

# SI 01120.199 Early Termination Provisions and Trusts

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## A. How to determine when to apply the policies in this section

### 1. New trusts and trusts that have not been previously excepted under section 1917(d)(4)(A) or (C) of the Act

A trust that is either newly formed or not previously excepted from resource counting must meet all of the criteria set forth in [SI 01120.199](#) through [SI 01120.203](#) and [SI 01120.225 through SI 01120.227](#) to be excepted under section 1917(d)(4)(A) or (C). Do not except such a trust from resource counting unless the trust meets all of [these requirements](#).

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### 2. Trusts that previously met the requirements to be excepted under section 1917(d)(4)(A) or (C) of the Act

A trust that was previously determined to be exempt from resource counting under section 1917(d)(4)(A) or (C) shall continue to be excepted from resource counting, provided the trust is amended to conform with the requirements of [this section within 90 days](#). That 90-day period begins on the day the recipient or representative payee is informed that the trust contains provisions that must be amended in order to continue qualifying for the exception under section 1917(d)(4)(A) or (C).

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Do not count a previously exempted trust as a resource during the 90-day amendment period. If the trust still fails to meet the requirements of [this section](#) after the expiration of the 90-day amendment period, begin counting the trust as a resource under normal resource counting rules.

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**NOTE:** Each previously excepted trust is permitted only one 90-day amendment period.

## B. Applicability of early termination provisions and trusts

This section provides the policy for evaluating special needs and pooled trusts established with the assets of an individual that contain early termination provisions. If certain criteria are met, such trusts can be excepted from counting as a resource under Section 1613(e)(5) of the Social Security Act (the Act). If those criteria are not met, such trusts should instead be evaluated under Section 1613(e) of the Act. For more information about evaluating trusts under Section 1613(e) of the Act, see [SI 01120.201](#).

Use the instructions in this section to evaluate the following types of trusts:

- Special needs trust established under Section 1917(d)(4)(A) of the Act  
For information on special needs trusts established under Section 1917(d)(4)(A) of the Act, see [SI 01120.203](#).
- Pooled trusts established under Section 1917(d)(4)(C) of the Act

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For information on pooled trusts established under Section 1917(d)(4)(C) of the Act, see [SI 01120.203](#).

## **C. Case processing alert regarding early termination provisions and trusts**

Trusts are often complex legal arrangements involving State law and legal principles that require obtaining legal counsel. Therefore, the following instructions may only be sufficient to recognize that an issue is present that should be referred to the regional office (RO) for possible referral to the Regional Chief Counsel. When in doubt, discuss the issue with the RO staff. Many issues can be resolved by phone.

### **D. What is an early termination provision?**

An early termination provision or clause would allow a trust to terminate before the death of the beneficiary. Commonly, such provisions or clauses provide for termination of the trust when, for example, the beneficiary is no longer disabled or otherwise becomes ineligible for Supplemental Security Income (SSI) and Medicaid, or when the trust fund no longer contains enough assets to justify its continued administration.

## **E. Defining terms for trusts**

### **1. Trust**

A trust is a property interest whereby property is held by an individual or entity (e.g., a bank) called the trustee, subject to a fiduciary duty to use the property for the benefit of another (i.e., the beneficiary).

### **2. Trust established with the assets of an individual**

A trust is considered to have been established with the assets of an individual if any assets of the individual or spouse, regardless of how little, were transferred to a trust other than by a will. For more information on how to determine whether something is considered an “asset”, see [SI 01120.201B.2](#).

### **3. Grantor**

A grantor, also referred to as a settlor or trustor, is the individual who provides the trust principal or corpus. The grantor must be the owner or have legal right to the property or otherwise be qualified to transfer it. For more information on grantors, see [SI 01120.200B.2](#).

### **4. Trustee**

A trustee is a person or entity who holds legal title to property for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for his or her own benefit.

## 5. Trust beneficiary

A trust beneficiary is a person for whose benefit a trust exists. A beneficiary does not hold legal title to trust property but does have an equitable ownership interest in it. As equitable owner, the beneficiary has certain rights that will be enforced by a court because the trust exists for his or her benefit. The beneficiary receives the benefits of the trust while the trustee holds the title and duties.

## 6. Trust principal

The trust principal is the property placed in trust by the grantor which the trustee holds, subject to the rights of the beneficiary, and includes any trust earnings paid into the trust and left to accumulate. It is also called “the corpus of the trust.”

## 7. Other definitions

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

# F. Policy for Section 1917(d)(4)(A) and (C) trusts that contain an early termination provision

## 1. Criteria for determining whether an early termination clause is acceptable

For the purpose of SSI eligibility, a trust that contains an early termination provision or clause may not be excepted from the resource counting rules at Section 1613(e) of the Act unless it satisfies either the requirements in Section 1917(d)(4)(A) or (C). Additionally, a trust must also satisfy the resource counting rules found at [SI 01120.200D](#) and [SI 01110.100B](#) to not be a countable resource. In order to meet those requirements, all of the following criteria must be met:

- Upon early termination (i.e., termination prior to the death of the beneficiary), the 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 under the State Medicaid plan(s); and
- Other than payment for those expenses listed in [SI 01120.199F.3](#), in this section, no entity other than the trust beneficiary may benefit from the early termination (i.e., After reimbursement to the State(s), **all** remaining funds are disbursed to the trust beneficiary); and
- The early termination clause gives the power to terminate to someone other than the trust beneficiary.

**NOTE:** For trusts that are excepted from resource counting under Section 1917(d)(4)(C) as a pooled trust and do not contain an early termination clause, it is permissible for the trust to retain

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amounts remaining in the individual's account upon the death of the individual. For more information, see [SI 01120.203B.2](#).

## 2. Exception for early termination clauses in Section 1917(d)(4)(C) trusts

For pooled trusts established under Section 1917(d)(4)(C), an early termination clause does not need to meet the above criteria if the clause solely allows for a transfer of the beneficiary's assets from one Section 1917(d)(4)(C) trust to another Section 1917(d)(4)(C) trust. The early termination clause must contain specific limiting language that precludes the early termination from resulting in disbursements other than to the secondary Section 1917(d)(4)(C) trust or to pay for the expenses listed in [SI 01120.199F.3](#), in this section.

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## 3. Allowable administrative expenses paid from the trust

The following types of administrative expenses may be paid from the trust prior to reimbursement of medical assistance to the State(s):

- Taxes due from the trust to the State(s) or Federal government due to the termination of the trust; and
- Reasonable fees and administrative expenses associated with the termination of the trust.

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For more information about allowable and prohibited expenses, see [SI 01120.203B.3](#).

### References

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

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## G. Procedure for the development and documentation of trusts established on or after 1/1/00

See [SI 01120.202](#).

## H. Examples of trust evaluations and determinations

The following examples are illustrative of situations that you may encounter. You should not rely solely on the analysis provided in the examples in making determinations in a specific case as laws vary from State to State and the language of individual trust documents may provide different results from those given in an example. You can refer to regional instructions, if any, and consult your regional office as necessary. Also, be aware of the implications that the trust may have for Medicaid eligibility. For more information on the effect upon Medicaid eligibility, see [SI 01730.048](#).

### 1. Trust principal is a resource

**Example 1:**

A disabled child is the beneficiary of a special needs trust that was established after 1/1/00 with assets of the child. The trust contains an early termination clause that states that, upon early termination, all assets remaining in the trust will be distributed to the beneficiary.

The field office (FO) evaluates the trust document and determines that the trust meets the criteria of a Section 1917(d)(4)(A) trust (i.e., a special needs trust). However, the FO determines that the trust is a countable resource because, upon early termination, the document does not allow for reimbursement first to the State(s) for providing medical assistance to the trust beneficiary.

**Example 2:**

A disabled individual, under age 65, is the beneficiary of a pooled trust that was established after 1/1/00 with the assets of the individual. The trust contains an early termination clause that states that, upon early termination, all assets remaining in the trust will be retained by the trust.

The FO evaluates the trust document and determines that the trust meets the criteria of a Section 1917(d)(4)(C) trust (i.e., a pooled trust). However, the FO determines that the trust is a countable resource because, upon early termination, the State(s) is not designated as the primary assignee to 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 under the State Medicaid plan(s). Also, the trust allows for an entity other than the beneficiary (i.e., the trust) to benefit from the early termination.

**Example 3:**

A disabled individual, under age 65, is the beneficiary of a special needs trust that was established after 1/1/00 with assets of the individual. The trust contains an early termination clause that gives the beneficiary the authority to terminate the trust and states that, upon early termination, first, the State(s) will be reimbursed for medical assistance provided to the trust beneficiary. Per the trust document, after reimbursement to the State(s), any remaining assets will be distributed to the beneficiary.

The FO evaluates the trust document and determines that the trust meets the criteria of a Section 1917(d)(4)(A) trust (i.e., special needs trust). However, the FO determines that the trust is a countable resource because the early termination clause gives the beneficiary the authority to terminate the trust.

## 2. Trust principal is not a resource

**Example 1:**

A disabled child is the beneficiary of a special needs trust that was established after 1/1/00 with assets of the individual. The trust contains an early termination clause that states that, upon early termination, first, the State(s) will be reimbursed for medical assistance provided to the trust beneficiary. Per the trust document, after reimbursement to the State(s), any remaining assets will be distributed to the beneficiary. The clause bestows the power to terminate to the trustee, a bank.

The FO evaluates the trust document and determines that the trust meets the criteria of a Section 1917(d)(4)(A) trust (i.e., a special needs trust). The FO determines that the early termination clause would not prevent the trust from meeting the criteria to be excepted from resource counting under the special needs trust exception. Additionally, the FO evaluates the trust under [SI 01120.200D](#) and determines that it is not a countable resource.

**Example 2:**

A disabled adult, under age 65, is the beneficiary of a pooled trust that was established after 1/1/00 with assets of the individual. The trust contains an early termination clause that states that, upon early termination, first, the State(s) will be reimbursed for medical assistance provided to the trust beneficiary. Per the trust document, after reimbursement to the State(s), any remaining assets will be distributed to the beneficiary. The clause bestows the power to terminate to the trustee.

The FO evaluates the trust document and determines that the trust meets the criteria of a Section 1917(d)(4)(C) trust (i.e., pooled trust). The FO determines that the early termination clause would not prevent the trust from being excepted from resource counting under the pooled trust exception. Additionally, the FO evaluates the trust under [SI 01120.200D](#), and determines that it is not a countable resource.

## I. References

- [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 1/1/00
- [SI 01120.203](#), Exceptions to Counting Trusts Established on or after 1/1/00
- [SI 01150.100](#), What is a Resource Transfer
- [SI 01150.121](#), Exceptions – Transfers to a Trust
- [SI 01730.048](#), Medicaid Trusts

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