

The True Link Card Compliance Guide

Prepared by Stephen W. Dale, Esq., LL.M Attorney and Counselor at Law

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Introduction

Supplemental Security Income (SSI) recipients often have other sources of supplemental support, such as a family member, legal settlement, or other Special Needs Trust (also called a Supplemental Needs Trust or SNT), in addition to their benefit income. Without this supplemental support, the SSI recipient might not be able to afford to meet certain needs – for example, hearing aids, transportation, physical therapy, or a home remodel necessary to accommodate a disability. In many cases, this supplemental support can also reduce dependency on government benefits in both the short and long term. For the trustee of an SNT, their mandate is to use the funds available in the trust to provide this type of supplemental support, without endangering eligibility for SSI, Medicaid, and other lifesaving benefits.

True Link Financial is a financial services firm that helps protect individuals including seniors and people with disabilities manage the financial needs that come with their circumstances. The company has created tools that can be managed by a range of professionals or family members, with the dual goal of protecting an individual's financial well-being while enabling greater independence. The company offers a payment card, the True Link Card.

The availability of the True Link Card represents a unique opportunity for both the trustee and the beneficiary of a special needs trust, yet the trustee and beneficiary each need to understand how a True Link Card can be properly used when also receiving needs-based benefits, such as SSI or Medicaid. This Compliance Guide and the Toolkit are intended to provide guidance, but they are not substitutes for legal advice. Each state and program's rules are different, as is each individual's need and situation. If you are a trustee of a special needs trust, you should seek legal advice from an attorney familiar with administration of special needs trusts and benefits eligibility. Ask them to review this Compliance Guide and the Toolkit and to assist you in discharging your duties as trustee.

¹ Thank you to Robert B. Fleming, Esq., Fleming & Curti, P.L.C., for his thorough review of these materials.

How the True Link Card works

The True Link Card is a reloadable stored value payment card that combines features analogous to those of credit cards, debit cards, FSAs, and gift cards, with unique administrative controls that allow a trustee to exercise discretion over how the card is used. The card can be customized to allow only approved purchases, and it will block all purchases that are not authorized by the trustee. With these controls in place, the card offers trustees a simple, auditable way to provide supplemental support and manage trust disbursements.

Using the True Link Card, the trustee or card administrator can:

- Make trust disbursements through a reloadable payment card with customizable settings
- Manage the card through True Link's online dashboard
- Make individual authorizations based on the trustee's discretion
- Block access to cash, purchases at specific stores, and entire categories of spending
- Easily monitor spending habits and adjust card settings, as needed
- Receive alerts about completed and blocked transactions
- Maintain an auditable record of the restrictions placed on each card and any purchases made on each card

The True Link Card can be loaded with funds from source accounts controlled by the trust administrator. Beneficiaries do not have access to the funds in these source accounts, nor can they load funds onto the cards or remove funds from the cards themselves. Administrators can remove funds from the cards and return to trust source accounts at any point. Cardholders can only spend what the administrator allows and loads onto the card on purchases approved in advance by the administrator.

If a purchase is attempted and there are insufficient funds on the card, or the transaction is not allowed by the administrator, the attempted transaction will be blocked. The True Link Card is also non-transferrable – it can't be sold for cash or given to another person. The beneficiary's name is printed on the card, which also bears the Visa logo and comes with Visa's normal restrictions on unauthorized use.

Using A True Link Card for a Special Needs Trust Beneficiary

Trustees of special needs trusts often struggle with how to provide for beneficiaries' needs without giving beneficiaries cash, since the use of cash will almost always affect the

beneficiaries' eligibility for assistance programs like SSI and Medicaid. Sometimes a trustee will arrange direct payment for services and items the SSI beneficiary is allowed to receive, or hire a caregiver to make purchases on their behalf, but this is often expensive or otherwise infeasible.

Another frequently used alternative is the use of traditional gift cards, but as we will explore, there can be major limitations to this method. Alternatively, beneficiaries can secure a credit card and request that the trustee pay the credit card statement or reimburse the beneficiaries for those items that are allowed or will not cause a reduction in benefits. However, it can be very difficult for the trustee to control what purchases are made with the card, as well as the credit limit of the card. The True Link Card combines the advantages of using a credit card with the ability to impose important limitations on spending to protect the beneficiary's eligibility for benefits and ensure the card is not misused.

The Social Security Administration's "Program Operations Manual System" (POMS) is a series of instructions that function as the primary source of information used by Social Security employees to review and process claims for benefits. A close reading of the relevant sections in the POMS sheds light on how the True Link Card can be used safely by special needs trusts, consistent with fundamental rules regarding payment mechanisms and disbursements, without interfering with benefits eligibility.

SSI Income and Resources Basics

The trustee of a special needs trust (and, for that matter, the beneficiary) must understand the basic rules concerning what is income and what is a resource. SSI is a federal program administered by the Social Security Administration. Participation is determined by documenting needs based on disability and financial necessities. The maximum federal benefit (the FBR, or Federal Benefit Rate) is \$733 for an individual in 2015. In addition, a few states supplement SSI payments, so that there can be a second component to the benefit. In California, for example, the 2015 State Supplement Payment (SSP) adds \$156.40 for a single person, for a maximum total of \$889.40.

Once a person has been determined to be eligible for SSI as a result of a disability, there are still two tests that the individual must meet to continue to receive benefits. The first test is an income test, which determines how much money the individual will receive. The second test is the resource test, which determines whether or not the individual is eligible.

Test 1 – Income Test

Think of SSI as a source of income that will raise the individual's income up to the maximum SSI rate (this is not quite accurate, but it will help make the program more understandable). SSI classifies income into three categories: 1) Unearned income; 2) In-kind support and maintenance (ISM); and 3) Earned income. Through this categorization of income, the government is able to determine the amount of benefits an individual will receive. For this guide, we will focus on unearned income and in-kind support and maintenance. Earned income can create its own concerns, but use of the True Link Card should not have any effect on the earned income tests.

Unearned Income

SSI defines unearned income as any cash or gift the SSI recipient receives, or is entitled to receive, from annuities, pensions, alimony, support payments, dividends, interest, rent, litigation awards or settlements, or payments from other programs. This is to distinguish the income from earned income like wages. If an SSI recipient receives unearned income from anywhere, it will reduce their SSI benefits amount dollar-for-dollar (after the first \$20, which is sometimes referred to as the “disregard”). A basic principle of SSI is that the benefits recipient cannot receive direct funds of more than \$20 a month without having their benefits reduced.

Note that the unearned income rules are not the same as tax concepts, accounting principles, or common everyday language use. If a concerned parent gives an SSI beneficiary \$50 for a movie date, popcorn, and soft drinks, and the individual actually spends the money exactly as planned, the \$50 gift will be unearned income for SSI purposes and will affect the level of benefits. The same principles apply for any cash received by the SSI beneficiary, regardless of the source (except, as noted above, for wages – they follow different, more complicated, rules).

In-Kind Support and Maintenance

ISM – in-kind support and maintenance – is often considered the hardest category of income to understand. ISM is non-cash assistance to a benefits recipient, which helps the recipient secure food and/or shelter. One example of ISM is when someone other than the benefits recipient is paying rent directly: if the trustee of a special needs trust pays the beneficiary's rent directly, then the beneficiary has received ISM. Another example would be giving the recipient a week's worth of groceries.

Let's recap how this is calculated. As of 2015, SSI payments are set at a maximum of \$733, the FBR. (Remember that some states add a supplement to that figure; the state supplement can be larger or smaller, and might or might not change each year.) The federal amount generally goes up every year based on a cost-of-living adjustment. The SSI benefit, with the addition of any state supplement, is intended to provide the beneficiary's basic support needs – shelter, food, and incidentals.

SSI reasons that if an individual is not paying the full amount of their rent or food from the SSI benefit, then SSI can be reduced without affecting the beneficiary's ability to meet essential needs. When someone else – including a concerned parent, a charitable organization, or a special needs trust – provides food or shelter directly, the SSI benefit will be reduced dollar-for-dollar for the amount paid for food and shelter, up to a maximum of one-third of the federal contribution plus \$20. That means a maximum reduction of \$264.33 in 2015; this capped amount is referred to as the Presumed Maximum Value, or PMV.

Example 1: Sam receives \$733 in SSI benefits. He moves to an apartment that costs \$1,000 per month. The trustee of Sam's special needs trust pays the \$1,000 rent directly to Sam's landlord. Sam's SSI will be reduced by the 2015 maximum of \$264.33, and his federal SSI check will be \$468.67 (\$733 minus \$264.33).

Example 2: Cheryl is also receiving \$733 in SSI benefits, and she moves into the apartment next to Sam. In order to help Cheryl manage funds and exercise as much personal autonomy as possible, the trustee of her special needs trust gives her \$1,000 per month and lets her pay her own rent – which she does, like clockwork, on the same day she receives the money from the trust every month. Because she handled the cash, this counts as unearned income, not in-kind support. Her SSI reduction is \$1,000 is more than the amount of her benefit; she loses SSI altogether.

Example 3: Sally, also an SSI recipient, lives next door to Cheryl and pays the same rent. Her special needs trustee has arranged with the landlord to give Sally access to the communal dining room in the apartment complex, and she takes all her meals at the complex. Her trustee pays an extra \$400 per month for her meals, and so sends a total of \$1,400 to the landlord each month. How much is the reduction in Cheryl's SSI benefit? Exactly the same as Sam's: \$264.33. Payment for Cheryl's food does not increase the benefit reduction over the Presumed Maximum Value amount.

Test 2 – Resource Test

For purposes of SSI eligibility, income determines how much a beneficiary receives while resources determine whether an individual is eligible at all. So what is a resource? SSI defines a resource as anything you can convert into cash or support (with “support” still defined as above, as food or shelter). One simple way to make the distinction: “income” is money you receive in a given month, and “resources” include anything that is still there on the first day of the next month.

If a benefits recipient’s countable resources exceed \$2,000 on the first moment of the first day of the calendar month, the individual is not eligible for benefits that month. Note that this does not mean the benefits are reduced for that month – even a small amount of excess resources will result in complete loss of the SSI benefit.

For example, if an SSI recipient has \$1,999 in their checking account on the 1st of January, and he receives \$733 from SSI on January 3rd for a total of \$2,732, he remains eligible for benefits for the month of January. If, on the other hand, he does not spend down the account below \$2,000 by the 1st of February, eligibility for SSI (and, in most states, Medicaid) will cease for the month of February.

However, it is important to note that there are a number of exceptions to the \$2,000 resource rule – items that Social Security considers excluded from the resource calculation. These items are called “exempt resources.” Exempt resources can include the beneficiary’s residence, one automobile, household furnishings, prepaid burial amounts plus up to \$1,500 set aside for funeral expenses (or life insurance in that amount), and tools of the beneficiary’s trade. Each of those exempt resources categories is subject to its own special rules, and so it may require some special consideration to figure out the differing effect in individual cases.

In summary, food or shelter given directly is *in-kind support*; anything that can be converted into cash, food, or shelter is *unearned income* when given and a *resource* on the first of the month; and things that are not, and can’t be used to get, cash, food, or shelter, don’t affect SSI payments.

Eligibility for Medicaid

In most states (but not all), any person who receives SSI payments will automatically be eligible for Medicaid, which will provide for most of their medical needs. It is often the case that Medicaid eligibility is more important for the beneficiary than the SSI payment itself.

Even individuals not receiving SSI benefits may qualify for Medicaid coverage, though the eligibility process can sometimes be more complicated and difficult to navigate. To further complicate the picture, there are a number of different ways that a given individual might qualify for Medicaid benefits, and the rules may not even resemble one another depending on the program. Direct payment of expenses like food and shelter may have a different effect, or even no effect, depending on the particular Medicaid eligibility standards being applied. Availability of assets may or may not have an effect on direct Medicaid eligibility. For the special needs trust beneficiary receiving Medicaid benefits directly (that is, without qualifying for SSI), it is important for the trustee to consult with a knowledgeable attorney about how to manage trust benefits.

Gift Cards and FSA Debit Cards in the POMS

For both gift cards and debit cards tied to medical flexible spending accounts (FSAs), the POMS lays out two tests: (1) whether the form of payment can be used to purchase food or shelter, and (2) whether the form of payment can be transferred, redeemed, or resold for cash. If it can't be used for food or shelter and can't be converted into cash, it is not counted as income, and does not become a resource.

Gift Cards

POMS SI 01120.201 I.1.e states the general rule that if a gift cards or gift certificate (1) can be used for food or shelter, or (2) can be resold for cash, will be counted as income the month of receipt and a resource the following month if a balance remains. In POMS SI 00830.522, it states that gift cards and gift certificates are *not* income or a resource if they (1) can *not* be used for food or shelter, and (2) can *not* be resold for cash.

SI 01120.201 I.1.e. Disbursements for gift cards and gift certificates

Gift cards and gift certificates are considered cash equivalents. If a gift card or certificate can be used to buy food or shelter (e.g., restaurant, grocery store or VISA gift card), it is unearned income in the month of receipt. Any unspent balance on the gift card or

certificate is a resource beginning the month after the month of receipt. If the store does not sell food or shelter items (e.g., bookstore or electronics store), but the card does not have a legally enforceable prohibition on the individual selling the card for cash, then it is still unearned income (see SI 00830.522).

SI 00830.522 A2 Gift Cards/Gift Certificates Not Income

The value of a gift card/gift certificate is not income in the month it is received if the gift card/certificate:

- Cannot be used to purchase food or shelter; and
- Cannot be resold.

In addition, if the individual does not have the right, authority, or power to convert or sell the gift card/certificate for cash, and it cannot be used to purchase food or shelter, then the gift card/certificate would not meet the definition of a resource in SI 01110.100.

NOTE: A gift card/certificate that is restricted on its use, and is legally prohibited from resale, must be evaluated (case by case) based on the restrictions and or prohibitions for determining income for SSI purposes.

The restriction on use of a gift card/certificate can be legal, (imposed by the card issuer), or practical, (the store where the card must be redeemed does not sell food or shelter items).

The POMS offers three examples of gift cards. The first example illustrates that a gift card which (1) is *not restricted* from using food and shelter, and (2) *can* be resold *is* income (and a resource the following month):

SI 00830.522 C1 Gift Card/Gift Certificates is Income

Example 1: Bernie receives an award settlement in the form of a Xmart gift card worth \$3100. (See Awards, SI 00830.515.) There is no restriction on the use of the gift card in Xmart stores, nor is there any legally enforceable prohibition on its resale. Treat the gift card at its face value as unearned income in the month it is received, subject to the rules pertaining to income and income exclusions for SSI purposes. Any remaining value on the card is a resource beginning the month following the month the gift card was received, subject to the rules pertaining to resource and resource exclusions.

A second example illustrates that a gift card which (1) is *not restricted* from using food and shelter yet (2) can *not* be resold *is* income (and a resource the following month) because it is not restricted:

Example 2: Mrs. Garcia receives a \$200 Visa gift card from a friend for use at any locations where Visa debit cards are accepted, including retail stores and online merchants. The gift card includes a prohibition against the beneficiary selling the card to another individual, applying the value as a payment to a store credit card account, or redeeming the card for cash. Thus, it is restricted on its use. However, it can be used to purchase food or shelter items. We treat the Visa gift card as unearned income based on its value (\$200) in the month that it is received, subject to the rules pertaining to income and income exclusions for SSI purposes. Any unspent balance remaining on the card is a resource beginning the month following the month the gift card was received, subject to the rules pertaining to resource and resource exclusions.

A third example illustrates that a gift card which (1) *is* restricted from using food and shelter and (2) can *not* be resold *is not* income (and a resource the following month):

SI 00830.522 C2 Gift Card/Gift Certificate is Not Income

Mr. Blacksmith receives a \$100 Office Warehouse gift certificate from a friend for use at any Office Warehouse store. The gift certificate is restricted for use to purchase only office supplies and has a legally enforceable prohibition on its resale. Since the beneficiary cannot use the gift certificate to purchase food or shelter, nor can he/she sell the gift certificate for cash, do not count the gift certificate as income and it does not meet the definition of a resource. (See SI 01110.100 Distinction Between Assets and Resources).

Debit Cards

There is very little guidance in the POMS on the use of debit cards as a means of distributing funds to individuals receiving SSI. In fact, there is very little guidance around debit cards at all, save for a few minor mentions of debit cards as they relate to food support programs, direct deposit information, and victims of Hurricane Katrina, and more substantively, as they relate to health flexible spending arrangements (FSAs). Health flexible spending arrangements (FSAs), also known as flexible spending accounts, are an employer-established benefit plan used to reimburse employees for qualified medical expenses. It is interesting for us to explore the

guidelines for FSAs, as there are several compelling analogies between how FSA funds are restricted and how funds loaded onto a True Link Card are restricted.

POMS SI 01120.230 B provides that health FSAs are not considered resources because employers restrict the use of FSA funds to pay for qualified expenses.

SI 01120.230 B Policy for health FSAs

For Supplemental Security Income (SSI) purposes, do not count health FSAs as resources because FSA funds are restricted to pay for qualified medical expenses. Employers ensure that health FSA funds are only used for qualified medical expenses. Individuals cannot use health FSA funds to pay for their own support and maintenance.

In POMS SI 01120.230 C2, we see that debit cards are one of three allowable ways to distribute FSA funds. Individuals are required to agree to proper use of the card and to save all receipts and documentation. Additionally, the card cannot be used to make purchases anywhere other than authorized merchants and services. If an unauthorized transaction is attempted, the card will be blocked.

SI 01120.230 C2 FSA distributions

For SSI purposes, health FSA distributions paid directly to the individual are not income. For more information on medical and social services, related cash and in-kind items, see SI 00815.050. For more information on cafeteria plans, see SI 00820.102. Health FSA plans reimburse individuals for qualified medical expenses in three ways.

- Debit cards, credit cards, and stored-value cards

Most FSA plans issue debit, credit, or stored-value cards to pay for qualified medical expenses. When individuals receive a card, they certify they will use the card for eligible medical care expenses for the individual, his or her spouse, and dependents. The issued card has the certification printed on the back. The individual also agrees to acquire and retain sufficient documentation for any expenses paid with the card, including invoices and receipts. Individuals can only use the card with merchants and service providers the employer authorizes. If the individual uses the card somewhere else or for another purpose other than a qualified medical expense, the merchant will reject the card or purchase. The card is automatically cancelled at termination of employment.

When it comes to FSAs we see the same principles in action as we did for gift cards: anything can't be resold or redeemed for cash and is restricted from being used for food or shelter does not count as income or a resource according to the POMS.

Credit Cards and Third Party Payments in the POMS

In the treatment of gift cards and FSAs in the POMS, what matter are the restrictions on the form of payment – what the beneficiary *could* get. In contrast, in the treatment of credit cards and other third party payments (including payments made by trusts directly), what matters is what the beneficiary *does* get. Food and shelter are ISM; cash or anything exchangeable for cash is cash; everything else is everything else.

In this section, to highlight the contrast with the gift card rules, we will consider the situation in which the trustee decides to permit a purchase of groceries. As you will see, if the True Link Card is treated like a credit card, payment from the trust for a purchase of groceries would be ISM at the time of payment. This is in contrast to treatment under the gift card rules, in which the mere *ability* to purchase food would make the card *itself* income when it is given to the beneficiary, and a resource the following month.

Because the True Link Card is innovative – not quite like anything that came before it – the argument here is best made by analogy. What makes a credit card different from cash under the POMS? The ability to make a purchase with a credit card is different than the ability to make a purchase with cash because (a) the cash is your property in a way that the unused balance on a credit card isn't really property at all, and (b) rather than the funds ever being in your hands as they are with cash, the transfer of funds is made directly from the card-issuing bank to the merchant. This is the same as if the groceries are given to you by a caregiver or paid for by the trustee directly – you don't ever have any property to exchange for the groceries; you get to walk out of the store with the groceries as a result of payment arrangements made by someone else.

In these respects, is the True Link Card more like a credit card or more like cash? When properly configured, in at least some ways it's more like a credit card or third party payment; and less like cash, a checking account, or debit card. Consider the following contrasts:

- Your cash (or gift cards, gift certificates, etc.) are your property. The True Link Card is legally the property of the issuing bank.
- You can spend your cash on whatever you like. A True Link Card can only be used for purchases approved in advance by the trustee.
- The ability to spend your cash is inherent. The ability to spend money using a credit card is *delegated* – the credit card authorization process represents the merchant checking with the bank that you're permitted to exchange the bank's money for your groceries, even though the money isn't yours. In this case the True Link authorization process represents the merchant checking with True Link that the trustee has permitted you to exchange the card's stored value for your groceries.
- If you don't make any purchases with your cash, you still have the cash. If you don't make any purchases with a credit card, the money is still at Wells Fargo (or whoever the issuer is) and isn't yours. If you don't make any purchases with your True Link Card, the funds return to the trust.

POMS on Trust Disbursements and Third Party Payments

Here are is the relevant section in the POMS – note in particular the treatment of “food or shelter received as a result of disbursements from a trust by the trustee to a third party” (section b) and of reimbursements (including credit card bills) for purchases of food and shelter (sections d and f):

SI 01120.201 I §b-f. Policy for disbursements from trusts

b. Disbursements which result in receipt of in-kind support and maintenance

Food or shelter received as a result of disbursements from a trust by the trustee to a third party is income in the form of in-kind support (ISM) and maintenance and is valued under the presumed maximum value (PMV) rule. (For instructions pertaining to the PMV rule, see SI 00835.300, and for rules pertaining to a home, see SI 01120.200F).

c. Disbursements which are not income

Disbursements from the trust that are not cash to the individual or are third party payments that do not result in the receipt of support and maintenance are not income. Such disbursements may take the form of educational expenses, therapy, medical services not covered by Medicaid, phone bills, recreation, entertainment, etc., (see SI 00815.400). Disbursements made from the trust to a third party that result in the beneficiary receiving non-cash items (other than food or shelter) are not income if it would become a totally or

partially excluded non-liquid resource if retained into the month after the month of receipt (see SI 00815.550).

For example, a trust purchases a computer for the beneficiary. Since the computer would be excluded from resources as household goods in the following month, the computer is not income (see SI 01130.430).

d. Disbursements for credit card bills

If a trust pays a credit card bill for the trust beneficiary, whether the individual receives income depends on what was on the bill. If the trust pays for food or shelter items on the bill, the individual will generally be charged with in-kind support and maintenance up to the PMV. If the bill includes non-food, non-shelter items, the individual usually does not receive income as the result of the payment unless the item received would not be a totally or partially excluded non-liquid resource the following month.

For example, if the credit card bill includes restaurant charges, payment of those charges results in ISM. If the bill also includes purchase of clothing, payment for the clothing is not income.

e. Disbursements for gift cards and gift certificates

Gift cards and gift certificates are considered cash equivalents. If a gift card or certificate can be used to buy food or shelter (e.g., restaurant, grocery store or VISA gift card), it is unearned income in the month of receipt. Any unspent balance on the gift card or certificate is a resource beginning the month after the month of receipt. If the store does not sell food or shelter items (e.g., bookstore or electronics store), but the card does not have a legally enforceable prohibition on the individual selling the card for cash, then it is still unearned income (see SI 00830.522).

f. Reimbursements to a third party

Reimbursements made from the trust to a third party for funds expended on behalf of the trust beneficiary are not income. In addition, reimbursements from the trust to pay a credit card belonging to a third party for purchases made for the trust beneficiary are not income. Existing income and resource rules apply to items a trust beneficiary receives from a third party. If a trust beneficiary receives a non-cash item (other than food or shelter), it is in-kind income if the item would not be a partially or totally excluded non-liquid resource if retained into the month after the month of receipt. If a trust beneficiary receives food or shelter, it is income in the form of in-kind support and maintenance (ISM).

Relative to reimbursements of third party credit cards, the True Link Card is even more convenient, since it does not require the family member, caregiver or friend to use their own

credit card (or their own credit) to make purchases for the trust beneficiary. It also allows the trustee to more directly manage or limit the use of the card, and to review card use in real time.

When the True Link Card is Not in the Beneficiary's Hand

It is not uncommon for a beneficiary of a special needs trust to have a family member, caregiver, or friend who provides a great deal of assistance to the beneficiary.

If the card is not in the beneficiary's hands to make the purchase themselves, it is clearer that the third-party payment rules apply. What matters for the income and resource tests is what's received by the beneficiary from the third party, not what the third party in theory could purchase. As discussed above, if the third party caregiver gives the beneficiary cash (or unrestricted or transferable gift cards), that counts as cash income (and a resource the next month); if the third party gives the beneficiary food or shelter, or reimburses a bill for food or shelter, it is ISM; if the third party gives the beneficiary clothing, household goods, a computer, or pays for educational expenses, therapy, a phone bill, etc., it is neither income nor a resource.

Therefore, if a True Link Card is in the hands of a caregiver and purchases are reimbursed from the trust, or if the trust uses a True Link Card in the hands of a third party as a convenient way to make authorized purchases (at the trustee's direction and discretion, for the sole benefit of the beneficiary, and consistent with the rules governing the trust), ensuring that cash and unrestricted gift cards are not given to the beneficiary would avoid receipt of unearned cash income, and purchases of food and shelter would constitute ISM.

Applying these Guidelines to the True Link Card

When using a True Link Card, it is essential that both the trustee and the beneficiary understand how income and resources affect SSI eligibility. As mentioned earlier, a critical challenge for the trustee of a special needs trust is how to provide assistance to the beneficiary without giving cash. For many years, trustees have utilized credit cards and gift cards in order to make distributions. Yet the True Link Card is neither credit card nor a traditional gift card; it is a restricted stored value card that can be customized to permit one purchase and decline another. The product is innovative – there is nothing else quite like it. Thus, although the SSA has not provided guidance on the use of True Link Cards specifically, we can determine how to approach compliance by drawing connections to those guidelines around payment mechanisms and disbursements that are currently provided in the POMS.

The table below provides a summary of the POMS previously discussed, and how these guidelines can be reasonably applied to the True Link Card.

Table 1. Relevant Excerpts from the Program Operations Manual System as Applied to True Link

	POMS	TRUE LINK APPLICATION
SI 00830.522 Gift Cards and Gift Certificates	<p>A. Policy</p> <p>2. Gift Cards/Gift Certificates Not Income The value of a gift card/gift certificate is not income in the month it is received if the gift card/certificate:</p> <ul style="list-style-type: none"> • Cannot be used to purchase food or shelter; and • Cannot be resold. <p>In addition, if the individual does not have the right, authority, or power to convert or sell the gift card/certificate for cash, and it cannot be used to purchase food or shelter, then the gift card/certificate would not meet the definition of a resource in SI 01110.100. NOTE: A gift card/certificate that is restricted on its use, and is legally prohibited from resale, must be evaluated (case by case) based on the restrictions and or prohibitions for determining income for SSI purposes. The restriction on use of a gift card/certificate can be legal, (imposed by the card issuer), or practical, (the store where the card must be redeemed does not sell food or shelter items).</p>	<ul style="list-style-type: none"> • The True Link Card can be set up so that it cannot be used to purchase food or shelter. Card administrators can block specific merchants, as well as entire spending categories, such as grocery stores, liquor stores, restaurants, and convenience stores. Administrators can also choose to block all transactions and only allow specific, authorized merchants. • The individual does not have the right, authority, or power to convert or sell the True Link Card. Any attempted resale of the True Link Card is legally prohibited. The card is the property of Sunrise Banks, N.A., and must be returned upon demand. To make this clearer, the True Link card bears the holder’s name and signature. • True Link Card administrators have access to monthly statements, which show all transactions at the merchant level. In order to evaluate specific items purchased from a store, True Link recommends that administrators request receipts – just as they would with other forms of disbursement.
SI 00830.522 Gift Cards and Gift Certificates	<p>B. Procedure</p> <p>3. How to Count Gift Cards/Gift Certificates</p> <p>Step 1 Does the individual have the right, authority, or power to convert or sell the gift card/certificate for cash?</p> <p>If YES,</p> <ul style="list-style-type: none"> • Count the value of the gift card/certificate as cash income in the month it is received, subject to the rules pertaining to income and income exclusions, and • Count any unspent balance remaining on the gift card/certificate as a resource beginning the month following the month the gift card/certificate was received, subject to the rules pertaining to resource and resource exclusions. STOP <p>If NO, go to STEP 2.</p> <p>Step 2 Can the individual purchase food or shelter with the gift card/certificate?</p>	<ul style="list-style-type: none"> • The individual does not have the right, authority, or power to convert or sell the card. • The True Link Card can be set up so that it cannot be used to purchase food or shelter. Card administrators can block specific merchants, as well as entire spending categories, such as grocery stores, liquor stores, restaurants, and convenience stores. Administrators can also choose to block all transactions and only allow specific, authorized merchants. • The administrator can evaluate items obtained with the True Link Card by reviewing online statements and by requesting receipts from cardholders.

	<p>If NO, Do not count the value of the gift card/certificate as income. Also, the gift card/certificate would not meet the definition of a resource (See SI 01110.100.) However, you must evaluate items obtained with the gift card/certificate based on the SSI resources policy.</p>	
<p>SI 00830.522 Gift Cards and Gift Certificates</p>	<p>C. Examples 2. Gift Card/Gift Certificate is Not Income</p> <p>Mr. Blacksmith receives a \$100 Office Warehouse gift certificate from a friend for use at any Office Warehouse store. The gift certificate is restricted for use to purchase only office supplies and has a legally enforceable prohibition on its resale. Since the beneficiary cannot use the gift certificate to purchase food or shelter, nor can he/she sell the gift certificate for cash, do not count the gift certificate as income, and it does not meet the definition of a resource. (See SI 01110.100 Distinction Between Assets and Resources).</p>	<ul style="list-style-type: none"> • The individual does not have the right, authority, or power to convert or sell the card. The card is the property of Sunrise Banks, N.A., and must be returned upon demand, thereby making any attempted resale legally prohibited. To make this clearer, the True Link card bears the holder's name and signature. • The True Link Card can be set up so that it cannot be used to purchase food or shelter. Card administrators can block specific merchants, as well as entire spending categories, such as grocery stores, liquor stores, restaurants, and convenience stores. Administrators can also choose to block all transactions and only allow specific, authorized merchants.
<p>SI 01120.201 Trusts established with the assets of an individual on or after 1/1/00</p>	<p>I. Policy for disbursements from trusts 1. Trust principal is not a resource a. Disbursements which are income</p> <p>Cash paid directly from the trust to the individual is unearned income.</p>	<ul style="list-style-type: none"> • The True Link Card administrator can set up the card to restrict all access to cash (at ATMs, inside banks, after a purchase). • Purchases using the card are made at the discretion of the card administrator – the card is not a cash equivalent to the cardholder. • At any point, the administrator can completely block use of the card and/or return funds to the source account.
<p>SI 01120.201 Trusts established with the assets of an individual on or after 1/1/00</p>	<p>I. Policy for disbursements from trusts 1. Trust principal is not a resource b. Disbursements result in receipt of in-kind support and maintenance</p> <p>Food or shelter received as a result of disbursements from a trust by the trustee to a third party is income in the form of in-kind support (ISM) and maintenance and is valued under the presumed maximum value (PMV) rule.</p>	<ul style="list-style-type: none"> • If the trust's funds are used to purchase food or shelter via the True Link Card, these can be considered <i>under the credit card rules</i> as in-kind support and maintenance up to the PMV. The administrator can prevent this by setting up the card to block categories of spending and specific merchants.

<p>SI 01120.201 Trusts established with the assets of an individual on or after 1/1/00</p>	<p>I. Policy for disbursements from trusts 1. Trust principal is not a resource c. Disbursements which are not income</p> <p>Disbursements from the trust that are not cash to the individual or are third party payments that do not result in the receipt of support and maintenance are not income. Such disbursements may take the form of educational expenses, therapy, medical services not covered by Medicaid, phone bills, recreation, entertainment, etc., (see SI 00815.400).</p>	<ul style="list-style-type: none"> • The True Link Card administrator can set up the card to restrict all access to cash (at ATMs, inside banks, after a purchase), so that disbursements cannot be received in the form of cash. • Administrators can also choose to block all transactions and only allow specific, authorized merchants. • The True Link Card can be set up to allow disbursements for any categories of spending or merchants that are authorized by the administrator (e.g., educational expenses, therapy, medical services not covered by Medicaid, phone bills, recreation, entertainment, etc.). Similarly, the administrator can block any transactions that are not authorized.
<p>SI 01120.201 Trusts established with the assets of an individual on or after 1/1/00</p>	<p>I. Policy for disbursements from trusts 1. Trust principal is not a resource d. Disbursements for credit card bills</p> <p>If a trust pays a credit card bill for the trust beneficiary, whether the individual receives income depends on what was on the bill. If the trust pays for food or shelter items on the bill, the individual will generally be charged with in-kind support and maintenance up to the PMV. If the bill includes non-food, non-shelter items, the individual usually does not receive income as the result of the payment unless the item received would not be a totally or partially excluded non-liquid resource the following month.</p> <p>For example, if the credit card bill includes restaurant charges, payment of those charges results in ISM. If the bill also includes purchase of clothing, payment for the clothing is not income.</p>	<ul style="list-style-type: none"> • With the True Link Card, administrators have the option of setting up the card to block or allow food and shelter purchases. If food or shelter is purchased, the beneficiary may be charged with in-kind support and maintenance up to the PMV. • The administrator can evaluate purchases made with True Link Card by reviewing monthly statements. The administrator can also view transactions in real-time – as they occur – through True Link’s online dashboard. Additionally, the administrator can receive text or email alert notifications for blocked or allowed transaction attempts, as they occur. • True Link recommends that administrators request receipts to review items purchased, just as they would with other forms of disbursement.
<p>SI 01120.201 Trusts established with the assets of an individual on or after 1/1/00</p>	<p>I. Policy for disbursements from trusts 1. Trust principal is not a resource e. Disbursements for gift cards and gift certificates</p> <p>Gift cards and gift certificates are considered cash equivalents. If a gift card or certificate can be used to buy food or shelter (e.g., restaurant, grocery store or Visa gift card), it is unearned income in the month of receipt. Any unspent balance on the gift card or certificate is a resource beginning the month after the month of receipt. If the store does not sell food or</p>	<ul style="list-style-type: none"> • The True Link Card can be set up so that it cannot be used to purchase food or shelter. Card administrators can block specific merchants, as well as entire spending categories, such as grocery stores, liquor stores, restaurants, and convenience stores. Administrators can also choose to block all transactions and only allow specific, authorized merchants.

	<p>shelter items (e.g., bookstore or electronics store), but the card does not have a legally enforceable prohibition on the individual selling the card for cash, then it is still unearned income (see SI 00830.522).</p>	<ul style="list-style-type: none"> The individual does not have the right, authority, or power to convert or sell the card. The card is the property of Sunrise Banks, N.A., and must be returned upon demand, thereby making any attempted resale legally prohibited. To make this clearer, the True Link card bears the holder's name and signature.
<p>SI 01120.230 Health Flexible Spending Arrangements (FSAs)</p>	<p>B. Policy for health FSAs</p> <p>For Supplemental Security Income (SSI) purposes, do not count health FSAs as resources because FSA funds are restricted to pay for qualified medical expenses. Employers ensure that health FSA funds are only used for qualified medical expenses. Individuals cannot use health FSA funds to pay for their own support and maintenance.</p>	<ul style="list-style-type: none"> True Link Card administrators can restrict the card so it can only be used at authorized merchants and service providers. The True Link Card can be set up so that it cannot be used to purchase food or shelter. Card administrators can block specific merchants, as well as entire spending categories, such as grocery stores, liquor stores, restaurants, and convenience stores. Administrators can also choose to block all transactions and only allow specific, authorized merchants.
<p>SI 01120.230 Health Flexible Spending Arrangements (FSAs)</p>	<p>C. How to identify health FSAs</p> <p>2. FSA distributions</p> <p>For SSI purposes, health FSA distributions paid directly to the individual are not income. For more information on medical and social services, related cash and in-kind items, see SI 00815.050. For more information on cafeteria plans, see SI 00820.102.</p> <p>Health FSA plans reimburse individuals for qualified medical expenses in three ways.</p> <ul style="list-style-type: none"> <u>Debit cards, credit cards, and stored value cards</u> Most FSA plans issue debit, credit, or stored-value cards to pay for qualified medical expenses. When individuals receive a card, they certify they will use the card for eligible medical care expenses for the individual, his or her spouse, and dependents. The issued card has the certification printed on the back. The individual also agrees to acquire and retain sufficient documentation for any expenses paid with the card, including invoices and receipts. Individuals can only use the card with merchants and service providers the employer authorizes. If the individual uses the card somewhere else or for another purpose other than a qualified medical expense, the merchant will reject the card or purchase. The card is automatically cancelled at termination of employment. 	<ul style="list-style-type: none"> True Link Card administrators can restrict the card so it can only be used at authorized merchants and service providers. The administrator can require the beneficiary to certify that they will use the card only for eligible expenses. True Link can provide administrators with a sample beneficiary agreement. The administrator can require the beneficiary to retain all invoices and receipts, and provide those before receiving additional disbursements. If the cardholder attempts to use the True Link Card somewhere that is not authorized by the administrator, the merchant will reject the card or purchase.

True Link Compared to Other Options

As mentioned above, the trustee of a special needs trust often needs to facilitate payments to third parties, and the primary benefit of the trust may be to allow provision of those items not covered by the beneficiary's own resources or available public benefits. How does the True Link Card stack up against some of the common mechanisms used by trustees?

- *Direct payment from the trust to third parties* – A trustee might issue a check to a vendor and mail it out, and that might work well in some cases, particularly when the payment is consistently the same amount and paid the same day each month. Payments for personal supplies (diapers, medical devices, clothing, etc.) might not be as easy to handle by this method. The True Link Card can be a good way to give the purchaser the ability to make approved purchases on a more complex or irregular schedule – even after hours or electronically.
- *Use of the trust's or the trustee's credit card* – Many trustees use a corporate or trust-specific credit card to pay vendors. In such cases, though, it is important not to let the trust beneficiary handle the credit card directly; that may mean that a trustee or employee must physically go to – or at least deal directly with – a vendor for each transaction. The True Link Card gives another option: the beneficiary, caretaker, or family member may be able to make approved purchases directly without hands-on involvement by the trustee.
- *Unrestricted prepaid gift cards or pre-loaded debit cards* – This method is used by too many trustees without any recognition of the dangers. The very existence of prepaid cards in the possession of the SSI recipient creates an income and a resource problem – even though the beneficiary in a particular case may not yet have gotten into trouble with the arrangement. The True Link Card, on the other hand, avoids the problems associated with prepaid debit or gift cards, since the prepaid amounts in the True Link card are not available to the cardholder except for the limited, approved (and appropriately restricted) uses established by the trustee / card administrator.
- *Reimbursement of a beneficiary or family member's credit card* – A trust beneficiary who qualifies for an individual credit card, or has a family member or caretaker who is able to make purchases on their behalf, may have much greater autonomy and personal freedom. The logistical impact can be a serious constraint though: the trustee can pay the portion of the credit card bill that represents approved expenditures only after appropriate

documentation has been received, and the beneficiary, family member, or caretaker needs to be certain that there are funds available for purchases not deemed reimbursable by the trustee. The purpose-built restrictions make the True Link Card an attractive alternative to maximize personal autonomy and appropriate trust accountability.

Conclusion

A trustee of a special needs trust should feel confident that, when used correctly, the True Link Card should not be considered inconsistent with the income and resource tests used to determine SSI (and often Medicaid) eligibility. Consistently across FSAs, gift cards, and gift certificates, a form of payment that is restricted against use for food or shelter and is not convertible into cash does not count as income or a resource. When the card is in the hands of a third party, what matters is not the restrictions but what is actually purchased – food and shelter is ISM, cash or unrestricted or transferable gift cards are cash, and most other things are excluded. And, to the extent the restrictions collectively vitiate its use as a fungible general-purpose resource, it seems to fall closer to the third-party payment rules (e.g. credit card, direct payment to the merchant) than the ones that deal with cash and equivalents (e.g. checking account, cash, debit card).

Basic Features of the True Link Card that Support the Work of Special Needs Trustees

- The True Link Card can be set up so that the cardholder cannot purchase food or shelter.
- The True Link Card can be set up so that the cardholder cannot access cash in any way, including ATM withdrawals, withdrawals inside a bank, or cash back after a purchase.
- The beneficiary does not have the right, authority, or power to convert or sell the card.
- The beneficiary does not have unfettered access to the funds in any account connected to the True Link Card.
- The True Link Card can be set up to pay only a specific purchase, e.g. buying up to \$100 of gas or paying a single electric bill or telephone bill.

The True Link Card Adheres to Rules Regarding Other Forms of Disbursement

- The True Link Card is a stored value card with controls that enable the card administrator to decide where and how the card can be used. Due to these controls, it is distinct from gift cards, credit cards, and debit cards; it is an innovative mechanism for trust disbursements that affords the user an even greater level of oversight and protection.
- If set up properly, the True Link Card adheres to the guidelines set forth in the POMS with regard to other forms of disbursement.
 - *Gift cards* – Gift cards can be used for disbursement without affecting benefits, as long as they cannot be used to purchase food or shelter, and they cannot be resold. The True Link Card can be set up so that the cardholder cannot purchase food or

shelter, or access cash. Additionally, the beneficiary does not have the right, authority, or power to convert or sell the card.

- *Credit cards* – Depending on what is being paid for, credit cards can be used for disbursement without affecting benefits. The True Link Card is not a credit card, but if sufficiently restricted it starts to operate more like a third party payment than a piece of property owned by the beneficiary.
- *Debit cards* –The one section of the POMS that details debit card use in detail – regarding FSAs – indicates that FSA debit cards are one of three permissible mechanisms for distributing funds. Although the True Link Card is legally a stored-value card rather than a debit card, some of its features are similar to FSA card features, including the ability to limit and restrict spending as defined by a card administrator.

Practices Recommended by True Link

- True Link recommends administrators set up True Link Cards to so that the cardholder cannot access cash in any way.
- True Link recommends administrators set up True Link Cards to work only at merchants where food and shelter cannot be purchased.
- True Link still recommends that administrators collect receipts from their beneficiaries, as this is in keeping with practices stipulated in the POMS for other mechanisms of disbursement.
- True Link recommends that administrators require their beneficiaries to sign an agreement that certifies they will use the card for approved expenses only.