

THE BOT, THE TRUST, AND THE BENEFIT THREAT

Responding to AI-Driven SSA Scrutiny

Bridget O'Brien Swartz, ACTEC Fellow

Vice President & Fiduciary Counsel
Mission Management & Trust Co.

Victoria Blair Struse, ACTEC Fellow

Partner
Fletcher Struse Wagner & Derksen PLC

2026 National Conference on Special Needs Planning and Special Needs Trusts

The case study is anonymized. The pooled trust, sponsoring organization, beneficiaries, agency personnel, and nonessential identifying details are not named.

Why this paper sounds different. Victoria is telling the story of the review she handled. Bridget is asking the trustee-side questions that follow from it: Does the requested change make legal sense? Does it match state fiduciary law? Can the trustee actually administer it? We have kept both voices because the tension between advocacy and administration is the substance of the session.

I. The Email That Started It

In early 2026, Victoria received an email from SSA concerning a long-standing pooled special needs trust. An email—not a formal letter—was unusual enough. The message was not tied to the ordinary review of a trust submitted in conjunction with an eligibility application or redetermination. SSA had pulled the master trust for review and concluded that it did not comply with pooled-trust policy. The review came from a regional office far from the trust’s home state.

What followed was more surprising. The message was organized in long bullet points, packed with citations to the trust and to POMS, and difficult to follow. Sentences addressing different provisions were placed together as though the combination proved the conclusion. Several of the conclusions clearly did not take into consideration how a pooled trust is actually administered, particularly, under state fiduciary requirements.

Victoria had recently begun using ChatGPT and Claude. She would never describe herself as technologically savvy—quite the opposite. However, the email had the look of an AI answer that had found many relevant words and citations but had not understood the relationships among them. The reaction was, “[t]his reads differently from any government trust review letter I have seen. Is SSA using AI in trust reviews and if so, what consequences does that have on all special needs trusts? What can we do about it? How do we approach this?”

To be clear, we have no direct proof that AI generated the review. We do not have the prompt, the workflow, the model name, the system log, or an agency statement identifying trust review as an AI use case. Victoria searched the publicly available information and found that SSA reports AI use within the agency, but she did not find any reported formal AI use in trust reviews at the SSA. Therefore, the agency’s use of AI is at this time, more of a

“what if” and “if so, where does that put all of us who handle special needs trust matters? How do we approach a review (and determination of non-compliance) that is so seemingly disconnected from the whole picture?”

For purposes of legal strategy, that is enough. A practitioner does not need to prove the internal toolchain to challenge reasoning that is unsupported, factually mistaken, or inconsistent with statute, POMS, state law, or prior agency treatment. Whatever assistance a reviewer may have used, a human official adopted and communicated the position. To what extent does the agency have to defend it as law?

II. Why Trusts Are Easy to Misread in Isolation of the Whole Picture

A special needs trust is not a bag of keywords. The reviewer must distinguish ownership from custody, control from delegated performance, discretion from availability, separate accounting from pooled investment, and a master-trust expense from an expense attributable to one beneficiary. The same word can do different work in different provisions. “Trustee,” “manager,” “advisor,” “agent,” “vendor,” “account,” and “distribution” all require context.

That context includes state law. Trust instruments do not restate every fiduciary duty imposed by statute and common law. A trustee’s power to hire an investment advisor does not eliminate the trustee’s duty to select, instruct, monitor, and, when necessary, remove the advisor. A professional who performs a specialized function does not become the manager of the entire trust merely because a clause uses a broad verb. A reviewer who reads one paragraph without the definitions, the governing law, an understanding of how the document is utilized in practice, and the operating agreements can easily reach the wrong conclusion.

Additionally, it is well known that AI is inherently biased.¹ AI is also eager to flatter and please its user. In a study in a science journal, 11 leading AI systems were tested and they were all found to show varying degrees of sycophancy.² The AI systems are overly agreeable and affirming, a danger cited in all disciplines, including medicine, where a sycophantic AI could lead doctors to confirm their first hunch about a diagnosis rather than encourage them to explore further.³ If, in furtherance of, for example, a budget cut, the agency strives to render people ineligible for benefits, an AI prompt of “find any which way this trust document is not in compliance with the POMS” may create a never-ending cycle of noncompliance based on unfounded interpretations of language and bias towards a drafting preference.

This is why the AI question is relevant even when it cannot be proven. If the goal is centered around reducing the number of Supplemental Security Income beneficiaries to accommodate a sliced budget, the use of AI is merely a tool to accomplish that goal. Additionally, the use of AI may be a consequence of a budget reduction in the first place, where a lack of experienced employees may mean that use of AI is needed to generate work product. The human reviewer may or may not be experienced and may or may not have time to carefully review its work product. In practice, then, automated policy matching tends to reward surface similarity. A citation appears near a familiar phrase, and the phrase is treated as dispositive. But hurried human review can do the same thing. The

¹ “Bias is Implicit in all AI, Even Legal AI”, Los Angeles & San Francisco Daily Journal August 12, 2026 (<https://www.courthousenews.com/defense-attorneys-urged-to-cautiously-adopt-ai-to-match-prosecution/>).

² “Sycophantic AI Decreases Prosocial Intentions and Promotes Dependence,” Science, Vol. 391, Issue 6792 (Mar. 26, 2026) (<https://www.science.org/doi/10.1126/science.aec8352>).

³ “AI is Giving Bad Advice to Flatter its Users,” The Associated Press, March 26, 2026 (<https://www.ap.org/news-highlights/spotlights/2026/ai-is-giving-bad-advice-to-flatter-its-users-says-new-study-on-dangers-of-overly-agreeable-chatbots/>).

agency's unspoken goals and the mechanisms in place to carry out those goals are unknown to us. Therefore, we must operate in a manner that requires careful review of the agency's analysis and careful decision making on how to proceed with a remedy.

III. The Governing Law—Without the Abstractions

A. The pooled trust statute

Section 1917(d)(4)(C) creates an exception from the usual Medicaid trust rules for a trust containing the assets of a disabled individual when: (1) the trust is established and managed by a nonprofit association; (2) a separate account is maintained for each beneficiary, although accounts may be pooled for investment and management; (3) the account is established solely for the benefit of a disabled individual through an authorized person or court; and (4) amounts not retained by the trust at death are used to reimburse the State or States for medical assistance.⁴

The statute expressly anticipates both separation and pooling. Each beneficiary has a separate account, while investment and management may occur collectively. That structure necessarily requires common systems, common policies, and common professional services. It also makes cost allocation more complicated than it is in a single-beneficiary trust.

B. What POMS says about for-profit service providers

POMS SI 01120.225 recognizes that a nonprofit may employ a for-profit entity to perform financial functions if the nonprofit retains ultimate managerial control and the for-profit entity remains subordinate. The POMS focuses on retained authority: determining

⁴ 42 U.S.C. § 1396p(d)(4)(C).

beneficiary-related matters, setting or approving investment parameters, obtaining information, monitoring performance, and removing or replacing the service provider. It also instructs personnel not to routinely question the relationship absent language suggesting that the nonprofit lacks sufficient control.

That policy does not require the nonprofit's employees to execute every investment trade, process every disbursement, or personally perform every administrative task. "Managed by" cannot sensibly mean "performed only by." The nonprofit must remain the decision-maker and fiduciary manager. It may still use specialists.

C. State law is not background noise

Uniform Trust Code § 807 and many state analogues permit a trustee to delegate functions that a prudent trustee could properly delegate under the circumstances. The trustee must exercise reasonable care, skill, and caution in selecting the agent, defining the scope and terms of the delegation, and periodically reviewing the agent's actions. The agent owes a duty to comply with the terms of the delegation. Those rules are not a loophole. They are part of ordinary fiduciary administration.

Bridget's trustee-side point is simple: Delegation can be responsible or irresponsible. The answer turns on selection, instructions, oversight, information, and removal—not on whether the outside professional is paid or organized as a for-profit business. A trust instrument that pretends no one is delegated any work may be less accurate and less safe than one that describes the relationship honestly.

D. POMS matters, but it is not the statute

At the administrative level, POMS provisions often drive the result. The agency regularly cites the POMS regulations in communications with beneficiaries and Trustees, as if it is definitive governing law. In court, its status is more limited. The Supreme Court

has described SSA manuals as internal guidance without independent legal force, while recognizing that an agency interpretation may receive respect to the extent it is persuasive.⁵ A court is who determines the best reading of the statute, rather than deferring merely because the agency has spoken.

None of that makes POMS optional in day-to-day practice. Rather, it means counsel should not let “POMS says” end the analysis. Ask what the cited section actually says, whether it applies to this trust type, whether the factual premise is true, and whether the agency has converted an example or internal instruction into a new substantive requirement.

IV. The First Review, Point by Point

Before turning to each point, the first-round objections can be summarized as follows:

Chart 1. SSA’s First-Round Objections

Issue	SSA’s stated concern
Directed trustee / nonprofit management	SSA asserted that a directed or successor directed trustee might be a for-profit entity, could be called a “Trustee,” and could exercise substantial trust powers without satisfying the nonprofit-management requirement.
Investment advisor and other agents	SSA treated delegation to a potentially for-profit investment advisor or other agent as inconsistent with POMS SI 01120.225 because the trust allegedly did not make the nonprofit’s ultimate managerial control sufficiently clear.
Defense costs and IBA counsel	SSA concluded that allocating legal expenses across accounts that were not directly affected violated the sole-benefit requirement.
Medicaid payback and taxes	SSA objected that the trust appeared to permit payment of a beneficiary’s income-tax liability before reimbursement to the State.
MSA component and vendor	SSA questioned whether MSA funds were improperly commingled, who managed the component, whether a for-profit vendor was subordinate to the nonprofit, and whether early termination provisions applied.

⁵ See *Schweiker v. Hansen*, 450 U.S. 785, 789 (1981); *Washington State Department of Social & Health Services v. Keffeler*, 537 U.S. 371, 385 (2003); *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Issue	SSA's stated concern
Outdated citations	SSA identified a transfer provision that referred to POMS sections that had been renumbered or replaced.

A. Directed trustees and nonprofit management

SSA first objected that the trust allowed a directed or successor directed trustee that might not be a nonprofit and defined that actor as a “Trustee” capable of exercising substantial powers. Although the Trust document stated clearly that the Non-Profit Trustee shall retain all management powers with respect to directed trustees, the agency stated that the directed trustee must be a non-profit. It is true that, if two different actors are each called “Trustee” and the allocation of authority must be reconstructed from several articles, a noncomprehensive review or a harsh reading may cause an inference of noncompliance. Noting that, in the practice of law, particularly, when working with government benefits, sometimes the path of least resistance is the path chosen. Because the particular trustee has not appointed or utilized a directed trustee, and had no plans to do so, it was reasonable to quickly amend the section in the trust to read that any directed trustee must be a non-profit.

This was a cautious response under a deadline. It should not be read as a concession that every fiduciary or service provider associated with a pooled trust must be a nonprofit. The narrower lesson is to perhaps use one title for each role and state the hierarchy clearly.

B. Investment advisors and other agents

The agency next focused on the trust’s investment-advisor provisions and general power to employ agents. Because an advisor could be a for-profit entity, SSA reasoned that the delegation might violate the requirement that the trust be managed by a nonprofit, even though the document provided standard language that the Non-Profit Trustee had full authority to remove and appoint another investment advisor (language that has previously,

for many years, been accepted by the agency as fulfillment of the duty of management). In actual administration, an investment advisor may be responsible for custody arrangements, risk assessment, asset allocation, trading, performance reporting, and cash management. Those are important functions, but they are not the same as deciding whether a beneficiary receives a distribution, setting trust-wide policy, interpreting the master agreement, or deciding whether to retain the advisor. All that could reasonably be done is a redraft of the section pertaining to investment advisors and other agents to explicitly spell out the management of those entities to be maintained by the Non-Profit Trustee. In practice, of course the investment advisor is not given management powers (that would be a violation of fiduciary duty of the trustee, to delegate management powers elsewhere). This level of scrutiny is what led to suspicion as to how the agency was reviewing the trust and language; whether the agency suddenly lacked an understanding of how trustee fiduciary duties play a role in trust administration; or the tool they used to review the trust lacked this understanding.

Regardless, to mitigate or avoid beneficiaries' loss of benefits, provisions were drafted in the amendment to explicitly state that the nonprofit retained managerial control, could remove the advisor, and retained ultimate fiduciary responsibility notwithstanding delegation.

C. Defense costs, account counsel, and sole benefit

The original trust allowed some defense costs to be allocated on a pro rata basis across accounts when a substantial number of accounts were affected. It also permitted account counsel to be paid more broadly in some circumstances. SSA treated those clauses as violating the sole-benefit requirement because an account might pay for a matter concerning another beneficiary.

Although this provision has been accepted and approved by the agency for many years, the agency pinpointed this as an issue. As known in the pooled trust world, allocations of legal fees are often allocated on a pro rata basis. If a beneficiary is not yet on benefits, but will be applying for benefits, or will likely be applying for benefits in the future, does the resolution of a benefits issue apply to their trust or not?

Again, regardless, the trustee felt it was best to revise and clarify as the trustee already has in place procedures to ensure that, to the best of trustee's ability, legal fees are appropriately allocated to applicable trusts. There is a legitimate problem at one end of the spectrum. Beneficiary A's account should not routinely pay for Beneficiary B's individual eligibility dispute. There is an equally serious problem at the other end. If SSA attacks the validity or construction of the master agreement, the outcome may affect every account. Requiring the smallest account selected for review to bear the entire cost could make a pooled trust defenseless.

An amendment to the provisions was drafted. The amendment adopted an affected-account approach. Costs may be shared when the matter affects the master trust and therefore all accounts; otherwise, they are charged only to the account or accounts affected. That is a sensible starting point. We would also document the fiduciary finding supporting the allocation: what legal issue is being defended, which accounts face a material effect, what allocation method was selected, and why the cost is reasonable for those accounts.

D. Taxes before Medicaid reimbursement

SSA objected to language permitting payment of income taxes from the beneficiary's account before reimbursement to the State at death. Unlike several of the management objections, this point tracked the payback-priority rules more directly. An

amendment was drafted to remove the ability to pay the beneficiary's income taxes (as differentiated from taxes attributable to the trust). Although the trust and these provisions have been approved for years, the path of least resistance was to draft a clarification.

The response should still be precise. Not every reference to taxes is the same. Taxes arising because of the beneficiary's death or the inclusion of trust assets may be treated differently from the beneficiary's personal income-tax liability or taxes attributable to residual beneficiaries. The clause should use current POMS terminology and applicable state law rather than the generic phrase "income taxes."

E. Medicare Set-Aside components and vendors

The MSA discussion was the most tangled part of the review. The master trust allowed an account to include Medicare Set-Aside (MSA) funds and contemplated a specialized vendor. SSA asked whether the MSA funds were improperly commingled, who managed them and if a for-profit vendor was retained, whether the vendor was subordinate to the nonprofit, and whether the early-termination provision applied to the MSA component.

A clear misunderstanding existed regarding the role of MSA vendors and the MSA component of a pooled trust. First, MSAs held in trusts are addressed in POMS SI 01120.203G.1. Specifically, the MSA component held within a trust is subject to an "undue hardship waiver" under certain circumstances. Although MSA *vendors* are not specifically addressed in the POMS, MSA vendors have been an integral part of the administration of an MSA and are in place to help ensure compliance with rules provided by the Centers for Medicare & Medicaid Services ("CMS"). Whether or not the pooled trust trustee may delegate to an MSA vendor as it pertains to the sub-account could be arguable under the POMS. An MSA vendor may make distribution decisions from the MSA component if the

vendor appropriately determines that the expense should be paid from that component. However, the Non-Profit Trustee should oversee the vendor and have the ability to retain and/or remove the MSA vendor, and, therefore, maintain overall managerial control.

Some of those questions were fair. An MSA component touches several systems at once: the pooled-trust statute, SSI resource rules, Medicare Secondary Payer compliance, account-level recordkeeping, permitted medical payments, exhaustion, death, and early termination. If the instrument adds an MSA as an afterthought, gaps are likely.

Other parts of the critique again confused specialized administration with managerial control. Reviewing medical bills for MSA compliance does not, by itself, make the vendor manager of the pooled trust. The amendment removed the defined MSA-vendor role, placed exclusive managerial control with the nonprofit, and made the early-termination clause apply to the MSA component. That reduced the facial issue. It also illustrates the hard drafting choice: removing a vendor from the trust may appease a literal reviewer, but the actual operating agreement still must describe who performs the work and under whose authority.

F. Outdated citations and cross-references

The trust included references to POMS sections that had been superseded. Those errors were easy to fix and difficult to defend. They were not the reason the trust's structure should have failed, but they gave the agency a legitimate point and may have colored the review of everything else. Version control is not clerical housekeeping in a benefits trust. It is risk management.

V. The Amendment: What It Did and What It Did Not Admit

SSA would not review a draft. It required an executed amendment before resubmission and expressly declined to guarantee that amendment would produce a favorable result. That put the nonprofit in a difficult position: Execute broad changes without knowing whether they would satisfy the agency, or risk continued resource findings for beneficiaries. If the agency were to respond with additional amendments, that would tip the scales towards reasonably believing AI rather than the agency itself is conducting the review given its bias. If an AI is asked to find fault, it will find fault. Victoria’s law partner did a simple experiment with Claude recently. Claude consistently found fault in a paragraph and finally he asked Claude to draft the “perfect” paragraph. Claude did so. Then he erased Claude’s memory of the paragraph, reentered it, and asked Claude whether there was any issue with it. Indeed, Claude found issue with it, scrutinizing its own “perfect” paragraph.

The nonprofit decided to prepare and execute a thorough amendment of more than fifteen pages. The principal changes—and the legal positions the amendment did not concede—are summarized below. Anonymized amendment (May 21, 2026) (on file with presenters).

Chart 2. The Amendment: What Changed and What Was Not Conceded

Issue	What changed	What was not conceded
Directed trustee	Required any directed or successor directed trustee to be an organization described in IRC § 501(c)(3). The trust had not appointed or used a directed trustee, and none was planned.	That the statute or POMS requires every fiduciary or service provider connected with a pooled trust to be a nonprofit.
Investment advisor / agents	Made the nonprofit’s managerial control, removal power, oversight, and retained fiduciary responsibility express, notwithstanding delegation.	That prudent delegation to a for-profit advisor or agent is prohibited, or that performing specialized functions is the same as managing the pooled trust.

Issue	What changed	What was not conceded
Defense costs / IBA counsel	Adopted an affected-account approach: Master-trust matters may be allocated across all affected accounts; account-specific matters are charged only to the affected account or accounts.	That a pooled trust may never share the cost of defending the master instrument when the issue materially affects all accounts.
Taxes / payback	Removed authority to pay the beneficiary's personal income-tax liability before Medicaid reimbursement and retained only the categories permitted by applicable law and POMS.	That every reference to taxes was impermissible, or that the prior administration necessarily violated the payback rules.
MSA	Deleted the defined MSA-vendor role, stated that the nonprofit retained exclusive managerial control, and made the early-termination provision apply to the MSA component.	That a specialized MSA administrator necessarily "manages" the pooled trust or that using specialized vendors is itself impermissible.
Citations / savings provisions	Corrected obsolete POMS references and added broader conformity, severability, nonprofit-management, sole-benefit, and payback language.	That a savings clause can cure contradictory operative language, or that outdated citations alone made the trust a countable resource.

The response letter was courteous by design. It thanked the agency, explained the changes, and emphasized the effect on beneficiaries. It also carefully described several changes as clarifications of how the trust had always operated. That distinction should be preserved. A risk-management amendment does not necessarily concede that prior administration violated the law.

Bridget's concern here is worth making explicit. A trust amendment should match actual authority and actual procedures. If the instrument says the nonprofit exercises "exclusive" control but an operating agreement gives a vendor final authority over a class of payments, the inconsistency will return. The document, policies, contracts, and committee practice need to tell the same story.

VI. Round Two: When the Goalposts Keep Moving

After the amendment was submitted, counsel reported another agency response.

The second round allegedly raised different and highly granular objections. One example concerned a tax-refund provision: The clause said the refund would be returned to “the Trust,” but did not expressly say it would be credited to the beneficiary’s individual subaccount. Victoria’s spontaneous response was, “Where else would it go?”

That sentence captures the frustration of serial review. The trust had definitions and account provisions that answered the question when read together. Another example also demonstrates this. The amended trust stated that any directed trustee or successor directed trustee must be a nonprofit defined by the IRC regulations. The next sentence stated that the trustee may remove any directed trustee and retain another corporate trustee or private professional trustee as successor directed trustee, “if it qualifies to act as directed trustee or successor trustee.” The agency stated that the clause was not in compliance with the POMS because it is not clear that the successor directed trustee must be a nonprofit. The reviewer appeared unwilling to read the two sentences together. Instead, the question seemed to be whether the second sentence, standing alone, repeated that the successor directed trustee must be a nonprofit. If that becomes the standard, every clarification creates new words to search and another opportunity to object.

Many AI document review tools do not read a document as a whole. Instead, they split it into small chunks that are each processed as an isolated unit, which researchers

describe as an inevitable loss of global context.⁶ Because standard chunking ignores a legal document's hierarchy of sections, cross-references, and definitions, a retrieved passage can appear relevant while losing the meaning that depends on provisions located elsewhere, and in one test on a pool of 362 nondisclosure agreements, more than 95% of the passages a standard pipeline retrieved came from the wrong agreement.⁷

VII. This Was Not an Isolated Conversation

Practitioners in other jurisdictions reported substantially similar objections: The nonprofit did not personally make enough day-to-day or investment decisions; delegation to an advisor threatened nonprofit management; and common defense costs violated sole benefit. In one reported matter, SSA had previously accepted the master trust in a published regional precedent, the master language had not changed, and later accounts were nevertheless treated as resources.⁸

Those reports are important but limited. They do not establish that the same reviewer handled every matter, that a national directive exists, or that AI produced the analyses. They do show that the theories recur. That supports collection of comparator letters, prior precedents, amendments, and outcomes. It also supports asking whether a new policy interpretation is being applied without public guidance.

⁶ See Markus Reuter et al., Towards Reliable Retrieval in RAG Systems for Large Legal Datasets, arXiv (Oct. 8, 2025), <https://arxiv.org/abs/2510.06999>.

⁷ See *id.*

⁸ Anonymized practitioner reports (July–Aug. 2026) (on file with presenters).

VIII. How We Would Respond Now

A. Preserve the record before changing the document

Save the exact version reviewed, including the master trust, joinder, amendments, schedules, operating agreements, and policies. Save the agency email in native form with headers and attachments. Identify which beneficiary accounts are affected and which version applies to each. A later clean restatement should not erase the document that generated the dispute.

B. Calendar every deadline separately

A ninety-day pooled-trust amendment period is not the same as a beneficiary's reconsideration deadline, benefit-continuation deadline, court-approval deadline, or state Medicaid response deadline. Create a separate timeline for the master trust and each beneficiary. The master-document negotiation should not cause an individual to lose appeal rights.

C. Take the letter apart

For each agency point, create a row that states: the exact trust language, the agency's rule, the cited authority, the factual premise, the agency conclusion, our response, the proposed document change, and the status after resubmission. This is not a fancy framework. It is how counsel keeps twenty bullet points from turning into one generalized accusation that "the trust is noncompliant."

D. Decide what to fix, what to explain, and what to challenge

Some points should be fixed: obsolete citations, inconsistent cross-references, an overbroad pre-payback clause, or authority to charge clearly unrelated accounts. Some points call for clarification: overlapping role names, broad verbs, a missing hierarchy clause, or an MSA provision that does not connect to early termination. Other points

should be challenged: the claim that any for-profit provider is disqualifying, the assumption that delegation equals loss of management, or a factual assertion about authority that the governing documents contradict.

Making those distinctions helps the cover letter. Counsel can be cooperative without saying, “SSA was right about everything.” Explain why a change is being made and preserve the position that prior administration was compliant where that is the case.

E. Prove how the trust operates

The agency should not be permitted to invent administration from a broad verb. Submit or preserve the governance documents that show who approves distributions, who sets investment parameters, what reports are received, how providers are monitored, who can remove them, and how conflicts are resolved. Depending on the case, that may include board resolutions, committee charters, investment policy statements, delegation agreements, service contracts, minutes, and declarations.

Operating evidence is not a substitute for a compliant instrument. It is the answer when the agency reads the instrument to assume facts that are not true. The document and the evidence should reinforce each other.

F. Protect the beneficiary while the policy dispute proceeds

A master-trust review may not itself give a beneficiary the same appeal path as an initial SSI determination. Once a beneficiary receives an adverse determination, preserve reconsideration, ALJ, Appeals Council, and judicial-review rights as applicable.⁹ Seek benefit continuation when available. The organizational dispute is important, but the beneficiary is the person who loses rent, food, or medical access if the case is mishandled.

⁹ See 20 C.F.R. §§ 416.1400–416.1499; 42 U.S.C. §§ 405(g), 1383(c)(3).

G. Use prior approval carefully

Prior approval is powerful evidence. It shows that the agency previously read the same or materially similar language as compliant; that the trust and beneficiaries relied on that treatment; and that a later contrary result calls for an explanation. It may support arguments concerning consistency, fair notice, reliance, administrative finality, reopening, or retroactivity.

Prior approval is not magic. Estoppel against the federal government is difficult, and a later account may still be reviewed. We would not lead with the claim that approval forever bars reconsideration. We would lead with the statutory text, the agency's own POMS, unchanged language, actual administration, and the absence of a reasoned explanation for the new result. Novel constitutional theories may be preserved after research, but they should not distract from stronger administrative-law and benefits arguments.

H. Ask focused transparency questions

A focused FOIA request can seek trust-review instructions, training materials, quality-control guidance, routing rules, memoranda concerning nonprofit management or delegated investment functions, and records identifying any documented AI use case relevant to trust review. "All records about AI" is likely to produce delay or an unhelpful response. Define the component, time period, subject, and decision.

Comparator materials can be equally valuable. Ask other practitioners for redacted defect letters, favorable decisions, prior precedents, amendments, and outcomes. A request for a policy witness or hearing subpoena may preserve an issue when supported by a concrete proffer. Congressional or policy-level inquiry may help obtain aggregate clarification. None of these tools replaces exhaustion of the beneficiary's claim.

IX. Drafting Changes We Would Make Before the Next Letter

- 1.** Identify the trust type in the opening provisions and use the correct statutory subsection consistently.
- 2.** Give each actor one stable title. Do not use “Trustee” as a shorthand for several different offices.
- 3.** Include one global hierarchy provision. State who has final authority over policy, distributions, investments, providers, information, monitoring, removal, and conflicts.
- 4.** Describe delegation honestly. Identify the delegated function, the instructions, the standard of performance, the reporting duty, the monitoring right, the removal right, and the fiduciary responsibility retained by the trustee or nonprofit.
- 5.** Use the beneficiary’s separate-account name when a provision concerns a refund, expense, transfer, distribution, death, or early termination. A defined term should carry through the operative sentence.
- 6.** Adopt an affected-account rule for legal and administrative expenses. Require a documented fiduciary basis for any allocation across more than one account.
- 7.** Integrate every special component—MSA, structured settlement, retirement asset, real property, or other restricted fund—into accounting, distribution, death, termination, and payback provisions.
- 8.** Use current payback language and distinguish the narrow expenses allowed before reimbursement from expenses that must wait.
- 9.** Treat a savings clause as interpretive guidance, not a cure for contradictory operative language.

10. Run a final audit for defined terms, cross-references, citations, conflicting verbs, role overlap, and version applicability before execution.

The practical test. A reviewer should be able to answer four questions without assembling the instrument like a puzzle: Who decides? Who performs? Who monitors? Who can remove the person performing the work?

X. What This Means for (d)(4)(A) Trusts and Medicaid

The most immediate spillover risk is the application of the same review process by the agency to (d)(4)(A) trusts. An individual trust can be misread if roles are unclear, a beneficiary appears to hold removal or direction powers, an early-termination provision is incomplete, or a trustee protector or advisor is described with language suggesting beneficiary control.

State Medicaid review is separate. A provision revised for SSA may trigger a different issue under state payback law, long-term-care policy, court supervision, caregiver rules, or fiduciary statutes. Counsel should maintain a jurisdiction chart identifying the federal statute, SSA POMS, state Medicaid authority, governing trust law, any court order, and the actual administrative procedure. When an objection jumps from one column to another, ask the reviewer to identify the source of authority.

XI. Using Our Own AI Without Repeating the Problem

AI can help counsel organize a long review letter, separate propositions, compare versions, trace citations, and identify inconsistent terms. That is useful work. It can also produce confident mistakes, omit limiting language, or invent a citation. Use an approved system, anonymize or protect confidential information, understand retention and training terms, and verify every legal proposition. ABA Formal Opinion 512 (July 29, 2024) and the

Supreme Court of Arizona Steering Committee on Artificial Intelligence and the Courts, Generative AI: Ethical Best Practices for Lawyers and Judges (Nov. 14, 2024), apply the familiar duties of competence, confidentiality, communication, supervision, candor, and reasonable fees.

The lawyer should use AI to reduce clerical friction, not to outsource judgment. If our criticism is that a reviewer treated a trust as a collection of phrases instead of a legal arrangement, we should not do the same thing in our response.

XII. Final Thoughts

We still do not know whether an AI system helped produce the review that began this matter. We do know that the review threatened benefits, misunderstood important aspects of administration, and forced a nonprofit to execute a substantial amendment without draft review or assurance that the next review would end the dispute.

The right response is not reflexive defiance. Some language was vulnerable and needed correction. The right response is also not endless capitulation. A trust cannot be rewritten every time a reviewer finds a new isolated phrase while ignoring the instrument as a whole and the law that governs it.

Our recommendation is practical: Preserve the record, protect the beneficiary's appeal, separate each issue, correct what is actually wrong, clarify what is genuinely unclear, and challenge requirements that do not appear in the statute or the agency's own policy. Draft so that the hierarchy and administration are obvious to a human reader and difficult for a machine—or a hurried reviewer—to misunderstand. That is not drafting for a bot. It is good trust drafting.

Immediate Response Checklist

- Identify every document version and every affected beneficiary.
- Calendar cure, appeal, benefit-continuation, court, and Medicaid deadlines separately.
- Map each agency point to its exact rule, factual premise, and requested change.
- Preserve prior approvals, precedent opinions, comparator decisions, and evidence of reliance.
- Collect governance records, delegation agreements, policies, and monitoring evidence.
- Use the narrowest amendment that protects benefits and remains administrable.
- Ask SSA to confirm which issues are resolved before answering new objections.
- Keep the master-trust response and each beneficiary's appeal moving on parallel tracks.
- Consider targeted FOIA and policy inquiry when the same theory appears repeatedly.
- Review any SSA-driven change for state Medicaid, fiduciary, tax, and court consequences.

Selected Authorities and Materials

- 42 U.S.C. §§ 405(g), 405(h), 1382b(e)(5), 1383(c)(3), 1396p(d)(4)(A), and 1396p(d)(4)(C).
- 20 C.F.R. §§ 416.1201 and 416.1400–416.1499.
- SSA, POMS SI 01120.202, SI 01120.203, SI 01120.204, and SI 01120.225.
- *Schweiker v. Hansen*, 450 U.S. 785 (1981).
- *Washington State Department of Social & Health Services v. Keffeler*, 537 U.S. 371 (2003).
- *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
- *Lewis v. Alexander*, 685 F.3d 325 (3d Cir. 2012).
- Uniform Trust Code § 807 and applicable state analogues.
- ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 512, Generative Artificial Intelligence Tools (July 29, 2024).
- Supreme Court of Arizona Steering Committee on Artificial Intelligence and the Courts, Generative AI: Ethical Best Practices for Lawyers and Judges (Nov. 14, 2024).

- Anonymized SSA review correspondence dated March 10, 2026; executed amendment and response letter dated May 21, 2026; master trust and joinder materials; and practitioner correspondence concerning related reviews and appeals (2026) (on file with presenters).

P.S. *We used generative AI as a drafting and editing aid in preparing these materials, including the summary charts. We used a platform that protects confidential information, independently reviewed and revised the work product, and remain responsible for the analysis, citations, and conclusions.*