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## **Non-SSI Individual's Resource Eligibility - Introduction**

An applicant for AG must meet two financial eligibility criteria, income and resources. This chapter addresses a non-SSI individual's resource eligibility. An individual's or couple's resource eligibility is determined by comparing their total countable resources to the appropriate resource limit. If the individual's total countable resources are equal to or less than the resource limit the individual is resource eligible. If they exceed the limit, the individual is ineligible for AG.

**Exception:** An individual who fails to meet the resources requirement due solely to **excess non-liquid resources must** be evaluated to determine if he/she is eligible for Conditional Benefits. See Chapter F.

Countable resources are determined by evaluating all known resources, identifying those that are excluded by policy, and totaling the values of those that are countable. The method for determining the countable value of a resource varies by the type of resource. Policy in this chapter outlines the methods to be used for each resource type.

Sections 1 through 5 of this chapter address general information regarding resources. Sections 6 through 11 address exclusions that may apply to more than one type of resource. Sections 12 through 68 address specific resources. They are listed in alphabetical order. Other resource exclusions are addressed under the specific resource to which they apply.

**Note:** This policy **DOES NOT apply when evaluating an SSI recipient's resource eligibility.** See SSI Recipients' Eligibility Chapter D.

### **1. Resources Defined**

Resources are cash and any other personal or real property that an individual (or spouse, if in the AU):

- Owns;
- Has the right, authority, or power to convert to cash (if not already cash); and
- Is not legally restricted from using for his/her support and maintenance.

#### **1.1. Personal Property**

Personal property is any property that is not real property. The term encompasses such things as cash, tools, life insurance policies, and automobiles.

## 1.2. Real Property

Real property is land, including buildings or immovable objects attached permanently to the land.

## 1.3. Liquidity Of Resources

The liquidity of a resource is a factor in determining an individual's eligibility for Conditional Benefits and in the application of some resource exclusions.

**Liquid resources** are any resources in the form of cash or in any other form which **can** be converted to cash within 20 workdays. **Workdays** are any days other than Saturdays, Sundays, and Federal holidays. Resources that are not liquid are **non-liquid resources**.

## 2. Relationship of Income to Resources

An item received in the current month is income for the current month. If held by the individual until the following month, that item is subject to resource counting rules.

### Example

Mr. Jones receives a dividend check for \$300 at the end of May. He spends \$150 immediately and deposits the remaining \$150 in his savings account. His income for May is \$300. The June 1 evaluation of Mr. Jones' resources includes (for the first time) the \$150 he saved.

### 2.1. Conversion Or Sale Of A Resource

When a resource is sold, exchanged, or replaced, one resource has been exchanged for another. The item received is evaluated as a resource.

Receipts from the sale, exchange, or replacement of a resource are **not income** but are resources that have changed their form. This includes any cash, real property or personal property that is provided to replace or repair a resource that has been lost, damaged, or stolen.

### Example

Jerry Wallace sells his 1974 Plymouth Satellite for \$300. The money he receives is not income but a resource which has been converted from one form (a car) to another form (cash).

### **2.1.1. Verification**

Verification of the conversion and the new resource is required for resource evaluation. See policy that addresses the new resource type.

## **3. Values to Apply to Resources**

A resource's value is its value as it existed on the first moment of the first day of the month in which it is being evaluated. *Consider any increase or decrease in the resource as of the first moment of the first day of the month following the month the change occurs.* For AG purposes, the value of a resource is the amount of an individual's/ couple's equity in it.

### **Exception:**

When there is only one automobile, and it does not qualify for exclusion based on its use, its value is the current market value rather than equity value.

### **3.1. Current Market Value**

The current market value (CMV) of a resource is the going price for which it can reasonably be expected to sell on the open market in the particular geographic area involved.

### **3.2. Equity Value**

Equity value (EV) is the CMV of a resource minus any encumbrance on it.

### **3.3. Encumbrance**

An encumbrance is a legally binding debt against a specific property. Such a debt reduces the value of the encumbered property but does not have to prevent the property owner from transferring ownership (selling) to a third party. However, if the owner of encumbered property does sell it, the creditor will nearly always require debt satisfaction from the proceeds of sale.

## **4. Monthly Determinations**

Eligibility with respect to resources is a determination made as of the first moment of each calendar month and applicable to the entire month. Subsequent changes have no effect until the following month's resources determination. Thus, resource eligibility (or ineligibility) exists for an entire month at a time.

## 5. Resource Limits

An individual (or couple) with countable resources in excess of the applicable limit (which is set by statute) is not eligible for AG.

**Individual      \$2000**

**Couple          \$3000**

If countable resources do not exceed the applicable limit, they have no effect on the amount of AG payments.

## 6. Ownership

An individual may be the sole owner of **real or personal property** or may share ownership with one or more others. The type of ownership and the percentage of ownership are factors in determining the resource value available to the individual. If the worker is unable to determine the type of ownership based on the following information, the ownership documents will be submitted to the AG consultant. The AG consultant will consult the AAG as appropriate.

### 6.1. **Sole Ownership**

Sole ownership of (**real or personal**) property means that only one person may sell, transfer or otherwise dispose of the property. If not otherwise excluded, the full value of the property is a resource to the sole owner.

**Note:** Sole ownership may be subject to conditions imposed by others as, for example, sole ownership of a remainder interest in property. The individual's resource value is not the full value of the property but is the full value of the portion he/she owns, the remainder interest in the property. See Remainder Interests Chapter E – 41.3.

### 6.2. **Shared Ownership**

Shared ownership of (real or personal) property means that two or more people own it concurrently.

### **6.2.1. *Types of Shared Ownership***

#### **6.2.1.1. Tenancy-In-Common - Owners May Not Have Equal Interests**

In tenancy-in-common, two or more persons each have an undivided fractional interest in the whole property for the duration of the tenancy. These interests are not necessarily equal; e.g., two joint tenants do not necessarily each own half of the property. One owner may sell, transfer or otherwise dispose of his or her share of the property without permission of the other owner(s) but cannot take these actions with respect to the entire property.

The individual's resource value equals his pro-rata share of the equity value of the property.

##### **6.2.1.1.1. No Survivorship Rights**

When a tenant-in-common dies, the surviving tenant(s) has no automatic survivorship rights to the deceased's ownership interest in the property. Upon a tenant's death, the deceased's interest passes to his or her estate or heirs.

##### **Example -**

Don, Charles, and Fred Evans own property as tenants-in-common. Charles and Fred each own an undivided one-fourth interest in the property while Don owns the remaining one-half interest. If Don Evans were to sell his half interest to Stanley Long, Mr. Long would become a tenant-in-common with Charles and Fred Evans. If Mr. Long were then to die so that his property passed to his four children, each of them would own a one-eighth interest as tenants-in-common with Charles and Fred who would each continue to own a one-fourth interest.



### **6.2.1.2. Joint Tenancy - Each Owner Has Same Interest**

In joint tenancy, each of two or more persons has one and the same undivided ownership interest and possession of the whole property for the duration of the tenancy. In effect, each owner owns all of the property. The individual's resource value equals the full equity value of the property.

#### **6.2.1.2.1. Survivorship Rights**

Upon the death of one of only two joint tenants, the survivor becomes sole owner. On the death of one of three or more joint tenants, the survivors become joint tenants of the entire interest.

#### **6.2.1.2.2. Conversion to Tenancy-in-Common**

It is possible for joint tenants to take action during their lifetimes to convert the joint tenancy to a tenancy-in-common (see Chapter E - 6.2.1.1 above).

### **6.2.1.3. Tenancy By The Entirety - Married Couples Only**

A tenancy by the entirety can exist only between the members of a married couple. The wife and husband as a unit own the entire property which can be sold only with the consent of both parties.

- If the spouse is in the AG AU, 50 % of the equity value is a resource to each of the spouses, meaning 100% would be used in determining the countable value for the AU of two.
- If the spouse is not in the AG AU but agrees to sell the property, the individual's resource value would be 50% of the equity value.
- If the spouse is not included in the AG AU and refuses to sell, the property would not be a resource to the individual.

**Note:** If a marriage has been legally dissolved, the former spouses become tenants-in- common and one can sell his or her share without the consent of the other.

#### **6.2.1.3.1. Survivorship Rights**

Upon the death of one tenant by the entirety, the survivor takes the whole.

### **6.3. Property Rights Without Ownership of the Property**

An individual may have certain rights with respect to property without also having the right to dispose of the property. However, the individual may have the right to sell his/her right or interest, i.e., the right to use or possess the property.

#### **6.3.1. Leasehold**

Leasehold does not designate rights of ownership. Rather, it conveys to an individual use and possession of property for a definite term and usually for an agreed rent. However, under common law, a lease could create a life estate. Due to the complexity of these arrangements, leasehold documents should be forwarded to the area AG Consultant who will determine if there is a need for legal review. If a legal review is needed, the papers will be forwarded to the AAG.

- If the leasehold does not create a life estate, the leasehold is not a resource.
- If the leasehold does create a life estate, evaluate the life estate as a resource. See Chapter E – 41.

#### **6.3.2. Incorporeal Interests – Mineral and Timber Rights and Easements**

There are several types of real property rights called “incorporeal interests.” They do not convey ownership of the physical property itself. They convey the right to use property but not to possess it. These rights encompass mineral and timber rights and easements. These “rights” must be evaluated as resources. See Non-Home Property Chapter E – 49.

## **7. Property Essential to Self-Support Exclusion 1 – Excluded Regardless of Value or Rate of Return**

Property essential to self-support is real or personal property that is or was being used to produce income for the individual.

## **7.1. Exclusion**

The properties below are excluded as essential to self-support regardless of value or rate of return. The property must be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

### **7.1.1. Trade Or Business Property**

Property essential to self-support used in a trade or business is excluded from resources regardless of value or rate of return.

### **7.1.2. Government Permits**

Government permits represent authority granted by a government agency to engage in income producing activity. Examples are commercial fishing permits granted by a State Commerce Commission and tobacco crop allotments issued by the U.S. Department of Agriculture.

### **7.1.3. Personal Property Used By An Employee**

Personal property used by an employee for work is excluded from resources. Excluded items include tools, safety equipment, uniforms, etc.

## **7.2. Current Use Criterion**

Property, including property used by an individual as an employee, must be in current use to be excluded as essential to self-support. Current use is evaluated on a monthly basis. Property not in current use can be excluded as essential to self-support only if:

- It has been in use;
- And there is a reasonable expectation that the use will resume

If property is **not in current use**, obtain the individual's signed statement as to:

- The date of last use;

- The reason(s) the property is not in use; and
- When the individual expects to resume the self-support activity, if at all

### **7.2.1. 12-Month Rule**

Resumption of use must be expected within 12 months of last use. For example, if property was last used in October, resumption of use must reasonably be expected to occur before the end of the following October.

### **7.2.2. 12-Month Extension**

The 12-month period can be extended for an additional 12 months if nonuse is due to a disabling condition.

#### **7.2.2.1. Disabling Condition**

If an individual alleges that self-support property is not in current use because of a disabling condition, obtain the individual's signed statement as to:

- The nature of the condition;
- The date he or she ceased the self-support activity; and
- When he or she intends to resume the activity, if at all.

### **7.2.3. No Intent To Resume Activity**

If the individual does not intend to resume the self-support activity, the property is a countable resource for the month after the month of last use.

### **7.2.4. Change of Intent**

If, after property has been excluded because an individual intends to resume self-support activity, the individual decides not to resume such activity, the exclusion ceases to apply as of the date of the change of intent. Thus, unless excluded under another provision the property is a resource for the following month.

## **7.3. Trade Or Business**

When an individual alleges owning trade or business property, determine if a valid trade or business exists, and if the property is in current use. Obtain a statement giving the information below. Absent evidence to the contrary, accept the responses to the first four bulleted items. Verify the last bulleted item with the business tax returns.

- A description of the trade or business;
- A description of the assets of the trade or business;
- The number of years it has been operating (see 4. Below);
- The identity of any co-owners;
- The estimated gross and net earnings of the trade or business for the current tax year.

#### **7.3.1. Redetermination**

Consider current use of the property in the trade or business. Obtain and verify the individual's allegations as to the estimated gross and net earnings of the trade or business for the current tax year for income purposes.

#### **7.3.2. Verification**

Obtain a copy of the business tax return (i.e., Form 1040 and the appropriate schedules) for the tax year prior to the application or redetermination. Use the return to determine the net earnings from self-employment and validity of the trade or business. The following can be particularly helpful:

- Schedule C, Profit or Loss from Business or Profession;
- Schedule SE, Computation of Social Security Self-Employment;
- Schedule F, Farm Income and Expenses;
- Form 4562, Depreciation and Amortization; and
- Form 1065, U.S. Partnership Return of Income.

If the current tax return is not available, obtain a copy of the latest tax return available.

#### **7.3.3. Questionable Trade Or Business**

If a trade or business has operated a year or less, use the following to determining if a business or trade exists:

- The good faith intention of making a profit or producing income,
- Continuity of operations, repetition of transactions, or regularity of activities,
- Regular occupation,
- Holding out to others as being engaged in the selling of goods or services.

A single factor is not sufficient upon which to determine the existence of a trade or business but all of the factors need not apply.

#### **7.3.4. Liquid Resources Used In A Trade Or Business**

All liquid resources used in the operation of a trade or business are excluded as property essential to self-support. Obtain an individual's signed allegation that liquid resources are used in the trade or business.

**Liquid resources** are any resources in the form of cash or in any other form which **can** be converted to cash within 20 workdays. **Workdays** are any days other than Saturdays, Sundays, and Federal holidays.

#### **7.4. Government Permits**

If an individual alleges owning a government license, permit, or other property that represents government authority to engage in an income producing activity, and that has value as a resource, obtain his or her signed statement as to:

- The type of license, permit or other property;
- The name of the issuing agency, if appropriate;
- Whether the law requires such license, permit, or property for engaging in the income producing activity at issue; and
- How the license, permit, or other property is being used; or
- If it is not being used, why not.

##### **7.4.1. Verification**

Have the individual submit a copy of the license, permit and/or other pertinent documents. For example, an individual engaged in fishing in Alaska would have to have a permit. In North Carolina, a person growing flue-cured tobacco would have to have a “marketing sales card” to sell it.

## **7.5. Personal Property Used By An Employee**

### **7.5.1. Verification**

If an individual alleges owning items that are used in his or her work as an employee; or that his or her employer required he or she provide as a condition of employment, obtain his or her statement to include:

- The name, address, and telephone number of the employer;
- A general description of the items;
- A general description of his or her duties; and
- Whether the items are currently being used

Absent evidence to the contrary, accept the individual's statement.

## **8. Property Essential To Self-Support Exclusion 2 - Excluded Up To \$6,000 Equity Regardless Of Rate Of Return**

Non-business property essential to self-support can be real or personal property. It produces goods or services essential to daily activities if, for example, it is used to:

- Grow produce or livestock solely for personal consumption in the individual's household; or
- Perform activities essential to the production of food solely for home consumption

While this category of property may encompass a vehicle used solely in a non-business self-support activity (e.g. a garden tractor, or a boat used for subsistence fishing), it does not include any vehicle that qualifies as an automobile. See Chapter E – 15.

### **8.1. Exclusion**

Up to \$6,000 of the **equity value** of non-business property used to produce goods or services essential to daily activities is excluded from resources. There is no requirement that the property produce a certain rate of return. The property must

be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

Any portion of the property's equity value in excess of \$6,000 is a countable resource.

### **8.1.1. Exception to the Exclusion**

Liquid resources are not considered property essential to self-support except when used as part of a trade or business. (This exclusion applies to non-business property.)

**Liquid resources** are any resources in the form of cash or in any other form which **can** be converted to cash within 20 workdays. **Workdays** are any days other than Saturdays, Sundays, and Federal holidays.

#### **Resources Assumed to be Liquid**

Cash is **always** liquid. Absent evidence to the contrary, assume that the following types of resources are liquid:

- Stocks, bonds, and mutual fund shares;
- Checking and savings accounts and time deposits;
- United States Savings Bonds and Treasury bills, notes and bonds;
- Mortgages and promissory notes; and
- Cash value of life insurance policies.

### **8.2. Current Use Criterion**

Property, including property used by an individual as an employee, must be in current use to be excluded as essential to self-support. Current use is evaluated on a monthly basis. Property not in current use can be excluded as essential to self-support only if:

- It has been in use;
- And there is a reasonable expectation that the use will resume.

If property is not in current use, obtain the individual's signed statement as to:

- The date of last use;



- The reason(s) the property is not in use; and
- When the individual expects to resume the self-support activity, if at all.

### **8.2.1. 12-Month Rule**

Resumption of use must be expected within 12 months of last use. For example, if property was last used in October, resumption of use must reasonably be expected to occur before the end of the following October.

### **8.2.2. 12-Month Extension**

The 12-month period can be extended for an additional 12 months if nonuse is due to a disabling condition.

#### **8.2.2.1. Disabling Condition**

If an individual alleges that self-support property is not in current use because of a disabling condition, obtain the individual's signed statement as to:

- The nature of the condition;
- The date he or she ceased the self-support activity; and
- When he or she intends to resume the activity, if at all.

### **8.2.3. No Intent To Resume Activity**

If the individual does not intend to resume the self-support activity, the property is a countable resource for the month after the month of last use.

### **8.2.4. Change of Intent**

If, after property has been excluded because an individual intends to resume self-support activity, the individual decides not to resume such activity, the exclusion ceases to apply as of the date of the change of intent. Thus, unless excluded under another provision, the property is a resource for the following month.

## **8.3. Value**

**8.3.1. Real Property**

Use the guidelines under Non-Home Real Property to verify and determine ownership, the CMV and the EV of real property. See Chapter E – 49.

**8.3.2. Personal Property**

Have the individual obtain a CMV estimate from a knowledgeable source. The estimate must:

- Clearly identify the source;
- Contain a description of the item whose CMV is being estimated; and
- Show the basis for the estimate.

If a knowledgeable source provides a value range, use the lower edge of the range.

**8.4. Verification**

When an individual alleges owning property that he or she uses to produce goods or services necessary for daily activities, obtain his or her statement giving:

- A description of the property;
- How it is used; and
- An estimate of its CMV and any encumbrances on it.

Absent evidence to the contrary, accept the statement of how it is used.

**9. Property Essential to Self-Support Exclusion 3 - Excluded up to \$6,000 Equity If It Produces a 6 Percent Rate of Return**

Non-business property essential to self-support can be real or personal property.

**9.1. Exclusion**

Up to \$6,000 of the equity value of non-business income producing property can be excluded from resources if the property produces a net annual return equal to at least 6% of the **excludable equity**. The property must be in current use or, if it is

not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

Any portion of the property's equity value in excess of \$6,000 is a countable resource.

Evaluate the income as unearned income. See Chapter – I.

**Note:** “Excludable equity” is either \$6000 or the actual equity value if it is less than \$6000.

### ***9.1.1. Exception to the Exclusion***

Liquid resources are not considered property essential to self-support except when used as part of a trade or business. (This exclusion applies to non-business property.)

**Liquid resources** are any resources in the form of cash or in any other form which **can** be converted to cash within 20 workdays. **Workdays** are any days other than Saturdays, Sundays, and Federal holidays.

#### **9.1.1.1. Resources Assumed to be Liquid**

Cash is **always** liquid. Absent evidence to the contrary, assume that the following types of resources are liquid:

- Stocks, bonds, and mutual fund shares;
- Checking and savings accounts and time deposits;
- United States Savings Bonds and Treasury bills, notes and bonds;
- Mortgages and promissory notes and
- Cash value of life insurance policies.

## **9.2. Current Use Criterion**

Property, including property used by an individual as an employee, must be in current use to be excluded as essential to self-support. Current use is evaluated on a monthly basis. Property not in current use can be excluded as essential to self-support only if:

- It has been in use;

- And there is a reasonable expectation that the use will resume.

If property is not in current use, obtain the individual's signed statement as to:

- The date of last use;
- The reason(s) the property is not in use; and
- When the individual expects to resume the self-support activity, if at all.

If the individual does not intend to resume the self-support activity, the property is a countable resource for the month after the month of last use.

### **9.2.1. 12-Month Rule**

Resumption of use must be expected within 12 months of last use. For example, if property was last used in October, resumption of use must reasonably be expected to occur before the end of the following October.

#### **9.2.1.1. 12-Month Extension**

The 12-month period can be extended for an additional 12 months if nonuse is due to a disabling condition.

##### **9.2.1.1.1. Disabling Condition**

If an individual alleges that self-support property is not in current use because of a disabling condition, obtain the individual's signed statement as to:

- The nature of the condition;
- The date he or she ceased the self-support activity; and
- When he or she intends to resume the activity, if at all.

### **9.2.2. Change Of Intent**

If, after property has been excluded because an individual intends to resume self-support activity, the individual decides not to resume such activity, the exclusion ceases to apply as of the date of the change of

intent. Thus, unless excluded under another provision, the property is a resource for the following month.

### **9.3. Computing The Rate Of Return**

Determine the individual's equity value in the property. If the full equity value is less than \$6000, use the actual equity value to calculate the rate of return. If the full equity value is \$6000 or more, use \$6000 to calculate the rate of return. Multiply the equity value (the actual or the \$6000) times 6%. The result is the required rate of return.

#### **Example**

The individual owns a lot valued at \$50,000 that he rents to an adjacent landowner to use as a parking lot. The individual has \$7,500 equity in the property. To be eligible for the \$6000 exclusion the individual must receive at least \$360 in rent annually. ( $\$6000 \times .06 = \$360$ )

### **9.4. Rate Of Return Less Than 6%**

If the property produces less than a 6% return, the exclusion can apply only if:

- The lower return is for reasons beyond the individual's control (e.g., crop failure or illness); and
- There is a reasonable expectation that the property will again produce a 6% return.

Otherwise, none of the EV is excluded under this provision.

#### **Example**

Mr. Patterson owns a mobile home (not his residence) that has a CMV and EV of \$3,000. He owns other property that has a CMV and EV of \$2,000. The mobile home produces a net annual rental income of \$750, and the other property produces less than \$50 a year.

Since the mobile home produces more than a 6% return ( $\$3000 \times 6\% = \$180$ ), its EV is excluded. Since the other property produces less than a 6% return ( $\$2000 \times 6\% = \$120$ ), its EV is not excluded.

#### **9.4.1. When the tax return shows an earnings rate of less than 6%:**

- Record the individual's explanation of the earnings decline in the file.

- Obtain evidence of prior years' earnings (e.g., tax returns for at least 2 years prior to the current tax year) to determine whether the activity has produced a 6% rate of return before.
- When no tax returns are available, use other evidence such as receipts, check registers, invoices, sales slips, bank statements, etc.

#### **9.4.2. Time Limit For Resumption Of 6% Return**

If the earnings decline was for reasons beyond the individual's control, up to 24 months can be allowed for the property to resume producing a 6% return. The 24-month period begins with the first day of the tax year following the one in which the return dropped to below 6%.

- **24-Month Period Ends**

If the property still is not producing a 6% return, include the full equity value of the property in determining resources for the month following the month in which the 24-month period ends.

#### **9.4.3. Operating At A Loss**

At initial application, if the tax returns show that the activity has operated at a loss for the two most recent years or longer, the property cannot be excluded unless the individual submits current receipts and records to show that it currently is producing a 6% return.

#### **9.5. More Than One Income Producing Property**

If an individual owns more than one piece of income producing property:

- The 6% return requirement is computed separately for each piece of property; and
- The \$6,000 EV exclusion applies to each piece of property that meets the 6% return requirement

#### **9.6. Equity Value Exceeds \$6000**

The portion of a property's EV in excess of the \$6,000 excluded amount is a countable resource.

#### **Example**

Mr. Cameron states that he now lives in an ALF and is renting out his formerly excluded home, which has an EV of \$7,000. If the property produces a 6%

return, \$6000 of its equity will be excluded and \$1,000 will be a countable resource. The rent will be evaluated as unearned income.

## **9.7. Verification**

When an individual alleges owning non-business real property that produces income (e.g., land or a house for rent), obtain his or her signed statement concerning:

- The number of years he or she has owned the property;
- Any co-owners of the property;
- A description of the property;
- The estimated CMV of the property and any encumbrances on it; and
- The estimated net and gross income from the property for the current tax year.

When redetermining the status of property already excluded under this provision, only the value and income need to be redeveloped.

### **9.7.1. *Supporting Evidence***

- Absent evidence to the contrary, accept the statement with respect to years of ownership, identity of owners, and description of the property.
- Determine rate of return based on income and value figures shown on the individual's Schedule E (Supplemental Income Schedule) of Form 1040 for the year prior to filing of the application. If no tax return is available, obtain other appropriate evidence from the individual (e.g., a copy of the lease agreement for the period in question).

## **10. Reasonable Efforts to Sell Real Property After End of 9 Months of Conditional Benefits Exclusion**

When an individual has received nine months of Conditional Benefits due to his ownership of excess real property during which he/she made continuing but unsuccessful

reasonable efforts to sell, the reasonable effort to sell exclusion may be applied in determining his/her eligibility for regular AG benefits. The exclusion will apply if the individual continues to make reasonable efforts to sell or establishes good cause for failure to do so.

Regular AG benefits paid as a result of this exclusion are not subject to recovery as overpayments of conditional benefits.

**Note:** This exception **does not** apply until the individual has qualified for and received nine months of conditional benefits.

### **10.1. Exclusion**

Real property that an individual has made reasonable but unsuccessful efforts to sell throughout a 9-month period of conditional benefits will continue to be excluded in determining eligibility for regular AG benefits for as long as:

- The individual continues to make reasonable efforts to sell it; and
- Including the property as a countable resource would result in a determination of excess resources.

### **10.2. Conditional Benefits Overpayment**

If the individual qualifies for this reasonable effort to sell exclusion, repayment of the conditional benefits overpayment is postponed until the property is sold. If the property is later sold, benefits paid during the 9-month conditional benefits period are subject to recovery as overpayments. The overpayment must be computed using the procedures in Conditional Benefits Overpayment Chapter F – 12.

Regular AG benefits paid as a result of this exclusion are not subject to recovery as overpayments of conditional benefits.

### **10.3. No Resumption of the Exclusion after Termination of Eligibility**

If eligibility is **terminated** for any reason, this exclusion **will not** resume upon a new application for benefits. Before the property can again be excluded under this provision, the individual must make reasonable but unsuccessful efforts to sell it throughout a new 9-month period of conditional benefits.

### **10.4. Explanation of Exclusion**

When an individual has made reasonable but unsuccessful efforts to sell property throughout a 9-month period of conditional benefits, explain that:



- The property will continue to be excluded for as long as reasonable efforts to sell it continues and counting it would cause resources to exceed the AG resource limit;
- The worker will continue to make periodic follow-up contacts and to request evidence of ongoing reasonable efforts to sell; and
- The individual is still responsible for informing the worker promptly of any offers to buy and for showing that any offer refused was not reasonable.

#### **10.5. Reasonable Efforts to Sell**

The individual must make reasonable efforts to sell excess non-liquid property by taking all necessary steps to sell it through media serving the geographic area in which the person lives or, if different, where the property is located. The individual must attempt to sell the property for as much as he/she can but cannot ask for more than the highest CMV estimated by a knowledgeable and disinterested third party

#### **10.6. Continuing Efforts to Sell**

Except for gaps of no more than 1 week, the owner must:

- List the property with an agent; or
- Begin to advertise in at least one of the appropriate media; place a “For Sale” sign on the property (if permitted); begin to conduct open houses or otherwise show the property to interested parties on a continuing basis; or attempt any other appropriate methods of sale such as posting notices on community bulletin boards, distributing fliers, etc.

#### **10.7. Individual Must Accept Any Reasonable Offer**

The owner must not reject any reasonable offer to buy the property and must accept the burden of demonstrating to the worker’s satisfaction that he/she rejected an offer because it was not reasonable.

- Assume that an offer to buy real property is reasonable if it is at least two-thirds of the estimated CMV unless the owner proves otherwise.

#### **Example**

When the worker contacted Mrs. Darwin on September 19 to verify her continuing effort to sell, Mrs. Darwin stated that she had just refused an offer of \$6,000 as being too low. Mrs. Darwin said she has no proof that \$6,000 was

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unreasonable; it was her opinion that it was too low. The worker determines that the offer was reasonable (\$6,000 is more than two-thirds of \$8,000) and that Mrs. Darwin is no longer making reasonable efforts to sell. As of October 1, the property is a countable resource

## **10.8. Verification of Efforts to Sell**

Document the individual's allegations regarding ads, listings, consignments, and other efforts to sell the resources. Obtain any supporting evidence the individual can provide. If the individual cannot provide evidence, verify allegations with a statement from an appropriate third party.

Verify only those allegations necessary to establish that the individual is making reasonable efforts to sell. Verifying duration of an ad, listing or consignment at the outset will prevent the need to verify its continuing existence at subsequent follow-up contacts.

Evaluate those efforts against the criteria in Reasonable Effort to Sell Chapter F – 8. 1.

**Note:** Reasonable efforts to sell do not have to be confined to traditional methods such as listing the property with a real estate agent or placing an ad in the newspaper. Any reasonable effort, considering the individual's circumstances, may be acceptable.

## **10.9. Supporting Evidence**

Ask the individual to submit all appropriate proof such as:

### **10.9.1. Real Property**

- Copy of the listing agreement with the real estate agency in current use;
- Dated advertisement(s) indicating the property is for sale;
- Contracts with media to advertise the property;
- A photograph of the “For Sale” sign on the property;
- Copies of fliers or posted notices; and/or
- Any other evidence of reasonable efforts to sell property.

### **10.9.2. Personal Property**

- Dated advertisement(s) indicating the property is for sale;
- Contracts with media to advertise the property;
- Copies of fliers or posted notices; and/or

- Any other evidence of reasonable efforts to sell property.

## **10.10. Good Cause**

Good cause exists when circumstances beyond an individual's control prevent his/her taking the required actions to accomplish reasonable efforts to sell.

### **10.10.1. Significance of Good Cause**

- Without good cause, failure to meet the criteria outlined above, as applicable, means that the individual is not making reasonable efforts to sell the property. Therefore, his/her countable resources include the value of the excess property.
- With good cause, failure to meet the criteria above means that the exclusion continues.

### **10.10.2. Examples of Good Cause**

- **No Offer to Buy**

The individual makes good faith efforts to sell excess non-liquid resources (or is prevented from doing so by circumstances beyond his/her control) but receives no offer to buy them.

- **Reliance on an Offer That Does Not Result in a Sale**

A legitimate or apparently legitimate offer to buy the property halts further efforts to sell it for a prolonged period of time, and the prospective buyer subsequently cannot or will not complete the purchase.

- **Escrow Begins But Closing Does Not Take Place within Disposal Period**

The individual accepts an offer to buy real property, and escrow begins, which precludes acceptance of another offer. Closing (at which full or partial payment and transfer of title are exchanged) does not take place.

- **Incapacitating Illness or Injury**

The individual becomes homebound or hospitalized for a prolonged period, due to illness or injury, and cannot take the steps necessary to sell the resource or to arrange for someone to sell it on his/her behalf.

- **Part-Owner Dies**

A part-owner of a resource dies, and administration or probate of the estate delays efforts to sell the resource (assuming that the property continues to be a resource).

**10.10.3. Verification**

Verify good cause by documents in the individual's possession, the individual's statement, or contact with knowledgeable third parties as appropriate.

**10.11. Follow-up Contacts**

The worker must make follow-up contacts with the individual throughout the exclusion period. Contacts should be made by telephone whenever possible.

**Contact the individual in order to:**

- Remind him/her of the responsibility for selling the property;
- Verify the efforts being made to accomplish a sale;
- Verify if there has been an offer to buy since the prior contact.

**Document:**

- Whether there have been any offers to buy since prior contact;
- The amount of the offer and whether the owner accepted it; and
- If the owner has refused an offer that was at least two-thirds of the estimated CMV, his explanation for refusal.
- Verify good cause in the absence of reasonable efforts to sell.

**10.11.1. Frequency of Contacts**

Contact the owner at 3-month intervals.

**Exception:**

Contact may be at 6-month intervals if the individual's equity in the property is \$2,000 or less;

### **10.12. Individual Making Reasonable Efforts**

If it is decided that the individual is making continuing reasonable efforts to sell, document the case and set a special review for the next follow-up contact.

### **10.13. Individual Not Making Reasonable Efforts**

- **Investigate Good Cause** - If it is judged the individual is not making continuing reasonable efforts to sell:
  - Record the individual's allegations as to why;
  - Obtain any evidence the individual has to support allegations of good cause; and
  - Verify with a third party allegations the individual cannot support with evidence.
- **Make Good Cause Determination** - Make a good cause determination.
  - **Good Cause Exists** - continue eligibility; or
  - **Good Cause Does Not Exist** - If it is determined that the individual is not making reasonable efforts to sell and there is no evidence to establish both that the individual cannot pursue reasonable efforts to sell the property on his/her own and cannot make arrangements for someone else to act on his/her behalf:
    - Terminate AG eligibility effective with the month following the month in which reasonable efforts cease.
    - Determine the amount of the conditional benefits overpayment. See Chapter F – 12.

## **11. Undue Hardship Exclusion - Real Property**

The value of an individual's ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship, due to loss of housing, to a co-owner.

### **11.1. Undue Hardship**

Undue hardship would result if such co-owner:

- Uses the property as his or her principal place of residence;
- Would have to move if the property were sold; and
- Has no other readily available housing.

### **11.2. Allegation Of Loss Of Housing For Co-Owner**

If someone alleges that the sale of certain real property would force a co-owner living on it to move, obtain:

- The individual's signed statement to that effect, and
- Evidence of joint ownership.

#### **11.2.1. Required Statement From Resident Co-Owner**

Obtain a statement from the co-owner regarding whether he or she:

- Uses the property as his or her principal place of residence;
- Would have to move if the property were sold; and
- Have other living quarters readily available.

### **11.3. Hardship Determination**

Determine on the basis of the statements of the individual and the co-owner whether or not the sale of the property would cause undue hardship to the co-owner.

Accept any reasonable allegation from the co-owner that there is no readily available housing (e.g., no other affordable housing available or no other housing with necessary physical modifications for a handicapped individual).

## **12. ABLE Accounts**

*An Achieving a Better Life Experience (ABLE) account is for eligible individuals with disabilities and is administered by Virginia529. Any money in an ABLE account is excluded up to \$500,000 as a state exemption and will not be a countable resource in determining eligibility for AG, reapplications and/or renewals.*

*Disbursements for qualified disability expenses for the beneficiary from an account are disregarded. The amount disbursed will not be considered as countable income to the beneficiary.*

**12.1. Verification:**

*ABLE account beneficiaries are not issued paper statements unless a special request is submitted to Virginia 529 with the agreement to pay a fee for mailing. Beneficiaries are able to view their account online. Acceptable verification will be documents printed by the beneficiary from a computer that shows the following:*

- *PNC Bank as the financial institution*
- *Identifiable markers stating “ABLE” account*
- *Name of the beneficiary/account holder*
- *Balance in the account*
- *Date of the account balance*

*Note: Should the worker consider the document submitted to be questionable, additional verifications may be requested to prove the account is eligible for exclusion.*

**12.2. Exclusion:**

*The entire ABLE account with a balance up to \$500,000 is excluded as a resource. Disbursements or withdrawals from this account for qualified expenses related to maintaining the health, independence and quality of life of the beneficiary are also excluded as a resource and income.*

**13. Agent Orange Payments**

Agent Orange settlement payments made in connection with the case of In re Agent Orange Product Liability Litigation come from a fund created by manufacturers of Agent Orange who agreed to pay into a settlement fund. Payments began in March 1989. Qualifying veterans will receive at least one payment a year for the life of the program. Qualifying survivors of deceased veterans will receive a single lump sum payment.



**13.1. Exclusion:**

Unspent Agent Orange settlement payments and all accrued interest on them are excluded from resources and income.

Retained funds must be identifiable in order to be excluded. See Chapter E - 26 if funds excluded under this provision are commingled with other funds.

**13.2. Verification**

Verify the date(s) and amount(s) of such payment(s) and obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the payments. Absent evidence to the contrary, accept the individual's written statement regarding payments and deposits.

**14. Annuities**

An annuity is a sum paid yearly or at other specific times in return for the payment of a fixed sum. Annuities may be purchased by an individual or by an employer. If the individual can withdraw any funds from the annuity, it is a resource in the amount that is currently available.

Use the policy in Retirement Funds Chapter I - 56 to determine the countable value.

**15. Austrian Social Insurance Payments**

Based on Paragraphs 500–506 of the Austrian General Social Insurance Act, individuals who suffered a loss (i.e., were imprisoned, unemployed, or forced to flee Austria) during the period of March 1933 to May 1945 for political, religious, or ethnic reasons were granted payments.

**15.1. Exclusion:**

Unspent Austrian social insurance payments based, in whole or in part, on wage credits granted under Paragraphs 500–506 of the Austrian General Social Insurance Act are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

**Note:** Not all Austrian social insurance payments are based on Paragraphs 500–506. Those that are not are not excluded.

## 15.2. Verification

Austrian pension insurance agencies issue many types of award notices. Some notices contain information about wage credits granted under Paragraphs 500 - 506 of the Austrian General Social Insurance Act. The notices are written in German, and anywhere in the notice, the following language may appear:

DIE BEGUESTIGUNGSVORSCHRIFTEN FUER GESCHAEDIGTE AUS POLITISCHEN ODER RELIGIOESEN GRUENDEN ODER AUS GRUENDEN DER ABSTAMMUNG WURDEN ANGEWENDET (§500FF ASVG);

**Translation:** “The regulations which give preferential treatment for persons who suffered because of political or religious reasons or reasons of origin were applied (§500ff ASVG).”

## 16. Automobile

“Automobile” means **any** vehicle used for **transportation**. Vehicles used for transportation include but are not limited to cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and even animals. A temporarily broken down vehicle normally used for transportation meets the definition of an automobile.

A vehicle that has been junked or that is used only as a recreational vehicle (e.g., a boat or plane used for pleasure) doesn’t meet the definition of automobile.

### 16.1. Exclusion:

#### 16.1.1. Month of Application

One automobile per applicant/recipient is excluded regardless of the value if it is used for transportation of the eligible individual/couple or a member of the eligible individual’s/couple’s household.

Assume the automobile is used for transportation, absent evidence to the contrary.

#### 16.1.2. Ongoing Months

One automobile per applicant/recipient is excluded regardless of the value if it is used for transportation of the eligible individual.

Assume the automobile is used for transportation, absent evidence to the contrary.

### **16.1.3. When an Individual Owns More Than One Automobile**

If the eligible individual/couple own more than one automobile used for transportation of the eligible individual/couple or a member of the eligible individual's/couple's household, the total exclusion applies to the automobile with the greater equity value.

The **current market value** of any automobile, other than the one wholly excluded is a resource.

## **16.2. Value**

Use the average trade-in value listed in the National Automobile Dealers Official Used Car Guide (NADA) Guide to determine the vehicle's current market value. The countable resource value is the individual's equity value.

Do **not** use the N.A.D.A. guides when:

- The guides do not list the make and/or model of the vehicle.
- The guides do not show a value for the listed make and/or model of the vehicle.
- The vehicle is a car or truck that is 25 or more years old.
- A non-motorized vehicle (e.g., an animal or animal-drawn vehicle).

In these situations, obtain a written appraisal of the automobile's CMV from a disinterested knowledgeable source, such as a used car or truck dealer or an automobile insurance company.

### **16.2.1. Rebuttal**

If the N.A.D.A. guide trade-in value affects eligibility and the individual disagrees with it, give him/her the opportunity to rebut it. An example of rebuttal evidence can be a written appraisal of an automobile's CMV obtained by the individual at his or her own cost from a disinterested knowledgeable source, such as a used car or truck dealer or an automobile insurance company. The estimate should show what the vehicle would sell for on the open market in the area.

### **16.3. Automobile Is Temporarily Inoperable**

If an individual who owns an automobile that is temporarily inoperable (e.g., needs repairs) states it will be used for transportation within 12 months after the evaluation month, exclude the total value of the automobile. If it will not be used for transportation within 12 months, count the equity value of the automobile as a resource.

### **16.4. Verification**

Accept the individual's allegation of sole or joint ownership of an automobile and his/her proportionate share of joint ownership, absent evidence to the contrary. Resolve any questions by examining the title, the current year's registration, or the bill of sale.

## **17. Burial Contracts**

A prepaid (or preneed) burial contract is an agreement whereby the buyer pays in advance for a burial that the seller agrees to furnish upon the death of the buyer or other designated individual. Prepaid burial contracts do not include burial insurance or burial trusts. See Burial Trusts Chapter E -20.

If a burial contract is **revocable or salable**, and the conditions for its liquidation do not present a significant hardship, it is a resource.

### **17.1. Contract Revocability**

State law determines whether a contract is revocable or irrevocable.

Some state laws are such that a contract may be either revocable or irrevocable. In those cases, examine and evaluate the contract. The contract itself should provide the necessary information to determine if it can be revoked or liquidated.

If the contract is irrevocable or is not salable, it is not a resource. If the contract may be revoked or sold, and the conditions for its liquidation do not present a significant hardship, it is a resource.

#### **17.1.1. Virginia**

State Law specifies that all burial contracts are fully revocable for the first 30 days after purchase. After 30 days, only the designated provider of services can be changed. The contracts are not salable.

**17.1.1.1. First 30 Days**

The contract is a countable resource and the Burial Fund and Burial Space Exclusions may apply.

**17.1.1.2. After 30 Days**

The contract is not a resource. The value of the burial fund items included in the contract must be subtracted from the maximum Burial Fund Exclusion that is available to exempt other burial resources.

**17.1.2. Kentucky**

State Law specifies any contracts made June 16, 1966 or later, are revocable, but any made before then may be irrevocable.

**17.1.3. North Carolina**

State law specifies that contracts entered into after June 22, 1982, may be irrevocable if the contract so provides; contracts before then are all revocable.

**17.1.4. Tennessee**

State law provides that contracts entered into after June 30, 1981, may be irrevocable if they contain certain statutorily mandated language. Contracts made prior to July 1, 1981, are all revocable unless a Tennessee court has been petitioned on or after July 1, 1981, to make them irrevocable.

**17.2. Provider Places Funds in Trust**

When an individual contract with a provider of burial services and the provider places the funds in trust, the individual has purchased goods and services. The purchased contract is evaluated to determine if it is a countable resource. The trust is not evaluated. See Burial Trusts Chapter E -20.

**17.3. Conditions for Liquidation**

A prepaid burial contract may have conditions attached to its liquidation or revocation. If either of the following conditions exists, the contract is not a resource.

- Significant hardship may result from the conditions required for selling or revoking a contract. Significant hardship means an unrealistic demand on the buyer; e.g., having to move out of state.
- Contractual terms may require mutual consent of buyer and seller in order to sell or revoke a contract. If the seller will not consent, or will consent only under conditions that would pose a significant hardship to the buyer, the contract is not a resource. Obtain verification that the seller is unwilling to sell.

If a condition creating hardship or some other obstacle to liquidation is not evident on the face of the contract, assume it is revocable or salable and, therefore, a resource. The burden is on the applicant/recipient to provide evidence to the contrary.

#### **17.4. Value**

If a burial contract is a resource, its value is:

- The amount payable to the owner upon revocation; or
- If the contract is not revocable but is salable, it's CMV.

##### **17.4.1. Rebuttal**

If the individual disagrees with this assumption, he or she can rebut it with an estimate from a disinterested knowledgeable source such as the State Funeral Directors Association or a local funeral director.

#### **17.5. Relationship To The Burial Space And Burial Fund Exclusions**

##### **17.5.1. Revocable Or Salable**

- Apply the Burial Space Exclusion as appropriate. See Burial Spaces Chapter E -19.
- Apply the Burial Fund Exclusion as appropriate. See Burial Funds Chapter E - 17.

##### **17.5.2. Irrevocable And Not Salable**

The value of all burial fund items in the contract must be used to reduce the maximum Burial Fund Exclusion. See Burial Funds Chapter E - 17.

#### **17.6. Verification**

Obtain a copy of the contract.

## **18. Burial Funds**

Burial funds are funds designated to be used to pay for expenses that are related to preparing a body for burial and other related services provided prior to burial. These expenses usually include: transportation of the body, embalming, cremation, flowers, clothing, services of the funeral director and staff, etc. These funds are a resource.

### **18.1. Exclusion**

A maximum of **3,500 each** may be excluded for:

- The burial expenses of the individual; and
- The burial expenses of the individual's spouse (whether in the AU or not).

#### **18.1.1. Mandatory Reduction of Maximum Exclusion**

The individual (or spouse) may not be entitled to the maximum exclusion. If the individual's assets include any of the following, the values of those assets must be subtracted from the \$3,500 maximum. The remaining value of the exclusion, if any, may be used to exclude designated burial funds.

- Life insurance policies that are excluded as resources because their total face values do not exceed \$1500 – Subtract the total face values.
- Any amount held in an irrevocable burial trust, irrevocable burial contract, or other irrevocable arrangement for the individual's (or spouse's) burial expenses – Determine the total value of the burial fund items that are included in the arrangement and subtract that amount.
- Burial insurance – Subtract the total face values.

This exclusion is separate from and in addition to the burial space exclusion.

#### **18.1.2. Burial funds to which the burial fund exclusion may be applied are:**

- Revocable burial contracts;
  - Revocable burial trusts;
  - Other revocable burial arrangements;

- Designated cash;
- Designated financial accounts (e.g., savings or checking accounts);
- Other designated financial instruments with a definite cash value (e.g., stocks, bonds, certificate of deposit, etc.)
- Life insurance policies; or
- Installment contracts for the purchase of burial space items (prior to full payment of the contract).

Property other than that listed in this definition will not be considered burial funds and may not be excluded under the burial funds provision. For example, a car, real property, livestock, etc., are not burial funds.

#### **18.1.3. Appreciation**

Any appreciation in the value of excluded burial funds is also excluded from resources (and from income), even if the total of the burial funds plus the appreciation exceeds \$3,500. This includes interest earned by burial funds, if the interest is left to accumulate as part of the funds.

#### **18.1.4. Recalculation of Burial Fund Exclusion**

The individual's (spouse's) burial fund exclusion must be recalculated at the point the individual disposes of or obtains additional burial related assets. A subsequent purchase of an excluded life insurance policy, burial insurance or an irrevocable burial contract will reduce the amount of the available burial funds exclusion. The reduction is effective the month after the month in which the life insurance, burial insurance or the irrevocable burial contract was purchased.

#### **18.1.5. Burial Funds Must Be Kept Separate**

Burial funds may be commingled with other burial-related assets, but must be kept separate from non-burial-related assets to be excluded. Burial-related assets are burial funds (excluded and non-excluded) and burial spaces (including agreements representing the purchase of a burial space). If burial funds are commingled with non-burial-related assets, the exclusion does not apply. See Commingled Funds Chapter E - 26



**18.1.6. Effective Date of Exclusion**

The first month for which the exclusion affects the first-of-the-month resources determination is the **latest** of:

- The month following the month in which the funds were considered to have been set aside; or
- The month of application, if the funds were considered set aside before that month

Accept the individual's allegation as to the date he/she first considered the funds set aside for burial (even prior to application) unless there is evidence that the funds were used and replaced after that date. If the funds were used and replaced, the new set aside date is the date the funds were replaced. Accept the individual's allegation as to the date he/she replaced the funds.

**Note:** The separation requirement must be met before burial funds can be excluded. If the requirement is not met as of the first moment of the month of evaluation, the exclusion cannot apply until the following month even if the funds were considered as set aside for burial prior to filing.

**18.2. Designation of Burial Funds**

To be excluded the funds must be clearly designated for the individual's or spouse's burial, cremation or other burial-related expenses.

Burial funds may be designated as such by:

- An indication on the burial fund document (e.g., the title on a bank account); or
- A signed statement. The "Burial Resource Statement" form may be used. The signed statement must show:
  - The value and owner of the resources;
  - For whose burial the resources are set aside;
  - The form(s) in which the resources are held (burial contract, bank account, etc);

- The date the individual first considered the funds set aside for the burial of the person specified;
- Acknowledgement of the penalty clause; and
- Acknowledgement of the reporting requirements.

#### **18.2.1. Length of Designation**

Once a fund is designated, it remains a burial fund until:

- Eligibility terminates; or
- The individual uses the funds for another purpose.

#### **18.2.2. Redesignation of Funds After Misuse**

If burial funds are used for another purpose, a redesignation of the remaining funds will be necessary. Obtain a new designation statement.

### **18.3. Funds Used For Another Purpose**

Use of excluded burial funds for a purpose other than the burial arrangements of the individual or the individual's spouse for whom the funds were set aside, is considered misuse. Misuse of excluded burial funds may result in a penalty.

- Transferring excluded burial funds from one form to another (e.g., from a certificate of deposit to a burial contract) is **not** use for another purpose.
- Use of a burial fund as collateral for a loan is use for another purpose because the loan creates an encumbrance on the funds. Since the funds are not available for the individual's burial as long as they are encumbered, the funds cannot be considered as a set aside for the individual's burial. This is true even if the loan is used for burial purposes.
- A loan against the cash surrender value (CSV) of a life insurance policy that has been designated for burial expenses is not used for another purpose if the loan is for the purchase of another burial fund.

#### **18.3.1. Penalty — Funds Used For Another Purpose**

With the exception noted below, if an individual uses excluded burial funds for a purpose other than the burial arrangements of the individual or the individual's spouse for whom the funds were set aside, the amount of **excluded funds used** will be withheld from

future AG benefits. Excluded funds include the excluded accumulated interest earned on the excluded funds.

This is a penalty, not the recoupment of an overpayment, and is not subject to overpayment procedures.

### **Exception**

No penalty applies if, as of the first day of the month in which the excluded funds were used for another purpose, the individual's resources would not have exceeded the limit even if the burial funds were not excluded.

#### **18.3.1.1. Computing the Penalty**

Use the following procedure to compute and apply the penalty.

<b>Computing the Penalty</b>	
<b>Steps</b>	<b>Actions</b>
<b>Step 1</b>	<p>Determine the individual's countable resources as of the first moment of the first day of the month in which the funds were used for another purpose.</p> <p>Do not apply the Burial Fund Exclusion to the burial fund from which the funds were taken.</p>
<b>Step 2</b>	<p>Compare the total resources to the resource limit.</p> <p>If the countable resources are equal to or less than the limit, there is no penalty.</p> <p>If the countable resources exceed the limit, there will be a penalty. Go to Step 3.</p>
<b>Step 3</b>	<p>Determine the amount of excluded funds that were used. The penalty only applies to the use of excluded funds (including excluded interest).</p> <p>If the fund included excluded and non-excluded funds, assume the funds were used in the following order: non-</p>

<b>Steps</b>	<b>Computing the Penalty</b> <b>Actions</b>
	<p>excluded interest, non-excluded originally designated amounts, excluded interest, and excluded originally designated amounts.</p> <p>EXAMPLE – At initial application an individual designated \$4,000 as a burial fund. The worker excluded \$3,500 and counted \$500. Over time interest was added to the account. The account grew to \$4,200 as of April. The worker determined the amount of interest that was earned on the excluded funds was \$150 and \$50 on the non-excluded funds. The totals for April were \$3,650 excluded and \$550 non-excluded.</p> <p>The individual used \$750 for a non-burial purpose in April. The worker determined that the \$750 used consisted of \$50 in non-excluded interest, \$500 in non-excluded funds, \$150 in excluded interest and \$50 in originally designated excluded burial funds.</p>
<b>Step 4</b>	<p>The penalty will equal the total of the excluded funds and excluded interest that were used.</p> <p>EXAMPLE - Penalty for above example - A penalty of \$200 applies (\$150 excluded interest and \$50 originally designated excluded funds)</p>
<b>Step 5</b>	<p>Apply the penalty as soon as administratively possible. An advance notice of action must be sent.</p> <p>Compute the grant as normal and subtract the penalty amount from the final grant amount.</p> <p>If the penalty exceeds the amount of one month's grant apply the remainder of the penalty to the following month's grant. Continue this process until the full penalty is recovered.</p> <p>Reduction of the grant to zero due to the application of the</p>

<b>Computing the Penalty</b>	
<b>Steps</b>	<b>Actions</b>
	penalty will not be a reason to close the case. If all other eligibility factors are met, the individual will continue to be enrolled as eligible for AG and Medicaid. No grant will be issued

#### **18.4. Life Insurance Designated as a Burial Fund**

When designating a countable life insurance policy as a burial fund, the individual typically designates the policy itself rather than the CSV. However, since the CSV is the current resource value of the policy, it is the CSV to which the burial fund exclusion is applied.

Increases in cash value that occur after the first date the policy is excluded are considered appreciation in the value of excluded burial funds. As appreciation the full cash value is excluded, even if the total exceeds \$3,500.

#### **18.5. Life Insurance Dividends**

The individual can also designate any dividend accumulations on the life insurance policy. Dividend accumulations are a separate resource (i.e., not considered as an increase in the value of the CSV) and must be designated as burial funds separate from the life insurance policy itself.

Dividends that are added after the initial designation are not automatically exempted. Each must be designated as received/deposited.

#### **18.6. Verification**

Obtain

- The appropriate verification for the type of resource that contains the funds to be exempted (savings account, life insurance policy, trust, etc.).
- The designation statement.

## **19. Burial Insurance**

Burial Insurance is a contract whose terms preclude the use of its proceeds for anything other than payment of the insured's burial expenses. It is not a resource.

The face value of burial insurance must be subtracted from the maximum Burial Fund Exclusion. See Burial Funds Chapter E - 17.

### **19.1. Verification**

Obtain a copy of the policy.

## **20. Burial Spaces**

A burial space is a:

- Burial plot;
- Gravesite;
- Crypt;
- Mausoleum;
- Casket;
- Urn;
- Niche; or
- Other repository customarily and traditionally used for the deceased's bodily remains.

The term burial spaces also include necessary and reasonable improvements or additions to such spaces, including but not limited to:

- Vaults;
- Headstones, markers, or plaques;
- Burial containers (e.g., for caskets); and
- Arrangements for the opening and closing of the gravesite

- A contract for care and maintenance of the gravesite sometimes referred to as endowment or perpetual care.

Non-excluded burial space items are countable resources.

### **20.1. Exclusion**

A burial space or agreement which represents the purchase of a burial space held for the burial of the AG recipient or applicant, his or her spouse, or any other member of his or her immediate family is an excluded resource, regardless of value.

The burial space exclusion is in addition to, and has no effect on, the burial funds exclusion.

Of items that serve the same purpose, we will exclude only one per person. For example, we will exclude a cemetery lot and a casket for the same person, but not a casket and an urn. If the individual owns two items for the same purpose, exclude the one with the highest equity value.

### **20.2. Individual's Immediate Family**

The individual's immediate family includes his or her:

- Parents, including adoptive parents;
- Minor or adult children, including adoptive and stepchildren;
- Siblings (brothers and sisters), including adoptive and stepsiblings.

“Immediate family” also includes the spouse of the above relatives. If the relative's relationship to the recipient is by marriage only, the marriage must be in effect in order for the burial space exclusion to continue to apply. For example, a burial space held for a sister-in-law is no longer excludable if she and the recipient's brother divorce. Accept the individual's declaration regarding the marital status.

### **20.3. Held For**

A burial space is “held for” an individual when someone currently has:

- Title to and/or possesses a burial space intended for the individual's use (e.g., has title to a burial plot or owns a burial urn stored in the basement for his or her own use); or

- A contract with a funeral service company for specified burial spaces for the individual's burial (i.e., an agreement which represents the individual's current right to the use of the items at the amount shown)

A burial space that is being purchased on an installment plan is not held for an individual if the seller is not required to provide the items until the full purchase price has been paid. Until all payments are made, the amount paid will be considered burial funds.

#### **20.4. Verification:**

If an individual alleges owning only one burial space, or an individual and spouse allege owning no more than two spaces, assume that the spaces are excluded.

If an individual or individual and spouse allege owning more than one or two spaces, respectively, obtain a signed statement showing:

- The name of the person for whose burial each space is intended; and
- The relationship of each such person to the individual.

Verify ownership through documents in the individual's possession. Verify the value through a disinterested knowledgeable source such as funeral directors or cemetery operators.

## **21. Burial Trusts**

Burial trusts are trusts established to fund an individual's burial. They may be revocable or irrevocable.

### **21.1. Revocable Burial Trusts**

Revocable burial trusts established prior to 1/1/00 with the individual's (spouse's) funds must be evaluated under Trust Policy A Chapter E - 65. If established on or after 1/1/00 Trust Policy B Chapter E - 66 must be used.

The Burial Spaces and Burial Fund exclusions must be applied as appropriate. See Chapter E – 19 and Chapter E – 17.

### **21.2. Other Burial Trusts**

The following types of burial arrangements are not evaluated as trusts belonging to the individual. They constitute a purchase of goods and services by the individual and the establishment of a trust with the funeral provider's funds, not



the funds of the individual. These arrangements must be evaluated as third party trusts under Trust Policy A Chapter E – 65.

#### **21.2.1. Funeral Provider Establishes A Trust**

- An individual contracts with a provider of funeral goods and services for a funeral; **and**
- The individual funds the contract by prepaying for the goods and services; and
- The funeral provider subsequently places the funds in a trust.

#### **21.2.2. Individual Establishes An Irrevocable Trust**

- An individual contracts with a provider of funeral goods and services for a funeral; and
- The individual funds the contract by establishing an irrevocable trust, naming the funeral provider as the beneficiary.

**Note:** SSI has ruled that the funds become the funeral provider's funds at the point the trust is established making the trust one that was created with the funeral provider's funds, not the funds of the individual.

### **21.3. Assistant Attorney General Review**

The AAG has reviewed many common burial trust documents and has issued guidelines for their evaluation. Burial trusts established on the previously reviewed and approved documents do not have to be submitted for the AAG's review. If there is a question regarding the trust, submit the documents to the AG consultant who will determine the need to forward it to the AAG.

### **21.4. Verification**

Obtain a copy of the trust documents.

## **22. Cash**

Cash on hand is a resource.

### **22.1. Verification**

Accept the individual's statement regarding the amount owned.

## **23. Certain Cash to Purchase Medical or Social Services**

Medical services are those services which are directed toward diagnostic, preventive, therapeutic, or palliative treatment of a medical condition and which are performed, directed, or supervised by a State licensed health professional.

A social service is any service (other than medical) which is intended to assist a handicapped or socially disadvantaged individual to function in society on a level comparable to that of an individual who does not have such a handicap or disadvantage.

### **23.1. Exclusion**

A cash payment for medical or social services that is not income is not a resource for one calendar month following the month of receipt.

#### **23.1.1. Exception**

Cash received as repayment for medical or social services bills an individual has already paid is a resource and, if retained, is subject to resource-counting rules as of the first moment of the month following receipt.

#### **23.1.2. Services That Are Not Income**

##### **23.1.2.1. Medical Services**

Medical services (which include in-kind medical items) are never income regardless of the source of the service or the source of payment for the service.

##### **23.1.2.2. Cash Provided By A Governmental Medical Or Social Services Program**

Any cash provided by a governmental medical or social services program is not income. (Exception - Payments for sheltered employment and incentive payments are income.) To be considered “governmental” in this context, the program must be authorized by Federal, State or local law to make payments for medical or social service purposes.

- Obtain evidence from the individual that the source of the cash is a governmental medical or social services program (e.g., program identification card, notice, or award letter).

### **23.1.2.3. Cash Provided By A Nongovernmental Medical Or Social Services Organization For Medical Or Social Services**

Any cash provided by a nongovernmental medical or social services organization (including medical and liability insurers) for medical or social services already received by the individual and approved by the organization is not income but is a resource if retained.

- Document the file with a statement by the organization as to the purpose of providing the cash.

## **24. Certificates of Deposit**

Certificates of deposit are a type of time deposit. It is a contract between an individual and a financial institution whereby the individual agrees to leave funds on deposit for a specified period (six months, two years, five years, etc.) and the financial institution agrees to pay interest at a specified rate for that period. They are resources. Use the policy in Time Deposits Chapter E - 62 to determine the countable value.

## **25. Checking and Savings Accounts**

Checking and savings accounts are resources if the individual owns them, has the right to withdraw the funds and use them for his/her support and maintenance.

### **25.1. Value**

The value of the resource is equal to the amount of funds in the account that the individual owns and has the legal right to withdraw and use for support and maintenance.

### **25.2. Deposits of Income**

*Any income deposited on the first moment of the first day* for the month of evaluation must be subtracted from the balance.

**25.2.1. Allegation of Checks That Have Not Cleared the Bank**

If the individual indicates the balance of a checking account is not accurate, as he/she has written checks that have not cleared, ask for verification of any outstanding checks that were written prior to the first of the month. The individual's check register is acceptable verification. Deduct from the verified balance the value of the outstanding checks that were verified as being written prior to the first day of the evaluation month.

**25.3. Ownership Of Account****25.3.1. Fiduciaries**

A fiduciary is a legal representative for the owner of an account who is obligated to use the funds for the owner's benefit. The existence of a fiduciary does not change the ownership of an account nor does it limit the account owner's right to access the funds in the account. A fiduciary's actions are considered the actions of the owner. The account is not a resource to the fiduciary.

**25.3.2. Individual Accounts**

Absent evidence to the contrary, assume that the person designated as owner in the account title owns all the funds in the account and has the legal right to use them for his/her own support and maintenance.

**25.3.3. Joint Accounts**

Absent evidence to the contrary, assume that all the funds in the account belong to the applicant/recipient unless one or more of the other joint owners are also AG recipients. Assume all the funds in the account belong to the AG recipients in equal shares. See Joint Bank Accounts Chapter I – 38.

**25.3.4. Ownership Rebuttal**

If an individual wishes to rebut the applicable ownership assumption, obtain his/her statement regarding:

- Who owns the funds;
- Why there is a joint account;

- Who has made deposits to and withdrawals from the account; and how withdrawals have been spent.

#### **25.3.4.1. Rebuttal Verification**

In addition, inform the individual that he/she must submit the following evidence within 10 days:

- A corroborating statement from each other account holder (if the only other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account);
- Account records showing deposits, withdrawals and interest in the months for which ownership is at issue;
- If the individual owns none of the funds, evidence showing that he/ she can no longer withdraw funds from the account;
- If the individual owns only a portion of the funds, evidence showing removal from the account of such funds, or removal of the funds owned by the other account holder(s), and redesignation of the account.

#### **25.3.4.2. Rebuttal Results**

Any funds that the evidence establishes were owned by the other account holder(s), and that the individual can no longer withdraw from the account, were not and are not the individual's resources. That is, rebuttal is both retrospective and prospective.

### **25.4. Right to Use for Support and Maintenance**

If the individual cannot withdraw and use the funds in an account for his/her own support and maintenance, the account is not a resource.

#### **25.4.1. Examples of Evidence to the Contrary**

- **Right to Withdraw Funds Restricted to a Specified Account Holder**

An account is titled, "In trust for John Jones and Mary Smith, subject to sole order of John Jones, balance at death of either to

belong to survivor.” Since John alone has unrestricted access, none of the funds in the account could be considered Mary's resources unless John was her fiduciary. The full value of the account would be a resource to John.

- **Withdrawals Require Authorization of Third Party**

An account is titled, “George Dailey, restricted Individual Indian Money Account.” Mr. Dailey cannot withdraw funds from the account without Bureau of Indian Affairs (BIA) authorization. Therefore, the account is not his resource.

#### **25.4.2. Examples of Restricted Use**

- **Use Restricted by Court Order**

Even with ownership interest and the legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance means the property is not the owner's resource.

- **Special Purpose Accounts**

An account is titled, “Thomas Green, Kiwanis Club Fund for Heart Surgery.” While Mr. Green has unrestricted access to the funds, development shows that their use is restricted to the expenses of his surgery. Therefore, they are not a resource.

#### **25.5. Verification**

##### **Obtain verification that shows**

- The balance in the account as of the first moment of the month being evaluated
- The name and address of the financial institution;
- The account number(s); and
- The exact account designation.

##### **Verification of account balances can be obtained from:**

- Bank statements and passbooks;
- Internet printouts from the financial institution's web site; and

- ATM transaction receipts and/or deposit/withdrawal slips.

## **26. Child Tax Credits (CTC)**

The child tax credit is a special refundable Federal tax credit that is available to certain low income taxpayers with earned income. They must be parents, step-parents, grandparents or foster parents with a dependent child. This child tax credit may provide a refund to individuals even if they do not owe any tax.

### **26.1. Exclusion**

Any unspent Federal tax refund from a CTC is excluded from resources for the 9 calendar months following the month the refund or payment is received.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **26.2. Interest**

Interest earned on unspent CTC funds is not excluded from income and resources.

### **26.3. Verification**

If an individual alleges that his or her resources include unspent CTC refunds or payments:

- Use the individual's Federal income tax return or other documents in the individual's possession to verify the source, date(s), and amount(s) of such refund(s) or payment(s); and
- Obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the EITC and/or CTC refunds or payments.

## **27. Commingled Funds**

### **27.1. Non-Burial Related Excluded Funds**

Otherwise excludable funds must be identifiable in order to be excluded. Identifiability does not require that excluded funds be kept physically apart from other funds (e.g., in a separate bank account) but enough information must be

presented to clearly identify which portion of the funds are from an excludable source.

### **27.2. Excluded Burial Funds**

Excluded burial funds may be commingled with burial-related assets, but must be kept physically apart from other funds (e.g., in a separate bank account). See Burial Funds Chapter E - 17.

### **27.3. Interest**

If interest on the excluded funds is excluded (as with disaster assistance), the percent of an interest payment to be excluded is the same as the percent of funds in the account that is excluded **at the time the interest is posted**. The excluded interest is then added to the excluded funds in the account.

#### **Example:**

A \$1,000 savings account includes \$800 in excluded disaster assistance when a \$10 interest payment is posted. Since 80 percent of the account balance is excluded at the time the interest is posted, 80 percent of the interest (\$8) is excluded. The amount of excluded funds now in the account is \$808.

### **27.4. Determining The Excluded Portion**

Always assume, when withdrawals are made from an account with commingled funds in it, that non-excluded funds are withdrawn first, leaving as much of the excluded funds in the account as possible.

If excluded funds are withdrawn, the excluded funds left in the account can be added to only by:

- Deposits of subsequently received funds that are excluded under the same provision; and
- Excluded interest.

Obtain a complete history of account transactions back to the initial deposit of excluded funds. Use the individual's own records if possible. Accept the individual's allegation as to the date and amount of a deposit of excluded funds if it agrees with the evidence in file on the receipt of the funds.

Record:

- Each deposit of excluded funds;



- Each withdrawal that reduces the amount of excluded funds;
- Each computation of excluded interest and its addition to the excluded funds.

**Examples:****One-Time Receipt and Deposit of Excluded Funds**

An individual deposits a \$1,000 SSA check (\$800 for the preceding 4 months and \$200 for the current month) in a checking account. The account already contains \$300 in non-excluded funds.

- Of the new \$1,300 balance, \$800 is excluded as retroactive SSA benefits.
- The individual withdraws \$300. The remaining \$1,000 balance still contains the excluded \$800.
- The individual withdraws another \$300, leaving a balance of \$700. All \$700 is excluded.
- The individual deposits \$500, creating a new balance of \$1,200. Only \$700 of the new balance is excluded.

**Periodic Receipt and Deposit of Excluded Funds**

An individual deposits \$200 in excluded funds in a non-interest bearing checking account that already contains \$300 in non-excluded funds.

- The individual withdraws \$400. The remaining \$100 is excluded.
- The individual then deposits \$100 in non-excluded funds. Of the resulting \$200 balance, \$100 is excluded. The individual next deposits \$100 in excludable funds. Of the new \$300 balance, \$200 is excluded.

**28. Conservatorship Accounts**

The term “conservatorship account” refers to a financial account in which a person or institution has been appointed by a court to manage and preserve the assets of an individual which are held in the account. The “individual” is the person for whom a conservatorship account is held.

## **28.1. Assumption of Availability for Support and Maintenance**

Assume, absent evidence to the contrary, that funds in such an account are available for the individual's support and maintenance and are, therefore, that individual's resource. This includes accounts in which an individual or his/her agent must petition the court for withdrawal of funds.

### **28.1.1. Obtain the Individual's Allegation**

Obtain over the individual's signature an allegation regarding:

- Who can withdraw the funds;
- The method for withdrawing funds (e.g., petition the court or unlimited ability to withdraw by the individual or his/her agent);
- Uses to which funds may or must be put; and
- Any restrictions on availability or use of funds

### **28.1.2. Evidence to the Contrary**

Evidence to the contrary include (but are not limited to):

- Restrictive language in the court order that established the account or in a subsequent court order;
- If the court has, at the individual's or his/her agent's request, restricted use of funds in the account to things other than the individual's support and maintenance, obtain the individual's allegation as to whether the restriction(s) can be removed by request or petition.
  - If the restriction(s) can be removed at the individual's or agent's request or petition, determine that the funds are a resource.
  - If the restriction(s) cannot be removed, the funds are not available and are not a countable resource.
- The court has repeatedly denied requests for withdrawals for the individual's support and maintenance.
  - Denial by the court of a request for withdrawal of funds does not necessarily mean that funds in the account are unavailable for the individual's support and maintenance. Evaluate the

reasons for denial. If the court only disapproves requests for non-essential items, the funds are considered available and a resource for AG purposes.

## **28.2. Examples Of Policy And Procedures For Conservatorship Accounts:**

- **Funds Assumed to Be Available for Support and Maintenance**

The claimant, a disabled 28-year-old individual, received a \$20,000 court-ordered personal injury award as a result of an accident on a city bus. The court order stipulates that the claimant's legal guardian must petition the court for withdrawal of funds as needed. The order does not place any restrictions on how the funds may be used on behalf of the claimant. Therefore, the funds in the account are a resource.

- **Petition for Withdrawal of Funds Denied**

The AG recipient has received a \$100,000 medical malpractice award. The court order requires that the recipient petition the court for withdrawal of funds. The recipient alleges that a recent petition for withdrawal of funds was denied.

The worker asks the payee to submit evidence of the petition in question and all prior petitions. All but one petition for withdrawal of funds were approved for the general support and maintenance of the individual. The court denied one petition, citing the intended use of the funds. The court characterized the intended use as “nonessential for the individual’s care.”

Since the one denied petition does not negate the presumption that the funds are available for the individual’s support and maintenance, the funds are a resource.

## **28.3. Verification**

To verify the value of the funds ask the individual to submit evidence regarding the account. This evidence may include:

- The court order establishing the conservatorship and the account;
- Any account records showing withdrawals, deposits, and balances;
- Prior applications or petitions for withdrawal of funds (if applicable), including any correspondence or notices from the court responding to the applications or petitions; and

- Any other documents or evidence in the individual's possession pertaining to the conservatorship account.

## **29. Corporation for National and Community Service (CNCS) (Formerly ACTION) Payments**

In 1993, the National and Community Service Trust Act (NCSTA) established the Corporation for National and Community Service (CNCS) by combining two formerly independent agencies: the Commission on National Service and ACTION.

ACTION consisted of a number of volunteer services programs including:

- Volunteers in Service to America (VISTA) (now AmeriCorps\*VISTA)
- University Year for ACTION (UYA)
- Special and Demonstration Volunteer Programs
- Retired Senior Volunteer Program (RSVP)
- Foster Grandparent Program
- Senior Companion Program.

### **29.1. Exclusion**

Payments to volunteers under chapter 66 of title 42 of the U.S. Code (the former ACTION programs) are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **29.2. Verification**

Use documents in the individual's possession, contact with the program or agency involved or a precedent to verify that a program is one of those listed.

Accept an individual's allegation of participation in a former ACTION program and exclude any payments from resources without further verification.

### **30. Death Benefits**

A death benefit is something received as the result of another's death. Death benefits include gifts and inheritances and may be countable resources.

Examples of death benefits include:

- Proceeds of life insurance policies received due to the death of the insured;
- Lump sum death benefits from SSA;
- RR burial benefits;
- VA burial benefits;
- Inheritances in cash or in real or personal property;
- Cash or gifts of real or personal property given by relatives, friends, or a community group to “help out” with expenses related to the death.

**Note:** Recurring survivor benefits such as those received under Title II, private pension programs, etc., are not death benefits.

#### **30.1. Value of Resource**

Death benefits in excess of the cost of the deceased person's last illness and burial expenses that are **to be paid by the individual** are income in the month received and a countable resource the month following the month of receipt.

#### **30.2. Exclusion**

The portion of death benefits an individual will use to pay the deceased's last illness and burial expenses are not a resource for **one calendar month** following the month of receipt. If retained until the first moment of the second calendar month following receipt, death benefits are resources.

##### **30.2.1. Exception — Bills Already Paid**

Death benefits that are repayment of bills for last illness and burial expenses the individual has already paid are subject to resources rules beginning with the first moment of the month following the month of receipt.

### **30.2.2. Deductible Expenses**

Last illness and burial expenses include related hospital and medical expenses; funeral, burial plot, and interment expenses; and other related expenses.

### **30.2.3. Verifying Expenses**

Verify all last illness and burial expenses. If verification (e.g., bills, receipts, contact with provider, etc.) cannot be obtained, accept the individual's signed allegation. If an expense has been incurred but not paid, assume the individual will pay the expense unless you have reason to question the situation. No follow-up is required if the assumption is applied.

Use your judgment to determine whether an expense is reasonably related to the last illness and burial. It is expected that related expenses may include such items as: new clothing to wear to the funeral; food for visiting relatives; taxi fare to and from the hospital and funeral home; etc.

## **30.3. Verification of Benefits**

Obtain written verification from the source of the benefits. If written verification is unavailable, accept the individual's signed allegation of the amount of death benefits and when received unless you have reason to doubt the allegation.

## **31. Disaster Assistance**

Disaster assistance payments are funds paid to individuals to aid them in recovering from a major disaster. Major disasters include such things as hurricanes, tornadoes, floods, earthquakes, volcano eruptions, landslides, snowstorms, drought, etc.

### **31.1. Exclusion**

Unspent assistance received from the following sources is **permanently** excluded from resources:

- The Disaster Relief and Emergency Assistance Act(P.L. 100-707);
- Another Federal statute because of a presidentially-declared major disaster;
- Comparable assistance received from a State or local government; or

- From a disaster assistance organization.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **31.2. Interest**

Interest earned on funds excluded under this provision is excluded from income and from resources.

### **31.3. Verification**

A declaration by the President or the Governor of a major disaster will be public information, i.e., newspaper, television, and radio. Accept the individual's allegation as to the amount received.

## **32. Earned Income Tax Credits**

The earned income tax credit is a special tax credit that reduces the Federal tax liability of certain low income working taxpayers. This tax credit sometimes results in a payment to the taxpayer, either as an advance from an employer or as a refund from IRS.

### **32.1. Exclusion**

Any unspent Federal tax refund or payment made by an employer related to an EITC is excluded from resources for the 9 calendar months following the month the refund or payment is received. If the funds are retained beyond nine months, they are countable resources as of the first day of the tenth month.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **32.2. Interest**

Interest earned on unspent EITC funds is not excluded from income and resources.

### **32.3. Verification**

If an individual alleges that his or her resources include unspent EITC refunds or payments:

- Use the individual's Federal income tax return or other documents in the individual's possession to verify the source, date(s), and amount(s) of such refund(s) or payment(s); and
- Obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the EITC refunds or payments.

### **33. Educational Funds - Grants, Scholarships, Fellowships, and Gifts**

Grants, scholarships, and fellowships are amounts paid by private nonprofit agencies, the U.S. Government, instrumentalities, or agencies of the U.S., State and local governments, foreign governments, and private concerns to enable qualified individuals to further their education and training by scholastic or research work, etc.

The source of the grants, scholarships, and fellowships determine how the funds are evaluated. Title IV of Higher Education Act of 1965 (HEA) or Bureau of Indian Affairs (BIA) grants are fully excluded regardless of use. The portion of Other Grants, Scholarships, Fellowships, and Gifts used or intended to be used to pay the cost of necessary educational expenses are excluded for nine months after receipt.

#### **33.1. Title IV of HEA or BIA Involvement**

Examples of HEA Title IV Programs:

- Pell grants
- State Student Incentives
- Academic Achievement Incentive Scholarships
- Byrd Scholars
- Federal Supplemental Educational Opportunities Grants (FSEOG)
- Federal Educational Loans (Federal PLUS Loans, Perkins Loans, Stafford Loans, Ford Loans, etc.)
- Upward Bound
- Gear Up (Gaining Early Awareness and Readiness for Undergraduate Programs)
- LEAP (Leveraging Educational Assistance Partnership)



- SLEAP (Special Leveraging Educational Assistance Partnership)
- Work-Study Programs.

**Note:** State educational assistance programs, including work-study, funded by LEAP or SLEAP are programs under Title IV of HEA.

### **33.1.1. Exclusion**

All student financial assistance received under HEA, or under BIA student assistance programs, is excluded from income and resources, regardless of use. The resource exclusion for this educational assistance does not have a time limit, i.e. regardless of how long the assistance is held, it is excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **33.1.2. Interest and Dividends**

Interest and dividends earned on unspent educational assistance under Title IV of HEA or under BIA are countable resources but are excluded as income.

### **33.1.3. Verification**

Verify that the assistance is a grant, scholarship, fellowship, or gift using documents in the individual's possession or by contacting the institution or provider.

## **33.2. Other Grants, Scholarships, Fellowships, and Gifts**

### **33.2.1. Exclusion**

Any portion of a grant, scholarship, fellowship, or gift used or intended to be used to pay the cost of tuition, fees, or other necessary educational expenses at any educational institution, including vocational and technical education, is excluded from resources for 9 months beginning the month after the month it was received. This exclusion does not apply to any portion set aside or actually used for food or shelter.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

**33.2.2. The Non-Excluded Portions**

The Non-Excluded Portions of Other Grants, Scholarships, Fellowships, and Gifts must be evaluated as income. See Non-SSI Income - Other Grants, Scholarships, Fellowships, and Gifts Chapter I – 29.3.

**33.2.3. Excluded Funds Not Spent**

Grants, scholarships, fellowships, and gifts that are retained after the 9-month exclusion period are countable resources beginning the month following the end of the 9th month.

**33.2.4. Verification**

Verify that the assistance is a grant, scholarship, fellowship, or gift using documents in the individual's possession, contact with the institution or provider, or a precedent to verify the nature of the assistance (e.g., scholarship, grant, etc.). If not totally excluded under another provision, verify the amount, date(s) of payment, payee, source of payment/payer, etc.

Determine the amount of tuition, fees, and other necessary educational expenses.

- Use receipts, bills with cancelled checks, contact with the provider, etc., to verify expenses paid. If an expense is verified as incurred but not paid, assume the individual will pay the expense unless you have reason to question the situation. No follow-up is required if the assumption is applied.
- Use your judgment to determine whether payment of an expense was a necessary part of obtaining an education.
- A signed allegation is acceptable evidence of expenses when it is unreasonable to obtain other evidence (e.g., daily bus-fare, small expendable items, etc.). Do not accept an allegation for major expenses such as tuition, fees, and books.

## **34. Food Stamps**

The Food Stamp Program is a nationwide food supplementation program.

### **34.1. Exclusion**

The value of the food under the food stamp program to any household is excluded from resources.

### **34.2. Verification**

Accept an individual's allegation of receipt.

## **35. Gifts Of Travel Tickets**

### **35.1. Domestic Travel Tickets**

The value of a ticket for domestic travel received by an individual (or spouse) is not a resource if the ticket is:

- Received as a gift;
- Not converted to cash; and
- The ticket was used or is still retained

Domestic travel is travel in or between the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

#### **35.1.1. Converted to Cash**

If the tickets are converted to cash, the amount received is income in the month the ticket was converted to cash. Chapter I – 27.1.2

### **35.2. Verification**

Obtain the individual's signed statement as to whether the ticket has been retained, used, or converted to cash. If the ticket has been converted to cash, specify in the statement the amount of cash received. In the absence of evidence to the contrary, accept the statement as fact.

### **35.3. Non-Domestic Travel Tickets**

The value of tickets for non-domestic travel received by an individual are a resource if held beyond the month of receipt. See Chapter I – 28 for treatment as income.

**Exception:** If the ticket cannot be sold or converted to cash due to restrictions placed on the ticket, it is not a resource.

### ***35.3.1. Verification***

Obtain the individual's signed statement as to whether the ticket could be converted to cash:

- If the answer is yes, count the CMV of the ticket as a resource in the month following the month of receipt.
- If the answer is no, verify the allegation by examining the ticket or by contact with the travel carrier or travel agent. If the allegation is verified, the ticket is not a resource.

## **36. Home Property**

An individual's home is property in which he or she has an ownership interest and that serves as his or her principal place of residence. **It includes:**

- **The shelter in which he or she lives;**
  - An individual's principal place of residence is the dwelling the individual considers his or her established or principal home and to which, if absent, he or she intends to return. It can be real or personal property, fixed or mobile, and located on land or water.
  - Absent ownership in more than one residence or evidence that raises a question about the matter, assume that the alleged home is the individual's principal place of residence.
- **The land on which the shelter is located;**
  - The home includes any land that adjoins it. Land adjoins the home plot if not completely separated from it by land in which neither the individual nor his or her spouse has an ownership interest. Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot.
  - It is not necessary that the individual own the shelter itself.
- **Related buildings on such land**
  - The home includes all buildings on the land on which the shelter is located and those on adjoining land.

**36.1. Exclusion**

An individual's home, regardless of value, is an excluded resource as long as:

- The alleged home is the individual's principal place of residence;
- The individual continues to live there;
- The individual has left the home but states his/her intent to return to the home;
- A spouse or dependent relative of the individual continues to live there while the individual is living in an ALF or is in AFCH; or
- Its sale would cause undue hardship, due to loss of housing, to a co-owner of the property.

**Note:** A life estate in property is an “ownership interest”. If an individual lives on the property to which he has a life estate, the life estate interest may be excluded as home property.

**36.2. Property That No Longer Serves As The Principal Place Of Residence**

Property ceases to be the principal place of residence, and, therefore, to be excludable as the home as of the date that the individual, having left it, does not intend to return to it. (See Intent to Return Chapter E – 35.6.2) Such property, if not excluded under another provision, will be included in determining countable resources as of the first moment of the first day of the following month.

**36.3. Indication of More than One Residence**

If an individual alleges or other evidence indicates ownership of more than one residence, obtain his or her signed statement concerning such points as:

- How much time is spent at each residence;
- Where he or she is registered to vote;
- The address he or she uses as a mailing address or for tax purposes.

Determine the principal place of residence accordingly and document the determination in the file.

## **36.4. Ownership**

Accept an individual's allegation of home ownership unless the file raises a question about it (e.g., a life estate is involved). If there is a question, have the individual submit one of the items of evidence listed below.

### **36.4.1. Verification**

#### **36.4.1.1. Real Property Ownership:**

- Tax assessment notice;
- Recent tax bill;
- Current mortgage statement;
- Deed;
- Report of title search;
- Evidence of heirship in an unprobated estate (e.g., receipt of income from the property, a will, or evidence of relationship recognizable under State intestate distribution laws in cases where the home is unprobated property).

#### **36.4.1.2. Personal Property Ownership (E.G., A Mobile Home):**

- Title
- Current registration

#### **36.4.1.3. Life Estate Or Similar Property Rights:**

- Deed
- Will
- Other legal document

## **36.5. Evidence Indicates Non-adjointing Property**

### **36.5.1. Individual Agrees With Evidence**

If evidence indicates that land the individual owns does not adjoin the home plot, and the individual agrees that it does not:

- Obtain his or her statement to that effect; and
- Evaluate the non-adjoining portion as Non-home Real Property or Property Essential to Self-Support, as applicable. See Chapter E - Sections 49, 7, 8, and 9.

### **36.5.2. Individual Disagrees With Evidence**

If the individual maintains that all the land adjoins the home plot, document the file with:

- A sketch of the land showing the boundaries of the various plots and the location of the shelter used as the home; and
- Evidence of how the land is treated for tax assessment purposes.

The sketch may be by the individual or from public records.

The tax assessment information may be in the form of a tax assessment notice or obtained from the appropriate tax jurisdiction.

#### **36.5.2.1. Combined or Single Holding for Tax Assessment**

Assume that the land is a single piece of property in which all the land adjoins the home plot if:

- It is recorded and treated as a single holding for tax assessment purposes; or
- The original holding has been subdivided, but still is treated as a single holding for tax assessment purposes.

#### **36.5.2.2. More Than Single Holding for Tax Assessment**

If the land is recorded and treated as two or more holdings for tax assessment purposes, use the sketch to determine whether other holdings adjoin the home plot.

### **36.6. Absences From The Home**

When the individual is in an ALF or in an AFCH, determine if the home can be excluded because a spouse or dependent relative is there. If no spouse or dependent relative is living in the home, determine:

- Whether the individual intends to return to the home; and

- If not, whether the sale of the home would cause undue hardship due to loss of housing to a co-owner.

### **36.6.1. Dependent Relative**

- Dependency may be of any kind (financial, medical, etc.).
- Relative means:
  - Child, stepchild, or grandchild;
  - Parent, stepparent, or grandparent;
  - Aunt, uncle, niece, or nephew;
  - Brother or sister, stepbrother or stepsister, half-brother or half-sister;
  - Cousin; or
  - In-law.

#### **36.6.1.1. Dependency Verification**

Obtain a signed statement from the individual as to:

- Whether anyone is living in the home while the individual is in the ALF/AFCH;
- If so, how that person is related to the individual, if at all; and
- If related (except for the individual's spouse), how that person is dependent on the individual, if at all.

Absent evidence to the contrary, accept the allegations.

**Note:** If the individual living in the home is the spouse, verification of dependency is not required.

### **36.6.2. Intent To Return Home Development**

Obtain a signed statement from the individual as to:

- When and why he or she left the home;



- Whether he or she intends to return; and
- If he or she does not intend to return, when that decision was made.

**Note:** If the individual has a guardian or power of attorney, obtain the “intent” statement from the guardian or POA.

This statement governs the “intent to return” determination unless the statement is self-contradictory.

#### **36.6.2.1. Self - Contradictory Statement**

Consider a statement to be self-contradictory if it contains conflicting or unclear expressions of intent.

##### **Examples of self-contradictory statements:**

“Sometimes I want to go home and sometimes I don't.”

“I intend to go home but I also want to stay here.”

“Yes, I want to go home, but I really don't know if I should.”

If the individual's statement of intent is self-contradictory, contact someone who knows the situation, such as a physician, family member, or close friend or relative, to clarify the situation.

#### **36.6.2.2. Factors Not to Consider**

Do **not** consider other factors, such as the individual's age, physical condition, or other circumstances when determining intent to return home. Assuming the individual is mentally competent, age, mental capacity, and physical condition are **not** factors in evaluating the individual's statement of intent.

**Example:** The recipient is 93 years old and resides in an ALF. She tells the worker that her doctor believes she may not be able to leave the ALF and return home. However, she states that she intends to return to her former residence as soon as she is well enough to leave the ALF. Based on her statement, “intent to return home” is established.

## **37. Home Replacement Funds**

When an individual sells an excluded home, the proceeds of the sale become an available resource.

### **37.1. Exclusion**

The proceeds of the sale are excluded resources if the individual:

- Plans to use them to buy another excluded home, and
- Does so within 3 full calendar months of receiving them.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

#### **37.1.1. Interest**

Interest earned on funds excluded under this provision is not excluded from income or resources.

### **37.2. Explanation To Individual**

Explain the home replacement exclusion to any individual who has sold an excluded home (if it is not too late to exclude any of the proceeds) or who plans to do so. Include the date, if known, by which the proceeds must be used in order to qualify for exclusion.

### **37.3. Statement Of Intent**

Obtain a signed statement from the individual as to whether he or she intends to use the proceeds to buy another home by the date specified. If so, the statement also must reflect his or her understanding that the exclusion of any funds not used by the date specified will be revoked **retroactively**. See Chapter E - 36.4.6.

When the proceeds are being paid in installments, the individual's statement of intent must reflect his or her understanding that, if the non-interest portion of any payment is not used within 3 months of its receipt, the exclusion of

- The unused portion of such payment and
- The contract itself will be revoked retroactively to the date of receipt of such payment.

**37.4. Proceeds****37.4.1. If Paid in a Lump Sum**

The proceeds are the net amount the seller receives at settlement.

**37.4.2. If Paid in Installments**

The proceeds consist of:

- Any down payment; and
- That portion of any subsequent payment that is not interest.

**37.4.3. Verifying Proceeds of Sale**

The individual must provide a copy of the settlement sheet, contract for sale and/ or other evidence that shows the net proceeds of the sale and how paid or payable, i.e.: paid in full at settlement, dates and amounts of down payment and installment payments, interest, etc.

**37.4.4. Allowable Uses Of Proceeds**

Use of proceeds to buy another excluded home includes payment of any costs that stem from the purchase. These include, but are not necessarily limited to:

- Down payment;
- Settlement costs;
- Loan processing fees and points;
- Moving expenses;
- Necessary repairs to or replacements of the new home's structure or fixtures (e.g., roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy;
- Mortgage payments; and
- Other costs identified and documented prior to occupancy that stem directly from the purchase or occupancy of the new home.

“Using” the proceeds includes obligating them by contract as well as actually paying them out.

**37.4.5. Timely Use Of Proceeds**

“Within 3 full calendar months” means by the end of the last day of the third month after the month in which the proceeds are received.

**37.4.6. Proceeds Not Used Timely**

- **Lump Sum**

The exclusion of the unused funds will be revoked retroactively to the date of their receipt.

- **Installment Payments**

The exclusion of the installment contract itself, and of the unused portion of any installment payments, will be revoked retroactively to the date the unused proceeds were received.

**37.5. Verification**

Document the file with the same types of evidence used to document the proceeds of the sale of the prior home and, if necessary, with bills, receipts, or other evidence of related allowable expenses.

**37.6. Proceeds Not Used To Replace Home**

If not all of the proceeds will be used timely or the exclusion of the funds was revoked, **redetermine resources for the months after the proceeds were received**. Do not exclude:

- The unused portion of the lump- sum proceeds or down payment; or
- The value of an installment contract.

If the redetermination shows the individual was ineligible, an overpayment occurred and **repayment must be pursued**. The overpayment occurred due to the individual’s error. See overpayment policy in Vol. II, Part I, Chapter G 3.

**38. Household Goods and Personal Effects****38.1. Household Goods Are:**

- Items of personal property, found in or near the home, that are used on a regular basis; and

- Items needed by the householder for maintenance, use and occupancy of the premises as a home.

Household goods include, but are not limited to, furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.

Items that are acquired or held because of their value or as an investment are not considered household goods.

### **38.2. Personal Effects Are:**

- Items of personal property ordinarily worn or carried by the individual; and
- Articles otherwise having an intimate relation to the individual.

Personal effects include, but are not limited to, personal jewelry including wedding and engagement rings, personal care items, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual, such as ceremonial attire, and items required because of an individual's physical or mental impairment, such as prosthetic devices or wheelchairs.

Items that are acquired or held because of their value or as an investment are not considered personal effects.

### **38.3. Exclusion**

Household goods and personal effects are excluded from resources, regardless of their dollar value.

### **38.4. Verification**

If reported, accept the individual's allegation regarding household goods and personal affects.

## **39. Indian Lands, Restricted Allotted**

Interests in certain lands were allotted to individual Indians many years ago. The ownership interests may be quite small since many of the original interests in allotted lands have fractionated over time; e.g., due to inheritance by multiple heirs over several generations.

### 39.1. Exclusion

In determining the resources of an individual (spouse) who is of Indian descent from a federally recognized Indian tribe, any interests of the individual (spouse) in trust or restricted lands are excluded from resources.

### 39.2. Verification

If an individual Indian alleges an interest in trust or restricted land:

- Obtain a copy of any document or documents that might identify it as such; and/or
- Verify the allegation with the appropriate Indian agency.

## 40. Inheritances and Unprobated Estates

An **inheritance** is cash, a right, or non-cash items received as the result of someone's death. An inheritance is a **death benefit**.

Until an item or right has a value (i.e., can be used to meet the heir's need for food, clothing, or shelter), it is neither income nor a resource. The inheritance is income in the first month it has a value and can be used to meet the individual's needs. If retained, it becomes a resource the following month.

Use the policy in this section to determine the availability and the equity value of the inheritance and the policy in Death Benefits Chapter E – 29 to determine the resource's net countable value.

### 40.1. Date of Receipt

In Virginia, it takes a minimum one year for an estate to be probated. This period is allowed for the filing of a will, claims by creditors, and claims to contest a will. If there is no will to be probated, there are estate administration requirements that have to be followed. These, too, may take a long period to complete. Because these timeframes prohibit the individual from using the inheritance to meet his/her needs, the inheritance is not income until **earliest** of:

- The date the individual alleges receiving the inheritance (using a signed statement from the individual or documents in the individual's possession); or
- The date the estate is closed (which may be determined by contacting the court or an attorney involved in the closing of the estate); or

- 12 months after the death.

#### **40.2. Unprobated Estate**

If an estate remains unprobated beyond 12 months, the inheritance must be evaluated to determine if it is a resource. An ownership interest in an unprobated estate may be a resource if an individual:

- Is an heir or relative of the deceased; or
- Receives any income from the property; or
- Under State intestacy laws, has acquired rights in the property due to the death of the deceased.

#### **40.3. Ownership Interest**

There is an ownership interest in an unprobated estate if:

- Documents (e.g., a will or court records) indicate an individual is an heir to property of a deceased; or
- An individual has use of a deceased's property or receives income from it; or
- Documents establish, or the individual alleges, a relationship between himself and the deceased which, under state intestacy laws, awards the individual a share in the distribution of the deceased's property; and
- The inheritance, use of income, and distributions are uncontested.

#### **40.4. Status as a Resource**

- If the individual is the sole owner or if other owners give needed consent to sell, the property is the individual's resource. Evaluate the type of ownership to determine if a co-owner's consent is required to sell. See Ownership Chapter E - 6.
  - An inheritance is evaluated as a resource in the month following the month in which it meets the definition of income. See Inheritances Chapter I – 36
- If other owners withhold consent and that consent is necessary to sell, the property is not a resource until the estate has been through probate.

**40.5. Value of Resource**

The countable value of the property is the individual's equity value in it. Determine the property's CMV (and EV, if appropriate) following guidelines for the particular type of property involved.

**40.6. Verification**

Document the file, as applicable, with a copy of:

- An inheritance or relationship document (or a signed statement alleging a relationship);
- Evidence of income from the property;
- Individual's signed statement concerning his/her use of the property and whether there is contest of any factor; or
- Other evidence showing the right of inheritance exists, and
- If countable, documents verifying the value the property.

**41. Japanese-American and Aleutian Restitution Payments**

Restitution payments are made by the U.S. and Canadian governments to individual Japanese-Americans or the spouse or parent of an individual of Japanese ancestry (or, if deceased, to their survivors) and Aleuts who were interned or relocated during World War II

**41.1. Exclusion**

Japanese-American and Aleutian Restitution Payments Restitution payments made by the U.S. and Canadian governments are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

**41.2. Interest**

Interest earned on unspent Japanese- American, Aleutian, and Japanese-Canadian restitution payment is excluded from income in the month of receipt. If retained, the unspent interest is a countable resource.



### **41.3. Verification**

#### **41.3.1. U.S.**

If the individual alleges receiving restitution payments from the U.S. Government, use documents in the individual's possession to verify the payments. If the individual has no documents which verify this, obtain verification from the Office of Redress Administration at the following address:

Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66260  
Washington, D.C. 20035-6260

Phone: 202-219-6900

Provide the individual's name, address, date of birth, and SSN in the request.

#### **41.3.2. Canada**

If the individual alleges receiving restitution payments from the Canadian government but has no documents which verify this, ask if the individual was imprisoned, relocated, deported, or deprived of other rights in Canada during the period December 1941 to March 1949 because of their Japanese ancestry. If the answer is "yes," exclude the payment from resources.

## **42. Life Estate And Remainder Interest**

A life estate instrument often conveys property to one person for life (life estate owner) and to one or more others (remaindermen) upon the expiration of the life estate. Each is a form of ownership and must be evaluated as a resource.

### **42.1. Life Estates (Without Powers)**

A life estate conveys to the individual to whom it is given certain property rights for the duration of his or her life, or someone else's life. In some cases, it may be conditional: e.g., for life or until remarriage.

The owner of a life estate can sell the life estate but does not have title to the property and thus normally cannot sell it or pass it on as an inheritance.

**42.1.1. Owner Can Do**

Unless the instrument (will or deed) establishing the life estate places restrictions on the rights of the life estate owner, the owner has the right to possess, use, and obtain profits from the property and to sell his or her life estate interest.

**42.1.2. Owner Cannot Do**

A life estate owner owns the physical property only for the duration of the life estate. The owner generally can sell only his or her interest; i.e., the life estate. The owner cannot take any action concerning the interest of the remainderman.

**42.1.3. Value of Life Estate**

- A life estate in home property is an excluded resource and valuation is not necessary. See Home Property Chapter E - 35.
- Evaluate all other life estates as Non-Home Real Property and develop ownership and CMV value per Chapter E - 49.
- Using the Life Estate column of the Unisex Life Estate or Remainder Table (Chapter E – 41.5), multiply the CMV of the property by the life estate interest decimal that corresponds to the life estate owner's age. The result is the resource value of the life estate.

**42.2. Life Estates With Powers**

Life estates “with powers,” are ones wherein the owner of the property creates a life estate for himself or herself, retaining the power to sell the property, with a remainder interest to someone else, e.g., a child.

Since the life estate holder retains the power to sell the property, its value as a resource is its full equity value.

**42.3. Remainder Interests**

When the owner of property gives it to one party in the form of a life estate, and designates a second party to inherit it upon the death of the life estate holder, the second party has a remainder interest in the property. A remainderman has an ownership interest in the physical property but without the right to possess and use the property until termination of the life estate.

Unless restricted by the instrument establishing the remainder interest, the remainderman is generally free to sell his/her interest in the physical property even before the life estate interest expires.

#### **42.3.1. Value of Remainder Interest**

- The remainder interest is considered ownership of Non-Home Real Property. Develop ownership and CMV value per Chapter E - 49.
- Multiply the CMV of the property by the decimal figure shown in the “Remainder” column adjacent to the **life estate holder’s** age in the Unisex **Life Estate or Remainder Table**. The result is the resource value of the life estate.

#### **42.4. Verification**

Verify the life estate/remainder interest by obtaining a copy of the document that established the ownership interest.

- Deed,
- Will,
- Other legal document

#### **42.5. Unisex Life Estate Or Remainder Table**

<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>
<b>0</b>	.97188	.02812	<b>55</b>	.80046	.19954
<b>1</b>	.98988	.01012	<b>56</b>	.79006	.20994
<b>2</b>	.99017	.00983	<b>57</b>	.77931	.22069
<b>3</b>	.99008	.00992	<b>58</b>	.76822	.23178
<b>4</b>	.98981	.01019	<b>59</b>	.75675	.24325

<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>
<b>5</b>	.98938	.01062	<b>60</b>	.74491	.25509
<b>6</b>	.98884	.01116	<b>61</b>	.73267	.26733
<b>7</b>	.98822	.01178	<b>62</b>	.72002	.27998
<b>8</b>	.98748	.01252	<b>63</b>	.70696	.29304
<b>9</b>	.98663	.01337	<b>64</b>	.69352	.30648
<b>10</b>	.98565	.01435	<b>65</b>	.67970	.32030
<b>11</b>	.98453	.01547	<b>66</b>	.66551	.33449
<b>12</b>	.98329	.01671	<b>67</b>	.65098	.34902
<b>13</b>	.98198	.01802	<b>68</b>	.63610	.36390
<b>14</b>	.98066	.01934	<b>69</b>	.62086	.37914
<b>15</b>	.97937	.02063	<b>70</b>	.60522	.39478
<b>16</b>	.97815	.02185	<b>71</b>	.58914	.41086
<b>17</b>	.97700	.02300	<b>72</b>	.57261	.42739
<b>18</b>	.97590	.02410	<b>73</b>	.55571	.44429
<b>19</b>	.97480	.02520	<b>74</b>	.53862	.46138
<b>20</b>	.97365	.02635	<b>75</b>	.52149	.47851
<b>21</b>	.97245	.02755	<b>76</b>	.50441	.49559

02/17

<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>
<b>22</b>	.97120	.02880	<b>77</b>	.48742	.51258
<b>23</b>	.96986	.03014	<b>78</b>	.47049	.52951
<b>24</b>	.96841	.03159	<b>79</b>	.45357	.54643
<b>25</b>	.96678	.03322	<b>80</b>	.43659	.56341
<b>26</b>	.96495	.03505	<b>81</b>	.41967	.58033
<b>27</b>	.96290	.03710	<b>82</b>	.40295	.59705
<b>28</b>	.96062	.03938	<b>83</b>	.38642	.61358
<b>29</b>	.95813	.04187	<b>84</b>	.36998	.63002
<b>30</b>	.95543	.04457	<b>85</b>	.35359	.64641
<b>31</b>	.95254	.04746	<b>86</b>	.33764	.66236
<b>32</b>	.94942	.05058	<b>87</b>	.32262	.67738
<b>33</b>	.94608	.05392	<b>88</b>	.30859	.69141
<b>34</b>	.94250	.05750	<b>89</b>	.29526	.70474
<b>35</b>	.93868	.06132	<b>90</b>	.28221	.71779
<b>36</b>	.93460	.06540	<b>91</b>	.26955	.73045
<b>37</b>	.93026	.06974	<b>92</b>	.25771	.74229
<b>38</b>	.92567	.07433	<b>93</b>	.24692	.75308

02/17

<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>	<b>AGE</b>	<b>LIFE ESTATE</b>	<b>REMAINDER</b>
<b>39</b>	.92083	.07917	<b>94</b>	.23728	.76272
<b>40</b>	.91571	.08429	<b>95</b>	.22887	.77113
<b>41</b>	.91030	.08970	<b>96</b>	.22181	.77819
<b>42</b>	.90457	.09543	<b>97</b>	.21550	.78450
<b>43</b>	.89855	.10145	<b>98</b>	.21000	.79000
<b>44</b>	.89221	.10779	<b>99</b>	.20486	.79514
<b>45</b>	.88558	.11442	<b>100</b>	.19975	.80025
<b>46</b>	.87863	.12137	<b>101</b>	.19532	.80468
<b>47</b>	.87137	.12863	<b>102</b>	.19054	.80946
<b>48</b>	.86374	.13626	<b>103</b>	.18437	.81563
<b>49</b>	.85578	.14422	<b>104</b>	.17856	.82144
<b>50</b>	.84743	.15257	<b>105</b>	.16962	.83038
<b>51</b>	.83674	.16126	<b>106</b>	.15488	.84512
<b>52</b>	.82969	.17031	<b>107</b>	.13409	.86591
<b>53</b>	.82028	.17972	<b>108</b>	.10068	.89932
<b>54</b>	.81054	.18946	<b>109</b>	.04545	.95455

## **43. Life Insurance Policies**

A life insurance policy is a contract. Its purchaser (the owner) pays premiums to the company that provides the insurance (the insurer). In return, the insurer agrees to pay a specified sum to a designated beneficiary upon the death of the insured (the person on whom, or on whose life, the policy exists). A life insurance policy is a resource if it generates a cash surrender value (CSV).

**Note:** Term insurance and burial insurance do not generate a CSV, are not considered life insurance, and are not resources.

### **43.1. Value**

A life insurance policy's value as a resource is the amount of the CSV.

### **43.2. Exclusion**

A life insurance policy is an excluded resource if its face values (FV) and the FV of any other life insurance policies the individual owns **on the same insured** total \$1,500 or less. The FV of burial insurance policies; and term insurance policies do not count toward this \$1,500 total.

#### **43.2.1. Relation to Burial Fund Exclusion**

The Burial Fund Exclusion maximum of \$1,500 must be decreased by the FV of any insurance policy on the life of the individual that is excluded under this provision.

### **43.3. Face Value**

Face value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. A policy's FV does **not** include:

- The FV of any dividend addition, which is added after the policy is issued;
- Additional sums payable in the event of accidental death or because of other special provisions; or
- The amount(s) of term insurance, when a policy provides whole life coverage for one family member and term coverage for the other(s).

### **43.4. Cash Surrender Value**

A policy's cash surrender value (CSV) is a form of equity value that it acquires over time. The owner of a policy can obtain its CSV only by turning the policy in for cancellation before it matures. A loan against a policy reduces its CSV.

### **43.5. Life Insurance Dividends**

Periodically (annually, as a rule), the life insurance company may pay a share of any surplus company earnings to the policy owner as a dividend. Depending on the Life Insurance Company and type of policy involved, dividends can be applied to premiums due or paid by check to the individual or by an addition or accumulation to an existing policy.

#### **43.5.1. Additions**

Dividend additions are amounts of insurance purchased with dividends and added to the policy, increasing its death benefit and CSV. The table of CSV's that comes with a policy does not reflect the added CSV of any dividend additions.

#### **43.5.2. Accumulations**

Dividend accumulations are dividends that the policy owner has constructively received but left in the custody of the insurer to accumulate at interest, like money in a bank account. They are not a value of the policy per se; the owner can obtain them at any time without affecting the policy's FV or CSV.

##### **43.5.2.1. Resource Value**

Dividend accumulations are evaluated as a separate resource. The total value of the accumulated dividends is the resource value.

Dividend accumulations cannot be excluded from resources under the life insurance exclusion, even if the policy that pays the accumulations is excluded from resources. Unless they can be excluded under another provision (e.g., as set aside for burial), they are a countable resource.

### **43.6. Accelerated Life Insurance Payments**

Accelerated life insurance payments are proceeds paid to a policyholder prior to death. Although accelerated payment plans vary from company to company, all of the plans involve early payout of some or all of the proceeds of the policy.

Some companies refer to these types of payments as “living needs” or “accelerated death” payments.



**43.6.1. Resource Value**

Since accelerated payments can be used to meet food, or shelter needs, the payments are income in the month received and a resource if retained into the following month and not otherwise excludable

**43.7. Verification**

Ask the individual to submit:

- All the life insurance policies he or she owns;
- The most recent annual dividend statement issued for each policy; and
- Documents that verify the amount of additional insurance purchased with dividends
- Documents verifying any loans against a policy

If examination of a policy does not reveal an item of needed information, obtain that information from the individual's agent or the insurance company.

**44. Loans**

A loan is a transaction whereby one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest. The loan agreement may be written or oral, and must be enforceable under Virginia law. Loans may be formal or informal.

- 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.
- A formal (e.g., commercial) loan is a loan between an individual and an entity that is in the business of lending money or providing credit.

**Note:** Federal Educational Loans (Federal PLUS Loans, Perkins Loans, Stafford Loans, William D. Ford Loans, etc.) under Title IV of the Higher Education Act (HEA) are excluded from resources and income. See Chapter E – 32.1 and Chapter I – 29.2.

## **44.1. Determining When A Loan Counts As A Resource**

### **44.1.1. Eligible Individual Is The Borrower - All Loans**

Loans are not resources in the month of receipt but become resources if retained to the month following the month of receipt. Bona Fide or Not Bona Fide determines whether or not the cash provided to the borrower is counted as income in the month of receipt. See Loan Proceeds Chapter I – 42.

### **44.1.2. 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.

#### **44.1.2.1. Value**

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

##### **44.1.2.1.1. Rebuttal Rights**

If the outstanding principal balance combined with the individual's other resources cause ineligibility, inform the individual that the outstanding principal balance will be used 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.

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.

#### **44.2. Negotiable Agreement**

A negotiable agreement is an agreement (e.g., a loan) whereby the ownership of the instrument itself and the whole amount of money expressed on its face can be transferred (given or sold) from one person to another. Absent evidence to the contrary, assume the agreement is negotiable.

#### **44.3. Bona Fide Agreement**

A bona fide agreement is an agreement that is legally valid and made in good faith.

A loan (oral or written) is bona fide if it meets all of the following requirements.

- **Enforceable Under State Law**

A bona fide loan is a contract that is enforceable under Virginia law.

- **Loan Agreement in Effect at Time of Transaction**

The loan agreement must be established and 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.

- **Acknowledgement of an Obligation to Repay**

The 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 AG 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.

- **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 AG benefits).

- **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 AG benefits), and the individual's living expenses.

#### **44.4. Verification**

If there is a written agreement between the parties, obtain a copy of the agreement. If there is no written agreement, obtain signed statements from the borrower and the lender.

##### **44.4.1. Forms**

To document informal loans, you may use two locally reproducible forms.

- The "Statement of Funds You Provided to Another" form has two parts. The first part is a cover letter to the lender, which identifies the borrower and explains why the information is needed. The second part is a questionnaire that the lender completes.
- The "Statement of Funds You Received" form has one part that the borrower completes. Send the form to the lender for completion using the cover letter portion of the form.

Use the backs of the forms if you need more room to record information.

## **45. Low Income Energy Assistance**

Through a block grant, the Federal Government provides funds to States for energy assistance (including weatherization) to low income households. It is most often provided in a medium other than cash (e.g., voucher, two-party check, direct payment to the vendor, etc.) but may be in cash.

**45.1. Exclusion**

Home energy assistance payments or allowances provided under subchapter II of chapter 94, title 42 of the U.S. Code (Low-Income Energy Assistance) are excluded from resources.

**45.2. Verification**

Use documents in the individual's possession, contact with the provider or agency involved, or a precedent to verify that assistance from a particular program is provided under the Federal Low-Income Home Energy Assistance Program or "LIHEAP." Once this is verified, no further verification is necessary.

**46. Municipal, Corporate and Government Bonds**

A bond is a written obligation to pay a sum of money at a specified future date. Bonds are negotiable and transferable and are a resource.

- **Municipal Bond**

A municipal bond is the obligation of a State or a locality (county, city, town, village or special purpose authority such as a school district).

- **Corporate Bond**

A corporate bond is the obligation of a private corporation.

- **Government Bond**

A government bond, as distinct from a U.S. Savings Bond, is a transferable obligation issued or backed by the Federal Government.

**46.1. Value**

Municipal, corporate, and government bonds are negotiable and transferable. Therefore, their value as a resource is their CMV. Their redemption value, available only at maturity, is immaterial.

**46.2. Verification**

The closing price of a bond on a given day may be found on the internet or by contacting a local securities firm for the information. Record the appropriate closing price and the source of the information.

## **47. Mutual Funds**

A mutual fund is a company whose primary business is buying and selling securities and other investments. Shares in a mutual fund represent ownership in the investments held by the fund. Mutual funds shares are a form of “stock” and are evaluated as such. They are resources. See Stocks Chapter E – 60.

## **48. Nazi Persecution, Payments to Victims of**

The governments of Germany, Austria, and the Netherlands make payments to victims of Nazi persecution.

### **48.1. Exclusion**

Payments received from any source by individuals because of their status as victims of Nazi persecution are excluded from income and resources.

Retained funds must be identifiable in order to be excluded. See Chapter E - 26 if funds excluded under this provision are commingled with other funds.

#### **48.1.1. Interest**

Interest earned on unspent payment to victims of Nazi persecution is excluded from income. If retained, the interest is a countable resource the month following the month of receipt.

### **48.2. Verification**

If an individual reports receiving payments as a result of being a victim of Nazi persecution, accept a signed allegation of the amount(s) involved and the date(s) these payments were received. No further development or documentation is required.

## **49. Netherlands WUV Payments to Victims of Persecution**

The Netherlands' Act on Benefits for Victims of Persecution 1940–1945, WUV (Wet Uitkering Vervolgingsslachtoffers), provides payments to individuals who, during the German and Japanese occupation of the Netherlands and the Netherlands East Indies (now the Republic of Indonesia), were victims of persecution during World War II because of their race, religion, belief or homosexuality and, as a result of that persecution presently are suffering from illnesses or disabilities. There are 4 types of payments

available to individuals who meet the eligibility rules for payment under the WUV program—periodical income, NMIK (compensation for non-definable disability expenses), reimbursements of persecution-related disability expenses and partial compensation for persecution related disability expenses.

#### **49.1. Exclusion**

Unspent WUV payments made by the Dutch government are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

##### **49.1.1. Interest**

Interest earned on unspent WUV payments is excluded from income. If retained, the interest is a countable resource the month following the month of receipt.

#### **49.2. Verification**

Use the documents in the individual's possession to document the date(s), and amount(s) of such payment(s). If the individual has no documentation or it is incomplete, contact the Consulate General of the Netherlands to verify payment date(s) and amount(s). If the individual has no documentation and the Consulate General of the Netherlands is unable to provide the information, accept the individual's signed allegation of the amount(s) and date(s) of receipt.

Consulate General of the Netherlands  
Attn: War Victims Department (WUV Dept.)  
Suite 1150  
11766 Wilshire Blvd.  
Los Angeles, CA 90025  
(800)591-5431 (9:00 - 12:00 Pacific Time)  
Fax: 310-478-3428  
email: los-wuv@minbuza.nl

### **50. Non-Home Real Property**

Non-home real property consists of land and buildings or immovable objects (including some mobile homes) that are attached permanently to the land and that do not meet the definition of excludable home property. If not otherwise excluded, non-home real property is a countable resource.

Non-home real property also includes the following property rights.

- **Mineral Rights**

Mineral rights represent ownership interest in natural resources such as coal, oil, or natural gas, which normally are extracted from the ground.

- **Timber Rights**

Timber rights permit one party to cut and remove free standing trees from the property of another party.

- **Easements**

An easement gives one party the right to use the land of another party for a special purpose.

- **Leaseholds**

A leasehold gives one party control over certain property of another party for a specified period.

- **Water Rights**

Water rights usually confer upon the owner of riverfront or shorefront property the right to access and use the adjacent water.

- **Life Estates**

See Life Estates/Remainder Interests Chapter E - 41.

## **50.1. Ownership**

### **50.1.1. Sole Ownership**

Absent evidence to the contrary, accept an individual's allegation of sole ownership of property.

### **50.1.2. Shared Ownership**

Document an allegation of shared ownership with any of the following evidence:

- A tax assessment notice or bill;
- A current mortgage statement;



- A deed;
- A report of title search;
- Wills, court records, or other documentation of inheritance.

If the individual alleges owning other than an equal share of the property (e.g., alleges having a 25 percent ownership interest where there are only two owners), the evidence must support that allegation as well.

#### **50.1.3. Ownership of Land and Mineral Rights**

If the individual owns the land to which the mineral rights pertain, the CMV of the land can be assumed to include the value of the mineral rights. Additional development is unnecessary.

#### **50.1.4. Ownership of Mineral Rights Only**

If the individual does not own the land to which the mineral rights pertain, obtain a CMV estimate from a knowledgeable source. Such sources include, in addition to those listed below, the Bureau of Land Management, the U.S. Geological Survey, or any mining company that holds leases.

### **50.2. Current Market Value**

Absent evidence to the contrary, assume that an individual can sell the property at its estimated CMV.

#### **50.2.1. Tax Assessment Notice**

Obtain from the individual a copy of the most recently issued tax assessment notice for the property. Base the CMV on this assessment notice unless:

- The notice is more than a year old based on its date of issue (unless it specifies that it covers more than one year and it is no older than the number of years it covers);
- The notice pertains to a special purpose assessment (unless it also provides a fair market value assessment, which can be used);
- The assessment is under appeal;

- The assessment uses a fixed rate per acre method based on land usage, such as agricultural or industrial. (this does not refer to assessments where conditions dictate similar taxes for similar types of land, such as desert, swamp, landfills, etc.); or
- The notice provides either no assessment ratio or only a range, e.g., between 25 and 50 percent (unless the individual would be ineligible using even the top of the range).

#### **50.2.1.1. How to Use**

To determine CMV based on a tax assessment notice, divide the assessed value by the assessment ratio. For example, an assessed value of \$2,000 divided by an assessment ratio of 50 percent equals a CMV of \$4,000 ( $\$2,000 \div .50 = \$4,000$ ).

#### **50.2.2. Knowledgeable Source Estimate**

If you cannot use the tax assessment notice to establish CMV or if a tax assessment notice is not readily available, have the individual obtain an estimate of the property's CMV from a knowledgeable source.

If you doubt the validity of an estimate furnished by the individual, obtain an estimate from an additional knowledgeable source.

The estimate must show, in addition to the estimate itself:

- The name of the person providing the estimate;
- The name, address and telephone number of the business or agency for whom the person providing the estimate works;
- The basis for the estimate, to include such things as a description of the property and its condition and, where appropriate, the value of similar property in the same area; and
- The period to which the estimate applies (which should correspond to the period for which it is being requested).

#### **50.2.2.1. Knowledgeable Sources**

Knowledgeable sources include but are not limited to:

- Real estate brokers;

- The local office of the Farmer's Home Administration (for rural land);
- The local office of the Agricultural Stabilization and Conservation Service (for rural land);
- Banks, savings and loan associations, mortgage companies, and similar lending institutions;
- An official of the local property tax jurisdiction (be sure to obtain the individual's estimate rather than the office's assessment); and
- The County Agricultural Extension Service.

### **50.2.3. CMV Rebuttals**

If the individual disagrees with CMV, and the difference is material to eligibility, ask the individual to provide additional evidence such as

- Evidence that the individual's ownership interest in the property is worth less than the total value of the property divided by the number of owners; and
- Evidence from knowledgeable.

### **50.3. Equity Value**

Equity value (EV) is the CMV of a resource minus any encumbrance on it.

Have the individual provide a copy of the note or agreement establishing the encumbrance and the verification of the outstanding principal balance

### **50.4. Foreign Property**

Foreign property is subject to the same rules as domestic property.

#### **50.4.1. Effect of Legal Restrictions**

- If evidence of a legal bar to the sale of property, or to removing the proceeds of a sale from the country exists, the property is not a resource. CMV development is unnecessary.
- If a legal restriction limits the **amount** an individual can remove from the country, that limit is the maximum value the property can have as a resource.

- If a legal restriction affects when the proceeds of a sale can be removed from the country (e.g., once a year), such proceeds are income when they can be removed, and are not resources before then.

#### **50.4.1.1. Obtaining Evidence of Legal Bars**

Acceptable sources of information are a consulate, mission, or embassy of the country, or the U.S. Department of State. The number for the General Information Desk at State is (202) 647-4000.

#### **50.4.2. Verification**

If an individual does not have the documents necessary to support a determination of ownership and CMV or equity value, he/she may be able to write for them, directly or with the aid of a local nationality organization.

The request should include the following types of information:

- A detailed description of the property, its location, and any other background information the individual can provide;
- The specific information needed, e.g., CMV, the details of any restrictions on removing the proceeds of a sale from the country, etc.; and
- The source(s) of the necessary documents or information, to the extent known.

### **51. North Vietnam, Payments to Certain Persons Captured and Interned by**

Section 606 of P.L. 105-78 provides that payments will be made to certain individuals who were captured and interned by North Vietnam. Such payments are made by DOD pursuant to section 657 of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104-201).

If the individual who was captured and interned by North Vietnam is deceased, payment may be made to a surviving spouse or, if none, to surviving children of any age (including biological and adoptive children) of the decedent, in equal shares.

The amount payable for each captured and interned individual is a one-time payment of \$40,000 to \$50,000.

### **51.1. Exclusion**

Payments to such an individual, individual's surviving spouse or child of any age are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **51.2. Interest**

Interest earned on unspent payments is excluded income. If retained, the interest is a countable resource the month following the month of receipt.

### **51.3. Verification**

Use documents in the individual's possession to verify the nature of these payments. The award letter will state that the payments are made under section 657 of the National Defense Authorization Act. The award letter will be signed by Carl Witfchonke, Chairman of the Vietnamese Compensation Commission.

If such documents are not available, suggest the individual contact the appropriate Military Finance Center.

## **52. Other Property Rights**

See Non-Home Real Property Chapter E – 49.

## **53. Promissory Notes and Property Agreements**

### **Promissory Note**

A promissory note is a written, unconditional agreement whereby one party promises to pay a specified sum of money at a specified time (or on demand) to another party. It may be given in return for goods, money loaned, or services rendered.

### **Property Agreement**

A property agreement is a pledge or security of particular property for the payment of a debt or the performance of some other obligation within a specified period. Property agreements on real estate generally are referred to as mortgages but also may be called real estate or land contracts, contracts for deed, deeds of trust, and so on. Personal property agreements (e.g., pledges of crops, fixtures, inventory, etc.) are commonly known as chattel mortgages.

### **Negotiable Agreement**

A negotiable agreement is an agreement whereby the ownership of the instrument itself and the whole amount of money expressed on its face can be transferred (e.g., sold) from one person to another.

#### **53.1. For the Buyer (Debtor)**

For the buyer of the property (debtor), the promissory note is not a resource. However, the property purchased may be a countable resource in the month following the month of the transaction.

#### **53.2. For the Seller (Creditor)**

For the owner of the agreement (the seller), a promissory note or property agreement is a resource. The property itself is not a resource because the seller cannot legally convert it to cash while it is encumbered by the agreement.

##### **53.2.1. Property Agreements Prior to Settlement**

An individual who enters into a contract for the sale of real estate owns two items until the settlement of the sale is completed: the real estate and the contract. The real estate is not a resource because the seller cannot legally convert it to cash while it is encumbered by the contract. The real estate contract is a property agreement that is a resource to the seller.

### **53.2.2. Resource Value of the Agreement**

Assume that the resource value of a promissory note or property agreement is its outstanding principal balance unless the individual furnishes evidence that it has a lower cash value.

#### **53.2.2.1. Rebuttal**

Inform the individual that the outstanding principal balance will be used 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.

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.

#### **53.2.3. Verification**

- Obtain a copy of the agreement. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
- Obtain evidence of the outstanding principal balance. The outstanding principal balance is the balance in the month for which a determination is being made. An amortization schedule can be used to determine the outstanding principal balance and the interest income if the terms of the agreement are known (e.g., interest rate, payment period, original principal amount, etc.).

## **54. Radiation Exposure Compensation Trust Fund**

Fallout emitted during the U.S. Government's atmospheric nuclear testing in Nevada during the 1950s and during a brief period in 1962 exposed some individuals to doses of radiation that put their health at risk. In addition, some individuals employed in uranium mines during the period January 1, 1947 to December 31, 1971 were exposed to large doses of radiation. P.L. 101-426 created the Radiation Exposure Compensation Trust

Fund (RECTF) and authorizes the Department of Justice (DOJ) to make compensation payments to individuals (or their survivors) that were found to have contracted certain diseases after exposure. The payments will be made as a one-time lump sum. Generally, the exposure occurred in parts of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming.

#### **54.1. Exclusion**

Unspent payments received from the RECTF are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

#### **54.2. Interest**

Interest earned on unspent RECTF payments is excluded income.

#### **54.3. Verification**

Use documents in the individual's possession to verify that the payment is from the RECTF. Accept the individual's signed allegation of the amount and date of receipt if it is not evident from the documents.

If the individual has no documents or there is reason to question the source of the payments, obtain verification from:

The Radiation Exposure Compensation Program  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
1 -800-729-7327  
Email: [civil.reca@usdoj.gov](mailto:civil.reca@usdoj.gov)

Use the individual's name and Social Security number (SSN) as identifying information when writing to the DOJ. When writing on behalf of a survivor, also include the survivor's name and SSN.

### **55. Relocation Assistance**

Relocation assistance is provided to persons displaced by projects which acquire real property. The following types of reimbursement, allowances, and help are provided:



- Moving expenses;
- Reimbursement for losses of tangible property;
- Expenses of looking for a business or farm;
- Displacement allowances;
- Amounts required to replace a dwelling which exceed the agency's acquisition cost for the prior dwelling;
- Compensation for increased interest costs and other debt service costs of replacement dwelling (if it is encumbered by a mortgage);
- Expenses for closing costs (but not prepaid expenses) on replacement dwelling (if it is encumbered by a mortgage);
- Rental expenses for displaced tenants;
- Amounts for down payments on replacement housing for tenants who decide to buy;
- Mortgage insurance through federal programs with waiver of requirements of age, physical condition, personal characteristics, etc., which borrowers must usually meet; and
- Direct provision of replacement housing (as a last resort).

### **55.1. Federal Relocation Assistance Exclusion**

Federal relocation assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (subchapter II, chapter 61, title 42 of the U.S. Code) is excluded from resources. **There is no time limit on the exclusion for federal relocation assistance.**

This exclusion applies to relocation assistance provided to persons displaced by any Federal or federally-assisted project.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

#### **55.1.1. Exception: Revenue Sharing**

If the only Federal assistance is revenue sharing, this exclusion does not apply.

**55.1.2. Interest**

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision.

**55.2. State Or Local Relocation Assistance Exclusion**

Unspent relocation assistance payments from a State or local government are **excluded from resources for 9 months**.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

**55.2.1. Interest**

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision.

**55.3. Verification**

Verify that the project which displaces the individual has governmental involvement. This can be done by using documents in the individual's possession, or contacting the provider or entity involved in the project. Once verified, accept the individual's signed statement of the assistance.

**56. Repair/Replacement of Lost, Damaged or Stolen Resources Payments**

Individuals may receive payments to repair or replace items damaged or lost as the result of a catastrophe. Funds received to repair or replace non-excluded resources or personal injury is income in the month received and, if retained, a resource the month following the month of receipt. Funds received to repair or replace excluded resources are excluded as income and excluded as a resource for 9 months.

**56.1. Exclusion**

Cash and in-kind receipts from any source for the replacement or repair of lost, damaged, or stolen **excluded** resources are themselves not treated as resources for 9 months from the date of their receipt. The exclusion period may be extended if good cause exists. Retained funds become countable resources the month following the end of the exclusion period.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

**56.1.1. Interest**

Interest earned by these excluded funds is not counted as income and resources for the period during which the funds themselves are not considered resources.

**56.1.2. 9-Month Extension for Good Cause**

The initial 9-month period can be extended for a reasonable period up to an additional 9 months if the individual shows good cause why repair or replacement was not possible during the first 9 months.

**56.1.3. Presidentially-Declared Major Disasters**

For presidentially declared major disasters, the 18-month period (9-month initial period plus 9-month good cause extension) exclusion period can be extended for up to an additional 12 months for a maximum exclusion period of 30 months if:

- The excluded resource is geographically within the disaster area as defined in the presidential order;
- The individual intends to repair or replace the excluded resource; and
- The individual presents evidence of good cause, as defined above.

This extension should not be granted automatically, but only after a thorough examination of the evidence of good cause.

**56.1.4. Good Cause**

Good cause is present if circumstances beyond the individual's control:

- Prevent repair or replacement of the lost, damaged, or stolen property; or
- Keep the individual from contracting for such repair or replacement.

**Example - Good Cause**

An individual's home was destroyed by a severe hurricane. Due to the extent of the devastation to the area, there were not a sufficient number of contractors available to rebuild the house. There were so many homes to rebuild and repair that the contractors could not estimate when they could begin to rebuild the recipient's home and could not accept any new contracts at the time.

**56.1.4.1. Good Cause Claimed**

If payment(s) remain unspent, but the individual alleges:

- Good cause; and
- The intent to use the funds for their designated repairs or replacement.

**Obtain and evaluate**

- Evidence of the amount of payment(s) not treated as resources that are still unspent ,
- The individual's signed statement regarding intent and
- Evidence to substantiate the allegation of good cause, (e.g., letters from contractors, etc).

**56.1.4.2. Intent to Use**

An individual cannot qualify for an extension of the initial 9-month period unless he/she intends to use the funds for their designated purpose, i.e., repair or replacement of excluded resources.

**56.1.4.2.1. Change of Intent During Extension**

The good cause extension will terminate as of the date of the change of intent. The funds previously not treated as resources will be taken into account in determining resources for the following month.

**56.1.4.3. Good Cause Not Established**

If the evidence does not establish good cause, document your determination and include the unspent payment(s) in determining countable resources.

**56.1.4.4. Good Cause Established**

If the evidence shows good cause, discuss with the individual how much additional time is needed and why. On the basis of that discussion, extend the initial 9-month period for a reasonable period up to an additional 9 months (or, after an initial 9-month good cause extension, up to an additional 12 months in the case of victims of presidentially-declared disasters),

**56.2. Verification**

Obtain a copy of any evidence the individual has that shows the source, value, date(s), and intended purpose of the items received, including whether any cash received is for a purpose other than the replacement or repair of the lost, damaged, or stolen (and excluded) resource.

**57. Retirement Funds**

Retirement funds are annuities or work-related plans for providing income later in life or when employment ends (e.g., pension, disability, or retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans. Also, depending on the requirements established by the employer, some profit sharing plans may qualify as retirement funds.

This section of policy applies to all items that meet the above definition of retirement funds. Retirement funds may be evaluated as a resource or as income.

**57.1. Resource Or Income**

The treatment of retirement funds is based on the availability of the funds and if available, the payout options. The funds may not be available, may be paid out in periodic payments or may be available in a lump sum payment.

Unavailable funds are neither income nor a resource. If the funds are distributed in periodic payments, the payments are income in the month received. If the funds can be distributed as a lump sum, the value of the fund is a resource.

#### **57.1.1. Periodic Payments**

Periodic retirement benefits are payments made to an individual at some regular interval (e.g., monthly). If the individual receives periodic payments, the payments are evaluated as unearned income in the month received. The balance of the retirement funds is not a resource.

If the individual has a choice between periodic benefits and a lump sum, he/she must choose the periodic benefits.

##### **57.1.1.1. Requirement To Apply**

If an individual is eligible for periodic retirement benefits, he/she must apply for those benefits. If he/she fails to apply, he/she does not meet the non-financial requirement to apply for other benefits and will be ineligible for AG. (*Application for Other Benefits Chapter C - 10*)

**Note:** The individual does not have to pursue withdrawal if the funds are only available in a lump sum payment.

#### **57.1.2. Lump Sum Payments**

A lump sum payment is a payment that is issued once and includes the full amount of money that an individual can withdraw from the fund.

A retirement fund owned by an eligible individual is a resource if periodic payments have been denied and he/she has the option of withdrawing a lump sum. Withdrawal of the lump sum is not income but is a conversion of a resource.

#### **57.2. Termination of Employment**

A retirement fund is not a resource if an individual must terminate employment in order to obtain any payment.

#### **57.3. Fund Not Immediately Available**

If the retirement funds are unavailable they are not a resource. They become a resource and are counted in the month following the month the funds become available for withdrawal.

A delay in payment for reasons beyond the individual's control (e.g., an organization's processing time) does not mean that the fund is not a resource since the individual is legally able to obtain the money. It is a non-liquid resource.

#### **57.4. Value**

The value of a retirement fund is the amount of money that an individual can currently withdraw from the fund. If there is a penalty for early withdrawal, the fund's value is the amount available to an individual after penalty deduction. Any taxes due are not deductible in determining the fund's value.

#### **57.5. Verification**

Verify the source of the benefits, the availability of funds, the payment options, the approval/denial of a request for periodic payments, the amount of available funds, and the amount of an early withdrawal penalty, if any.

#### **57.6. Excess Resources/Conditional Benefits**

An individual with excess non-liquid resources, such as retirement funds, may qualify for conditional benefits while awaiting payment. See Conditional Benefits Chapter F.

### **58. Retroactive RSDI and SSI Payments (Title II and Title XVI)**

**Retroactive RSDI benefits** are those issued in any month that is **more than a month** after the calendar month for which they are paid. Thus, RSDI benefits for January that are issued in February are not retroactive, but RSDI benefits for January that are issued in March are retroactive.

**Retroactive SSI benefits** are SSI benefits issued in any month after the calendar month for which they are paid. Thus, benefits for January that are issued in February are retroactive.

#### **Note: General Relief Interim Assistance Reimbursement (IAR)**

When SSA reimburses a local department of social services under an IAR agreement and the agency refunds a portion of this to the individual, what the individual receives is treated as a retroactive SSI payment.

#### **58.1. Exclusion**

The unspent portion of retroactive SSI and RSDI benefits is excluded from resources for the 9 calendar months following the month in which the individual

receives the benefits. The exclusion begins with the month after the individual receives the payment.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

#### **58.1.1. Written Notice**

The individual must be given a written notice of this exclusion and its limited duration.

### **58.2. Verification**

Absent evidence to the contrary, accept the individual's allegation as to when he/she received a retroactive SSI or RSDI payment.

Obtain evidence of the amount of retroactive payment, such as a copy of a notice to the recipient, a systems record of the payment (e.g., payment history through SVES), etc.

## **59. Reverse Mortgage**

A reverse mortgage is a loan against the equity in a home that provides tax-free cash advances, but requires no payments during the term of the loan. Since there are no monthly payments during the life of the loan, the balance grows larger and the equity value in the home gets smaller.

The mortgage contract itself is not a resource to the borrower. The payments the individual receives from the reverse mortgage are proceeds from a bona fide loan. The proceeds are neither income nor a resource in the month received. If the funds are retained beyond the month of receipt, they are a countable resource.

**Example:** Eleanor Jones, an eligible individual who owns her home, enters into a mortgage contract with a local bank. Under this contract, the bank provides her with monthly payments which do not have to be repaid as long as she lives in the home. These payments are actually a loan against her equity in the home and must be repaid when she dies, sells the home, or moves.

**Analysis:** Since Ms. Jones is the borrower, the mortgage contract itself is not a resource to her. Since she intends to return to the home, it continues to be excluded from resource counting. The payments she receives from the reverse mortgage are loan proceeds so they are not counted as income.



**59.1. Verification**

Obtain a copy of the mortgage contract.

**60. Ricky Ray Hemophilia Relief Fund**

The Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369 provided for a single payment of \$100,000 from the Ricky Ray Hemophilia Relief Fund to:

- Certain individuals with a blood-clotting disorder who may have contracted an HIV infection from a blood transfusion, and
- Certain current and former spouses of these individuals who also contracted an HIV infection, and
- Certain children of these individuals who also contracted an HIV infection, and
- Certain surviving spouses, children, and parents of the above persons.

Payments from this program have ended but individuals may have retained some of the funds.

**60.1. Exclusion**

The Act provides for exclusion of payments from the Ricky Ray Hemophilia Relief Fund for AG eligibility/payment purposes. The Act also provides for exclusion of certain private payments.

The following payments, regardless of when received, are excluded from income and resources:

- Payments from the Ricky Ray Hemophilia Fund;
- Payments made from any fund established pursuant to a class settlement in the case of *Susan Walker v. Bayer Corporation, et al.*, 96-C-5024 (N.D. Ill); and
- Payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement mentioned above and that is signed by all parties in the case on or before the later of (1) December 31, 1997, or (2) the date that is 270 days after the date on which such release is first sent to persons (or the legal representative of such persons) to whom the payment is to be made.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **60.2. Interest**

Interest earned on retained funds is excluded from resources and income.

### **60.3. Verification**

Obtain evidence of the payment.

If evidence is not available:

- For private payments, have the individual contact Metropolitan Life at 1-800-638-8787 for verification of the type and amount of the private payment.
- For payments from the Ricky Ray Hemophilia Relief Fund, have the individual contact the Ricky Ray Program Office at 1-888-496-0338 for verification of the type and amount of the Ricky Ray Hemophilia Relief Fund payment.

## **61. Stocks**

Shares of stock represent ownership in a business corporation. Their value shifts with demand and may fluctuate widely. The following guidelines apply to all stocks, including preferred stocks, warrants and rights, and options to purchase stocks.

### **61.1. Ownership**

Ask the individual to submit the stock certificate or most recent statement of account (including dividend account) from the firm that issued or is holding the stock. Document the file with a photocopy. If the individual does not have this documentation, have him/her obtain a statement from the firm.

Absent evidence to the contrary, assume that each owner owns an equal share of the value of the stock.

Absent evidence to the contrary, assume that the owner of shares of stock can sell them at will at current value.

## **61.2. Value — Publicly Traded Stocks**

The CMV of a stock as of the first moment of a given month is its closing price on the last business day of the preceding month.

The values of over-the-counter stocks are shown on a “bid” and “asked” basis. For example, “18 bid, 19 asked.” Use the bid price as the CMV. The “par value” or “stated value” shown on some stock certificates is not the market value of the stock.

**Note:** Broker fees do not reduce the value that stocks have as resources.

### **61.2.1. Verification**

The closing price of a stock on a given day can usually be found in the next day's regular or financial newspaper. If the value of a stock does not appear in the newspaper, the individual may use the internet or contact a local securities firm. Record the appropriate closing price and the source of the information.

## **61.3. Value — Stock That Is Not Publicly Traded**

The stock of some corporations is held within close groups and traded very infrequently. The sale of such stock is often handled privately and subject to restrictions. As a rule, it cannot be converted to cash within 20 working days.

**Note:** Broker fees do not reduce the value that stocks have as resources.

### **61.3.1. Verification**

The burden of proof for establishing the value of this kind of stock is on the individual. The preferred evidence is a letter or other written statement from the firm's accountants giving their best estimate of the stock's value and the basis for the estimate, e.g.:

- Most recent sale,
- Most recent offer from outsiders,
- CMV of assets less debts on them,
- Cessation of activity and sale of assets,
- Bankruptcy, etc.

## **62. Term Insurance**

Term insurance is a death benefit plan and offers no cash values. It is not a resource and does not impact the Burial Fund Exclusion unless the policy is assigned to fund a pre-need funeral.

### **62.1. Verification**

If the policy is assigned to fund a preneed funeral, obtain a copy of the policy. If not, accept the individual's statement.

## **63. Time Deposits (Certificates of Deposit and Savings Certificates)**

A time deposit is a contract between an individual and a financial institution whereby the individual agrees to leave funds on deposit for a specified period (six months, two years, five years, etc.) and the financial institution agrees to pay interest at a specified rate for that period. Certificates of deposit (CDs) and savings certificates are common forms of time deposits.

### **63.1. Ownership**

Assume that the person designated as owner in the account title owns all the funds in the account.

### **63.2. Value**

The resource value of a time deposit at any given time is the amount the owner would receive upon withdrawing it at that time, excluding interest paid that month. Generally, this is:

- The amount originally deposited;
- Plus accrued interest for all but the current month;
- Minus any penalty specified on the certificate for early withdrawal.

#### **63.2.1. Early Withdrawal**

Withdrawal of a time deposit before the specified period expires incurs a penalty, which usually is imposed against the principal. This reduces its value as a resource. On rare occasions, the terms of a time deposit

will prohibit early withdrawal altogether. If the owner cannot under any circumstances withdraw it before it matures, it is not a resource.

### **63.2.2. Interest**

If the owner cannot withdraw any portion of the interest prior to the maturity date, the interest is not a resource.

### **63.3. Verification:**

Verify the original amount deposited, interest accrued, and what penalty applies for early withdrawal. If the individual alleges that the deposit cannot be withdrawn prior to maturity under any circumstances, verify that. Obtain this information from the individual's copies of account records to the extent possible. Ask the individual to contact the financial institution to obtain information the individual's records do not provide.

## **64. Trusts – Applicable Policy**

A trust is a legal arrangement whereby a property interest is held by one person for the benefit of another. A trust may or may not be a resource. The availability of the trust funds; whose funds were used to establish the trust; and when the trust was established are all factors in determining the trust's value as a resource.

Trust policy is in four sections, Chapter E – 63, 64, 65, and 66. This section provides a chart to direct the worker to the policy that applies to the type of trust that is being evaluated. Section 64 provides definitions of terms commonly used in trusts and the procedure for referring trusts to the AAG for evaluation. Section 65 contains Trust Policy A and Section 66 contains Trust Policy B. Each of those sections identify the types of trust to which they apply.

Use this chart to determine the appropriate policy to use to evaluate a specific trust.

<b>If the trust was established...</b>	<b>And contains...</b>	<b>Then follow instructions in:</b>
<b>Before 1/1/00</b>	Only the assets of the individual (or spouse) and all or a portion the of the assets were transferred into the trust	Trust Policy A

<b>If the trust was established...</b>	<b>And contains...</b>	<b>Then follow instructions in:</b>
	<b>before 1/1/00</b>	
	Only the assets of the individual and the trust is a Special Needs Trust Established under Section 1917(d)(4)(A) of the Act	Trust Policy A
	Only the assets of the individual and the trust is a Pooled Trust Established under Section 1917(d)(4)(C) of the Act	Trust Policy A
	Assets of a third party and assets of the individual when a portion of the <b>individual's assets that were transferred</b> into the trust were transferred <b>before 1/1/00</b>	Trust Policy A
	Assets of a third party and assets of the individual when a portion of the <b>individual's assets that were transferred</b> into the trust were transferred <b>on or after 1/1/00</b>	Trust Policy B for the individual's portion  Trust Policy A for the third party's portion
	Only the assets of third parties	Trust Policy A

<b>If the trust was established...</b>	<b>And contains...</b>	<b>Then follow instructions in:</b>
<b>On or after 1/1/00</b>	Only the assets of the individual (or spouse) and all assets were transferred into the trust <b>on or after</b> 1/1/00	Trust Policy B
	Only the assets of the individual and is a Special Needs Trust Established under Section 1917(d)(4)(A) of the Act	Trust Policy A for Revocable Trusts  Trust Policy B for Irrevocable Trusts
	Only the assets of the individual and is a Pooled Trust Established under Section 1917(d)(4)(C) of the Act	Trust Policy A for Revocable Trusts  Trust Policy B for Irrevocable Trusts
	Assets of a third party and the individual when all of the individual's assets that were transferred into the trust were transferred <b>on or after</b> 1/1/00	Trust Policy B for the individual's portion

<b>If the trust was established...</b>	<b>And contains...</b>	<b>Then follow instructions in:</b>
		Trust Policy A for the third party's portion
	Only assets of third parties	Trust Policy A

## 65. Trusts – General Information

This section of trust policy provides definitions of terms commonly used in trusts and the procedure for referring trusts to the AAG for evaluation.

### 65.1. Definitions

#### 65.1.1. Asset

For purposes of this section, an **asset** is **any income or resource** of the individual or the individual's spouse including:

- Excluded income.
- Excluded resources.
- Any other payment or property to which the individual or individual's spouse is entitled, but does not receive or have access to because of action by:
  - The individual or individual's spouse;
  - A person or entity (including a court)) with legal authority to act in place of, or on behalf of, the individual or spouse; or
  - A person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse



### **65.1.2. Exculpatory Clause**

An exculpatory clause is one that attempts to exempt the trust from the applicability of these rules. For example, an exculpatory clause would be one that states, “Section 1613(e) of the Social Security Act does not apply to this trust.” Such a statement has no effect as to whether these rules apply to the trust.

### **65.1.3. Grantor**

A grantor (also called a settlor or trustor) is the individual who **provides the trust principal** (or corpus). Therefore, an individual may be a grantor if an agent, or other individual legally empowered to act on his/her behalf (e.g., a legal guardian, person acting under a power of attorney, or conservator), establishes the trust with funds or property that belong to the individual. Where more than one person provides property to the trust, there may be multiple grantors.

### **65.1.4. Spendthrift Clause or Spendthrift Trust**

A **spendthrift clause or trust** prohibits anticipatory transfer of the beneficiary's interest in the trust income or principal. It means that, for example, if the beneficiary is entitled to \$100 a month from the trust, the beneficiary cannot sell his/her right to receive the monthly payments to a third party for a lump sum. Because he does not have the right to sell his future benefits they are not countable as a resource.

### **65.1.5. Trust Beneficiary**

A trust beneficiary is a person **for whose benefit** a trust exists. A beneficiary does not hold legal title to trust property but **does have an equitable ownership interest** in it. The beneficiary owns the benefits of the trust while the trustee holds the title and duties.

A beneficiary generally does not have the power to revoke a trust. However, the trust may be a resource to the beneficiary if he/she has the authority under the trust to direct the use of the trust principal. In such a case, the beneficiary's equitable ownership in the trust principal and his/her ability to use it for support and maintenance means it **is** a resource.

The beneficiary's right to mandatory periodic payments **may be** a resource equal to the value of the anticipated string of payments unless a spendthrift clause or other language prohibits anticipation of payments.

While a trustee may have discretion to use the trust principal for the benefit of the beneficiary, the trustee should be considered a third party and not an agent of the beneficiary, i.e., the actions of the trustee are not the actions of the beneficiary, unless the trust specifically so provides.

#### **65.1.6. Trust Earnings (Income)**

Trust earnings or income are **amounts earned by the trust principal**. They may take such forms as interest, dividends, royalties, rents, etc. These amounts are unearned income to the person (if any) legally able to use them for personal support and maintenance. See Chapter I - 64.

#### **65.1.7. Trustee**

A trustee is a person or entity who holds legal title to property. Actions of a trustee are to be considered actions of a third party. The trustee is not an agent for the individual.

In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit. If the trustee has the legal authority to withdraw and use the trust principal for his/her **own** support and maintenance, the principal **is** the trustee's resource for AG purposes in the amount that can be used.

#### **65.1.8. Trust Principal**

The **principal** (corpus) of the trust is all property and other interests held by the trust, including accumulated earnings and any other additions, such as new deposits, to the trust after its establishment. Earnings or additions are not included in the principal in the month that they are credited or transferred into the trust because they are considered under income counting rules in that month.

### **65.2. Assistant Attorney General Evaluation Required**

Trusts are complex legal arrangements involving State law and legal principles that a worker should not apply without legal counsel. **Therefore, trusts must be evaluated by a Virginia Assistant Attorney General (AAG).**

#### **Exception:**

The AAG has reviewed many common burial trust documents and has issued guidelines for their evaluation. Burial trusts established on the previously reviewed and approved documents do not have to be submitted for the AAG's

review. If there is a question regarding the trust, submit the documents to the AG consultant who will determine the need to forward it on to the AAG.

Forward a copy of the trust along with other appropriate documents to the area AG consultant. The consultant will forward the documents to the appropriate AAG and return his/her evaluation to the worker. Allow at least two weeks for a response. The worker will use the AAG's evaluation to determine if the trust is or is not a resource.

The AAG will determine if the

- Individual (applicant or recipient) is grantor, trustee, or beneficiary;
- Trust is revocable or irrevocable and, if so, whether the individual has authority to revoke the trust and to use the principal for his/her own support and maintenance;
- Individual can direct the use of the trust principal for his/her support and maintenance;
- Trust provides for payments to the individual or on his/her behalf;
- Trust contains a spendthrift clause that prohibits anticipation of any trust payments ; and
- Irrevocable trust established after 1/1/00 permits any payment under any circumstances to or for the benefit of the individual.

## **66. Trust Policy A**

Trusts may or may not be a resource. If an individual (applicant/recipient) **has legal authority to revoke** the trust and use the funds to meet his food, clothing or shelter needs, **or** if the individual **can direct the use of the trust principal** for his/her support and maintenance under the terms of the trust, the trust **principal is** a resource. If an individual **does not** have the legal authority to revoke the trust or direct the use of the trust assets the trust principal **is not** the individual's resource for AG purposes.

This section of policy applies to the following types of trusts.

### **66.1. Trusts Established With The Assets Of An Individual (Or Spouse) Prior to 1/1/00**

Trusts established with the assets of an individual (or spouse), any of which were transferred before 1/1/00.

- A trust established by an individual prior to 1/1/00 but added to on or after 1/1/00 is still considered to be established prior to 1/1/00. (Additions to such a trust may be considered a transfer of resources. See Transfer To Trust Established With Individual's Resources Chapter G – 10.

#### **66.2. Trusts Established by Third Parties (Prior To And After 1/1/00)**

A third-party trust is a trust established for the benefit of the individual with the assets of anyone other than the individual (or spouse). For example, a third-party trust may be established by a grandparent for a grandchild. Trusts established by someone other than the individual (or spouse) with the individual's (or spouse's) assets are not third party trusts.

- If at any point after 1/1/00, the individual's assets are added to a third party trust, the individual's portion of the trust must be evaluated under Trust Policy B????

#### **66.3. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act**

- Revocable or irrevocable established prior to 1/1/00
- Revocable established on or after 1/1/00

**A special needs trust is one:**

- That contains the assets of an individual under age 65 and who is disabled; and
- That is established for the benefit of such individual by a parent, grandparent, legal guardian or a court; and
- That provides that the State will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State Medicaid plan.

#### **66.4. Pooled Trusts Established under Section 1917(d)(4)(C) of the Act**

- Revocable or irrevocable established prior to 1/1/00
- Revocable established on or after 1/1/00

A Pooled Trust Established under Section 1917(d)(4)(C) of the Act is a trust containing the **assets of a disabled individual** which meets the following conditions:

- The pooled trust is established and maintained by a nonprofit association;
- Separate accounts are maintained for each beneficiary, but assets are pooled for investing and management purposes;
- Accounts are established solely for the benefit of the disabled individual;
- The account in the trust is established by the individual, a parent, grandparent, legal guardian, or a court; and
- The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the State the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a State Medicaid plan.

#### **66.5. Assistant Attorney General Evaluation**

All trusts, with the exception of some burial trusts, must be evaluated by a Virginia Assistant Attorney General (AAG). Forward a copy of the trust along with other appropriate documents to the area AG consultant. The consultant will evaluate the documents and forward them to the AAG when appropriate. Allow at least two weeks for a response. **The worker will use the AAG's evaluation to determine if the trust is or is not a resource.**

#### **66.6. Trusts Which Are Resources**

If an individual (applicant/recipient) **has legal authority to revoke** the trust and use the funds to meet his food, clothing or shelter needs, **or** if the individual **can direct the use of the trust principal** for his/her support and maintenance under the terms of the trust, the trust **principal is** a resource.

##### **66.6.1. Trust Principal**

When the trust principal is a resource, its value is determined by evaluating each asset in the trust. Each asset's countable value is determined by applying the resource policy **and exclusions** that are specific to the type of asset being evaluated. The total countable value of all trust assets is the countable resource value of the trust.

**Note:** Earnings or additions are not included in the principal in the month that they are credited or transferred into the trust because they are considered under income counting rules in that month. See Unearned Income Chapter I.

### **66.6.1.1. Excluded Resources in a Trust**

If an individual places an excluded resource in a trust and the trust is a countable resource, the resource exclusion can still be applied to that resource. For example, if an individual transfer's ownership of his/her excluded home to a trust and the trust is a countable resource, the home is still subject to exclusion as home property. See Home Property Chapter E – 35.

#### **Example**

An applicant's revocable trust contains \$1,500 cash, a \$100,000 home to which the individual intends to return and a \$15,000 automobile that the individual's household uses for transportation. The total value of the trust is \$116,500. **The countable value is determined by applying resource policy to each of the trust assets.** The home is excluded as home property as the applicant has an equitable ownership in the property, it was his home and he intends to return to it. The automobile is exempted under the vehicle policy that permits one vehicle to be excluded for household transportation. Only the cash in the trust has a countable value, \$1,500. The total countable resource value of the trust is \$1,500. (See Home Property Chapter E – 35 and Automobiles Chapter E - 15)

### **66.6.2. Trust Payments**

If the trust principal is a resource, disbursements from the trust to or for the benefit of the individual are not income but conversion of a resource. Disbursements, not to or for the benefit of the individual (or spouse), need to be evaluated as resource transfers. See Resource Transfers Chapter G.

### **66.7. Trusts Which Are Not Resources**

If an individual **does not** have the legal authority to revoke the trust or direct the use of the trust assets for his/her own support and maintenance, the trust principal **is not** the individual's resource for AG purposes.

If the trust principal is not a resource, disbursements from the trust may be income to the AG recipient beneficiary. Cash paid directly to the individual is unearned income. See Trust Disbursements Chapter I - 64.

### **66.7.1. Mandatory Trust Payments**

If the trust principal is not a resource but provides for mandatory payments to the beneficiary and the beneficiary is not prohibited from anticipating, assigning or selling the right to future payments, **the current value of these payments may be a resource** to the beneficiary.

#### **66.7.1.1. Value**

Current resource value is assumed to be the total of all payments to be received in the future. If the trust identifies the period over which the payments are to be made, the resource value will be the total amount that will be received within that period. If the payments are to continue for life, determine the countable resource value by multiplying the total amount to be received within a 12 month period times the individual's life expectancy.

The individual **may rebut** the value by providing a written statement from a knowledgeable source such as a bank or other entity whose professional duties include the sale and purchase of future benefits.

Use the Life Expectancy Table below to determine the individual's life expectancy. If the individual's age falls between the ages listed in the table, use the next higher age.

**Example** - A trust provides for payment of \$100 (spending money) per month for life to the 42 year old beneficiary. Because the trust does not prohibit the sale of future benefits, the beneficiary may be able to sell the right to future payments for a lump-sum settlement. The value of the payments to be received over the lifetime of the individual is a resource.

\$1200 a year X 37 years (life expectancy at 45) = \$44,400  
countable resource value

<i>Life Expectancy Table</i>		
<i>by age and sex:</i>		
<i>Actuarial Life Table, 2013</i>		
<i>Office of the Chief Actuary, SSA</i>		
All races		
Age	Male	Female
0	76.28	81.05
5	71.87	76.56
10	66.91	71.60
15	61.96	66.64
20	57.14	56.85
25	52.47	56.85
30	46.5	51.1
35	43.17	47.19
40	38.53	42.43
45	33.98	37.73



<i>Life Expectancy Table</i>		
<i>by age and sex:</i>		
<i>Actuarial Life Table, 2013</i>		
<i>Office of the Chief Actuary, SSA</i>		
50	29.58	33.16
55	25.41	28.74
60	21.48	24.46
65	17.75	20.32
70	14.24	16.43
75	11.03	9.64
80	8.20	9.64
85	4.03	4.80
90	4.03	4.80
95	2.82	3.34
100	2.12	2.45
105	1.60	1.78

**66.8. Verification****66.8.1. Written Trust**

Obtain a copy of the trust document and related documents.

**66.8.2. Oral Trusts**

Obtain from all parties signed statements describing the arrangement.

**Note:** Virginia does recognize oral trusts as binding.

**66.8.3. Written and Oral**

Obtain from the trustee:

- **A statement to include**
  - The name of the grantor(s) – the individual(s) whose funds/property were used to establish the trust.
  - The amount of cash or the value of property each grantor placed in the trust.
  - The date the trust was established.
  - The date the individual first transferred his/her assets into the trust.
- **Verification of**
  - The current value of the trust if it is a cash trust.
  - A list of personal and/or real property that is owned by the trust.
  - Dates, amounts, to whom and for what purposes all distributions were made during the past 12 months.
  - Dates, amounts and the source of all additions to the trust during the past 12 months.

## **67. Trust Policy B**

Trusts may or may not be a resource. If a trust that was established by the individual is revocable, the individual's portion of the trust principal is a resource to the individual. If the trust is irrevocable, the trust principal is not a resource but disbursements from the individual's portion of the trust principal may be.

This section of policy applies to **trusts established with the assets of an individual (or spouse) on or after 1/1/00.**

- **Trust Established by an Individual**

An individual is considered to have established a trust if any assets of the individual (or spouse), regardless of how little, were transferred to a trust other than by a will.

- **The transfer of an individual's property to an existing third party trust is considered to be the establishment of a trust** subject to the provisions of this section if:
  - The transfer occurs on or after 1/1/00; and
  - The principal of the trust does not contain property transferred from the individual prior to 1/1/00.

### **67.1. Trust Rules Versus Transfer Rules for Assets in a Trust**

When an individual transfers assets to a trust, he/she generally transfers ownership of the asset to the trustee. In some cases, this could be considered a transfer of resources. In order to avoid both counting a trust as a resource and imposing a transfer of resources penalty for the same transaction, **the trust provisions take precedence over the transfer provisions.** If there are portions of the trust that cannot be counted as a resource, then the transfer rules may apply to that portion of the trust. See Resource Transfers Chapter G.

### **67.2. Trust Evaluation**

These provisions apply to trusts **without regard** to:

- The purpose for which the trust was established;
- Whether the trustees have or exercise any discretion under the trust;
- Any restrictions on when or whether distributions may be made from the trust;  
or

- Any restrictions on the use of distributions from the trust.

#### **67.2.1. Exculpatory Clause**

**No clause or requirement in the trust**, no matter how specifically it applies to AG or other Federal or State program (i.e., exculpatory clause), **precludes a trust from being evaluated** under the rules in this section.

**Note:** While exculpatory clauses, use clauses, trustee discretion and restrictions on distributions, etc. do not affect a trust's countability, they do have an impact on how the various components are treated. For example, a prohibition in a discretionary irrevocable trust that limits the trustee to distributing no more than \$10,000 to an individual has no effect on whether or not the trust is countable, but limits the amount that is countable to \$10,000.

### **67.3. Verification**

#### **67.3.1. Written Trust**

Obtain a copy of the trust document and related documents.

#### **67.3.2. Oral Trusts**

Obtain from all parties signed statements describing the arrangement.

**Note:** Virginia does recognize oral trusts as binding.

#### **67.3.3. Written and Oral**

Obtain from the trustee:

- **A statement to include**
  - The name of the grantor(s) – the individual(s) whose funds/property were used to establish the trust.
  - The amount of cash or the value of property each grantor placed in the trust, initially and subsequently.
  - The date the trust was established.
  - The date the individual first transferred his/her assets into the trust.

- **Verification of**

- The current value of the trust if it is a cash trust.
- A list of personal and/or real property that is owned by the trust.
- Dates, amounts, to whom and for what purposes all distributions were made during the past 12 months.
- Dates, amounts and the source of all additions to the trust during the past 12 months.
- Signed documents between organizations making payments to the individual when the individual is legally entitled to the payments and the payments have been assigned, either revocably or irrevocably, to the trust.

#### **67.4. Assistant Attorney General Evaluation**

All trusts, with the exception of some burial trusts, must be evaluated by a Virginia Assistant Attorney General (AAG). Forward a copy of the trust along with other appropriate documents to the area AG consultant. The consultant will evaluate the documents and forward them to the AAG when appropriate. Allow at least two weeks for a response. **The worker will use the AAG's evaluation to determine if the trust is or is not a resource.**

#### **67.5. Revocable Trusts**

A revocable trust is one that can be dissolved and the assets of the trust returned to the grantor. If a trust that was established by the individual is revocable, **the individual's portion of the trust principal** is a resource to the individual.

##### **67.5.1. Disbursements To or for the Benefit of the Individual**

Disbursements from the trust principal (or the individual's portion of the principal) to or for the benefit of the individual are not income, but conversion of a resource. However, disbursement of trust earnings, e.g., interest, is income. See Trust Disbursements Chapter I - 64.

##### **67.5.2. Disbursements Not to or for the Benefit of the Individual**

Distributions to or for the benefit of someone other than the individual is a transfer of resources as of the date of the payment. See Resource Transfers Chapter G.

### **67.5.3. Value**

When the trust principal is a resource, its value is determined by evaluating each asset in the trust. Each asset's countable value is determined by applying the resource policy **and exclusions** that are specific to the type of asset being evaluated. The total countable value of all trust assets is the countable resource value of the trust.

#### **67.5.3.1. Excluded Resources in a Trust**

If an individual places an excluded resource in a trust and the trust is a countable resource, the resource exclusion can still be applied to that resource. For example, if an individual transfer's ownership of his/her excluded home to a trust and the trust is a countable resource, the home is still subject to exclusion as home property. See Home Property Chapter E – 35.

#### **Example**

An applicant's revocable trust contains \$1,500 cash, a \$100,000 home to which the individual intends to return and a \$15,000 automobile that the individual's household uses for transportation. The total value of the trust is \$116,500. The countable value is determined by applying resource policy to each of the trust assets. The home is excluded as home property as the applicant has an equitable ownership in the property, it was his home and he intends to return to it. The automobile is exempted under the vehicle policy that permits one vehicle to be excluded for household transportation. Only the cash in the trust has a countable value, \$1500. The total countable resource value of the trust is \$1,500. (See Home Property Chapter E – 35 and Automobiles Chapter E - 15)

### **67.5.4. Relationship to Transfer Penalty**

Any disbursements from a revocable trust that are not made to, or for the benefit of, the individual are considered a transfer of resources. See Resource Transfers Chapter G.

## **67.6. Irrevocable Trusts**

Irrevocable trusts cannot be dissolved but may permit distributions under certain circumstances. The principal itself is not a resource but disbursements from the

individual's portion of the trust principal may be. Disbursements, payments, that can be made **to or for the benefit of the individual or individual's spouse**, under **any** circumstance, no matter how unlikely or distant in the future, **are** a resource. Determine if the Undue Hardship (Chapter E - 66.6.4.3), Special Needs (Chapter E - 66.6.4.1), or Pooled Trust (Chapter E - 66.6.4.2) exclusions apply.

If there are no circumstances under which payment from the trust could be made to or for the benefit of the individual or the individual's spouse, it is not a resource. Develop the establishment of the trust as a transfer of resources. See Resource Transfers Chapter G.

#### **67.6.1. Payments to an Individual**

Payments are considered to be made **to the individual** when any amount from the trust, including amounts from the principal or income produced by the trust, is paid directly to the individual or someone acting on his/her behalf, e.g., guardian or legal representative.

#### **67.6.2. Payments on Behalf of/for the Benefit of an Individual**

Payments are considered to be made **on behalf of** or **to or for the benefit of** an individual if payments from the principal or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment.

Such payments could include purchase of food, clothing, shelter, household goods, personal items, medical services or personal attendant care.

#### **67.6.3. Value**

The resource value of an irrevocable trust is the total amount of payments that can be made from the individual's portion of the trust to or for the benefit of the individual or spouse. Restrictions within the trust may limit the amount and purpose of distributions.

#### **Examples**

- An irrevocable trust provides that the trustee can disburse \$2,000 to, or for the benefit of, the individual out of a \$20,000 trust. Only \$2,000 is considered to be a resource. The other \$18,000 is considered to be an amount which cannot, under any circumstances, be paid to the individual. It is not a resource and may be subject to the transfer of resources rule.

- If a trust contains \$50,000 that the trustee can pay to the beneficiary only in the event that he/she needs a heart transplant or on his/her 100th birthday, the entire \$50,000 is considered to be a payment which could be made to the individual under some circumstance and is a resource.

#### **67.6.3.1. Individual's Assets Form Only a Part of the Trust**

In the case of an irrevocable trust where the assets of the individual (or spouse) were transferred along with the assets of another individual(s), **these provisions apply to the distributions made from an individual's (or spouse's) assets in the trust.** Distributions made from the third party's trust assets must be evaluated under Trust Policy A. See Chapter E – 64.

**Example:** Jimmy Smith is an adult with cerebral palsy. His grandparents left \$75,000 in trust for him in their wills. Recently (after 1/1/00), Mr. Smith won an employment discrimination lawsuit and was awarded a \$1,500 judgment which was deposited into the trust established by his grandparents. The \$1,500 of Mr. Smith's funds is subject to these provisions, Trust Policy B, and could be a resource if payment could be made to or for Mr. Smith's benefit. The \$75,000 deposited by his grandparents is not subject to these provisions but must be evaluated under Trust Policy A.

##### **67.6.3.1.1. Disbursement**

Consult the trust document to determine from which portion of the trust disbursements were made. If the trust document does not specify, a statement from the trustee regarding the source of the disbursements will be determinative. If the trustee is unable to provide a statement, presume that disbursements were made first from the portion of the trust established with the funds of other individuals. When that portion is depleted, presume that disbursements were made from the portion of the trust established with funds of the individual.



#### **67.6.4. Exceptions to Counting Irrevocable Trusts Established on or after 1/1/00**

Three types of written irrevocable trusts are excluded as resources: Special Needs Trusts Established under Section 1917(d)(4)(A) of the Social Security Act, Pooled Trusts Established under Section 1917(d)(4)(C) of the Social Security Act, and trusts that if counted would result in undue hardship to the individual. Each irrevocable trust must be evaluated to determine if one of the exclusions applies.

##### **67.6.4.1. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act**

Although this exception is commonly referred to as the **special needs** trust exception, the exception applies to any trust meeting the following requirements. The trust must

- Contain the assets of an individual **under age 65** and who is **disabled** by SSI standards.
  - This exception does not apply to a trust established for the benefit of an individual age 65 or older.
  - If the trust was established for the benefit of a disabled individual prior to the date the individual attained age 65, the exception continues to apply after the individual reaches age 65.
- **Be established for the benefit of such individual by a parent, grandparent, legal guardian or a court; and**
  - This requirement refers to the individual who physically took action to establish the trust even though the trust was established with the assets of the AG claimant/recipient.
  - The special-needs trust exception does not apply to a trust established by the individual himself/herself.
- **Contain specific language that provides that upon the death of the individual, the State will receive all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan.**

#### **67.6.4.2. Pooled Trusts Established under Section 1917(d)(4)(C) of the Act**

A pooled trust is a trust established and administered by a non-profit organization. It is sometimes called a “master trust” because it contains the assets of many different individuals, each in separate accounts established by individuals, and each with a beneficiary.

The master trust is established by the nonprofit association, and the individual trust accounts within the master trust, are established by the individual or another person for the individual.

This exclusion applies to a trust containing the **assets of a disabled individual** which meets the following conditions:

- The pooled trust is established and maintained by a nonprofit association;
  - A nonprofit association is an organization that has tax-exempt status under section 501(a) of the IRC.
    - Contact the organization and request a copy of its IRS section 501(c) tax-exempt certification
- Separate accounts are maintained for each beneficiary, but assets are pooled for investing and management purposes;
  - The trust must be able to provide an individual accounting for the individual.
- Accounts are established solely for the benefit of the disabled individual;
- The account in the trust is established by the individual, a parent, grandparent, legal guardian, or a court;
  - This requirement refers to the individual who physically took action to establish the trust even though the trust was established with the assets of the AG claimant/recipient.

- The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the State the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a State Medicaid plan.

**Note:** There is **no age restriction** under this exception.

### **67.6.4.3. Undue Hardship**

The counting of an irrevocable trust as a resource is not applicable in any month for which counting the trust would cause undue hardship to the individual. Counting the trust as a resource resumes for any month(s) in which undue hardship does not exist.

#### **67.6.4.3.1. Applicability**

Consider the possibility of undue hardship under this provision only when:

- Counting an **irrevocable** trust as a resource results in the individual's ineligibility for AG due to excess resources;
- The individual alleges in a written statement or information in the file indicates that not receiving AG would deprive him/her of food or shelter; and
- The trust specifically prohibits disbursements or prohibits the trustee from exercising his/her discretion to disburse funds from the trust for the individual's support and maintenance

**Note:** Since an individual may revoke a revocable trust and access the funds for his/her support and maintenance, the requirements for undue hardship cannot be met if the individual established a revocable trust.

**67.6.4.3.2. Undue hardship exists in a month if:**

- Failure to receive AG payments would deprive the individual of food or shelter; and
- The individual's available funds do not equal or exceed the AG rate for the area

**Note:** Inability to obtain medical care does not constitute undue hardship for AG purposes.

**67.6.4.3.3. Loss of Shelter**

For purposes of this provision, an individual would be deprived of shelter if:

- He/she would be subject to eviction from the ALF if AG benefits were not received; and
- There is no other affordable housing available, or there is no other housing available with necessary modifications for a disabled individual

**67.6.4.3.4. Available Funds**

In determining the individual's available funds we include:

- **Income**
  - All **countable income** received in the month(s) for which undue hardship is determined.
  - All excluded income received in the month(s) for which undue hardship is an issue.

Do not include AG payments received or items that are not income per Chapter I – 3.

- **Resources**

- All countable liquid resources as of the first moment of the month(s) for which undue hardship is at issue.

Liquid resources are any resources in the form of cash or in any other form which can be converted to cash within 20 workdays. See Conditional Benefits Chapter F – 4.2 for further information on liquid resources.

- All liquid resources excluded as of the first moment of the month(s) for which undue hardship is at issue.

AG benefits retained into the month following the month of receipt are counted as a resource for purposes of determining available funds.

Do not include non-liquid resources or assets determined not to be a resource.

**Example**

Frank Williams filed for AG in 1/06 as an aged individual. In 2/06, he received an insurance settlement from an accident that was placed in an irrevocable trust. After determining that he met the other requirements for undue hardship, the worker determined Mr. Williams' available funds.

He receives \$750 title II benefits and \$10 per month interest on a bank account. His only liquid resource is the bank account that has \$600 in it. The total of \$1360 in available funds (\$750 title II, \$10 interest and \$600 bank account balance) means that undue hardship does not apply in 3/06 because that amount exceeds the AG rate.

Mr. Williams reapplies in 6/06. He presents evidence that he has spent down the \$600 in his bank account on living expenses in the past 3 months. As of 6/06, he has no liquid resources and his income total of \$650 is below the AG rate for his area. Mr. Williams meets the undue hardship test for 6/06. The trust does not count as his resource in that month. If his situation does not change, he will qualify for an ongoing AG payment.

**67.6.4.3.5. Follow-Up To A Finding Of Undue Hardship**

If the individual's income and resources are not expected to change significantly, contact the individual **no less than every 6 months**. If the individual's income and resources are expected to fluctuate, the contact period should be shorter, even monthly in some cases.

**At each contact:**

- Obtain the individual's signed allegation that failure to receive AG will deprive the individual of food or shelter.
- Determine whether total income and liquid resources exceeds the AG rate.
- If undue hardship is expected to continue in the future period, continue payment.
- If it is not expected to continue, redetermine resource eligibility counting the trust as a resource.

## **68. U.S. Savings Bonds**

U.S. Savings Bonds are obligations of the Federal Government. Unlike other government bonds, they are not transferable; they can only be sold back to the Federal Government. U.S. Savings bonds become countable resources after a mandatory retention period.

Savings bonds are issued as traditional paper bonds or as book-entry securities. Book-entry securities (also called “savings security instruments”) are electronic savings bonds sold online by the U.S. Treasury Department. No paper bond is issued when an individual purchases an electronic savings bond. Currently, only Series EE and Series I savings bonds are issued as electronic bonds. Record of ownership of electronic savings bonds is maintained electronically by the Treasury Department.

### **68.1. Mandatory Retention Period**

The mandatory retention period is the same for paper Series EE and I bonds and electronic Series EE and I bonds. Series E bonds have not been issued since June 1980.

- U.S. Savings Bonds (including Series E, EE, and I) issued prior to 2/1/03 are resources. Their retention period has passed.

Series EE and Series I U.S. Savings Bonds issued on or after 2/1/03 have a 12 month mandatory retention period. They are not resources during that period. They are resources (not income) as of the first moment of the thirteenth month.

- Series H and HH bonds have a 6-month mandatory retention period regardless of the issue date. They are resources (not income) as of the first moment of the seventh month.

### **68.2. Paper Savings Bonds**

#### **68.2.1. *Ownership***

##### **68.2.1.1. Sole Ownership**

The individual in whose name a U.S. Savings Bond is registered owns it. The Social Security Number shown on a bond is not proof of ownership.

##### **68.2.1.2. Co-Ownership**

The co-owners of a U.S. Savings Bond own equal shares of the redemption value of the bond.

### **68.2.1.3. Beneficiary Registration**

Beneficiary registration means that there are two persons named on the paper savings bond—the owner and a beneficiary. Their names are connected by the initials “POD” (“Payable on Death”) on the face of the savings bond. The owner has sole ownership rights during his or her lifetime including redeeming the savings bond. Upon death of the owner, the beneficiary becomes the owner of the savings bond.

### **68.2.1.4. Verification of Ownership**

Have the individual submit any paper bonds in which he/she has an ownership interest. Use the name(s) shown on the bond to determine ownership.

## **68.2.2. Access**

Physical possession of a paper U.S. Savings Bond is a requirement for redeeming it. If a person other than the AG recipient will not relinquish possession of the bond, it is not a resource for AG purposes

If the individual alleges that he/she cannot submit a bond because a co-owner or other individual has, and will not relinquish, physical possession of the bond, obtain from the co-owner or the other individual a signed statement verifying that he/she:

- Has physical possession of the bond;
- Will not allow the individual to cash the bond; and
- In the case of a co-owner, will not cash the bond and give the individual his/her share of its value.

## **68.2.3. Value of Paper Bonds**

### **68.2.3.1. Series E, EE, And I Bonds (Paper)**

Series E and EE bonds are sold at one half of their face value and they increase in value as interest accrues. Series I bonds are sold at their full face value and they increase in value as interest accrues. To determine the value of a paper bond:



- Use the Savings Bond Calculator or the Comprehensive Savings Bond Value Table on the U.S. Bureau of Public Debt's Internet web site at [https://www.treasurydirect.gov/indiv/tools/tools\\_saving\\_sbondcalc.htm](https://www.treasurydirect.gov/indiv/tools/tools_saving_sbondcalc.htm)
- Use a current copy of the Table of Redemption Values for U.S. Savings Bonds; or
- Obtain the value by telephone from a local bank. The bank will need the series, denomination, date of purchase and/or issue date.

#### **68.2.3.2. Series H And HH Bonds**

Series H and HH bonds are issued only as paper bonds, not as electronic bonds. They are issued at their face value and do not increase in value. Instead, they pay interest to the owner each six months which is unearned income. After the 6-month retention period, the redemption value of a series H or HH bond is its face value. Do not verify the value of an H or HH bond using the procedures above.

### **68.3. Electronic Savings Bonds**

#### **68.3.1. *Ownership***

##### **68.3.1.1. Single Owner Bond**

The individual named on the Treasury Department's record for that electronic savings bond is the owner. A record of bond ownership is maintained under an account number issued by the Treasury to that individual.

##### **68.3.1.2. "With" Bonds**

A "with" bond is a bond whose titling lists one person in addition to the owner. The bond owner may grant transaction authority that will allow the "with" person to cash the bond. However, even with transaction authority the "with" person is not considered an owner of the bond. The owner can grant transaction authority at the time the bond is purchased, or later. The owner can also remove the "with" person from the bond at any time without that person's permission.

**EXAMPLE:** Ownership record is titled “John Smith with Mary Smith.” Mary is not an owner but could redeem the bond for him if given transaction authority by John Smith.

#### **68.3.1.3. Verification of Ownership**

When an individual alleges ownership of electronic savings bonds, it will be necessary to document the bond ownership by asking the individual to download a record of the individual’s bond holdings from the Treasury Department.

#### **68.3.2. Beneficiary Registration**

The bond owner can name a beneficiary of the electronic savings bond. The owner has sole ownership rights during his or her lifetime and is the only person who can redeem the bond. When the owner dies, the beneficiary becomes the owner of the bond and can cash the bond.

#### **68.3.3. Access**

With electronic savings bonds, a paper bond is not issued. Thus, physical possession of the bond is not a requirement for redeeming it. The owner of an electronic savings bond can redeem it at any time after the mandatory retention period.

#### **68.3.4. Value**

Electronic Series EE and I bonds are always issued at their full face value. As interest accrues, the bond’s value is the face value plus the accrued interest. Unlike paper bonds, there are no set denominations for electronic Series EE and I bonds. Determine the value of electronic savings bonds as follows.

- Ask the individual to obtain his or her “Current Holdings” list from the Treasury Direct web site. <http://www.savingsbonds.gov/>
- Verify the total current value of all of the individual’s electronic Series EE and I bonds using the Current Holdings list.
- Use the “Current Holdings—Summary” page to verify the number of bonds, face value of the bonds, issue dates, confirmation numbers, and the value of individual bonds.

- If the individual alleges that the Current Holdings list cannot be obtained because the password or account number has been lost, the individual must contact the Treasury Department to retrieve them.

**Note:** The Current Holdings list is protected by password, so only the bond owner can access this information. The individual will also need to know his or her account number (issued by Treasury) to access the Current Holdings list.

## **69. Veterans' Children With Certain Birth Defects Payments**

The Department of Veterans Affairs (VA) provides three types of benefits to natural children of veterans:

- Benefits for Vietnam veterans' children born with spina bifida,
- Benefits for Korea service veterans' children born with spina bifida, and
- Benefits for women Vietnam veterans' children born with certain birth defects.

The child status is not changed by age and marital status. Children do not receive benefits under more than one of these programs. VA determines eligibility for VA benefits.

### **69.1. Exclusion**

Unspent payments paid to Veterans' Children with Certain Birth Defects Payments are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **69.2. Verification**

Use documents such as letters or notices from VA to verify the type of payment. If documents from VA do not show the type of the payment or if no documents are available to verify the type of payment, contact VA.

## **70. Victims' Compensation Payments**

Victims' Compensation Payments are payments received from a fund established by a State to aid victims of crime.

### **70.1. Exclusion**

Unspent payments received from a fund established by a State to aid victims of crime are excluded from resources for 9 months. To be excluded from resources under this provision, the individual must demonstrate that the payment was compensation for expenses incurred or losses suffered as the result of crime.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

### **70.2. Interest**

Interest earned on unspent victims' compensation payments is not excluded from income or resources by this provision.

### **70.3. Verification**

If an individual alleges that his or her resources include unspent victims' compensation payments, ask the individual to submit evidence that:

- Verifies the source, date(s), and amount(s) of such payment(s); and
- Establishes that the payment was paid as compensation for expenses incurred or losses suffered as the result of a crime.

Accept the following as evidence establishing that the payment was paid for expenses incurred or losses suffered as the result of a crime:

- A letter or check stub accompanying the payment indicating the reason for the payment;
- A subsequent letter requested by the claimant/recipient to clarify the reason for the payment; or any other document indicating the reason for the payment.