



# FIRST CAPITAL SURETY & TRUST COMPANY

## SPECIAL NEEDS TRUST GUIDELINES

The essential purpose of a Special Needs Trust is to improve the quality of an individual's life **without disqualifying them from eligibility to receive public benefits.**

The information below is designed to explain SSI rules so you can understand how distributions will be made from your Trust without jeopardizing your eligibility for benefits. There is also information regarding some practical suggestions on how to obtain help in recognizing and dealing with some of the special needs of the beneficiary.

### SECTION I

#### **OVERVIEW OF PUBLIC BENEFITS**

- Supplemental Security Income (SSI) – Operated by the **Federal** Social Security Administration.
- Medicaid – Operated by **state** governments. A regional Medicaid office in your state administers the Medicaid program **locally**.

An SSI beneficiary receives a monthly cash payment for support because:

- The beneficiary is aged, blind or disabled  
**AND**
- Their assets and income are low enough to meet a “means test”.

SSI is intended to pay for the beneficiary's **food and shelter**. In some states, an SSI recipient is automatically entitled to receive Medicaid benefits because they are “categorically needy”. If the beneficiary receives too much income or has assets that are too great, they are likely to **lose their SSI eligibility** and the automatic Medicaid coverage along with it.

The loss of Medicaid coverage can be a more serious problem than the loss of SSI benefits, especially if alternative medical insurance is not readily available.

First Capital Surety & Trust Company's goal is to supplement your public benefits while avoiding violation of complicated eligibility rules.

#### **SETTING THE AGENDA FOR DISTRIBUTIONS**

To assist you in making decisions about purchasing goods or services, the beneficiary will work with a Trust Service Administrator. Once you submit a request for funds to your Trust Service Administrator, they will determine if what you wish to purchase is something that is **not provided for by your public benefits**. First Capital Surety & Trust Company will then refer to the rules described below in Section II to decide which items (if any) will be paid for from your Trust.

We recommend that the beneficiary provide FCST with a complete *Benefit Summary Form* that is included in this packet. It is important to update this form at least once a year. If your benefit situation were to change, the administration of your Trust may change accordingly.



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A new **Benefit Summary Form** will be mailed to you annually with your annual statement and tax information. If you need a new form before then, you may request a copy from your Trust Service Administrator. This form is also on our website, [www.firstcapitalsurety.com](http://www.firstcapitalsurety.com)

## SECTION II

### **HOW AND WHEN DISTRIBUTIONS ARE MADE FROM THE TRUST**

This section describes the rules FCST must follow in regard to how and when payments are made from your Trust. To administer your account properly, it is very important that FCST has your current SSI and Medicaid information on file. We must be made aware of this information because it will allow us to determine how and when payments are made from your Trust so you maintain eligibility and continue to receive benefits. This information will also help FCST determine the kinds of distributions that can be made.

### **SSI RULES**

Any distribution made to or for the beneficiary will be **categorized by Social Security as some form of income** and, as a result, will be subject to Social Security's "income rules". If this income is used to buy some kind of asset or becomes an asset itself (such as money in a bank account), the asset will be subject to separate "resource rules".

Classifying distributions from the Trust as either "income" or a "resource" will have an effect as to the beneficiary's continued eligibility and benefit levels. As such, it is important to have some understanding of them.

In order to be sure that your distributions fall into the desired category, you must maintain very accurate records of how the Trust funds are invested and spent. These records will be needed if Social Security or the Division of Medicaid wants verification of the expenditures made. It is not unusual for the agencies to make a demand for verification, and you should expect it.

### **SSI RULES – ASSETS**

#### **COUNTABLE RESOURCES**

- An SSI recipient is allowed to have only **\$2,000 or less in "countable resources"**. If countable resources exceed \$2,000 during any calendar month (even by a few cents), the beneficiary's public benefits may be terminated.
- Money or property that is received during the month is considered "income" throughout the calendar month of receipt, even if it is deposited in a bank account. If, at the end of the month, it is still in the account, it becomes a "resource" in the next month and is then subject to "resource" rules.



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## EXCLUDED RESOURCES

The beneficiary is allowed to have certain **exempt** assets, which are not included in determining the \$2,000 limit. These exempt assets are not counted in determining eligibility, and the beneficiary's ownership of them will not jeopardize their SSI benefits.

Therefore, the Trustee may freely purchase exempt assets for the beneficiary (except for food and shelter, as explained below). The beneficiary will **not** receive the money to purchase exempt assets – payments of money are considered countable income to the beneficiary as explained below. Therefore, payments for allowable goods and services will be paid **directly to the provider**.

**FCST must also be careful as to what assets are transferred to your beneficiary if the Trust has a “payback provision”. The following assets are exempt:**

- A home, if the beneficiary lives in it or intends to return to it.
- Full value of an automobile and a second car if needed for medical treatment or if modified for a disabled person.
- All term life insurance and life insurance with cash surrender value, if the combined face value of all such policies is less than \$1,500.
- A burial plot, or other burial space, worth any amount, and
- A revocable burial fund, worth up to \$1,500.

## INCOME

Even though the Trust principal is not considered a resource of the SSI beneficiary, disbursements from the Trust may be considered **income** to the beneficiary, depending on the nature of the disbursement. **SSI rules will treat distributions made from the Trust in one of four ways:**

1. Direct income to the beneficiary
2. Not income
3. In-kind income
4. In-kind support and maintenance

## DIRECT INCOME

SSI recipients are permitted to receive a small amount of any kind of income (\$20.00 per month) without having their benefits reduced. This \$20.00 allotment is commonly referred to as the “*SSI Disregard Amount*”. Any money paid directly to the beneficiary above and beyond the SSI Disregard Amount will be considered income and will reduce their SSI benefits on a dollar-for-dollar basis.

If the beneficiary's SSI benefits were reduced to zero, both SSI **and** Medicaid benefits will be jeopardized as Medicaid benefits depend on SSI eligibility. As a result, **direct payments will not be made to the beneficiary**.



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In addition, the beneficiary may not be reimbursed for purchases made, **even if the purchases are for exempt assets.** The payment would still be counted as direct income. In addition, SSI rules state that if the beneficiary is given anything that is equivalent to cash it will be counted as direct income.

### NOT INCOME

Examples of benefits that are “not income” include payments made to someone **other** than the beneficiary, such as certain kinds of medical care and social services. Also, bills paid for the beneficiary to receive services are not income from the Trustee. However, if the beneficiary receives any asset as a result of the Trustee paying the bill, the value he or she receives is counted under the “in-kind come” rules discussed below.

### IN-KIND INCOME

Generally speaking, “in-kind income” exists when the beneficiary is given something other than money. In most cases, it is safe to provide such “income” to the beneficiary. This is because the value of any non-cash item (other than food or shelter) is **not** counted as income if the item will become an exempt asset when it is retained into the following month. The beneficiary can also receive something that will be used **in the month it is received**, such as a vacation or a tank of gas.

As a result, the beneficiary may receive most of the exempt assets mentioned above (such as books, furniture or recreational equipment). For example, if the beneficiary receives a television, it will not be counted as income. This is because it would be an exempt household item if retained into the following month.

For example, a direct payment can be made to a provider (appliance store) which then provides the goods or services to the beneficiary, such as delivering the television.

### IN-KIND SUPPORT AND MAINTENANCE (“ISM”)

If the beneficiary receives food or shelter as a result of payments by the Trustee to other persons, the beneficiary will have income in the form of “in-kind support and maintenance” (ISM). ISM causes a reduction in the beneficiary’s SSI payments. This is why the Trustee is directed to exercise discretion in the Trust agreement to make distributions which will **supplement and not provide for the beneficiary’s basic needs.**

However, in many cases, the Trustee has authority to make decisions which are in the best interest of the beneficiary. That may require carefully examining how the rules regarding ISM will be applied. Problems can arise when “in-kind income” consists of food or shelter. The beneficiary’s SSI benefits will be reduced or eliminated if they receive ISM.

SSI benefits are specifically intended to pay for a person’s food and shelter. If that person receives food and shelter from another source, less SSI benefits are needed. As a result, if the Trust pays the beneficiary’s grocery bill, rent, meals (for example, in a restaurant), the Trust is providing ISM to the beneficiary. In theory, the Trust is then also reducing your need for SSI benefits.

At times, there are very fine distinctions between allowable in-kind income and countable ISM. For example, the Trust can pay for some entertainment expenses, but not others (for example, a movie ticket but not a restaurant meal, as that is food).



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Note also that the Trust can pay for certain medications and alternative health treatments **if they are not covered by Medicaid or other benefit programs**. If the beneficiary purchases a home, ISM can arise in each month when the Trust pays the beneficiary's mortgage payment, property taxes, insurance or utilities (gas, water, electricity, garbage collection). ISM can also arise if the Trust purchases a home in which the beneficiary resides. If you are thinking of using your Trust to buy a home where you will reside, please inform your Trust Service Administrator. That decision will need to be discussed in detail to determine if the SSI benefit will be reduced and, if so, by how much.

If the Trust does give ISM to the beneficiary, your SSI benefits will be reduced, but not on a dollar-for-dollar basis, like with cash. However, if the Beneficiary's SSI payment is less than \$244.66 (2010) per month, payment of ISM by the Trust may terminate the entire SSI payment (and the Medicaid coverage that comes with it).

There are two different formulas that Social Security uses to reduce the SSI benefits for a person who receives ISM. The formula used depends on the household and living arrangements of the SSI recipient.

By design, you should use your SSI benefits for which they were intended, and use distributions from your Trust for "non-necessities". In an emergency, the Trust may make distributions for food and shelter. Please call first, however, to speak with your Trust Service Administrator for further information.

Distributions related to medical needs (which are not already provided by Medicaid or other public benefit programs) will always be exempt from consideration as income under the SSI program and most other public programs. As a result, the purchase of any medical equipment or medical service for the Trust beneficiary **not already available through Medicaid or another public benefit program** that can be justified by a medical authority's order will not cause a reduction in SSI benefit levels. The term "medical authority" is broadly interpreted and includes in addition to medical doctors, many other health care providers, such as podiatrists, chiropractors, physical therapists and psychologists.

### **EXAMPLES OF TRUST DISTRIBUTIONS THAT WILL REDUCE SSI BENEFITS:**

- Basic shelter-related expenses
- Food
- Cash for any purpose

### **EXAMPLES OF IMPERMISSIBLE TRUST DISTRIBUTIONS:**

- Paying for a service already paid for by another source
- Distribution not in the best interest of the beneficiary (made primarily for the benefit of another person)

## **SECTION III**

### **REPORTING GUIDELINES – SSA RULES**

The SSI program requires periodic reports for all SSI recipients. These reports **MUST** be completed for eligibility to continue. The representative payee must report the existence of the Special Needs Trust to the Social Security Administration, and provide a copy of it if requested. In addition, the beneficiary must report all of the following:



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A change in: (1) the beneficiary's address, (2) employment status, (3) his or her living arrangements (such as adding or losing a roommate), (4) his or her income (**including the receipt of any direct income or ISM from the Trustee**), (5) any **countable** resources, (6) health insurance, (7) the beneficiary's marital status, as well as (8) changes or improvements in the beneficiary's physical or medical condition (for example, the beneficiary improves so much that he/she is no longer considered disabled), (9) admission to or discharge from health facility or public facility (such as a hospital or nursing home), (10) any trip outside the U.S. and (11) new eligibility for other public benefits.

The report may be brief, but it should be in writing to the Social Security Administration and it should include the beneficiary's name and Social Security number, a description of the event that triggered the report and the date of the event. The report is due within 10 days after the end of the month in which the event took place. The Trustee is **not required** to send these reports to SSA, but if they do, they must keep a copy.

If a required report is not made on time, the SSI program is entitled to reimbursement for all SSI benefits incorrectly paid to the beneficiary. SSI can also assess a penalty of up to \$100, depending on how late the report is. The Trustee may also need to inform the Representative Payee of this requirement. Remember that the SSA will have access to any tax information filed itemizing the income from the Trust used for the Trust beneficiary. This may raise questions about the distributions and the Trustee may receive any inquiry from SSA about them. If you receive any correspondence from SSA, please inform us of it immediately. We are here to help you respond to these inquiries. Failure to respond, or an incomplete explanation, may result in a loss of benefits.

The beneficiary should report all distributions. It is safer to report and explain a distribution to the beneficiary than to be discovered later by SSI's Income and Eligibility Verification System (IEVS). At that point, the explanation will then have to be made to a very skeptical investigations unit.

**NOTE:** If your Trust is required to report tax information to the IRS, as most Special Needs Trusts are, the IRS and the State Tax Commission will know about all income distributed from the Trust, and they regularly exchange reporting information with SSI and the Medicaid program. This is why all reports should be filed on time as required by the governmental agencies and in the proper fashion.

### **PREVENTING A REDUCTION IN BENEFITS – APPEALS FROM ADVERSE ACTIONS**

In administering the Trust, the beneficiary must pay attention to any notice regarding a change in benefits and remain reasonably well informed of new developments. If SSI or Medicaid notifies you that it intends to reduce or eliminate your benefits, you should appeal in writing **within 10 days**. If you act quickly, the SSI and Medicaid benefits will continue and not be suspended during the appeal. Although you are allowed up to 60 days to appeal an SSI decision, and 90 days to appeal a Medicaid notice of action or decision, asking for an appeal **after** 10 days have passed will result in the **loss** of the SSI and Medicaid benefits while you await the results of the appeal.

The beneficiary must also keep FCST informed about changes in benefits so that we are able to make intelligent decisions as Trustee of the Trust. Failure to report a change in benefits can have catastrophic results. Although SSI is a federal program run by the Social Security Administration, the federal contribution is only a portion. Make sure that the SSI and Medicaid programs have FCST's address, in addition to the beneficiary's address, and request that FCST receive copies of all communications affecting your benefits. Be sure to let FCST know promptly of receipt of any such notice and keep copies of all correspondence from each benefit agency. This will help in determining the applicable rules on eligibility, reporting and appeals.



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## **RECORD KEEPING**

As we have seen, it is very important to determine whether distributions from the Trust are income, not income, in-kind income or in-kind support and maintenance for the beneficiary. To be certain that the distributions fall into the desired category, **FCST maintains records for all Trust distributions.**

**The beneficiary must request all distributions in writing.** These records will be needed if Social Security or Medicaid wants verification of the expenditures that have been made.

If your Special Needs Trust requires repayment at the death of the beneficiary to Medicaid (for all medical benefits paid by Medicaid for the beneficiary), then it is a “payback” Trust. States generally have the right to monitor distributions from such Trusts to be sure that the funds are used for the benefit of the disabled person. Generally, Medicaid requires that the Trustee file an annual accounting with Medicaid, showing all receipts and disbursements to or from the Trust for the prior year.

## **SECTION IV**

What do these complicated rules mean for expenditures from a Special Needs Trust? In-kind purchases, meaning purchase of goods or services for the benefit of the beneficiary, only potentially affect the SSI benefit amount, and not Medicaid benefits. However, Medicaid may restrict expenditures for approved things.

## **HOME, UPKEEP, AND UTILITIES**

Keep in mind that SSI’s in-kind support and maintenance (ISM) rules deal specifically with payments for “food and shelter.” **The Social Security Administration includes these items as food and shelter:**

- Food
- Mortgage (including property insurance required by the mortgage holder)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal

***416.C.F.R. 1130(b); POMS SI 00835.465D.***

The rules make special note of the fact that condominium assessments may in some cases be at least partial payments for water, sewer, garbage removal and the like.



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A payment for rent will implicate the ISM rules, as will monthly mortgage payments. The outright purchase of a home, whether in the name of the beneficiary or the Trust, will not cause loss of SSI (although it may reduce the beneficiary's SSI benefit for the single month in which the home is purchased).

This brings up another consideration. Purchase of a home **in the Trust's name** could subject it to a Medicaid "payback" requirement on the death of the beneficiary, whereas purchase **in the name of the beneficiary** may allow other planning that will avoid the home becoming part of the payback. This complicated interplay of Trust rules, ISM definition, estate-recovery rules, and home ownership makes this area of Special Needs Trust administration particularly challenging.

However, the Medicaid state agency's treatment of distributions from Special Needs Trusts may differ from the Social Security interpretation—especially when the beneficiary of a self-settled trust is eligible for Medicaid benefits. For example, contrary to putting the house in the individual's name, a state may require that any purchase of a home by such a trust would result in title being held in the trust's name, thereby ensuring that the state will at least receive the proceeds from the sale of the residence upon the death of the beneficiary.

### **CLOTHING**

Until March 7, 2005, purchase of clothing by a trust was considered as ISM for SSI, similar to shelter and food. Since then, a clothing purchase for the beneficiary will **not affect the benefit amount or eligibility**, whether the clothing in question is special garments related to the disability or just ordinary street clothes and shoes. Not all state Medicaid regulations reflect this change.

### **PHONE, CABLE, AND INTERNET SERVICES**

Other than those utilities listed above, there is no federal limitation on utility payments. The trust can pay for cable, telephone, internet connection, newspaper and other utilities not on the list.

### **TRANSPORTATION: VEHICLE, INSURANCE, MAINTENANCE, GAS**

In general, the use of trust funds for transportation expenses does not cause a problem for the SSI recipient. However, the trustee must be careful about how funds are distributed. **FCST cannot give money for transportation directly to the beneficiary.** One technique that has worked well has been for the beneficiary or authorized person to obtain a gas-company credit card. Because eligibility for such cards is easier to meet, and because the cards cannot be used to purchase groceries, administration of the credit account is easier to set up and monitor, and the card can then be billed directly to the trust.

SSI rules allow for a recipient to own **one** automobile. If the beneficiary wants to purchase an automobile, funds will be paid directly to the seller. The Special Needs Trust would then be listed as the lien holder on the vehicle.

Some state Medicaid agencies put limitations on the value, type and the title ownership of vehicles, such as only allowing a vehicle valued up to \$5,000, handicapped equipped, or requiring a lien in favor of the payback trust on the title.



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## **PRE-PAID BURIAL/FUNERAL ARRANGEMENTS**

Nothing in federal law prohibits or restricts use of Special Needs Trust funds for purchase of burial and funeral arrangements during the beneficiary's lifetime—except to the extent that the beneficiary has access to the funds used to pay for the arrangements, and thereby subject to the asset limitations affecting SSI recipients. State Medicaid agencies may limit the value of the burial contract. It is important to ask for an “irrevocable, prepaid” funeral plan.

## **TUITION, BOOKS, TUTORING**

No limit under either federal or state law. This is an excellent use of Special Needs Trust funds.

## **VACATIONS AND TRAVEL**

### **TRAVEL**

- Distributions for vacation and travel are often permitted from a Special Needs Trust. There may be some concern about payment for hotels. When the beneficiary still maintains a residence at home, the hotel stay and restaurant may be considered “shelter” and “food” expenses. Generally, Social Security does not pursue benefit reduction if a person goes on vacation. The current rules allow a recipient to receive food and shelter during a temporary absence from home, such as a vacation. A temporary absence is one of at least 24 hours of duration. 20 C.F.R. sec. 416.1149; POMS SI 00835.040.

## **PAID COMPANIONS**

- Some individuals with disabilities may require one-on-one assistance from parents or trained staff. The use of trust funds for paid companions does not cause a problem with SSI. Some states may impose limitations on companion travel not found in federal law. These might include not allowing recipients to have the Special Needs Trust pay for more than one traveling companion, the companion must be necessary to provide care, and the companion may not be a person obligated to support the beneficiary such as a minor beneficiary's parent. Generally, FCST will distribute funds for one companion.

## **HOUSEHOLD FURNISHINGS AND FURNITURE**

The trust can be used to purchase appliance, furniture, fixtures and the like. Before March 2005, there was a theoretical concern in the SSI program that the value of household furnishings might exceed an arbitrary limit and affect the beneficiary's eligibility; that value limit has now been removed.

## **TELEVISION, COMPUTERS, AND ELECTRONICS**

There is no specific limitation on purchase of household televisions or other electronic devices, although under SSI rules the individual is only allowed to own “ordinary household goods” that are not kept for collectible value and are used on a regular basis. The trust can also provide a computer for the beneficiary, plus software and upgrades.



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### **CREDIT CARDS**

Goods and services purchased with a credit card are actually a “loan” that must be paid back to the credit card company. As long as the beneficiary **does not use the card for food or shelter**, the trust can pay back the credit card company without the payment counting as income.

### **RESOURCES**

These websites are helpful resources for understanding how the Special Needs Trust and SSI work:

[www.firstcapitalsurety.com](http://www.firstcapitalsurety.com)

[www.socialsecurity.gov](http://www.socialsecurity.gov)

<http://www.ssa.gov/ssi/text-understanding-ssi.htm>