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

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The rules governing Federal programs generally fit within a three-tier scheme - statute, regulations and sub-regulatory instructions – with each tier having its 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.

Trust Policy Prior to January 1, 2000

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—

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