

WHEN PROMISSORY NOTES ARE EXCLUDED RESOURCES

The following analysis applies in 1634 states . . .

In this context, it is critical to note that a loan between a parent and a child or friend is an "INFORMAL LOAN" - defined in the POMS:

"An informal loan is a loan between individuals who are not in the business of lending money or providing credit." SI 01120.220(C)

If a client happens to be in the business of "lending money or providing credit", then a promissory note taken by that client would be EXCLUDED as a resource if it complies with the following three requirements found in SI 01120.220(B):

1) The loan is a bona fide loan. A bona fide loan is defined as one that is "legally valid and made in good faith".

2) The loan is NON-negotiable. A negotiable loan is defined as an agreement pursuant to which "ownership of the instrument itself and the whole amount of money expressed on its face can be transferred from one person to another." Accordingly, a NON-negotiable loan is one that by its terms expressly prohibits transfer of the instrument from one person to another.

NOTE: There is nothing in the DRA stating that making a promissory note NON-negotiable gives rise to a transfer penalty.

3) The lender cannot in any way access any or all of the principal amount loaned following the transaction.

In the case that a promissory note is excluded under this set of facts, SI 01120.220(B)(2)(b) dictates the following treatment:

Payments against the principal are income to the lender, not conversion of a resource.

The cash specified in the agreement may be a resource if the lender can access it for his or her own use.

NOTE: Interest income received by the lender is unearned income whether the loan is bona fide or not. If the loan payments received by the lender include both principal and interest, only the interest portion is considered income.

SIDE POINT: I am slightly confused by the fact that this section says "Payments against the principal are income" while simultaneously saying "If the loan payments received by the lender include both principal and interest, only the interest portion is considered income." It appears to me that the only logical reading of this is that if the note does not call for any interest, then the payments are income . . . but if the note does call for interest such that each payment is part accrued interest and part return of principal, then only the interest portion is income (and the part representing return of principal does NOT count as income). Does anyone else read this differently?

Unfortunately, most of our clients are not in the lending business such that a promissory note that they take in return for cash must be analyzed as an INFORMAL LOAN pursuant to SI 01120.220(C) and (D) which state:

C. POLICY —REQUIREMENTS FOR A BONA FIDE INFORMAL LOAN

An informal loan is a loan between individuals who are not in the business of lending money or providing credit. An informal loan can be oral or written. An informal loan is “written” when the parties to the loan commit to writing the terms of their agreement. Completing Form SSA-2854 and Form SSA-2855 does not establish a written loan. These forms merely document the parties’ allegations about the loan. An informal loan (oral or written) is bona fide if it meets all of the following requirements.

1. Enforceable Under State Law

A bona fide loan is a contract that must be enforceable under the applicable State law. Check your regional instructions.

2. Loan Agreement in Effect at Time of Transaction

The loan agreement must be in effect at the time that the cash proceeds are provided to the borrower. Money given to an individual with no obligation to repay cannot become a loan at a later date.

3. Acknowledgement of an Obligation to Repay

A loan is an advance from a lender that the borrower must repay, with or without interest. This obligation to repay must be acknowledged by both the lender and the borrower for a bona fide loan to exist. When money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan for SSI purposes.

A statement by the individual that he or she feels personally responsible to pay back the friend or relative does not create a legal obligation to repay the individual who provided the cash. Similarly, a statement by the lender that the eligible individual is only required to repay the cash if he or she becomes financially able to do so does not create a legal obligation to repay.

EXAMPLE: Mr. Johnson applies for SSI in June, 2002. He has no income and alleges that his son provided him \$200 cash per month as a loan. When contacted, the son states that his father is not required to repay him unless he gets SSI. The CR determines that a bona fide loan does not exist because there is no obligation to repay. An obligation to repay cannot be contingent on future improvement in an individual’s financial circumstances.

4. Plan for Repayment

The loan must include a plan or schedule for repayment, and the borrower’s express intent to repay by pledging real or personal property or anticipated future income (such as SSI benefits).

5. Repayment Plan Must be Feasible

The plan or schedule must be feasible. In determining the plan's feasibility, consider the amount of the loan, the individual's resources and income (including anticipated SSI benefits), and the individual's living expenses.

NOTE: Evidence received later that the individual did not repay the loan does not negate the determination that the loan was bona fide. If it has been previously determined that a loan is bona fide, do not redevelop that issue unless the individual provided incorrect information.

D. PROCEDURE — DEVELOPING ORAL AND WRITTEN INFORMAL LOANS

Follow these procedures to determine whether an informal loan is bona fide and to determine the resource value, if any, for the individual.

1. Document the Loan Allegation

2. Determine Whether the Loan is Bona Fide

After consulting any regional instructions for applicable State law, determine whether the loan is bona fide under the criteria in SI 01120.220C.

REMINDER: If the loan is bona fide, the cash proceeds are not income to the borrower but are a resource if retained until the following month. For the lender, the loan agreement itself is a resource if it is bona fide and negotiable. The principal portion of the loan repayments made by the borrower is not income to the lender, but the interest portion is unearned income.

3. Determine the Resource Value of the Loan

b. Eligible individual is the lender

Assume that the bona fide loan agreement is negotiable and is a resource, unless the lender raises questions about the negotiability of the agreement and wants to rebut this assumption.

The agreement is counted as a resource starting in the month after the month that the lender provides the proceeds to the borrower.

Assume that the agreement's resource value is its outstanding principal balance unless the lender disagrees and wants to rebut this assumption.

EXAMPLE: Prior to filing for SSI, Mr. Jones made a \$1,500 cash loan to his brother. Subsequently, Mr. Jones received \$300 in repayment. At the time of filing for SSI, the outstanding principal balance for the loan was \$1,200. The CR counted \$1,200 as a resource.

4. Offer Rebuttal Rights

If the outstanding principal balance combined with the individual's other resources causes ineligibility, inform the individual that we will use the outstanding principal balance in determining resources unless he or she submits:

Evidence of a legal bar to the sale of the agreement; or

An estimate from a knowledgeable source, showing that the CMV of the agreement is less than its outstanding principal balance.

Refer to the rules of for obtaining evidence in SI 00601.100 if the individual takes longer than 30 days to submit such evidence.

NOTE: Knowledgeable sources include anyone in the business of making such estimates (e.g., banks or other financial institutions, private investors, real estate brokers, etc.). The estimate must show the name, title, and address of the source.

ANALYSIS:

Although we are now talking about an "informal loan", it is clear that the regs still contemplate the fact that a bona fide and NON-negotiable is EXCLUDED. The first evidence of this is the REMINDER in SI 01120.220(D)(2) which states "For the lender, the loan agreement itself is a resource if it is bona fide and negotiable." In addition, SI 01120.220(D)(3)(b) directs that we ASSUME that the loan is bona fide and negotiable (and thus an includible resource), UNLESS "the lender raises questions about the negotiability of the agreement and wants to rebut this assumption." In this case, the regulations proceed nicely into SI 01120.220(D)(4) whereby the lender can rebut the presumption that the loan is negotiable. Here, the regs direct that the outstanding principal balance will be considered an includible resource unless the lender submits "evidence of a legal bar to the sale of the agreement". It is at this point that it is logical to conclude that even an informal loan will be excluded as a resource if it is bona fide and non-negotiable.

NOTE: SI 01120.220(D)(4) allows for TWO possible ways to rebut the presumption . . . EITHER you show it is non-negotiable . . . OR you proceed with the hassle of documenting current value is technically less than the full outstanding balance. You should never get to the hassle of documenting value if you can simply show that the loan is bona fide and non-negotiable.

Note also . . . in particular Section G wherein it states that if a promissory note cannot be converted to cash within 20 days, then its not a countable resource.

POMS Section HI

03030.001

Subchapter Preview:**Background**

This transmittal incorporates a Q& A posted to PolicyNet to clarify that we do not use the concept of deeming of resources from the SSI program when making Medicare Part D subsidy determinations.

Summary of Changes**HI 03030.005 Whose Resources Are Counted**

Subsection B. is reformatted for clarity.

Subsection C. is new and provides the criteria for a temporary absence.

Subsection D. is new and clarifies that we do not deem another persons' resources to an individual filing for or receiving a subsidy.

Subsection E. is new and adds procedures to determine when a married couple is living together.

Subsection F. is new and adds references.

TN 1 (12-05)

HI 03030.001 What are Resources

A. Background

To be eligible for the subsidy, an individual must have resources below the limits established by the MMA. The following sections define resources and explain how to count them for purposes of determining eligibility for the subsidy.

B. Definition of Resources

Resources are cash or other assets that an individual owns and could convert to cash to be used for his or her support and maintenance.

C. Policy — What are Countable Resources

For purposes of determining eligibility for the subsidy, the following are countable resources.

1. Liquid Resources

We count liquid resources. Liquid resources are cash or other assets, which can be converted to cash within 20 workdays.

Examples of resources that are ordinarily liquid are:

Stocks

Mutual fund shares

Promissory notes

Bonds

Mortgages

Life insurance policies

Annuities

Financial Institution Accounts
(including savings, checking,
and time deposits, also known
as certificates of deposit)

Retirement Accounts
(including Individual
Retirement Accounts
(IRA), and 401(k)
accounts)

Trusts
(including revocable trusts and
trusts that the beneficiary can
direct the use of the funds)

We will follow a presumption that these assets (and similar financial accounts and instruments) can be converted to cash within 20 workdays and are countable as resources. See [HI 03030.001G](#). if the individual alleges that a particular asset cannot be converted to cash within 20 workdays.

2. Non-Home Real Property

a. Equity Value

Count the equity value of non-home real property as a resource whether or not it can be converted to cash within 20 workdays. If the individual is not able to provide an estimate of the equity value of the property, follow the instructions in [SI 01140.100](#) to determine the equity value.

NOTE: Do not count the home that serves as the individual's principal place of residence as a resource ([HI 03030.020](#)).

b. Undue Hardship Exclusion

If the individual alleges that sale of the property would cause undue hardship due to loss of housing for a co-owner, follow the instructions in [SI 01130.130](#)

REMINDER: Conditional benefits do not apply to the subsidy program.

D. Policy — Assets that Are Not Liquid Resources

For purposes of determining eligibility for the subsidy, the following non-liquid assets are **not** countable resources;

- all vehicles (autos, trucks, motorcycles, boats, snowmobiles, etc.);
- household goods and personal effects;
- irrevocable burial trusts
- irrevocable burial contracts

E. Policy — Transfers of Resources

For purposes of determining eligibility for the subsidy, we do not consider transfers of resources. Therefore, it is not necessary to ask an applicant if he or she transferred resources. If an applicant alleges a transfer, it is not necessary to develop the transfer.

F. Policy — Trusts

For subsidy purposes, a trust may be a countable resource. Generally, we follow SSI rules when determining whether a trust is a resource for subsidy purposes. Unlike SSI, we do not consider transfers of resources when determining eligibility for subsidy in situations where funds have been placed into trusts or disbursed from trusts. In addition, it will be necessary to consider rebuttal if the individual has a trust and alleges that the funds in the trust cannot be accessed within 20 workdays.

1. All Trusts Established Before 1/1/2000

For trusts established before 1/1/2000, follow the instructions in [SI 01120.200D](#). to determine whether the trust is a resource. The following general rules apply:

- If the trust is irrevocable under applicable State law and the individual does not have the legal authority to direct the use of the trust assets for his or her support and maintenance, the trust **is not** a resource for purposes of determining subsidy eligibility.
- If the individual has the legal authority to revoke the trust or to direct the use of the funds in the trust for his or her support and maintenance, the trust **is** a countable resource. However, if the individual alleges that he or she cannot access the funds in the trust within 20 workdays, offer rebuttal and develop following [HI 03030.001G.2.b](#).

2. Trusts Established by Third Parties Regardless of Establishment Date

For trusts established by third parties (i.e., not grantor trusts), follow the instructions in [SI 01120.200D](#). to determine whether the trust is a resource. The following general rules apply:

- If the trust is irrevocable under applicable State law and the individual does not have the authority to direct the use of the trust assets for his/her support and maintenance, the trust **is not** a resource for purposes of determining subsidy eligibility.
- If the individual has the legal authority to revoke the trust or to direct the use of the funds in the trust for his/her support and maintenance, the trust **is** a countable resource. However, if the individual alleges that he or she cannot access the funds in the trust within 20 workdays, offer rebuttal and develop following [HI 03030.001G.2.b](#).

3. Trusts Established on or after 1/1/2000 by the Individual (Grantor Trusts)

For trusts established on or after 1/1/2000 by the individual (i.e., grantor trusts), follow the SSI rules in [SI 01120.201](#) and [SI 01120.203](#). The following general rules apply:

- If a grantor trust is irrevocable under applicable State law and it meets the requirements for one of the exceptions in [SI 01120.203](#), it **is not** a resource for purposes of determining eligibility for the subsidy.
- If a grantor trust is irrevocable under applicable State law but it does not meet the requirements for one of the exceptions in [SI 01120.203](#), or it is not clear whether it meets the requirements for one of the exceptions in [SI 01120.203](#), the trust is not a resource if the individual alleges that he or she cannot access the funds in the trust within 20 workdays.

NOTE: In this case, the presumption that the trust is a resource is successfully rebutted because it is one of the assets listed in [HI 03030.001G.2.a](#).

- If the individual has the legal authority to revoke the grantor trust or to direct the use of the trust assets for his/her support and maintenance, the trust is a countable resource. However, if the individual alleges that he or she cannot access the funds in the trust within 20 workdays, offer rebuttal and develop per [HI 03030.001G.2.b](#).

4. Chart Summarizing How Trusts are Counted as Resources

The following chart summarizes the policy for determining when a trust is counted as a resource for purposes of determining subsidy eligibility.

Type of Trust	Trust is revocable or individual can direct use of funds for support and maintenance	Trust is irrevocable and individual cannot direct use of funds for support/maintenance
Trust Established Before 1/1/2000	Trust is presumed to be a resource, but individual may rebut per HI 03030.001G.2.b. (full rebuttal development required)	Trust is not a resource
Trust Established by Third Party Regardless of Date	Trust is presumed to be a resource, but individual may rebut per HI 03030.001G.2.b. (full rebuttal development required)	Trust is not a resource
Trust Established by the Individual (Grantor Trust) on or after 1/1/2000	Trust is presumed to be a resource, but individual may rebut per HI 03030.001G.2.b. (full rebuttal development required)	<ol style="list-style-type: none"> 1. Trust is not a resource if it meets requirements for exception in SI 01120.203. 2. Trust is not a resource if the trust does not meet requirements for an exception but individual alleges that assets in the trust cannot be accessed in 20 workdays (rebuttal is successful based on list of assets in HI 03030.001G.2.a.

G. Policy — Rebuttal of the Presumption That An Asset Can be Converted to Cash Within 20 Workdays

We will presume that the types of resources described in [HI 03030.001C.1.](#) can be converted to cash within 20 workdays and are countable liquid resources. However, in some cases such assets may not be convertible within 20 workdays. If the individual alleges that he or she has an otherwise countable asset that cannot be sold or converted to cash within 20 workdays, the individual may seek to rebut the presumption that the asset is a countable liquid resource.

1. When Rebuttal Should be Developed

Rebuttal development should be undertaken during an initial application, verification or redetermination interview or when the individual responds to a pre-decisional or determination letter sent by SSA; if

- the individual alleges that he or she has an asset that cannot be sold or converted to cash within 20 workdays; and
- successful rebuttal by the individual is material to the subsidy determination.

2. Requirements for Successful Rebuttal

The presumption is considered rebutted if one of the following requirements is met.

a. Assets Not Requiring Evidence of Unsuccessful Effort to Sell

The presumption is considered rebutted if the individual alleges that the asset cannot be sold or converted to cash within 20 workdays and it is one of the following:

- a loan agreement or promissory note;
- an irrevocable grantor trust established on or after 1/1/2000 whether or not it meets the requirements for an exception in [SI 01120.203](#);
- a real estate contract;
- a deposit required by a continuing care retirement community;
- a time share;
- a life estate;
- an unprobated estate;
- livestock;
- machinery; or
- mineral rights.

If the individual alleges that one of these items cannot be sold or converted to cash within 20 workdays, we will assume that the presumption is rebutted without any further development.

b. Unsuccessful Effort to Sell the Asset

For assets not listed in [HI 03030.001G.2.a.](#), the presumption is considered rebutted if the individual:

- alleges that he or she has been trying to sell the asset or convert it to cash for at least 20 workdays and has not been able to do so; and
- provides evidence of a bona fide unsuccessful effort to sell or convert the asset, or
- provides a statement from a knowledgeable source that the asset cannot be converted to cash within 20 workdays.

NOTE: The allegation by the individual that the asset cannot be sold or converted in 20 workdays is not sufficient to successfully rebut the presumption that the resource is a liquid (countable) resource.

3. Rebuttal Determination

If the requirements for rebuttal are met, the asset is not a resource for purposes of determining eligibility for the subsidy. If the requirements for rebuttal are not met, continue to count the asset as a resource.

H. Procedure — Documenting the Rebuttal

When the individual alleges owning a resource that cannot be sold or converted to cash within 20 workdays, use the following procedure.

- Document on a MAPS Report of Contact the asset being rebutted, the individual's efforts to sell, and the nature of the evidence provided by the individual to support the rebuttal or that the asset is one of those listed in [HI 03030.001G.2.b.](#) which doesn't require evidence.
- Document on a MAPS Report of Contact the adjudicator's decision (e.g., rebuttal successful—asset not counted as a resource, or rebuttal unsuccessful—asset is counted as a resource.)
- Make the necessary input on MAPS to delete the resource if the rebuttal is successful.

I. References

[SI 01110.300](#), Determining Liquidity/Nonliquidity of Resources

[SI 01110.305](#), Resources Assumed to be Liquid

[SI 01120.200](#), Trusts

[SI 01140.100](#), Non-Home Real Property

[SI 01140.200](#), Checking and Savings Accounts

[SI 01140.210](#), Time Deposits

[SI 01140.220](#), Stocks

[SI 01140.230](#), Mutual Fund Shares

[SI 01140.240](#), U.S. Savings Bonds

[SI 01140.300](#), Promissory Notes

[SI 01140.310](#), Life Insurance