



## Attorney Acknowledgment

(Please complete and send to CFMF with new Joinder Agreements)

I represent a person establishing a Trust at Community Fund Management Foundation (CFMF) for the benefit of \_\_\_\_\_ [Beneficiary Name]. By signing this document, I acknowledge that the following items may affect my client and/or the advisability of establishing a CFMF Trust and I have advised my client accordingly.

**Disability Requirement:** CFMF Trusts are intended only for Ohio residents with disabilities. See 42 U.S.C. 1382c(a) and Ohio Admin. Code 5160:1-3-02 for the definition of disability.

**Sole Benefit Rule:** Funds in a CFMF Trust can be used only for the sole benefit of the named beneficiary. Funds cannot be distributed to pay the expenses of others, purchase items for others, or make gifts to others.

**Food and Shelter Expenses:** Funds in a CFMF Trust cannot be used to pay food or shelter expenses if the beneficiary is a community Medicaid or SSI recipient. "Food" includes grocery store purchases and restaurant dining. "Shelter" includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services, as well as homeowner's insurance if required by mortgagee. See 20 C.F.R. 416.1130(b), POMS SI 00835.465, and Ohio Admin. Code 5160:1-3-03.8(B)(10).

**Trust Established or Funded by Guardian:** While federal law allows a guardian to establish a trust, establishment of a CFMF Trust by a guardian of person only could result in termination of a beneficiary's benefits, such as SSI. Therefore, CFMF will not accept a trust established by a guardian of person only. It is also CFMF's position that a guardian of person only does not have authority to fund a trust with assets belonging to the beneficiary, if he/she is not also a guardian of estate, an agent with trust creation authority under a valid financial power of attorney, or a representative payee.

**Protection of Means-Tested Benefits Only:** Using a pooled trust may safeguard the beneficiary's eligibility for means-tested government benefits, including Medicaid and sometimes Supplemental Security Income (SSI).

**SSI Recipients Aged 65 and Older:** If the beneficiary is age 65 or older and receives SSI, depositing funds in a CFMF Trust will cause the beneficiary to lose SSI benefits for up to 36 months. The number of months of lost benefits will depend on the amount of money deposited into the Trust. CFMF requires all attorneys who establish a Trust for a beneficiary who is age 65 or older to sign a separate form acknowledging the potential penalties imposed by the Social Security Administration or state Medicaid agencies.



**SSDI Recipients and Workers Compensation:** If the beneficiary receives SSDI and Workers Compensation, depositing the Workers Compensation payments into a CFMF Trust will not protect the SSDI benefit from being offset.

**Veterans' Benefits:** A beneficiary who is eligible for VA benefits or seeking to become eligible may not be able to protect those VA benefits or avoid a penalty period by using a CFMF Trust. Transfers to pooled special needs trusts are generally not exempt from VA asset calculations. If the beneficiary is the child of a veteran, under the age of 18, and permanently incapable of self-support, legal advice is needed to determine whether the exception in 38 C.F.R. 3.276(d) may apply. In addition, Survivor Benefit Plan (SBP) annuity payments for a child with a disability may be exempt from Medicaid and SSI resource calculations if deposited into a first-party CFMF Pooled Medicaid Payback Trust but not if deposited into a third-party CFMF Master Trust. See 10 U.S.C. 1448(b)(6), 10 U.S.C. 1450(a)(4), 10 U.S.C. 1455(d), and U.S. Dept. of Defense Memorandum: Enabling Payment of Survivor Benefit Plan Annuities to a Special Needs Trust (Dec. 31, 2015).

**Other Benefits Not Protected:** There may be other scenarios where depositing funds into a CFMF Trust will not protect public benefits. CFMF does not provide legal advice, so it is the responsibility of the attorney signing the CFMF Joinder Agreement to discuss any applicable scenarios with the client.

**Fees:** CFMF's current fee schedule is available on its website. CFMF asks that attorneys ensure the parties understand all fees that will be charged for the administration of the Trust, including the initial setup fee, the annual and quarterly fees, any closing fee that may be charged, and if applicable, court fees.

**Timing of Deposits:** CFMF strongly recommends that time-sensitive deposits into CFMF trusts be submitted by bank check, cashier's check, or money order instead of personal check to ensure the funds are withdrawn from the payor's account within the expected timeframe. Personal checks may be subject to bank holds of three to five days after the deposit date and CFMF cannot guarantee that a deposited check will clear by a certain date. CFMF does not make daily deposits to trust accounts.

**Funds Not Insured:** Just as with any non-depository investments such as mutual funds, annuities, stocks, and bonds, funds placed in a CFMF Trust are not FDIC-insured.

**Investment of Trust:** Funds placed in a CFMF Trust will be invested by the Trustee and managed by a professional investment manager. Currently up to 65% is invested in equity assets and at least 35% is invested in fixed income. All investments involve risk, including the possible loss of principal. An investment's yield, share price, and rate of return fluctuate, and when sold or redeemed, the person funding the Trust may receive more or less than his/her original investment. Prior returns are not indicative of future performance.



**Tax Liability:** Placing funds in a CFMF Trust does not shield those funds from tax liability. Transactions within the Trust (such as distributions and investment activity) may result in tax liability for the grantor of a Revocable Master Trust or for the beneficiary of an Irrevocable Master Trust or a Pooled Medicaid Payback Trust. Tax documents for CFMF Trusts are generated by the Trustee and are expected to be mailed by March 15 for the prior calendar year. However, CFMF and the Trustee do not provide tax advice. If the grantor, beneficiary, or designated advocate has tax questions, he or she will need to contact an attorney or accountant.

**Irrevocability of Trust:** Placing funds in an irrevocable CFMF Trust means that the person establishing the Trust and/or the beneficiary will not be able to close or terminate the Trust as long as funds remain in it. Furthermore, once the person establishing the irrevocable Trust has named remainder distributees in the Joinder Agreement, those designations cannot be changed later.

**Notification to Federal and State Agencies:** Agencies providing public assistance such as Medicaid, SSI, and HUD require that notice be given when a trust is established and funded for a recipient of the public assistance program. Failure to provide timely notice may impact a beneficiary's eligibility for the public assistance program. CFMF does not provide legal advice regarding this requirement, nor does CFMF assist beneficiaries in notifying federal and state agencies that a new Trust sub-account has been established. CFMF recommends that attorneys who sign a CFMF Joinder Agreement send such notices to the appropriate government agencies via certified mail and provide CFMF with copies for the Trust file in case it is necessary to produce those notices in the future.

\_\_\_\_\_  
Attorney Printed Name  
(Required)

\_\_\_\_\_  
Printed Name of Person Establishing Trust  
(Optional)

\_\_\_\_\_  
Attorney Signature  
(Required)

\_\_\_\_\_  
Signature of Person Establishing Trust  
(Optional)

\_\_\_\_\_  
Date

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Date