007 of this Act allows individuals to establish their own special needs trusts and qualify for the exception to resource counting under Section 1917(d)(4)(A) of the Social Security Act for both the SSI and Medicaid programs. Effective with special needs trusts established on or after December 13, 2016, the resource counting provisions of the SSI trust statute do not apply to a trust established through the actions of the **individual**, a parent, grandparent, legal guardian, or a court.

As previously discussed, passage of this legislation ended decades of debate regarding an alleged drafter's error in the original statute. In the end, this change will have little impact on the number of individuals who can establish a trust and become SSI-eligible. The vast majority of individuals who want to establish a trust can do so through the methods such as the use of a seed trust or petitioning a court. Ultimately, it makes SSA's job of evaluating a trust easier in that establishment of a trust can be more straightforward and less convoluted.

B. Code of Federal Regulations

Several years after its passage, regulations were drafted to implement Section 205 of the Foster Care Independence Act of 1999 (P.L. 106-169), however, SSA never released those draft regulations for comment and review. At the time it was felt that there were too many unresolved issues to promulgate complete regulations. Rather than issue regulations and then continue to amend them in the future, the decision was made to delay regulations until a fuller policy could be developed. Efforts to issue regulations remain a long-term project for SSA.

C. Program Operations Manual System

POMS SI – Supplemental Security Income. After enactment of Section 205 of the Foster Care Independence Act of 1999, SSA revised POMS SI 01120.200 and issued several new POMS sections to provide operating instructions to SSA field offices. These POMS sections contained policy and procedure to implement the new law. Since the SSI trust statute more or less paralleled the policy of the Medicaid trust statute that was passed seven years earlier, the initial SSI instructions necessarily found a strong foundation in the State Medicaid Manual previously issued by Center for Medicare and Medicaid Services (CMS). However, differences in the statutes, the programs, and agency philosophies soon lead to some divergence in policies. The fact that SSI was a nationwide program and that Medicaid was State-administered and the Medicaid-only reimbursement provision were both factors leading to differences in administration.

- **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
- **SI 01120.201:** Trusts established with the assets of an individual on or after 1/1/00
- **SI 01120.202:** Development and Documentation of Trusts Established on or After 01/01/00
- **SI 01120.203:** Exceptions to Counting Trusts Established on or after 1/1/00
- **SI 01120.204:** Notices for Trusts Established on or after 1/1/00

Over time, these sections have been revised and rewritten several times. These revisions were made to address policy issues that arose or to provide policy clarifications as new issues were addressed. For example, the POMS has been revised to include instructions on the use of seed trusts, treatment of payments to third parties for goods and services, use of debit and gift cards, effect of a power of attorney, the sole benefit rule, allowable and prohibited administrative expenses, the three-tiered SSA trust review process and impact of the transfer of resources penalty in establishing a pooled trust for individuals age 65 and older.

Also, several other new POMS sections have been issued to address different policy questions and decisions.

- **SI 01120.195:** Trusts Established under the Indian Gaming Regulatory Act (IGRA) for Minor Children and Legally Incompetent Adults (IGRA Trusts)
This section has a relatively narrow application and generally only applies to trusts established by Native American tribes for children and disabled tribal members with casino proceeds and addresses when a trust is established by the tribe with tribal funds and when it is established with the tribal members funds.
- **SI 01120.199:** Early Termination Provisions and Trusts
The statute addresses when Medicaid reimbursement is required upon the death of the trust beneficiary, but not when the trust is terminated prior to death. This section was issued to address those situations.
- **SI 01120.225:** Pooled Trusts Management Provisions
Section 1917(d)(4)(C) requires that a qualifying trust must be established and managed by a nonprofit association. This POMS section addresses what trust management functions the nonprofit association must retain control over and what functions they may hire a management company to handle.
- **SI 01120.227:** Null and Void Clauses in Trust Documents
The popularity of the use of null and void or savings clauses in trusts to try to avoid an improperly drafted trust from causing ineligibility for SSI or Medicaid caused many administrative problems for SSA. If SSA determined that a clause was improper, but effect was given to a savings clause, how was the trustee or future SSA personnel supposed to know what trust provisions were effective and

which were deemed ineffective if the invalid provisions still remained within the trust document and without annotation? This POMS section provided that null and void or savings clauses were ineffective for SSI purposes and that improper provisions must be corrected in the trust document.

POMS PS - Title XVI Regional Chief Counsel Precedents. A number of years ago, SSA decided to break with longstanding precedent and make public certain Regional Chief Counsel opinions, which serve as agency precedents and provide guidance to SSA staff regarding a particular subject matter. For SSI, there are a broad range of topics such as income, resources (including trusts), deeming, in-kind support and maintenance, living arrangements and institutionalization. Frequently, the opinions are SSA's official interpretations of State law regarding a particular subject, e.g., the validity of dry trusts in a particular State. The opinion may also provide a precedent as to whether a particular pooled trust meets the requirement of Section 1917(d)(4)(C) of the SSACT. Such a precedent may be used as a basis for an SSA office to allow or deny SSI benefits. The opinions are sanitized to remove personal identifying information such as full names, social security numbers and addresses.

Not all Regional Chief Counsel (RCC) opinions are published in the PS POMS section. After an opinion is issued, the RCC sends the opinion into SSA Central Office where the opinion is reviewed by the appropriate policy component. That component determines if the opinion has value as a precedent, whether it is duplicative or whether basis for the opinion is so fact-specific that it would not serve as a usable precedent. If the opinion is to be published, a syllabus is written to summarize the opinion.

Currently there are several hundred published trust opinions from 41 States, the District of Columbia, Northern Mariana Islands and Guam.

POMS PS 01825: Trusts

- PS 01825.000: Trusts - Table of Contents
- PS 01825.001: Alabama
- PS 01825.002: Alaska
- PS 01825.004: Arizona
- PS 01825.006: California
- PS 01825.007: Colorado
- PS 01825.009: Delaware
- PS 01825.010: District of Columbia
- PS 01825.011: Florida
- PS 01825.012: Georgia
- PS 01825.014: Hawaii
- PS 01825.016: Illinois
- PS 01825.017: Indiana
- PS 01825.018: Iowa
- PS 01825.019: Kansas
- PS 01825.020: Kentucky
- PS 01825.023: Maryland

PS 01825.024: Massachusetts
PS 01825.025: Michigan
PS 01825.026: Minnesota
PS 01825.027: Mississippi
PS 01825.028: Missouri
PS 01825.029: Montana
PS 01825.030: Nebraska
PS 01825.031: Nevada
PS 01825.033: New Jersey
PS 01825.034: New Mexico
PS 01825.035: New York
PS 01825.036: North Carolina
PS 01825.037: North Dakota
PS 01825.038: Northern Mariana Islands
PS 01825.039: Ohio
PS 01825.041: Oregon
PS 01825.042: Pennsylvania
PS 01825.045: South Carolina
PS 01825.046: South Dakota
PS 01825.047: Tennessee
PS 01825.048: Texas
PS 01825.049: Utah
PS 01825.052: Virginia
PS 01825.053: Washington
PS 01825.054: West Virginia
PS 01825.055: Wisconsin
PS 01825.056: Wyoming
PS 01825.146: Guam

Emergency Messages. Emergency Messages (EM) are part of the POMS and have the same authority as the POMS. They are described as emergency changes to operations instructions for SSA employees and are considered temporary instructions. They are frequently issued to implement legislation that has a near-term effective date when issuing new or revised POMS instructions is not practicable. The term of an EM is generally six months, but that can be extended for a variety of reasons, for example, if the POMS cannot be revised to incorporate the EM within that time period.

As of April 2018, there were three Emergency Messages dealing with SSI trust policy. All of these instructions were incorporated into the new POMS rewrite.

- **EM-16006** (02/12/16) - Guidelines on Reviewing and Establishing Pooled Trust Precedents

This EM provides guidelines on how to establish pooled trust precedents in the SharePoint Repository for Precedents site (part of the SSI Trust Management System (SSITMS) that field offices use to document and review trusts) and clarifies policy regarding the review of pooled trusts for Supplemental Security Income (SSI) purposes. These instructions provide that, in many cases, SSA

personnel can use an established precedent when making a determination regarding a pooled trust.

- **EM-16012** (03/12/16) - Guidelines on issuing manual notices for individuals determined ineligible because of excess resources that include a countable trust

This EM provides additional requirements for issuing a manual notice when notifying an individual of ineligibility due to excess resources that include a countable trust.

In addition to providing the required notice language in SI 01120.204, using free form text, for each reason the trust is countable (that is, why it does not meet the exception or other requirements in POMS), the Claims Technician must cite:

- the applicable section of the trust (or any joinder agreement, if applicable) containing the problematic language or issue;
- the POMS citation that contains the policy requirements on that subject; and
- the following language indicating where the POMS can be found on-line – “You can find the Program Operations Manual System (POMS) on the Social Security website at <https://secure.ssa.gov/poms.nsf/Home?readform>.”

- **EM-16053** (12/13/16) - Information Regarding a Change in Supplemental Security Income (SSI) Special/Supplemental Needs Trust Policy– Permanent Instructions Will Follow Shortly

This EM provides important information regarding a change in SSI trust policy as a result of the 21st Century Cures Act (P.L. 114-255). Effective with special needs trusts established on or after December 13, 2016, an **individual** may establish a special needs trust and have that trust excepted from resource counting under Section 1917(d)(4)(A) of the Social Security Act.

IV. Why Are the POMS So Important and Why Should I Care?

If you are appealing an SSA determination regarding the impact of a trust on your client’s eligibility for SSI, you need to be concerned about the deference a court will give to SSA’s determination based on its instructions.

The SSI statute at Section 1613(e) [42 U.S.C. 1382b(e)] consists of a few brief paragraphs. It is not an exhaustive rule governing the subject of trusts and SSI eligibility. When you add to this fact that neither SSA, nor CMS have issued formal regulations to implement agency policy on the subject of special needs or pooled trusts, coupled with the lack of significant case law on the subject, the status of the POMS becomes significantly evident as the sole detailed agency policy statement and interpretation of the law on the subject.

A. Congressional Authority

Congress has explicitly granted the Social Security Administration authority to fill in statutory gaps. *See also, Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981) (noting Congress has granted the SSA ‘exceptionally broad authority to prescribe standards’).

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

Section 205 [42 U.S.C. 405] (a) of the Social Security Act, as made applicable to the SSI program by section 1631(d)(1) [42 U.S.C. 1383(d)(1)].

B. Deference by Courts

Courts approach administrative interpretations by looking to the formal or informal character of a rule and also by examining the authority under which the rule is made. Three different “levels” of deference can apply. These standards are rules that dictate whether the action should be accorded binding or persuasive weight.

When an agency is interpreting a statute that it administers and the interpretation is one involving a mechanism with the force of law, e.g., a regulation promulgated under the Administrative Procedures Act, a court generally applies what is known as *Chevron* deference. The *Chevron* standard is extremely deferential - an interpretation owed *Chevron* deference is binding unless it is unreasonable.

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter If, however, . . . the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron USA, Inc. v. NRDC, 467 U.S. 837, 842 - 43 (1984)

Second, deference under *Auer v. Robbins*, 519 U.S. 452 (1997), applies to agency interpretations of its own ambiguous regulations. The *Auer* standard is analogous to *Chevron* and is also highly deferential. An agency's interpretation of its own regulation is controlling “unless it is plainly erroneous or inconsistent with the regulation.” 519 U.S. 452, 461 (1997).

In *Christensen v. Harris County*, 529 U.S. 576, the Supreme Court held that “[i]nterpretations such as those in opinion letters - like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law - do not warrant *Chevron*-deference,” 529 U.S. at 587. “*Auer* deference,” the Court further distinguished, “is warranted only when the language of the regulation is ambiguous.” *Id.* at 588. Instead, interpretations of an administrative agency that do not receive deference under *Chevron* or *Auer* are “entitled to respect” under *Skidmore*, but

only to the extent that those interpretations have “power to persuade.” *Id.* at 587 (quoting *Skidmore*, 323 U.S. 134, 140 (1944)).

Under *Skidmore*, the weight of an agency interpretation “will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” 323 U.S. at 140.

Almost all courts have granted deference to agency interpretations in POMS under *Skidmore*. For a good discussion, see *Draper v. Colvin*, 779 F.3d 556 (2015).

Given the lack of formal regulations interpreting the SSI trust statute and the extensive breadth of SSA’s instructions on the subject (between 100 and 200 pages interpreting several paragraphs of statutory law), it is small wonder that most courts find SSA’s interpretations persuasive and defer to them, thus upholding the traditional principals of judicial deference; agency expertise, institutional competence, and legitimizing agency authority.

V. APPENDIX

A. Sources of Law for the Supplemental Security Income (SSI) Program

Statutory

Title XVI [42 U.S.C. 1381 et. seq.] of the Social Security Act

Trusts - Sec. 1613(e) [42 U.S.C. 1382b(e)]

Regulatory

1. SSI, in general, 20 CFR Part 416
2. Income rules - 20 CFR Part 416, Subpart K
3. Resource rules - 20 CFR Part 416, Subpart L

There are currently no specific regulations on trusts for the SSI program.

Sub-regulatory

1. The Program Operations Manual System (POMS)
 - In general, Part 5 (SI) Supplemental Security IncomeChapter 011 – Resources

Subchapter 20 – Identifying Resources
Sections

- SI 01120.195:** Trusts Established under the Indian Gaming Regulatory Act (IGRA) for Minor Children and Legally Incompetent Adults (IGRA Trusts)
- SI 01120.199:** Early Termination Provisions and Trusts
- 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
- SI 01120.201:** Trusts established with the assets of an individual on or after 1/1/00
- SI 01120.202:** Development and Documentation of Trusts Established on or After 01/01/00
- SI 01120.203:** Exceptions to Counting Trusts Established on or after 1/1/00
- SI 01120.204:** Notices for Trusts Established on or after 1/1/00
- SI 01120.225:** Pooled Trusts Management Provisions
- SI 01120.227:** Null and Void Clauses in Trust Documents

- In general, Part 10 (PS) Title XVI Regional Chief Counsel Precedents

Chapter 018 – Program Requirements – Resources
Subchapter - PS 01825: Trusts
Sections

- PS 01825.000 – PS 01825.146** (sections are State-specific, but not all States are represented)

According to the Social Security Administration Program Policy Information webpage (<https://secure.ssa.gov/poms.nsf/Home?readform>),

The Program Operations Manual System (POMS) is a primary source of information used by Social Security employees to process claims for Social Security benefits. The public version of POMS is identical to the version used by Social Security employees except that it does not include internal data entry and sensitive content instructions.

Please note that this document is intended for SSA employees. It contains technical terms and instructions that will be unfamiliar to you. If you have difficulty understanding these materials, [you can refer to] the Social Security Handbook, which is written in plain language for use by the public.

- POMS Table of Contents

RM - Records Maintenance
GN - General
RS - Retirement and Survivors Insurance
DI - Disability Insurance
SI - Supplemental Security Income
HI - Health Insurance
NL - Notices, Letters and Paragraphs
VB - Special Veterans Benefits
PR - Title II Regional Chief Counsel Precedents
PS - Title XVI Regional Chief Counsel Precedents
SL - State and Local Coverage Handbook

The POMS is broken down into several layers. From largest to smallest, they are, Part, Chapter, Subchapter, and Section. "Parts" are the top-level categories you will see if you look at the Table of Contents. They cover a number of broad subject areas. Be aware that POMS is rather large, more than 20,000 pages. The instructions specifically related to trusts cover more than 100 pages.