

It is not Just the Trust: There are Many Other Factors to Consider

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It is not Just the Trust: There are Many
Other Factors to Consider

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Objectives (1/2)

- Explain the General and Trust-specific Reporting Responsibilities
- Explain the Trust Review Business Process
- Share Drafting Errors

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Objectives (2/2)

- ▶ Explain Notice Requirements
- ▶ Explain Possible Actions after an Adverse Determination
- ▶ Q&A Session (if time permits)

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Disclaimer

- ▶ This presentation discusses general SSI trust policy and procedures.
- ▶ Specific cases involving an SSI claim or post-eligibility event require initial evaluation by the servicing field office technician and subsequent evaluation by the regional trust review team and when applicable, by the Office of Program Law.

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Objective 1 – Explain General and Trust-specific Reporting Responsibilities (1/3)

- ▶ Title 20 C.F.R. §416.701, 704, 708, 710, 712, 714 at https://www.ssa.gov/OP_Home/cfr20/416/416-0000.htm
- ▶ Program Operations Manual System - SI 02301.005 at <https://secure.ssa.gov/apps10/poms.nsf/lpx/0502301005>

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Explain General and Trust-specific Reporting Responsibilities (2/3)

- ▶ Report changes that affect eligibility and payment amount
- ▶ SSA explains reporting responsibilities during each interview with legally competent recipient and representative payees

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Explain General and Trust-specific Reporting Responsibilities (3/3)

- ▶ Who Must Report – recipient, rep payee, or authorized rep
- ▶ What to Report – changes in income/resources
- ▶ When to Report – ASAP or by 10th of following month
- ▶ How to Report – mail, telephone, or visit
- ▶ Content of Report – identifying information, change, and date change happened

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Trust-Related Reporting Responsibilities SI 01120.202

- ▶ Copy of signed trust document and related documents
- ▶ Who established, when, trust beneficiary
- ▶ How trust funded, when, and by who
- ▶ Trust principle, value, additions, disbursements

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Objective 2 – Explain the Trust Review Business Process (1/2)

- ▶ Process implemented April 28, 2014
- ▶ Review of field office (FO) and workload support unit initial claims and post eligibility (PE) trust determinations
- ▶ Centralizes the review by region(s)
- ▶ Goals: improve quality, provide accurate and consistent trust determinations, strengthen FO employees' proficiency, and capture management information
- ▶ FO technician makes initial trust resource determination
- ▶ Regional Trust Review Team (RTRT) agrees or disagrees

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Objective 2 – Explain the Trust Review Business Process (2/2)

- ▶ During PE events, technicians should not routinely reevaluate a previously excepted resource determination
- ▶ Exceptions: new and material evidence, policy clarification, or policy change
- ▶ Technician reopens prior determination subject to the rules of administrative finality
- ▶ During subsequent reviews, develop disbursements

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Key Players and Their Roles (1/7)

Field Office Technician

- ▶ First SSA contact who receives trust report
- ▶ Technician will evaluate trust and make resource determination

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Key Players and Their Roles (2/7)

Management

- ▶ Selects trust reviewers
- ▶ Provide oversight, feedback, and identify training needs
- ▶ Second SSA contact who receives assistance requests

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Key Players and Their Roles (3/7)

Trust Reviewer

- ▶ Initial Title XVI Claims Specialist training; subsequent Regional Trust Review Team training
- ▶ Reviews the technician's trust resource determination and provides feedback and results of review
- ▶ No SSA contact

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Key Players and Their Roles (4/7)

Regional Trust Lead

- ▶ Reviews trust resource determinations for new/amended pooled trusts, reevaluations, and appealed determinations
- ▶ Assist Trust Reviewers and request guidance from central office and/or the Office of Program Law
- ▶ Facilitates bi-monthly meetings with Trust Reviewers

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Key Players and Their Roles (5/7)

Operations Analyst

- ▶ Facilitates bi-monthly meetings with Regional Trust Leads
- ▶ Collaborate regarding trust issues
- ▶ Share lessons learned and best practices

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Key Players and Their Roles (6/7)

Office of Program Law

- ▶ Provides legal advice
- ▶ Legal opinions are confidential, attorney/client work products
- ▶ SSA post redacted opinions in POMS PS – Title XVI Regional Chief Counsel Precedents

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Key Players and Their Roles (7/7)

Office of Income Security Programs

- ▶ Provides agency-wide leadership and direction
- ▶ Responsible for all aspects of SSA's policy process
- ▶ Facilitates quarterly meetings with Regional Trust Leads

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Objective 3 – Share Drafting Errors

- ▶ Early Termination Provision
- ▶ Spendthrift Clause
- ▶ Legal Authority
- ▶ State Medicaid Reimbursement Requirement
- ▶ Pooled Trust Management Provisions
- ▶ Null and Void Clauses in Trust Documents

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Early Termination Provision (SI 01120.199)

- ▶ Allows a trust to terminate before trust beneficiary's death
- ▶ State(s), as primary assignee, would receive all amounts remaining in the trust at the time of termination up to an amount equal to the total amount of medical assistance paid on behalf of the individual
- ▶ Other than payment for allowable administrative expenses, no individual or entity other than the beneficiary may benefit
- ▶ Gives the power to terminate to an individual or entity other than the trust beneficiary

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Spendthrift Clause (SI 01120.200)

- ▶ Generally prohibits involuntary and voluntary transfers of the trust beneficiary's interest in the trust income and principal
- ▶ If the trust beneficiary is entitled to periodic payments, the beneficiary cannot sell his or her right to a third party
- ▶ A valid spendthrift clause would make the value of the trust beneficiary's right to receive payments not countable as a resource

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Legal Authority (SI 01120.203) (1/3)

- ▶ Trust is considered to have been "established by" an individual if any of the individual's (or the individual's spouse's) assets are transferred into the trust other than by a Will
- ▶ Trust can be "established by" an individual who does not provide the corpus or transfer any of his or her assets into the trust, but who takes action to establish the trust
- ▶ Established through the actions of ≠ Established by

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Legal Authority (SI 01120.203) (2/3)

- ▶ Assets of the disabled individual must be put into a trust established through the actions of:
 - Disabled individual
 - Disabled individual's parent(s)
 - Disabled individual's grandparent(s)
 - Disabled individual's legal guardian(s)
 - Court
- ▶ For legally competent, disabled adults, a parent or grandparent may establish a "seed" trust or dry trust
- ▶ Then, the adult or an individual with legal authority may transfer his or her own assets into the trust

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Legal Authority (SI 01120.203) (3/3)

- ▶ Person or entity establishing the trust with the assets of the legally competent disabled individual must have legal authority to act
- ▶ If no proper legal authority, generally will result in an invalid trust under state law
- ▶ A power of attorney can establish legal authority and transfer the trust beneficiary's assets into the trust

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**State Medicaid Reimbursement Requirement
(SI 01120.203) (1/2)**

Special Needs Trust

- ▶ Trust must contain specific language that provides 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(s) Medicaid plan(s)
- ▶ State(s) must be listed as the first payee(s) and have priority over payment of other debts and administrative expenses
- ▶ Payback for any State(s) that may have provided medical assistance
- ▶ Not limited to any particular State(s) or particular period

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**State Medicaid Reimbursement Requirement
(SI 01120.203) (2/2)**

Pooled Trust

- ▶ Trust must contain specific language that provides that to the extent that amounts remaining in the individual's account upon the death of the individual are not retained by the trust, the trust will pay to the State(s) from such remaining amounts equal to the total amount of medical assistance paid on behalf of the individual under the State(s) Medicaid plan(s)
- ▶ State(s) must be listed as the first payee(s) and have priority over payment of other debts and administrative expenses
- ▶ Payback for any State(s) that may have provided medical assistance
- ▶ Not limited to any particular State(s) or particular period

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**Pooled Trusts Management Provisions
(SI 01120.225)**

- ▶ Trust must be managed by a non-profit association
- ▶ Non-profit manager(s) may employ the services of a for-profit entity to manage some of the financial activities
- ▶ Non-profit association must maintain ultimate managerial control
- ▶ Use of a for-profit entity must always be subordinate to the non-profit managers

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Null and Void Clauses in Trust Documents (SI 01120.227)

- ▶ Null and void or savings clauses operate to cure trust defects and preserve remaining provisions
- ▶ Clause attempts to prevent the trust from being determined invalid by removing offending sections from consideration
- ▶ Clause does not cure an otherwise defective trust instrument
- ▶ Clause cannot nullify provisions that would otherwise make the trust a countable resource

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Objective 4 – Explain Notice Requirements (SI 01120.204)

- ▶ Manual notice required when an individual is ineligible for SSI due to excess resources and those resources include a countable trust
- ▶ Notice specifies each reason the trust does not meet an exception or other requirement(s)
- ▶ Notice cites the applicable section of the trust containing the problematic language or issue and the POMS citation that contains the policy on that subject
- ▶ Notice provides language indicating where the POMS can be found online
- ▶ Social Security website - <https://secure.ssa.gov/apps10/poms.nsf/Home?readform>

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Objective 5 – Explain Possible Actions After an Adverse Determination (Case Study) (1/2)

- ▶ Representative payee reports the SSI recipient is the beneficiary of a new self-funded special needs trust
- ▶ Field office technician evaluates the documentation to determine the resource status
- ▶ Technician determines trust is not excepted under section 1917(d)(4)(A) and undue hardship and the 90-day amendment period do not apply
- ▶ Technician submits the trust resource determination to the Regional Trust Review Team (RTRT) for review
- ▶ RTRT agrees with the technician's determination

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Objective 5 – Explain Possible Actions After an Adverse Determination (Case Study) (2/2)

- ▶ Technician issues a manual Notice of Planned Action: specify each reason the trust does not meet an exception and provides appeal rights
- ▶ Recipient/Representative Payee options:
 - Request for Information/Explanation
 - Request for Reconsideration
 - Request for Reopening
 - Report Post Eligibility Change

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Request for Information/Explanation

- ▶ Not a request for reconsideration
- ▶ Technician provides an explanation of the excess resources determination
- ▶ No further action is required

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Request for Reconsideration

- ▶ Recipient disagrees with an initial determination and requests further review
- ▶ First step in the administrative review process
- ▶ Involves thorough reexamination of all evidence on record
- ▶ Technician issues notice upon completion
- ▶ SSA encourages recipients to exercise the appeal process whenever they disagree with a determination

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Request for Reopening

- ▶ Process of investigating and reexamining a claim
- ▶ May result in revision of a prior determination or decision
- ▶ Implies the possibility of error
- ▶ Only determinations or decisions that were incorrect can be reopened and revised
- ▶ May be requested only after the 60-day appeal period has expired

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Report Post Eligibility Change

- ▶ Appeal period expired, no good cause for a late appeal, no reopening request, and SSA does not reopen determination
- ▶ Recipient submits revised/amended excepted trust
- ▶ Payments may be reinstated if evidence submitted prior to the end of the twelfth month of ineligibility
- ▶ After the twelfth month, file a new application

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Objective 6 – Q&A

General questions concerning other factors you must consider regarding an SSI trust:

Reporting Responsibilities

Trust Review Process

Drafting Errors

Determination Notice

Client Rights

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Conclusion

Thank you!
