CHAPTER M11

AGED, BLIND, AND DISABLED (ABD) RESOURCES*

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CHAPTER M11

AGED, BLIND, AND DISABLED (ABD) RESOURCES

SUBCHAPTER 10

RESOURCES - GENERAL

M1110 Changes

Changed With	Effective Date	Pages Changed
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OVERVIEW

M1110.001 ROLE OF RESOURCES

A. Introduction

As a program based on need, Medicaid uses the value of a person's countable resources as one of two financial criteria in determining eligibility. The other criterion is income.

B. Policy Principles

1. Monthly Determinations

Eligibility with respect to resources is a determination made for each calendar month, beginning with the third month prior to the month in which the application is received. Resource eligibility exists for the full month if countable resources were at or below the applicable resource limit for any part of the month.

2. Countable Resources

Not everything a person owns (i.e., not every asset) is a resource and not all resources count against the resource limit. The Social Security Act and other Federal statutes require the exclusion of certain types and amounts of resources. Any assets that are resources but not specifically excluded are "countable." See:

- M1110.003 B.2. for the resource limits;
- S1110.100 for the distinction between assets and resources; and
- S1110.210 for a listing of exclusions.

3. Whose Resources Can Count

Medicaid law specifies that resources are only considered available between spouses and from parents to their children under age *21*, and for certain blind and disabled children ages 18 to 21.

See M1110.530 for blind and disabled children age 18 to 21.

4. Whose Resources Can Not Count

Medicaid law will not allow certain resources to be considered in determining eligibility. Do not count resources:

- From a step-parent.
- From siblings.
- From spouse or parent living apart unless it is a voluntary financial contribution. (Exception for Long-term care)
- From an alien sponsor.

M1110.003 RESOURCE LIMITS

A. Introduction

The resource limit is the maximum dollar amount of countable assets an individual, couple, or family may own and still meet the established criteria for Medical Assistance in an ABD category. These amounts are established by law.

B. Policy Principles

1. Resource Ineligibility

An individual (or couple) with countable resources in excess of the applicable limit is not eligible for Medicaid.

2. Resource Limits

ABD Eligible Group	One Person	Two People
Categorically Needy Medically Needy	$2,000	$3,000
ABD With Income ≤ 80% FPL	$2,000	$3,000
QDWI	$4,000	$6,000
QMB SLMB QI	**Calendar Year** ***2016*** *(no change)* *$7,280* **2015** $7,280	**Calendar Year** ***2016*** *(no change)* *$10,930* **2015** $10,930

3. Change in Marital Status

A change in marital status can result in a change to the applicable resource limit. The resource limit change is effective with the month that we begin treating both members of a couple as individuals. For example, separation from an ineligible spouse can change the limit from $3,000 to $2,000. See M1110.530 B.

4. Reduction of Excess Resources

Month of Application

Excess resources throughout the month of application causes ineligibility for the application month. Reduction of excess resources within the application month can cause resource eligibility for that month.

ASSETS vs. RESOURCES

S1110.100 DISTINCTION BETWEEN ASSETS AND RESOURCES

A. Introduction

Not everything an individual owns (assets) are resources for Medicaid purposes. Moreover, in certain situations, an asset that is not a resource may become one at a later date or vice versa. The distinction is important since:

- an asset that is not a resource does not count against the resource limit; and
- proceeds from the sale or trade of a resource (i.e., the amount representing conversion of principal from one form to another) are also resources but what a person receives from a nonresource is subject to evaluation as income at the time of receipt.

EXAMPLE: An individual is the beneficiary of a trust which is not his resource. Therefore, when the trust pays him his monthly allowance, he receives income.

B. Policy Principles

1. Resources Defined

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

- 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.

2. Resources with Zero Value

Property does not cease to be a resource simply because it has no current market value. Even though there is no value to count, the property remains a resource for so long as it meets the criteria in 1. above. If the property develops a market value at a later time, there has been an increase in the value of a resource rather than a receipt of income.

3. Property That Is Not a Resource

Any property (an asset) that does not meet the criteria in 1. above is not a resource even though it may be an asset (e.g., an individual who has an ownership interest in property but is not legally able to transfer that interest to anyone else does not have a resource).

C. Definitions

1. Real Property

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

2. 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.

D. Related Policies

1. Conserved Fund in Change-Of-Payee Situations

Conserved funds (or other property) remain resources even during a period when they are being held in a bank account or by the paying agency because it is necessary to obtain a new payee or guardian. See S1120.022.

2. Liquid vs. Nonliquid Resources

Except for cash, any kind of real or personal property may be either liquid or nonliquid. For the distinction between liquid and nonliquid resources, and its significance, see S1110.300.

3. Evaluation of Receipt of Property As Income

When an individual first receives property (as a gift or inheritance, for instance, but not as a purchase or trade of one resource for another), the new property is subject to evaluation under the income rules for the month of receipt and under the resources rules thereafter.

4. Discovery of Unknown Assets

For the resources treatment of previously unknown assets, see S1110.117.

S1110.115 ASSETS THAT ARE NOT RESOURCES

A. Policy Principle--General Rule

Assets of any kind are not resources if the individual does not have:

- any ownership interest; and
- the legal right, authority, or power to liquidate them (provided they are not already in cash); or
- the legal right to use the assets for his/her support and maintenance.

EXAMPLE: An individual owns a block of stock jointly with his brother. Although the form of ownership is one which would permit either to sell the property without the other's consent, the brothers have a legally binding agreement that one will not sell without consent of the other. The individual's brother refuses his consent, thereby making the stock not a resource for the individual. However, if the brother should give his consent, the stock would be subject to evaluation under the resources-counting rule beginning with the month following the month of consent.

The value of the stock would **not** be counted as income to the individual in the month consent is given.

B. Policy Principles--Certain Specific Assets That Are Not Resources

Though not an exhaustive listing, the term "resources" does not apply to the assets described below.

1. Cash to Purchase Medical or Social Services

For 1 calendar month following its receipt, cash paid by a recognized medical or social services program is not a resource provided the cash is:

- not income under S0815.050; and
- not repayment for a bill already paid.

See S1120.110.

2. Home Energy Assistance/ Support and Maintenance Assistance

(HEA/SMA) HEA/SMA which is excluded from income and is not a resource regardless of how long a person retains it (S1120.100).

S1110.117 UNKNOWN ASSETS

A. Policy

An individual may be unaware of his or her ownership of an asset. If this is the case, the asset is not a resource during the period in which the individual was unaware of his/her ownership.

The value of the previously unknown asset, including any monies (such as interest) that have accumulated on it **through the month of discovery by the individual,** is **income** (not a resource) in the **month of discovery.**

For months after the month of discovery, the previously unknown asset is a **resource** subject to the usual resource-counting rules.

B. Procedure-Documentation

When an individual alleges having been unaware of his/her ownership of an asset, obtain a signed statement from the individual. Also obtain any available supporting documentation, including (but not limited to) signed statements from other individuals who are familiar with the individual's situation.

Document the file with your determination regarding the alleged "unknown" resource.

C. Examples

1. As a result of contacting a tax assessor's office, the eligibility worker (EW) learns that the recipient has an ownership interest in previously unreported property (undeveloped land). The property is co-owned with another individual who has always paid the property taxes. Contacts with the recipient and the other individual confirm the recipient's allegations that he was unaware the original owner of the property has died and, therefore, the recipient never knew that he had inherited an ownership interest. The value of the recipient's ownership interest is counted as **income** in the month he learned of the ownership interest and as a **resource** in the following month.

C. Example (cont.)

2. While in the hospital, the recipient received a check for $25 as a "get-well" gift from her neighbors. She was unaware of the gift. At the time, her affairs were being managed by her daughter, who put the check in a desk drawer and failed to tell the recipient anything about it.

   In the month the recipient learns of the existence of the check, the check is counted as her **income**. In the following month, the $25 is counted as her **resource.**

COUNTABLE VS. EXCLUDED RESOURCES

S1110.200 COUNTABLE RESOURCES

Policy

The value of any asset that meets the definition of a resource counts against the applicable resource limit to the extent that the instructions in S1130.100 do not provide for its exclusion.

M1110.210 EXCLUDED RESOURCES

A. Introduction

Once you have determined that an asset meets the definition of a resource, it is necessary to determine that resource's effect on eligibility. Certain resources do not count against the resource limit; i.e., they are excluded.

B. Description -- List of Resource Exclusions

Exclusion	**Reference**	**No Limit on Value and/or Length of Time**	**Limit on Value and/or Length of Time**
Home serving as the principal place of residence, including the land on which the home stands (*contiguous property exempt for QDWI, QMB, SLMB, *QI and ABD 80% FPL)*.	M1130.100	* X	X
Funds from sale of a home if reinvested timely in a replacement home	S1130.110		X
Jointly-owned real property which cannot be sold without undue hardship (due to loss of housing) to the other owner(s)-For QMB, QDWI, SLMB, *QI and ABD 80% FPL* only	*S1130.130* Appendix 1 *Appendix 2*	X	
Real property for as long as the owner's reasonable efforts to sell it are unsuccessful	M1130.140	X	
Restricted, allotted Indian land if the Indian/owner cannot dispose of the land without the permission of other individuals, his/her tribe, or an agency of the Federal Government	S1130.150	X	

B. Description--List of Resource Exclusions

Exclusion	**Reference**	**No Limit on Value and/or Length of Time**	**Limit on Value and/or Length of Time**
Life insurance, depending on its face value	S1130.300		X
Burial space or plot held for an eligible individual, his/her spouse, or member of his/her immediate family	M1130.400	X	
Burial funds for an individual and/or his/her spouse	M1130.410		X
Certain prepaid burial contracts	M1130.420		X
Household Goods and Personal Effects	M1130.430	X	
Property essential to self-support	S1130.500-.504		X
Resources of a blind or disabled person which are necessary to fulfill an approved plan for achieving self-support	S0870.001 ff. S1130.510		X
Retained retroactive SSI or RSDI benefits	S1130.600		X
Radiation Exposure Compensation Trust Fund payments	S1130.680	X	
German reparations payments made to World War II Holocaust survivors	S0830.710 S1130.610	X	
Austrian social insurance payments	S0830.715 S1130.615	X	
Japanese-American and Aleutian restitution payments	S0830.720	X	
Federal disaster assistance received because of a Presidentially declared major disaster, including accumulated interest	S0830.620 S1130.620	X	
Cash (including accrued interest) and in-kind replacement received from any source at any time to replace or repair lost, damaged, or stolen excluded resources	S0815.200 S1130.630		X
Certain items excluded from both income and resources by other Federal statutes	S0830.055 S1130.640	Varies	
Agent Orange settlement payments to qualifying veterans and survivors	S0830.730 S1130.660	X	
Victim's compensation payments	S0830.660 S1130.665		X
Tax refunds related to Earned Income Tax Credits	S0820.570 S1130.675		X

C. References

- Identifying excluded funds that have been commingled with non-excluded funds, S1130.700

LIQUID VS. NONLIQUID RESOURCES

S1110.300 DETERMINING THE LIQUIDITY/NONLIQUIDITY OF RESOURCES

A. Policy

1. Definitions

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

Liquidity/nonliquidity has no effect on a resource's countability.

B. Reference

Liquid resources do not qualify for exclusion as property essential to self-support unless they represent necessary assets of a trade or business. See S1130.500 B.3.

S1110.305 RESOURCES ASSUMED TO BE LIQUID

A. Introduction

Cash is **always** liquid. In addition, certain noncash items are nearly always liquid.

B. Policy

1. Assumption of Liquidity

Absent evidence to the contrary, we assume that the following types of resources are liquid:

- stocks, bonds, and mutual fund shares;
- checking and savings account and time deposits;
- United States Savings Bonds, Treasury bills, notes and bonds; and
- mortgage and promissory notes.

2. Evidence to the Contrary

If there is no apparent evidence to the contrary of the assumptions in 1. above, we do not seek out any evidence to the contrary. There is no need to document a lack of evidence to the contrary.

We resolve any issue and document the file if:

- liquidity is material to a particular resource; and
- an individual's statement or information in file suggests that one of the above-listed types of resources is not liquid.

C. Examples- Evidence to the Contrary

1. Recently Issued U.S. Savings Bond: Not a Resource

a. Situation - On January 6, 1994 Ms. Minnie Marbel applied for Medicaid benefits. Among her alleged resources was a $500 series EE U.S. Savings Bond which she had won a month earlier in a Christmas raffle at church. Since series EE bonds are never redeemable for 6 months following issue, the EW questioned whether the minimum retention period had expired.

b. Analysis - The bond's issue date was December 1, 1993. Therefore, Ms. Marbel by law could not redeem it before June 1, 1994. Consequently, the bond not only was not a liquid resource, it was not a resource at all. The value of the bond, including any interest accrued, does not become a liquid resource until July 1, 1994.

2. Guardianship Account -- Guardian Dies: Non-Liquid Resource

a. Situation - Ms. Harriet Dalton had a court-appointed guardian who had sole access to Ms. Dalton's savings account. On September 8, 1988 the guardian filed for Medicaid on Ms. Dalton's behalf. On November 2, while the claim was still pending, the guardian died. Because of the delay in having a new guardian appointed and establishing a new account signatory, there was no one authorized to withdraw funds from the account for at least 60 days (and possibly longer).

b. Analysis - For September through November the account was Ms. Dalton's liquid resource because her guardian had access to it as of the first moment of each month. Beginning in December and until the first of the month in which a new guardian had access to the account, it was a nonliquid resource.

3. Comparison of Analyses in 1. And 2. Above

The guardianship account continues to be a resource because, at all times, Ms. Dalton owned it and had the legal right to use it for her own support and maintenance. The delay in appointing a new guardian who could access it within 20 days does not remove Ms. Dalton's right to the funds.

In the case of the savings bond, neither Ms. Marbel nor anyone acting on her behalf had the right, authority or power to redeem the bond for cash until 6 months from the date of issue.

S1110.310 RESOURCES ASSUMED TO BE NONLIQUID

A. Introduction

Certain non-cash resources, though they may occasionally be liquid, are nearly always non-liquid.

B. Operating Policy

1. Assumption of Nonliquidity

Absent evidence to the contrary, we assume that the following type of resources are non-liquid.

- automobile, trucks, tractors, and other vehicles;
- machinery and livestock;
- buildings, land and other real property rights; and
- non-cash business property.

2. Evidence to The Contrary

a. If there is no apparent evidence to the contrary of the assumptions in 1. above, we do not seek out any evidence to the contrary. There is no need to document a lack of evidence to the contrary.

b. In very rare situations an individual may volunteer firm evidence that one of the above types of resources is liquid (i.e., its sale has been accomplished or arranged within 20 workdays). Document the file and proceed accordingly only if the distinction is material.

C. Operating Policy-- Life Insurance

This subchapter provides no categorical assumption regarding the liquidity or non-liquidity of life insurance policies.

VALUATION OF RESOURCES

M1110.400 WHAT VALUES APPLY TO RESOURCES

A. Policy Principles

1. Definitions

a. *The current market value (CMV) or fair market value (FMV) of a resource is:*

- *Real property – 100% of the local tax assessed value.*

- Countable vehicles
  – the **average trade-in value** listed in the National Automobile Dealers Official Used Car Guide (NADA) Guide, or
  – the value assessed by the locality for tax purposes may be used, if vehicle is not listed in N.A.D.A. Guide.

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

c. 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 a debt satisfaction from the proceeds of sale.

2. Valuation

General Rule
The value of a resource is the amount of an individual's/couple's equity in it.

3. Determining the Countable Value of Real Property

The procedures for determining the countable value of real property are found in Appendix 1 to subchapter S1130. An "ABD Home Property Evaluation Worksheet" is found in Appendix 2 to subchapter S1130.

B. Related Policy

See M1110.600 concerning the points in time for establishing resource values.

OWNERSHIP INTERESTS

S1110.500 SIGNIFICANCE OF OWNERSHIP

A. Introduction

Ownership interests in property, whether real or personal, can occur in various types and forms. Since the type and form of ownership may affect the value of property and even its status as a resource, they are significant in determining resource eligibility.

B. Description-Types of Ownership

1. Sole vs. Shared Ownership

An individual may have sole ownership of a property or may share its ownership with others. See S1110.510.

2. Fee Simple Ownership

Fee simple ownership, which relates only to real property, is completely free of conditions imposed by others. See S1110.515 A.1.

3. Less than Fee Simple Ownership

a. A life estate interest conveys ownership of limited duration. See S1110.515 A.2. and B.

b. Equitable ownership can occur when an individual does not have legal title to property. See S1110.515 A.2b. and C.

4. Property Rights Without Ownership

a. A leasehold conveys a time-limited control of property but not ownership of it. See S1110.520 B.1.

b. An incorporeal interest in property is a right to use the property but without any right to possess it or sell it. See S1110.520. B.2.

C. Operating Policy--Variance in State Laws with Respect to Ownership

The explanations of ownership in the following sections represent general legal principles. However, specific points may vary with State law and issues may have to be reviewed by the Regional Office and/or Assistant Attorney General's Office.

S1110.510 SOLE VS. SHARED OWNERSHIP

A. Introduction

An individual may be the sole owner of real or personal property or may share ownership with one or more others.

B. Definitions

1. Sole Ownership

Sole ownership of (real or personal) property means that only one person may sell, transfer or otherwise dispose of the property. However, sole ownership may be subject to conditions imposed by others as, for example, sole ownership of a remainder interest in property. See S1110.515.

2. Shared Ownership

Shared ownership of (real or personal) property means that two or more people own it concurrently. See C. below concerning different types of shared ownership.

C. Descriptions- Shared Ownership

1. Tenancy-In-Common

a. Owners Do Not Have Same Interests

In tenancy-in-common, two or more persons each has 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.

b. 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.

c. Example

Don, Charles, and Fred Evans own property as tenants-in-common. Charles and Fred each owns 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 one-eighth interest as tenants-in-common with Charles and Fred who would each continue to own one-fourth interest.

2. Joint Tenancy

a. 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.

b. 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.

c. Conversion to Tenancy-in-Common

In most States, it is possible for joint tenants to take action during their lifetime to convert the joint tenancy to a tenancy-in-common (see 1. above).

3. Tenancy by The Entirety

a. 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. However, 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.

b. Survivorship Rights

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

D. Operating Policy--Shared Ownership

1. General Rule

With the exception noted below, we assume, absent evidence to the contrary, that each owner of shared property owns only his or her fractional interest in the property. We divide the total value of the property among all of the owners in direct proportion to the ownership share held by each.

2. Exception: Checking/ Savings Accounts and Time Deposits

For a joint checking or savings account or a jointly-owned time deposit, we assume that all of the funds in the account belong to the applicant(s) recipient(s), in equal shares if there is more than one applicant or recipient (S1140.205 B and .210 B).

3. Determining the Countable Value of Jointly Owned Real Property

The procedures for determining the countable value of jointly owned real property are found in Appendix 1 to subchapter S1130.

M1110.515 OWNERSHIP IN FEE SIMPLE OR LESS THAN FEE SIMPLE

A. Definitions

1. Fee Simple

Fee simple ownership means absolute and unqualified legal title to real property. The owner(s) has unconditional power of disposition of the property during his or her lifetime. Upon his or her death, property held in fee simple can always pass to the owner's heirs. Fee simple ownership may exist with respect to property owned jointly or solely.

2. Less than Fee Simple Ownership

a. Life Estate

A life estate confers upon one or more persons (grantees) certain rights in a property for his/her/their lifetimes or the life of some other person. A life estate is a form of legal ownership and usually created through a deed or will or by operation of law. See B. below.

b. Equitable Ownership

An equitable ownership interest is a form of ownership that exists without legal title to property. It can exist despite another party's having legal title (or no one's having it). See C. below.

B. Description--Life Estate

1. Rights of Life Estate Owner

a. What 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.

Whether the value of a life estate is counted as a resource depends on when the life estate was created.

- The value of a life estate created prior to August 28, 2008 is **not** counted as a resource.
- *The value of a life estate created on or after August 28, 2008 but before February 24, 2009 is a countable resource to the owner of the life estate unless the life estate is excluded under one of the real property exclusions contained in Chapter S1l.*
- The value of a life estate created on or after February 24, 2009 is **not** counted as a resource.

Exception: The value of a life estate owned by a QDWI enrollee is countable, regardless of the date on which it was created. See M1140.110 for additional information.

b. What 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.

2. Remainder Interest

a. Future Interest in Physical Property

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. 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.

b. Sale of Remainder Interest

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. In such cases, the market value of the remainder interest is likely to be reduced since such a sale is subject to the life estate interest.

3. Example

Mr. Heath, now deceased, had willed to his daughter a life estate in property which he had owned in fee simple. The will also designated Mr. Heath's two sons as remaindermen. Ms. Heath has the right to live on the property until her death at which time, under the terms of her father's will, the property will pass to her brothers as joint tenants.

C. Policy--Equitable Ownership Interest

Basically, existence of an equitable ownership interest is determined by a court of equity.

1. Unprobated Estate

For Medicaid purposes, an individual may have an equitable ownership interest in an unprobated estate if he or she:

- is an heir or relative of the deceased;
- receives income from the property; or
- has acquired rights in the property due to the death of the deceased in accordance with State intestacy laws.

M1120.215 contains instructions on how to determine whether an interest in an unprobated estate is a resource.

2. Trust

A trust is a right of property established by a trustor or grantor. One party (trustee) holds legal title to trust property which he or she manages for the benefit of another (beneficiary). The beneficiary does not have legal title but does have an equitable ownership interest.

M1120.200 contains instructions concerning resources treatment of trusts in the Medicaid program.

M1120.201 contains instructions for the resources treatment of trust established on or after August 11, 1993.

3. Equitable Home Ownership

If an individual alleges equitable ownership (e.g., an unwritten ownership interest or right of use for life) obtain any pertinent documents and a signed statement from each of the parties involved regarding any arrangement that has been agreed to. Forward the document to a medical assistance program consultant for an opinion from legal counsel.

D. References

The following references pertain to trust situations:

- Financial institution/conservatorship accounts, S1140.200 - S1140.215
- Property held under a State's Uniform Gift to Minors Act, S1120.205
- Situations involving an agent acting in a fiduciary capacity on behalf of another party, S1120.020
- Trust established on or after August 11, 1993, M1120.201

S1110.520 PROPERTY RIGHTS WITHOUT OWNERSHIP OF THE PROPERTY

A. Introduction

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).

B. Definitions

1. Leasehold

A 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.

2. Incorporeal Interests

There are several types of real property rights called "incorporeal interests." They do not covey ownership of the physical property itself. They convey the right to use the property but not to possess it. These rights encompass mineral and timber rights and easements (explained in more detail at S1140.110).

M1110.530 WHOSE RESOURCES TO CONSIDER

A. Introduction

In addition to resources that actually belong to an eligible (or would-be eligible) individual, Medicaid Law provides that the resources of certain other persons are considered to be available to the individual. Therefore, all appropriate resources determinations include those other persons' resources.

B. Policy

1. Spouse of Adult Individual

The resources of an individual include those of a spouse, and the applicable resource limit is that for a couple, provided that the spouse:

- if **eligible,** lives in the same household as the individual as of the first of the month for which resources are being determined.
- if **ineligible,** lives in the same household as the individual as of the first of the month for which resources are being determined.

For institutionalized individuals with a community spouse, *see subchapter M1480.*

2. Parent(s) of Child under 18

If a blind or disabled child is under age 18 and is living in the same household with a parent, the agency must consider the parent's resources available to the child, whether or not they are actually contributed.

The applicable resource limit for a blind and/or disabled child is always that for an individual.

3. Parent(s) of Child Age 18 to 21

If a blind or disabled child age 18 to 21 is living in the same household with his parent, the agency must consider the parent(s') resources available to the child, whether or not they are actually contributed:

The applicable resource limit for a disabled or blind child is always that for an individual.

DETERMINING ELIGIBILITY BASED ON RESOURCES

M1110.600 RULE FOR MAKING DETERMINATIONS

A. Policy Principle--Rule

Make all resource determinations per calendar month. Resource eligibility exists for the full month if countable resources were at or below the resource standard for any part of the month.

B. Policy Principle--Significance of the Rule

1. Increase in Value of Resources

Consider any increase in the value of an individual's resources in the resources determination the month following the month in which:

- the value of an existing resource increase (e.g., the value of a share of stock goes up or installment payments increase a property's equity value);
- an individual acquires an additional resource (e.g., inherits property); or
- an individual replaces an excluded resource with one that is not excluded (e.g., sells an excluded automobile for nonexcludable cash).

2. Decrease in Value of Resources

Consider any decrease in the value of an individual's resources in the resource determination the month in which:

- the value of an existing resource decreases (e.g., the value of a share of stock goes down);
- an individual spends a resource (e.g., withdraws $150 from a savings account to pay bills); or
- an individual replaces a countable resource with one that is not countable (e.g., trades a countable piece of real property for an excluded automobile).

3. Treatment of Assets Under Income and Resource Counting Rules

When an individual receives an asset (real or personal property) during a month, *it is* evaluate*d* under the appropriate income-counting rules in that month. If the individual retains the item into the month following the month of receipt, *it is* evaluate*d* under the resource-counting rules. Do not evaluate the same asset under two sets of counting rules for the same month.

Funds cannot be both income and a resource in the same month. Income that has been added to a bank account during the month must be subtracted from the ending balance to ensure that the income is not also counted as a resource. See M1140.200.

EXCEPTION: Trusts established on or after August 11, 1993, have different counting rules. See M1120.201.

4. Receipts from the Sale, Exchange, or Replacement of a Resource

If an individual sells, exchanges, or replaces a resource, what he/she receives in return is not income. It is a different form of resource. This includes assets which have never been subject to resources counting because the owner sold, exchanged, or replaced them in the same month in which he/she received them.

Capital gains, which are profits made from the sale of capital assets (long-term assets such as land or buildings), are also not income. Any proceeds that remain the month after this type of sale must be evaluated as a resource.

The concept of such transactions not producing income does not apply to receipts from the sale of timber, minerals, or other like items which are part of the land.

C. Example--Receipt of a Resource Considered as Income and Exchanged in Same Month

Miss Laramie, a disabled individual, received a $350 unemployment insurance benefit on January 10 at which time it was unearned income. On January 18, she used the $350 to purchase several shares of stock; i.e., she exchanged one resource (cash) for another resource (stock). We never counted the $350 cash payment as a resource because Miss Laramie exchanged it for stock in the month of receipt. The stock is not income; it is a different form of resource. Since a resource is not countable until the first moment of the month following its receipt, we first count the stock in the resources determination made as of February 1.

CHAPTER M11

AGED, BLIND, AND DISABLED INDIVIDUALS (ABD) RESOURCES

SUBCHAPTER 20

IDENTIFYING RESOURCES

M1120 Changes

Changed With	Effective Date	Pages Changed
TN #DMAS-2	10/1/16	On page 6, updated the format of the header. Neither the date nor the policy was changed.
TN #96	10/1/11	Table of Contents pages 24-26
TN #93	1/1/2010	page 22

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IDENTIFYING RESOURCES

OVERVIEW

S1120.001 PURPOSE OF SUBCHAPTER

A. Introduction

This subchapter deals with the process of applying the basic principles in subchapter S1110 in determining whether property (an asset) is a resource. If it is a resource, subchapter S1130 provides guidance on possible exclusions. If a resource is not excludable, see subchapter S1140. These guidelines apply to both initial applications and to posteligibility situations.

B. Related Policies

1. Significance of Asset/ Resources Distinction	S1110.100 A.
2. Resources Defined	S1110.100 B.
3. Assets That Are Not Resources	S1110.115; S1120.100 ff.
4. Treatment of Assets as Income/ Resources	S1120.005.
5. Resource Conversion	S1110.600 B.4.

S1120.005 DISTINGUISHING RESOURCES FROM INCOME

A. Introduction

It is important to distinguish between resources and income to know which counting rules to use for any given month. An item is not subject to both income and resources counting rules in the same month.
Exception - Trusts established on of after August 11, 1993, See M1120.201

B. Policy Principles

1. Income-Counting Rules	Items received during a month are evaluated under the income-counting rules.
2. Resource-Counting Rules	Items retained as of the first moment of the month following receipt are subject to evaluation under resource-counting rules.

C. Example

1. Situation

Beverly Thompson, a single, disabled recipient, received $275 as a birthday gift in January. She used $50 to repay a loan; spent $100 for a Series EE U.S. Savings Bond; and put the remainder ($125) in her savings account. As of February 1, the account balance was $1,400.

2. Analysis

The $275 gift was income to Ms. Thompson in January when she received it. In February, only $125 of the cash gift counts as a resource; the remaining $150 she spent or converted into another form in the same month she received it. The U.S. Savings Bond is not a resource in February since Ms. Thompson cannot legally redeem it for 6 months. However, it will become a resource on August 1, when it is first legally redeemable. The $125 that she put in her savings account is a resource (along with the $1,275 deposited previously) as of February 1.

S1120.010 FACTORS THAT MAKE PROPERTY A RESOURCE

A. Introduction

Property of any kind, including cash, cannot be a resource in a month unless, it meets all three criteria in B. below. However, it is not unusual for a nonresource to become a resource or vice versa.

B. Policy-Resources Criteria

1. Ownership Interest

An individual must have some form of ownership interest in property in order for the property to be considered a resource. The fact that an individual has access to property, or has a legal right to use it, does not make it a resource if there is no ownership interest (S1110.100).

2. Legal Right to Access (Spend or Convert Property)

An individual must have a legal right to access property. Despite having an ownership interest, property cannot be a resource if the owner lacks the legal ability to access funds for spending or to convert noncash property into cash (S1110.100).

The fact that an owner does not have physical possession of property does not mean it is not his/her resource, provided the owner still has the legal ability to spend it or convert it to cash. However, see S1140.240 if a U.S. Savings Bond is involved.

3. Legal Ability to Use for Personal Support and Maintenance

Even with ownership interest and 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 his/her resource (S1110.100).

C. Policy – Access to Resources

1. Access via an Agent

We consider that an individual has free access to, and unrestricted use of, property even when he/she can take those actions only through an agent; e.g., a representative payee, guardian, etc. (S1120.020). **For real property where reasonable but unsuccessful efforts to sell must be established, see M1130.140.**

2. Access Only via Litigation

When there is a legal bar to sale of property (e.g., if a co-owner legally blocks sale of jointly-owned property), we do not require an individual to undertake litigation in order to accomplish sale or access. The property is not a resource under such circumstances in a month if a legal bar exists anytime during that month.

An individual's interest in an unprobated estate is a countable resource. An heir can initiate a court action to partition. If a partition suit is necessary (because at least one other owner of or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value.

An applicant or recipient's proportional share of the value of property owned jointly with another person to whom the applicant or recipient is not married as tenants in common or joint tenants with the right of survivorship at common law is counted as a resource unless it is exempt property or is unsalable.

3. Access via Petition - Conservatorship Accounts

If State law requires that funds in a conservatorship account be made available for the care and maintenance of an individual, we 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 is true despite the fact that the individual or his/her agent is required to petition the court to withdraw funds for the individual's support and maintenance. See S1140.215 for instructions concerning conservatorship accounts.

D. Examples

1. Lack of Ownership

a. **Situation** - In response to unstated income development, Mr. John Hart, explains that his brother, Ted, who lives in an adjacent State, allows him (John) access to his bank account in emergencies. John Hart says he withdraws funds to pay an overdue utility bill to avoid shutoff.

The EW confirms that the account is titled "Ted Hart by Ted Hart or John Hart." John Hart states that he uses the funds solely for his own benefit and not as an agent for his brother.

b. **Analysis** - Even though John Hart has unrestricted access to the account and can use the funds at his own discretion, the funds are not his resources because he has no ownership interest in them. The title of the account clearly designates Ted Hart as sole owner. However, whatever funds John withdraws from Ted's account are John's income in the month of the withdrawal.

c. **Situation** - A member of an Indian tribe states that he has several items, valued at several thousand dollars, that he would not sell because they are ceremonial in nature (clothing and beadwork). The EW questions him about the items and determines they were "entrusted" to him by the tribe for safekeeping.

d. **Analysis** - In order for an asset to be a resource, the individual must have an ownership interest in the asset. Since the individual in the above situation does not own the ceremonial items, they are not his resources.

2. Court Order Restricts Access

a. **Situation -** At the time of his divorce, Mark Thomas, an SSI recipient, was sole owner of the house in which his ex-wife and their two young sons are living. Under the terms of the divorce decree, Mr. Thomas must pay the taxes on the property and maintain it as a home for his ex-wife and the children until the younger boy reaches age 18. The decree also specifies that he is free to sell the property only after the younger boy's eighteenth birthday.

b. **Analysis** - Although Mr. Thomas clearly owns the property, he is legally barred from converting it to cash to be used for his own support and maintenance until 1997. Therefore, it is not his resource until the month following the month of his younger son's eighteenth birthday.

3. Binding Agreement Restricts Access

a. **Situation** - As a gift from their parents, Tom Brown, a Medicaid recipient, and his brother who is not eligible for Medicaid, received some shares of stock valued at $3,000. The stock certificates show that the brothers are joint tenants (S1110.510 C.2.), but the brothers have a legally binding agreement that one will not sell without consent of the other. The EW confirms that Tom's brother will not consent to sell.

b. **Analysis** - Normally, the gift would be valued under the income rules in the month of receipt and the resources rules thereafter. However, since Tom's brother will not consent to sale of the stock, Tom's share of the stock is not income in the month of receipt nor resources thereafter since it cannot be used for Tom's support and maintenance. If Tom's brother consents to sell, Tom's share would be a countable resource beginning with the month following the month that consent was given.

4. Lack of Possession Restricts Ability to Use- Savings Bonds

a. **Situation** - During a posteligibility review, the EW learns that George Jones, a Medicaid recipient, is co-owner along with his father of U.S. Savings Bonds with a face value of $3,500. The EW learns that George's father bought the bonds over a period of years with his own money and designated George as co-owner. The bonds are in the father's safe deposit b to which he will not give George access under any circumstances.

b. **Analysis** - The EW questions George's father and confirms that he will not give George the bonds under any circumstances. George's father states that, George can take possession of the bonds only after he (the father) dies. Generally, lack of physical possession of an otherwise liquid resource does not affect its status as a resource. However, physical possession of savings bonds is a legal requirement for cashing them. Although George is a legal owner, he cannot legally redeem the bonds for his own use. Therefore, they are not his resources.

5. Insurance Settlement Restricts Use

a. **Situation** - Bob Warfield, a Medicaid recipient, was injured in an automobile accident. A court awarded him damages of $10,000 to be used solely for medical expenses related to the accident.

b. **Analysis** - Although Mr. Warfield owns the funds and has direct access to them, he is not legally free to use them for his own support and maintenance. Therefore, the award funds are neither income nor resources.

Third party liability should be entered during enrollment.

6. No Access Without Litigation

a. **Situation** - Andrea Matthews, a disabled Medicaid recipient, has been separated from her spouse, who is not eligible for Medicaid, for 5 years. She and her spouse own a summer cottage in another State as tenants-by-the-entirety. Her spouse lives in the cottage and refuses to sell.

b. **Analysis** - If Ms. Matthews were to divorce her husband, she would, as a tenant-in-common, have the right to market her interest in the property without her ex-spouse's consent. However, since we do not require litigation to obtain access, the property is not a resource unless her husband changes his mind about the sale. Therefore, the cottage is not Ms. Matthew's resource. Even if Ms. Matthews could market her ownership interest in the cottage, for a QDWI, QMB, and SLMB coverage only, the cottage would be excluded from countable resources if its sale would cause undue hardship for Mr. Matthews due to loss of housing (S1130.130 in Appendix 2).

S1120.020 TRANSACTIONS INVOLVING AGENTS

A. Introduction

An eligible individual (EI) or deemor may have an agent to act on his/her behalf or may serve as an agent for someone else. When an agency relationship exists, it is important to distinguish an agent's actions on his/her own behalf from those on behalf of the person for whom he/she serves as agent.

B. Definitions

1. Agent

An agent is a person or organization acting on behalf of and/or with the authorization of another person. For Medicaid purposes, the term applies to anyone acting in a fiduciary capacity, whether formal or informal, and regardless of the applicable title (representative payee, conservator, guardian, etc.).

2. Ward

A ward, as used in this section, is the categorical designation of a party for whom an agent has authority to act. This is not necessarily a "ward" in the legal sense.

C. Operating Policies-Agent Holds Assets

1. Actions by Agent

For purposes of this section, an action by someone in his/her capacity as an agent is equivalent to an action by the ward for whom he/she acts. For example, RSDI funds held by a representative payee for a title II beneficiary are the same as funds held by the beneficiary himself.

2. Status of Assets Held for Ward

Unless there is a legal restriction on the agent's access to assets held for a ward or against their use for the ward's support and maintenance, the assets are the ward's resources. They are not the agent's resources since the agent has no ownership interest in them and often is not legally free to use them for his/her own support and maintenance.

3. Property Title Must Show Ownership

An agent holding property of any kind for a ward must keep it in a form that clearly shows ownership by the ward.

D. Operating Policies- Improperly Titled Financial Account

The most common type of improperly titled account is the savings account designated as held "in trust for" a ward. This form of holding is not a formal trust (M1120.200) and is misleading as to ownership of the funds. If State law does not recognize the funds as the ward's property, see E.3. below. If evaluating an improperly titled account, consult your Regional Coordinator.

1. Singly Owned Account; EI/Deemor Is Ward

a. Agent Agrees Funds Belong to Ward -
If there is an agency relationship so that deposits to the account are income to the ward, not the agent (S0810.120): we
- assume the funds are the ward's property; and
- request that the agent change the account designation.

b. Agent Does Not Agree Funds Belong to Ward - If the agent does not agree that the funds belong to the ward and refuses to correct the account title, we do not treat the funds as the ward's resources. See E.4. if the agent is a representative payee. See E.3. b. if the agent is not a representative payee.

2. Singly Owned Account; EI/Deemor Is Agent

Although deposits to the account are not the agent's income per S0810.120.D 2, we treat the account as the agent's resource. The account is the resource of the person shown as owner on the account title.

3. Jointly Owned Account

Regardless of whether the EI/deemor is ward or agent, an agent can rebut ownership of the funds and establish that they are the ward's property (S1140.205).

E. Development and Documentation

1. Verify Agency Relationship

Verify any allegation of an agency relationship per S0810.120 F.

2. Determine Resources

Document your decisions concerning the form and value of resources belonging to the EI/deemor. Follow the guidelines in C. and D. above, as well as in sections dealing with the specific type of property involved.

3. Improperly Titled Financial Account; EI/Deemor Has Agent

a. Agent Acknowledges Funds as Ward's
- Document the file with the agent's signed statement as to the ward's ownership.
- Ask the agent to have the account retitled.
- Treat the funds as the ward's property.

b. Agent Is Not Representative Payee and Does Not Acknowledge Funds as Ward's
If an agent (other than a representative payee) has set up an account incorrectly, will not change the account designation, and will not acknowledge the funds as the ward's:
- document the file with the agent's refusal;
- do not treat the funds as the ward's property; and
- see S0820.120 E. for the income rules that apply when the EI/deemor has an agent.

4. Representative Payee is Agent Who Does Not Acknowledge Funds As Ward's

a. If the conserved funds are SSI or RSDI funds and the representative payee will not change the account designation and acknowledge the ward's ownership of the funds:

- do not treat the funds as the EI's or deemor's property

b. Situation Changes - Consider the funds the ward's property the month following the month in which:

- the representative payee designates the funds properly; or
- a new representative payee establishes the account correctly.

NOTE: Do not consider any conserved SSI or RSDI funds as the EI's or deemor's income in the month the account is redesignated (S1120.022.B.2.)

F. Related Policies

1. Misuse of Funds by Representative Payee Who Is an EI or Deemor

See S0810.120 D.4. concerning misused funds as income to the agent. If the agent retains the misused funds, consider them his/her resources effective with the month following the month the funds are counted as income.

2. Representative Payee

SSA selects representative payees for recipients who are unable to manage their own funds. Representative payees have financial jurisdiction only over financial transactions involving SSI/RSDI benefits.

3. Agents and Income Determinations

For the effect on the income determinations of fees paid to an agent, misuse of funds, and correctly titled accounts, see S0810.120.

S1120.022 CONSERVED FUNDS WHEN FORMALLY DESIGNATED AGENT CHANGES

A. Introduction

1. General

An agent designated formally by an agency or court may conserve funds not used for a ward's (beneficiary's) current needs. If there is a change of agent, the former agent may return these savings to SSA or other paying agency (e.g., Veterans Administration).

2. Funds Reissued

SSA or other paying agency may reissue accumulated funds to a new payee or directly to the ward. The reissued funds may be paid in a lump sum or in installments and may be combined in a check with a current month's benefits.

B. Policy Principles

1. Conserved Funds as Resources

Conserved funds are a ward's resources while SSA or another agency is holding them for the ward. This is the case because the ward:

- owns the funds; and
- is legally entitled to use them (or have them used on his/her behalf) for his/her own support and maintenance.

2. Reissued Funds Not Income

Conserved funds are not income to the owner when reissued because they have been his/her resources while held for him/her. They may have changed from nonliquid to liquid in form but they are not new funds.

3. New Funds Issued Subject to Income Counting Rules

If a single check contains both reissued funds and new funds that do not represent income previously charged for a prior month, the new funds are subject to income-counting rules.

ASSETS THAT ARE NOT RESOURCES

S1120.100 HOME ENERGY ASSISTANCE/SUPPORT AND MAINTENANCE ASSISTANCE

A. Policy Principle

The term "resources" does not include home energy assistance/support and maintenance assistance (HEA/SMA) which qualifies for exclusion from income.

B. Operating Policy

We do not develop for HEA/SMA unless:

- retained funds, plus other countable resources, exceed the applicable resource standard, and
- resources exclusive of the alleged HEA/SMA funds would be within the limit.

C. Development and Documentation

When it is necessary to develop resources which include HEA/SMA, obtain the individual's signed statement identifying (if not already documented in file):

- amount of HEA/SMA funds received;
- when received and from what source, and
- amount of remaining funds.

S1120.110 CERTAIN CASH TO PURCHASE MEDICAL OR SOCIAL SERVICES

A. Introduction

An individual cannot always disburse in the month of receipt cash given him/her to purchase approved medical or social services. To permit use of such funds in the manner intended, it is reasonable to assume, for a limited time, that the individual will use them to pay for the approved services and, therefore, that they are not available for his/her support and maintenance.

B. Policy

1. What Is Not a Resource

Effective July 1, 1988, a cash payment for medical or social services that is not income under S0815.050, also is not a resource for one calendar month following the month of receipt.

2. Exception

The rule in 1. above does not apply to cash received as repayment for medical or social services bills an individual has already paid. Even though not income, such cash is a resource and, if retained, is subject to resource-counting rules as of the first moment of the month following receipt.

3. Determination

If the cash was neither income nor payment, it is not a resource for one calendar month following the month of receipt.

D. References

- Commingled funds, S1130.700.

S1120.112 RETROACTIVE IN-HOME SUPPORTIVE SERVICES PAYMENTS TO INELIGIBLE SPOUSES AND PARENTS

A. Introduction

In limited circumstances, governmental programs will pay a spouse or parent to provide a disabled spouse or child with certain in-home supportive (chore, attendant, and homemaker) services (IHSS). IHSS payments are income when received by the ineligible spouse or parent but are not included as income for deeming purposes.

So that the intended benefit of having services provided by a caregiver in the home can be realized, and to avoid Medicaid ineligibility due to excess deemed resources, the regulations provide for a reasonable period of time during which retroactive IHSS payments are not considered resources and, therefore, are not subject to resources deeming.

B. Policy

1. When an IHSS Payment Is Not a Resource

A **retroactive** IHSS payment paid to an ineligible spouse or parent to provide chore, attendant, or homemaker services to an eligible individual is not a resource for one calendar month following the month of receipt. If retained into the second calendar month following receipt, the payment is a resource subject to deeming.

This provision applies only to **retroactive** IHSS payments.

2. "Retroactive" IHSS Payment

For the purposes of this provision, a "retroactive" IHSS payment is one that is paid after the month in which it was due. If payment is made in the month due, but following the month in which services were rendered, such payment is not considered “retroactive” for purposes of this provision.

3. Interest Included in IHSS Payment

If the retroactive IHSS payment includes an interest amount, the entire payment, and any interest included in the retroactive payment, is subject to the rule 1. above.

S1120.115 DEATH BENEFITS FOR LAST ILLNESS AND BURIAL EXPENSES

A. Introduction

Death benefits, including gifts and inheritances an individual will use to pay the deceased's last illness and burial expenses, may still be on hand the first moment of the month following the month of receipt. It is reasonable to assume, for a limited time, that death benefits will be used for last illness and burial expenses and are not available for support and maintenance.

B. Policy

1. When a Death Benefit Is Not a Resource

Effective August 1991, death benefits, including gifts and inheritances, that are not income under S0830.545, also 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.

2. 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.

C. Procedure

1. Development Not Required

Do not develop unless the amount retained plus other countable resources exceeds the applicable resources limit.

2. Development Required

If an individual would have excess resources, determine and document whether death benefits:

- were income under S0830.545; and
- if not income, whether the amounts were for repayment of bills already paid.

If you determine that death benefits should not be counted for one calendar month, document the amounts and that month.

D. References

- Death benefits as income, S0830.545.

E. Example--Death Benefits Not a Resource

1. Situation

As a result of her uncle's death, Barbara Smith, a disabled recipient, receives $4,000 in July as beneficiary of his life insurance policy. She intends to spend the entire amount on his last illness and burial expenses. She has already received bills totaling $900 which she pays. On August 1, she receives a funeral bill for $2,900 and a few days later receives a cash gift of $500 to be used for last illness and burial expenses. She pays the $2,900 funeral bill in August and intends to use the remainder to pay some hospital expenses.

2. Analysis

Neither the $4,000 Ms. Smith receives in July nor the $500 she receives in August is unearned income. Since she uses $900 of the $4,000 life insurance check in July, as of August 1, she has a $3,100 balance which is not a resource for August. During August she pays the $2,900 bill and then has $200 left. However, the $500 she receives in August gives her $700 to use for funeral expenses. She must spend $200 in August for burial or last illness expenses, otherwise, the $200 will count as a resource September 1. She has until the end of September to spend the remaining $500, otherwise it will count as a resource October 1.

F. Example--Death Benefits Resource

1. Situation

Ruth Taylor, a 68 year old recipient, has total countable resources of $1,980 consisting of a $1,000 savings account and $980 checking account. Her brother died in late October. In November she receives $3,000 as beneficiary of her brother's life insurance policy. She has last illness and burial expenses of $2,750 to pay. There will be no more bills after these.

2. Analysis

Of the $3,000 Ms. Taylor received, $250 is unearned income in November because last illness and burial expenses are only $2,750. The $2,750 is not unearned income and will not be a resource until January 1 if she still has it then. The $250 amount will be a resource on December 1. This money will be added to the money she has in her checking and savings accounts. If the total is more than $2,000, she will be ineligible for Medicaid.

S1120.150 GIFTS OF DOMESTIC TRAVEL TICKETS

A. Policy

This policy is effective for tickets received on or after March 1, 1990.

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
- excluded from income per S0830.521.

B. Procedure

1. When to Develop

Develop under this section when an individual alleges having retained an uncashed ticket for domestic travel **and** the value of the ticket, plus the value of other countable resources, exceeds the applicable resource limit.

PROPERTY THAT MAY OR MAY NOT BE A RESOURCE

M1120.200 TRUST PROPERTY

A. Introduction

A trust is a legal arrangement involving property and ownership interests. Property held in a trust may or may not be considered a resource. The general rules concerning resources apply to evaluating the resource status of property held in a trust.

Trusts are often complex legal arrangements involving State law and legal principals that an eligibility worker (EW) is not expected to know or be able to apply without legal counsel.

Therefore, the following instructions may only be sufficient for you to recognize that an issue is present and should be referred to the Regional Coordinator or Assistant Attorney General through your regional office. When in doubt, refer the issue for a legal opinion.

The enactment of OBRA 93 changed the evaluation of trusts established (other than by a will) on or after August 11, 1993. Assets of trusts established other than by a will may be countable as income, resources, or as asset transfers. Trusts established for disabled individuals are treated differently; see M1120.202.

Policy relating to trusts is located in the following sections.

- M1120.200, Trust Property
- M1120.201, Trust Established on or after August 11, 1993
- M1120.202, Trusts Established for Disabled Individuals On or After August 11, 1993
- M1130.520, Trusts Established Between July 1, 1993 and August 11, 1993
- M1140.400 Trust Established By A Will
- M1140.401, Trusts Which Were Not Created by a Will
- M1140.402, Medicaid Qualifying Trust (Created Prior to August 11, 1993)
- M1140.403, Trusts Created After July 1, 1993 and Before August 11, 1993 With Corpus In Excess of $25,000
- M1140.404, Trust Established on or After August 11, 1993

B. Definitions

1. Trust — A trust is a property interest whereby property is held by an individual (trustee) subject to a fiduciary duty to use the property for the benefit of another (the beneficiary).

2. Grantor — A grantor (also called a settlor or trustor) is a person who creates a trust. 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, representative payee for title II/XVI benefits, a person acting under a power of attorney or conservator), establishes the trust with funds or property that belong to the individual. The terms grantor, trustor, and settlor may be used interchangeably.

3. Trustee — A trustee is a person or entity who holds legal title to property for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit.

4. 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.

5. Trust Principal

The trust principal is the property placed in trust by the grantor which the trustee holds, subject to the rights of the beneficiary plus any trust earnings paid into the trust and left to accumulate.

6. Trust Earnings (Income)

Trust earnings or income are amounts earned by trust principal. They may take such forms as interest, dividends, royalties, rents, etc. These amounts are unearned income to the person legally able to use them for personal support and maintenance.

7. Totten Trust

A Totten trust is a tentative trust in which a grantor makes himself/ herself trustee of his/her own funds for the benefit of another. The trustee can revoke a Totten trust at any time. Should the trustee die without revoking the trust, ownership of the money passes to the beneficiary.

8. Grantor Trust

A grantor trust is a trust in which the grantor of the trust is also the sole beneficiary of the trust.

9. Mandatory Trust

A mandatory trust is a trust which requires the trustee to pay trust earnings or principal to or for the benefit of the **beneficiary** at certain times. The trust may require disbursement of a specified percentage or dollar amount of the trust earnings or may obligate the trustee to spend income and principal, as necessary, to provide a specified standard of care. The trustee has no discretion as to the amount of the payment or to whom it will be distributed.

10. Discretionary Trust

A discretionary trust is a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions. The trustee may pay to or for the benefit of the beneficiary, all or none of the trust as he or she considers appropriate. The beneficiary has no control over the trust. The kind and degree of the "discretion" given to the trustee is determined by the terms of the trust.

11. Medicaid Qualifying Trust

A "Medicaid qualifying trust" is a trust, or similar legal device, established (other than by a will) by an individual or an individual's spouse prior to August 11, 1993 under which the individual may be beneficiary of all or part of the payments from the trust. The distribution of such payments is determined by one or more trustees who are permitted to exercise discretion with respect to the distribution to the individual.

EXCEPTION: A trust or initial trust decree established **prior to** April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded is not a "Medicaid Qualifying Trust".

12. Residual Beneficiary

A residual beneficiary is not a current beneficiary of a trust, but will receive the residual benefit of the trust contingent upon the occurrence of a specific event, e.g., the death of the primary beneficiary.

13. Fiduciary

A person or other entity that holds something in trust for another and has a legal obligation to act in the best interests of that person in all matters regarding the property held, as the executor of a will who is responsible for preserving assets and investing wisely, when required to do so.

C. Policy-Accounts That May or May Not Be Trusts

1. Accounts That Are Not Trusts

The following accounts and instruments are similar to trusts and may be titled as trusts, but should generally not be developed under these instructions for Medicaid purposes.

a. Conservatorship Accounts

These accounts, established by a court, are usually administered by a court-appointed conservator for the benefit of an individual. They differ from a trust in that the "beneficiary" retains ownership of all of the assets, although in some cases they may not be available for support and maintenance. (See S1140.215 for instructions pertaining to conservatorship accounts.)

b. Patient Trust Accounts

Many nursing homes and institutions maintain so called "patient trust accounts" for individuals to provide them with toiletries, cigarettes, candy and sundries. Although titled trust accounts, these are agency accounts. The individual owns the money in the account which the institution is merely holding for him or her and making disbursements on his or her behalf as necessary. (See S1120.020, S0810.120 for information on transactions involving agents.)

2. "In Trust For" Financial Accounts

These accounts may or may not be trusts depending on the circumstances in the individual case. Examples of the most common situations follow:

a. Representative Payee Accounts

One of the most common types of "in trust for" accounts are representative payee accounts. These accounts are not trusts, but improperly titled accounts and are misleading as to the actual owner of the funds. If a representative payee deposits current or conserved benefits in an account, the account must be titled to reflect the beneficiary's ownership interest. (See S1120.020 and S0810.120 for instructions pertaining to agency accounts.)

b. Totten Trusts

An "in trust for" financial institution account may be a Totten trust if an individual deposits his or her own funds in an account and holds the account as owner for the benefit of another individual(s).

D. Policy - Trust as Resources

1. Trusts Which Are Resources

a. General

If an individual (applicant or recipient) has legal authority to revoke the trust and then 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 for Medicaid purposes.

- M1120.200, B, 11
- M1140.402, Medicaid Qualifying Trust

b. Authority to Revoke Trust or Use Assets

- Grantor

  In some cases, the authority to revoke a trust is held by the grantor. Even if the power to revoke a trust is not specifically retained, a trust may be revocable in certain situations. (See B.8. above and 3. below for information on grantor trusts.) Additionally, State law may contain presumptions as to the revocability of trusts. If the trust principal reverts to the grantor upon revocation and can be used for support and maintenance, then the principal is a resource.

- Beneficiary

  A beneficiary generally does not have the power to revoke a trust. However, the trust may be a resource to the beneficiary, in the rare instance, where he/she has the authority under the trust to direct the use of the trust principal. (The authority to control the trust principal may be either specific trust provisions allowing the beneficiary to act on his/her own or by ordering actions by the trustee.) 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.

  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.

- Trustee

  Occasionally, a trustee may have the legal authority to revoke a trust. However, the trust is not a resource to the trustee unless he/she becomes the owner of the trust principal upon revocation. The trustee should be considered a third party. Although the trustee has access to the principal for the benefit of the beneficiary, this does not mean that the principal is the trustee's resource. 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 Medicaid purposes in the amount that can be used.

- Totten trust

  The creator of a Totten trust has the authority to revoke the financial account trust at any time. Therefore, the funds in the account are his/her resource.

2. Trusts Which May Not Be A Resource

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.

The revocability of a trust and the ability to direct the use of the trust principal depends on the terms of the trust agreement and/or on State or federal law. If a trust is irrevocable by its terms and under State law cannot be used by an individual for support and maintenance, it may not be a resource. Evaluate the trust in accordance with the following sections.

- M1120.201, Trusts Established on or after August 11, 1993
- M1120.202, Trusts Established for Disabled Individuals on or after August 11, 1993.
- M1130.520, Trusts Established Between July 1, 1993 and August 10, 1993
- M1140.400, Trust Created By A Will
- M1140.402, Medicaid Qualifying Trust (created prior to August 11, 1993)
- M1140.403, Trusts Created After July 1, 1993 and before August 11, 1993 with Corpus in Excess of $25,000

3. Revocability of Grantor Trusts

Virginia follows the general principle of trust law that if a grantor is also the sole beneficiary of a trust, the trust is revocable regardless of language in the trust document to the contrary.

Virginia recognizes the irrevocability of a grantor trust if there is a named "residual beneficiary" in the trust document who would, for example, receive the principal upon the grantor's death or the occurrence of some specific event.

NOTE: The above policies regarding grantor trusts may or may not apply in some States.

E. Policy – Disbursements from Trusts

1. When Trust Principal Is Not a Resource

If the trust principal is not a resource, disbursements from the trust may be income to the Medicaid *enrollee*/beneficiary, depending on the nature of the disbursements. Regular rules to determine when income is available apply.

a. Disbursements Which are Income

Cash paid directly from the trust to the individual is unearned income.

b. Disbursements Which Result in Receipt of In-kind Support and Maintenance

Food, clothing or shelter received as a result of disbursements from the trust by the trustee to a third party are income in the form of in-kind support and maintenance *and are not counted for Medicaid purposes*.

c. Disbursements Which Are Not Income

Disbursements from the trust by the trustee to a third party that result in the individual receiving items that are not food, clothing or shelter are not income. For example, if trust funds are paid to a provider of medical services for care rendered to the individual, the disbursements are not income for Medicaid purposes.

2. When Trust Principal Is a Resource – Trusts Created By Will or Prior to Aug. 11, 1993

If the trust principal is a resource to the individual, disbursements from the trust principal received by the individual are not income, but conversion of a resource. See S1110.100 for instructions pertaining to conversion of resources from one form to another and F.2. below for treatment of income when the trust principal is a resource.

3. When Trust Principle is a Resource – For Trust Created on or After August 11, 1993

Effective August 11, 1993:

- payments for the benefit of the individual are counted as unearned income;
- corpus is a resource, and
- payments to other individual(s) are evaluated as asset-transfer;
- trust earnings, e.g., interest, are income.

F. Policy Earnings/Additions to Trusts

1. Trust Principal Is Not a Resource

a. Trust Earnings

Trust earnings are not income to the trustee or grantor unless designated as belonging to the trustee or grantor under the terms of the trust; e.g., as fees payable to the trustee or interest payable to the grantor.

Trust earnings are not income to the Medicaid claimant or recipient who is a trust beneficiary unless the trust directs, or the trustee makes, payment to the beneficiary.

b. Additions to Principal

Additions to trust principal made directly to the trust are not income to the grantor, trustee or beneficiary. Exceptions to this rule are listed in c. and d. below.

c. Exceptions

Certain payments are non-assignable by law and, therefore, are income to the individual entitled to receive the payment under regular income rules. They may not be paid directly into a trust, but individuals may attempt to structure trusts so that it appears that they are so paid. Non-assignable payments included:

- Aid to Families with Dependent Children (AFDC);
- Railroad Retirement Board-administered pensions;
- Veterans pensions and assistance;
- Federal employee retirement payments (CSRS, FERS) administered by the Office of Personnel Management;
- Social Security title II and SSI payments; and
- Private pensions under the Employee Retirement Income Security Act (ERISA) (29 U.S.C.A. section 1056(d)).

d. Assignment of Income

A legally assignable payment (see c. above for what is not assignable), that is assigned to a trust, is income for Medicaid purposes unless the assignment is irrevocable. If the assignment is revocable, the payment is income to the individual legally entitled to receive it.

2. Trust Principal Is a Resource

a. Trust Earnings

Trust earnings are income to the individual for whom the trust principal is a resource, unless the terms of the trust make the earnings the property of another. See S0810.030 for when income is counted.

b. Additions to Principal

Additions to principal may be income or conversion of a resource, depending on the source of the funds. If funds from a third party are deposited into the trust, the funds are income to the individual. If funds are transferred from an account owned by the individual to the trust, the funds are not income, but conversion of a resource from one account to another.

G. References

- Agency Relationships, S1120.020, S0810.120
- Financial Institution Accounts, S1140.200
- Third Party Vendor Payments, S0835.360

M1120.201 TRUSTS ESTABLISHED ON OR AFTER AUGUST 11, 1993

A. Introduction

The enactment of OBRA 93 affects the treatment of trusts. For purposes of determining an individual's eligibility for Medicaid, the rules specified in this section shall apply to a trust established by such individual on or after August 11, 1993.

EXCEPTION: Certain trusts established for disabled individuals. See M1120.202.

B. Definitions

1. Assets

Assets means both income and resources of an individual and an individual's spouse. Assets of a trust established other than by a will may be countable as income, resources, or as asset transfers.

2. Revocable Trust

A revocable trust is a trust that can be legally revoked by the individual who established it. If a trust is revocable, the entire amount of the principle or corpus is counted as a resource.

3. Irrevocable Trust

An irrevocable trust is a trust that cannot be legally revoked by the individual who established it.

C. Policy

1. Who Established Trust

An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by a will:

- the individual,
- the individual's spouse,
- a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse,
- a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

NOTE: The individual does not establish a trust when a funeral home director is named as the "grantor" on the trust document. See M1140.404.

2. Treatment of Trust Assets

In the case of a trust the corpus of which includes assets of an individual and assets of any other person or persons, the provisions of this section shall apply to the portion of the trust attributable to the assets of the individual.

This section shall apply without regard to:

- the purpose for which a trust is 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 restriction on the use of *or* distribution from the trust.

a. In the case of a **revocable trust:**
   - the corpus of the trust shall be considered resources available to the individual.

   - Payments from the trust to or for the benefit of the individual shall be considered income of the individual.

- Any other payments from the trust shall be considered assets disposed of by the individual.

b. In the case of an **irrevocable trust** if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered

   - resources available to the individual, and

   - payments from that portion of the corpus or income to or for the benefit of the individual, shall be considered income of the individual, and

   - payments from that portion of the corpus or income for any other purpose, shall be considered a transfer of assets by the individual.

   Any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to or for the benefit of an individual shall be considered,

   - as of the date *the trust is established* (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for evaluation of asset transfers, and

   - the value of the trust shall be determined for purposes of such asset transfer by including the amount of any payments made from such portion of the trust after such date.

M1120.202 TRUSTS ESTABLISHED FOR DISABLED INDIVIDUAL ON OR AFTER AUGUST 11, 1993

A. Introduction

Irrevocable trusts established after August 11, 1993 solely for the benefit of disabled individuals will not affect Medicaid eligibility. The following policy must be met for trusts of disabled individuals.

Disability must be met as defined by SSA or SSI.

B. Policy

1. Trusts for Disabled Individual Under Age 65 (Individual Trust)

A trust containing the assets of an individual under age 65 who is disabled and which is established for the benefit of such individual by a

- a parent,
- a grandparent
- legal guardian of the individual, or
- a court,

The trust policy in M1120.201 will not be applied, if

- the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual.

2. Trusts for Disabled Individuals ("Pooled" Trust Funds)

A trust containing the assets of a disabled individual (no age requirement) must meet the following conditions, to be exempt from the trust policy in M1120.201.

- The trust is established and managed by a non-profit association.
- A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
- Accounts in the trust are established solely for the benefit of disabled individuals by the parent, grandparent, or legal guardian of such individuals, by such individuals or by a court.
- To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State Plan.

NOTE: *For an individual who meets the definition of an institutionalized individual in M1410,010 B.2, the placement of the individual's funds into a pooled trust when the individual is age 65 years or older must be evaluated as an uncompensated transfer, if the trust is structured such that the individual irrevocably gives up ownership of funds placed in the trusts. See M1450.550 D for additional information.*

S1120.205 UNIFORM GIFTS TO MINORS ACT

A. Introduction

1. General

Virginia like most states has adopted the Uniform Gifts to Minors Act (**UGMA)** which permits making to minors gifts which are free of tax burdens. The UGMA is sometimes called the Uniform Transfers to Minors Act.

When a gift is made to a minor under the Uniform Gifts to Minors Act (U.G.M.A.), the minor does not have the right to liquidate the property until he/she reaches an age (age of majority) specified by State law.

In Virginia the age of majority was lowered from age 21 to age 18 for gifts, under the U.G.M.A., made after June 30, 1973. A 1984 amendment, which became effective July 1, 1984, extended the definition of "minor" to include a person who has not attained the age of 21 years if the gift to the minor expressly provides that the custodial property shall be conveyed to the minor on his/her attaining the age of 21 years. Such provisions may be made by making the gift under the "Virginia Uniform Gifts to Minors Act (21)."

2. UGMA Provisions

Under UGMA legislation:

- an individual (donor) makes an **irrevocable gift** of money or other property to a minor (the donee);
- the gift, plus any earnings it generates, is under the **control of a custodian** until the donee reaches the age of majority established by State law;
- the **custodian has discretion** to provide to the minor or spend for the minor's support, maintenance, benefit, or education as much of the assets as he/she deems equitable; and
- the donee **automatically receives control** of the assets upon attainment of majority.

B. Policy Principles

1. UGMA and Resources

a. General

Since a custodian of UGMA assets cannot legally use any of the funds for his or her own personal benefit, they are not his or her resources. Similarly, once there is a gift under UGMA, additions to or earnings on the principal are not income to the custodian who has no right to use them for his/her own support and maintenance. (Additions to the principal may be income to the donor prior to becoming part of the UGMA principal.) For example, if the donor is a deemor who receives rental income and adds it to a child's UGMA funds, we would have to consider the rental income as income for deeming purposes.

b. While Donee Remains a Minor

- UGMA property, including any additions or earnings, is not income to the **minor;**
- the custodian's UGMA disbursements to the minor **are income to the minor**;
- the custodian's UGMA disbursements on behalf of the minor may be income to the latter if used to make certain third party-vendor payments.

c. When Donee Reaches Majority

All UGMA property becomes available to the donee and subject to evaluation as income in the month of attainment of majority.

*M*1120.210 RETIREMENT FUNDS

A. Definitions

1. Retirement Funds

Retirement funds are annuities or work-related plans for providing income 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.

2. Periodic Retirement Benefits

Periodic retirement benefits are payments made to an individual at some regular interval (e.g., monthly) and which result from entitlement under a retirement fund.

3. Value of a Retirement Fund

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. However, any taxes due are not deductible in determining the fund's value.

B. Policy Principle

A retirement fund owned by an eligible individual is a resource if he/she has the option of withdrawing a lump sum even though he/she is not eligible for periodic payments. However, if the individual is eligible for periodic payments, the fund may not be a countable resource.

A previously unavailable retirement fund is not income to its recipient when the fund becomes available. The fund is subject to resources counting rules in the month following the month in which it first becomes available.

C. Operating Policies

1. Termination of Employment

A retirement fund is not a resource if an individual must terminate employment in order to obtain any payment.

2. Fund Not Immediately Available

A resources determination for the month following that in which a retirement fund becomes available for withdrawal must include the fund's value. 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 nonliquid resource.

3. Claim of Periodic Payment Denied

If an individual receives a denial on a claim for periodic retirement payments but can withdraw the funds in a lump sum, include the fund's lump sum value in the resources determination for the month following that in which the individual receives the denial notice.

D. Development and Documentation

1. Evidence

If an individual has a retirement fund, obtain evidence of the availability of payments from the retirement fund. Determine if the individual is eligible for lump sum or periodic payments.

2. Determination

If the individual can withdraw a lump sum, the retirement fund is a resource in the amount that is currently available.

E. Related Policies

***1.* Nonliquid Resource**

Absent evidence to the contrary, assume that resources in the form of retirement funds are nonliquid (S1110.300 B.).

***2.* Deeming Exclusion**

If an ineligible spouse, or parent, owns a retirement fund, we exclude it from the deeming process. See S0830.500 regarding the treatment of interest income.

NOTE: If the individual is a married institutionalized individual with a community spouse, the retirement funds are evaluated as resources in the resource assessment and the eligibility determination (see M1480).

F. Example

1. Situation

Jeff Grant currently works 3 days a week for a company where he has been employed full-time for 20 years. Under his employer's pension plan, Mr. Grant has a $4,000 retirement fund. The EW confirms that Mr. Grant could withdraw the funds now, but there would be a penalty for early withdrawal and he would forfeit eligibility for an annuity when he stopped working.

2. Analysis

Since Mr. Grant can withdraw the retirement funds without terminating employment, they are a resource in the amount available after penalty deduction. This is true despite the fact Mr. Grant forfeits eligibility for periodic annuity payments in the future. All sources of available support (unless otherwise excluded) are considered in determining eligibility.

S1120.215 INHERITANCES AND UNPROBATED ESTATES

A. Introduction

Property in the form of an interest in an undivided estate is to be regarded as an asset when the value of the interest plus all other resources exceed the applicable resource limit, unless it is considered unsalable for reasons other than being an undivided estate. An heir can initiate a court action to partition. If a partition suit is necessary (because at least one other owner of or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value. However, if such an action would not result in the applicant/recipient securing title to property having value substantially in excess of the cost of the court action, the property would not be regarded as an asset. 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.

The procedure for determining the countable value of an unprobated or undivided estate is found in Appendix 1 to subchapter S1130.

B. For QDWI, QMB, SLMB, QI and ABD 80%FPL

The policy for treatment of an unprobated or undivided estate for the QDWI covered group is in Appendix 1 to chapter S11. The policy for treatment of an unprobated or undivided estate for the QMB, SLMB, QI and ABD 80% FPL covered groups is in Appendix 2 to chapter S11.

***C.* Operating Policies**

1. When to Develop

We develop for this type of resource only if:

- the property in question is not excludable under any of the provisions in S1110.210 B.; and

- counting the property's value would result in excess resources.

2. 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 receive 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 property; and
- the inheritance, use of income, and distributions are uncontested.

3. When Unprobated Estate Can Be a Resource

We do not consider that an inheritance is a resource until the month following the month in which it meets the definition of income. See S0830.550 for the income rules on inheritances. Thereafter, if retained, we evaluate the property as a resource.

S1120.220 LOANS, PROMISSORY NOTES, AND PROPERTY AGREEMENTS

A. Definitions

1. Bona Fide Agreement

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

2. Negotiable Agreement

A *negotiable* agreement is an agreement whereby the legal title to the instrument itself and the whole amount of money expressed on its face can be transferred from one person (holder) to another.

B. Policy--General

The following rules relate only to the principal amounts involved in the credit arrangements described in A. above. They do not include a creditor's receipt of interest which is unearned income.

1. Debtor/ Buyer

a. Bona Fide Agreement

- An agreement to make payment is neither income nor a resource.
- The goods or money represented in the agreement are not income but may be resources if retained.

b. Agreement Not Bona Fide

The goods or money represented in the agreement may be income upon receipt and resources if retained.

2. Creditor/ Seller

a. Bona Fide, Negotiable Agreement

- A bona fide, negotiable agreement by a debtor to make payment is a resource.
- The goods or money represented in the agreement are not resources since the creditor cannot access them for his/her own use; the agreement replaces them as his/her resource.
- The debtor's payments against the principal are conversion of a resource, not income.

b. Agreement Not Bona Fide or Not Negotiable

- The agreement is not a resource.
- Payments against the principal are income, not conversion of a resource.
- The goods or money specified in the agreement may be resources if the creditor can access them for his/her own use.

C. Policy--Informal Loans

Consider an informal loan as bona fide if it includes:

- borrower's acknowledgement of his obligation to repay;
- schedule and plan for repayment; e.g., borrower plans to repay when he receives anticipated income in the future; and
- borrower's express intent to repay by pledging either real or personal property or anticipated income.

D. References

- Interest income, S0830.500.
- Relationship between income and resources, M1120.005 and S1120.005
- Loan proceeds not being income, S0815.350 B.1.
- Promissory Note definition, S1140.300 A.2.
- Loan definition S1140.300 A.3.
- Property Agreement definition, S1140.300 A.4.

E. Example--Contractor Sale

1. Situation

Mr. Dottle, an aged applicant, tells the EW that he has an agreement to sell unused farmland in a nearby county to a neighbor for $1,800 plus interest. His neighbor has already paid $1,200 to Mr. Dottle. The sales contract specifies that Mr. Dottle will receive one additional payment of $600 plus interest.

2. Analysis

The EW correctly recognizes that the farmland is no longer Mr. Dottle's resource even though it is still his property; because he is bound by an agreement to sell that land, he cannot transfer title to anyone else. Mr. Dottle has converted his ownership interest in the land into a contract. Unless there is a legal restriction against converting the contract into cash, it is his resource in the amount of the $600 principal balance (absent convincing evidence of a lesser CMV).

If the contract is a resource, any payment against the principal represents a conversion of that resource.

If the contract is not a resource, payment against the principal is income.

Regardless of the resource status of the contract, any interest payment he receives is income.

F. Example--Installment Sale Contract

1. Situation

Henry Little, a Medicaid applicant, recently became a widower and moved out of the family home to live in a rented apartment. He has just entered into an installment sale contract on his former home with Thomas Higgins, a Medicaid recipient. Mr. Higgins made a $6,000 down payment on the house, using retroactive SSI benefits paid under a court order, and immediately moved into his new home in which he already has an equitable ownership interest, even though he does not yet have title. The outstanding principal balance on the installment agreement is $8,000.

2. Analysis

The EW must determine resources eligibility for both men. Although Mr. Little still has title to the house, he cannot sell it; rather, its value as a resource to Mr. Little has folded into the value of the installment contract. However, the installment sale contract (which the EW confirms has no legal restrictions against its sale) is Mr. Little's resource in the amount of the outstanding principal balance unless he presents convincing evidence that its CMV is a lower amount.

The installment sale contract has no bearing on Mr. Higgins' eligibility, as either income or resources. His ownership interest in the house he is buying from Mr. Little is an excluded resource since it is his principal place of residence.

M1120.225 REVERSE MORTGAGES

A. Definition

A reverse mortgage is a contract with a bank or other lending institution whereby the bank provides the borrower with monthly payments which do not have to be repaid as long as the individual lives in the home. These payments are a loan against the equity in the home and must be repaid when the individual dies, sells his home, or moves.

B. Policy

The payments from a reverse mortgage are loan proceeds and are not income to the borrower. Proceeds retained after the month of receipt are a resource.

CHAPTER M11

AGED, BLIND, AND DISABLED INDIVIDUALS (ABD) RESOURCES

SUBCHAPTER 30

IDENTIFYING RESOURCES

RESOURCE EXCLUSIONS

M1130 Changes

Changed With	Effective Date	Pages Changed
TN #DMAS-1	6/1/16	Pages 4, 14, 15
TN #100	5/1/15	Pages 13, 15, 21, 31, 33, 34 Pages 16 and 32 are runover pages.
UP #9	4/1/13	Table of Contents, page ii Pages 5, 62 Pages 62a was added.
TN#97	9/1/12	Page 14
Update #7	7/1/12	Page 24
TN #96	10/1/11	Table of Contents, page ii Pages 4, 73, 74 Appendix 1, pages 1-14 Appendix 2, page 1 Appendix 4, pages 1-8 added
TN #95	3/1/11	Pages 28, 29, 33
TN #94	9/1/10	Pages 20, 20a, 28-29a
TN #93	1/1/10	Pages 63-65 Pages 70, 74, 75
TN #91	5/15/09	Page 13

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M1130.000 RESOURCES EXCLUSIONS

REAL PROPERTY

M1130.100 THE HOME

A. Policy Principles -- General Rules

This policy only applies to SSI Recipients, ABD Individuals with Income ≤ 300% SSI, and ABD Medically Needy (MN) covered groups. It does NOT apply to the following ABD covered groups:

- *Qualified Disabled and Working Individuals (QDWI),*
- *Qualified Medicare Beneficiaries (QMB),*
- *Special Low-income Medicare Beneficiaries (SLMB),*
- *Qualified Individuals (QI), and*
- *ABD 80% FPL.*

The home property resource exclusion for the QDWI covered group is in Appendix 1 to Chapter S11. The home property resource exclusion for the QMB, SLMB, QI and ABD 80% FPL covered groups is in Appendix 2 to Chapter S11.

1. Home Exclusion

Ownership of a dwelling occupied by the applicant as his home does not affect eligibility.

2. Definition of the Home

An individual's home is property that serves as his or her principal place of residence.

A home means the house and lot used as the principal residence and all contiguous property, as long as the value of the land, exclusive of the lot occupied by the house, does not exceed $5,000.

In any case in which the definition of home as provided here is more restrictive than that provided in the State Plan for Medical Assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value.

3. Principal Place of Residence

An individual's principal place of residence is the dwelling the individual considers his established or principal home and to which, if absent, he intends to return. It can be real or personal property, fixed or mobile, and located on land or water. Only one resource can be exempted as home property.

4. Individual Owns the Land but Not the Shelter

For purposes of excluding "the land on which the shelter is located" (see A.2. above), it is not necessary that the individual own the shelter itself.

EXAMPLE: If an individual lives on his own land in someone else's trailer, the land meets the definition of home and is excluded.

B. Operating Policy -- Home Lot

1. Land

The home exclusion applies to the plot of land on which the home is located. The excluded home lot size may vary according to the locality's building requirements.

For localities with set minimum building lot size use the lesser of:

- *the* plat;
- *the* survey; or
- *the* locality's minimum size for a building lot.

For localities with no minimum building lot requirements, use the lesser of:

- *the* plat;
- *the* survey; or
- one acre.

2. Buildings

The home exclusion applies to all buildings on land excluded in B.1. above.

C. Operating Policy -- Contiguous Property Allowed Under Home Exclusion

The home exclusion may be applied to property contiguous to the home. Property adjoining the home lot may come under the home exclusion by using one of two different calculations. Apply the calculation which is most advantageous.

1. $5,000 Assessed Value of Contiguous Land

The home exclusion applies to land adjoining 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. **$5,000 of assessed value of land contiguous to the home lot can be included in the home exclusion**.

Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot.

2. Contiguous Property Essential to the Operation of the Home

The equity value of countable contiguous property may cause resources to exceed the maximum limit. In these cases, reevaluate the home property applying the definition of the home used in the State Plan for Medical Assistance in Virginia in effect on January 1, 1972. At that time a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value.

Property essential to the operation of the home means:

a. land used for regular production of any food/goods for the household's consumption only, including:

- vegetable gardens;
- pastureland for livestock raised for milk or meat;
- land to raise chickens, pigs, etc;
- outbuildings used to process and/or store any of the above.

The amount of land necessary to support animals named above is established by the local extension service. However, only actual land being used to support the animals will be allowed.

b. driveways connecting the homesite to public roadways.

c. land necessary to **the** homesite to meet local zoning requirements (e.g. building site, mobile home sites, road frontage, distance **from** road, etc.).

d. land necessary for compliance with state local health requirements (e.g., distance between home and septic tank(s));

e. water supply for the household.

f. existing burial plots.

g. outbuildings used in connection with dwelling, such as garages or tool sheds.

3. ABD Home Property Evaluation Worksheet

See Appendix 2 to this subchapter for the "ABD Home Property Evaluation Worksheet**."**

D. Limitations On Home Property Exclusion

1. Property That No Longer Serves as the Principal Place of Residence

Property ceases to be the principal place of residence, *and is no longer* excludable as the home, as of the date that *an* individual *who has* left *the home determines that he* does not intend to return to it.

Such property, if not excluded under another provision, will be included in determining countable resources.

2. 6-Month Exemption

An institutionalized individual's former residence is an excluded resource for six months beginning with the month following the month of the *individual's* admission to a medical institution. *The following are types of medical institutions:*

- *chronic disease hospitals,*
- *hospitals and/or training centers for the mentally retarded,*
- *institutions for mental diseases (IMDs),*
- *intermediate care facilities(ICFs),*
- *nursing facilities, and*
- *rehabilitation hospitals.*

After six months the former residence is counted as an available resource.

The six-month home exclusion allowed for an institutionalized individual's former home also applies to the home owned by an individual receiving Medicaid community-based care (CBC) services in another person's home, providing the individual resided in the home prior to receipt of Medicaid CBC. See M1460.530 for additional information.

3. Extended Exclusion for Institutionalized Individual

An institutionalized individual's home property continues to be excluded if it is occupied by his:

- spouse;
- minor dependent child under age 18;
- dependent child, **under** age 19, **who attends** school or vocational training; or
- individual's parent or adult child *who:*
  - *has been determined to be disabled* according to the Medicaid disability definition, *and*
  - *lived* in the home with the individual for at least one year prior to the individual's institutionalization, *and*
  - is dependent upon the individual for his shelter needs.

E. Development and Documentation-- Initial Applications

1. Ownership

a. Verify Ownership

Verify an individual's allegation of home ownership. Have the individual submit one of the items of evidence listed in b.- d. below.

b. Evidence of 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).

c. Evidence of personal property ownership (e.g., a mobile home):

- title,
- current registration.

d. Evidence of life estate or similar property rights:

- a deed,
- a will,
- other legal document.

e. Equitable Ownership

Virginia does not recognize equitable ownership of real property.

2. Principal Place of Residence--Operating Assumption

If the individual does not own more than one residence and there is no evidence that raises a question about his principal place of residence, assume that the alleged home is the individual's principal place of residence.

3. Indication of More than One Residence

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

- how much time is spent at each residence;
- where he is registered to vote;
- which address he uses as a mailing address or for tax purposes.

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

4. Evidence Indicates Non-adjoining Property

a. 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 statement to that effect; and
- **develop** the non-adjoining portion per S1140.100 (Non-home Real Property) or S1130.500 (Property Essential to Self-Support), as applicable.

b. 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, from public records, or by EW (from direct observation).

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

c. 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.

d. 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.

5. Absences From The Home

a. Summary of Development

If the individual is in an institution, determine whether a spouse or dependent relative is living in the home (see b. below).

If no spouse or dependent relative is living in the home, or if the absence is for a reason other than institutionalization, determine *if the individual intends to return when the purpose of the absence (such as medical care, rehabilitation, vacation/visit, education, employment, military service) is completed.*

NOTE: If a previously undeveloped absence from the home has ended, assume that the individual always intended to return. The absence, regardless of duration, will not affect the home exclusion.

b. Spouse or Dependent Relative Development

Obtain a signed statement from the individual as to:

- whether anyone is living in the home while the individual is in the institution;
- 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 for shelter needs, if at all.

Absent evidence to the contrary, accept the allegation.

6. Value of Home Lot

Verify the current assessed value of the home lot from the locality's Real Estate Assessment Office.

NOTE: The home lot assessed value is usually more than the value assessed to the contiguous property. Therefore, prorating the total assessed land value on the real estate tax assessment bill may not give the true assessed value of the home lot.

7. Total Home Exclusion Value

a. Add Together:

- the assessed value of the home lot as verified in 6. above, and
- $5,000 of contiguous assessed property value.

This total equals the amount of assessed land value allowed under the Home Exclusion.

If excess resources exist and any countable contiguous property was included in the evaluation, the Home Exclusion must be re-evaluated.

b. Add Together:

- the assessed value of the home lot as verified in 6. above, and
- the assessed value of contiguous property essential to the operation of the home.

This equals the amount of assessed property value allowed under the Home Exclusion used under the State Plan for Medical Assistance in Virginia in effect on January 1, 1972.

F. Procedure – Post-eligibility

If, after Medicaid eligibility is established, an individual receives real property—for example, as an inheritance or gift—which may be excludable as his home, apply the policy and procedures in A. and B. above to determine whether the home exclusion applies.

Redevelop the exclusion from resources of an individual's home only if something raises a question about the correctness of the original determination or indicates that the exclusion may no longer apply (e.g., a change of address).

G. References

- Home replacement funds, S1130.110
- Real property whose sale would cause undue hardship due to loss of housing, to a co-owner, Appendix 2 to chapter S11.
- Real property following reasonable but unsuccessful efforts to sell it, **M1130.140.**

S1130.110 HOME REPLACEMENT FUNDS

A. Policy Principles

1. General

When an individual sells an excluded home, 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.

2. Installment Sales Contracts

If an individual receives the proceeds under an installment contract, the contract is an excluded resource for as long as the individual:

- plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home; and
- does so within 3 full calendar months of receiving such down payment or installment payment.

B. Operating Policy

1. Proceeds Defined

a. If Paid in a Lump Sum

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

b. If Paid in Installments The proceeds consist of:

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

2. 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; and
- mortgage payments.

Use of proceeds to pay other costs will warrant their exclusion if such costs are identified and documented prior to occupancy and stem directly from the purchase or occupancy of the new home.

3. Timely Use of Proceeds

a. Timely
"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.

b. Use
"Using" the proceeds includes obligating them by contract as well as actually paying them out.

c. Proceeds Not Used Timely --Lump Sum
The exclusion of the unused funds will be revoked retroactively to the date of their receipt.

d. Proceeds Not Used Timely--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.

4. Reinstatement of Exclusion After Revocation

a. General
The exclusion of an installment contract, once revoked, will be reinstated if the individual intends to and does use the entire principal portion of a subsequent installment payment toward the purchase of another excluded home within 3 full calendar months of receiving such installment payment.

b. Effective Date
Reinstatement of the exclusion is effective as of the date the individual signs a new statement of intent (see C.2.b. below) and affects resource determination for that month.

5. Example--Installment Payments Not Used Timely

An installment contract has a principal balance of $5,000 as of July 1. On July 10, the buyer makes a payment of $200. As of October 31, the recipient has used only $150 of the July payment in connection with the purchase of a new home.

The exclusion of the unused $50 - and of the installment contract itself - is revoked back to July 10. As a result, the $50 and the value of the contract as of August 1 ($4,800) are included in a revised determination of resources for August.

C. Development and Documentation--Initial Applications

1. 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.

2. Statement Of Intent

a. General

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.

b. Installment Contracts

When the proceeds are being paid in installment, the individual's statement of intent must reflect his or her understanding that, if the noninterest 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.

3. Documenting Proceeds Of Sale

Document the file with 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 statement, dates and amounts of downpayment and installment payments, interest, etc.

a. Lump-Sum Proceeds

Set a special review to contact the individual in the month in which the exclusion period for the proceeds expires.

b. Installment Contact

Set the special review for the month in which the exclusion period for the downpayment on the prior home expires. If no downpayment is made, review the case the month in which the exclusion period for the first monthly payment expires.

c. Required Evidence Document the file with the same types of evidence used to document
the proceeds of the sale of the prior home (see 3. above) and, if necessary, with bills, receipts, or other evidence of related allowable expenses

4. Proceeds Used to Replace Home

a. Lump-Sum Proceeds
If the amount paid at settlement for the new home equals or exceeds the lump sum received for the old home, and there is no question about where any excess came from, cease development.

b. Installment Payments
Unless there is a question of unstated income or previously undetected resources, cease current development if:

- the downpayment on the new home equals or exceeds the downpayment received from the sale of the prior home; and
- monthly payments on the new home equal or exceed the noninterest portion of the installment payments being received on the prior home.

5. Proceeds Not Used to Replace Home

a. Lump Sum Proceeds or Downpayment
Document use of proceeds for related allowable expense (B.2. above) if:

- the amount paid at settlement for the new home is less than the lump-sum proceeds of the sale of the prior home; or
- the downpayment on the new home is less than the downpayment received from the sale of the prior home.

If not all of the proceeds will be used timely, redetermine resources for the months after the proceeds were received. Do not exclude:

- the unused portion of the lump-sum proceeds or downpayment; or
- the value of an installment contract.

NOTE: Any proceeds spent at all, whether or not for an allowable use, will not affect the resources determination for the month after they were spent.

b. Installment Payments
If the noninterest portion of the payments the individual receives on the old home exceeds the amount of the payments he or she makes on the new home, document use of the excess for related allowable expenses.

If the individual cannot provide evidence of allowable expenses for which a given month's excess can be earmarked for timely use, the installment contract cannot be excluded for that month.

D. Development and Documentation--Post-Eligibility

Do not develop for the continuing applicability of the home replacement funds exclusion unless something indicates that less than the entire noninterest portion of the installment payments is being applied to the purchase of the replacement home.

1. Federal Disaster Assistance

See S1130.620 regarding the exclusion of funds received under the Disaster Relief and Emergency Assistance Act of 1974 or under some other Federal statute because of a catastrophe declared by the President to be a major disaster.

2. Commingled Funds

See S1130.700 if funds excluded under this provision are commingled with other funds.

3. Interest

Interest earned on funds excluded under this provision is not excluded from income or resources by this provision. See S0830.500 for its treatment as income.

E. Related Policies

1. Federal Disaster Assistance

See S1130.620 regarding the exclusion of funds received under the Disaster Relief and Emergency Assistance Act of 1974 or under some other Federal statute because of a catastrophe declared by the President to be a major disaster.

2. Commingled Funds

See S1130.700 if funds excluded under this provision are commingled with other funds.

3. Interest

Interest earned on funds excluded under this provision is not excluded from income or resources by this provision. See S0830.500 for its treatment as income.

S1130.130 REAL PROPERTY WHOSE SALE WOULD CAUSE UNDUE HARDSHIP, DUE TO LOSS OF HOUSING, TO A CO-OWNER FOR QDWI, QMB, SLMB, QI and ABD 80% FPL ONLY

A. Policy Principles

1. Exclusion

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.*

2. 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.*

3. Exclusion Applies to Certain Groups

This exclusion only applies to:

Qualified Disabled Working Individuals (QDWI)

- *Qualified Medicare Beneficiary (QMB)*
- *Special Low Income Beneficiary (SLMB)*
- *Qualified Individuals (QI-1 and QI-2)*
- *ABD with Income ≤ 80% FPL (ABD 80% FPL).*

This exclusion does not apply to other ABD covered groups.

B. Development and Documentation--Initial Applications and Post-Eligibility

1. Allegations 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 (see S1130.100 B.1.b.-d.).*

If co-ownership is not proven, skip to 3. below. Otherwise, obtain the statement in 2. below.

2. 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*
- *has other living quarters readily available.*

Apply the policy principle in A. above to determine whether, on the basis of the statements of the individual and the co-owner, 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).

3. Determination-Not Undue Hardship

If the property cannot be excluded on the basis of undue hardship:

- *document the file to that effect;*
- *issue appropriate notice.*

4. Determination-Undue Hardship

If the property can be excluded on the basis of undue hardship:

- *document the file to that effect;*
- *issue appropriate notice.*

M1130.140 REAL PROPERTY FOLLOWING REASONABLE BUT UNSUCCESSFUL EFFORTS TO SELL

A. Policy Principles

1. Exclusion

Real property, including a life estate in real property created on or after August 28, 2008 but before February 24, 2009, that an individual has made reasonable but unsuccessful efforts to sell, will continue to be excluded 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.

This exclusion is effective the first of the month in which the most recent application was filed or up to three months prior if retroactive coverage is required.

B. Operating Procedure

The "current market" value (CMV) of real property located in Virginia is the tax assessed value of the property. For property located outside of Virginia the CMV is determined by applying the tax assessed value of the property to the local assessment rate, if the rate is not 100%.

1. Initial Effort Established

The following criteria define reasonable efforts to sell. The listing price must not exceed 100% of CMV *in order for the initial effort to sell to be met.*

A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement (must be actively marketed) if it is listed at *no more than* current market value **AND** the listing realtor verifies that it is unlikely to sell within 90 days of listing given particular circumstances involved; for example

- owner's fractional interest;
- zoning restrictions;
- poor topography;
- absence of road frontage or access;
- absence of improvements;
- clouds on title;
- right of way or easement;
- local market conditions; or

b. When at least two realtors employed by different realty companies refuse to list the property. The reason for refusal must be that the property is unsalable at CMV (other reasons are not sufficient – *documentation of the property's deficiencies must be provided); or*

c. When the applicant has personally advertised his property at or below CMV for 90 days by use of a "Sale by Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, reasonable inquiries with all adjoining land-owners, or other potential interested purchasers.

d. For property which is an interest in an undivided estate and for jointly owned property when a co-owner refuses to sell, an initial reasonable effort to sell shall have been made when all other co-owners have refused to purchase the applicant's or recipient's share, and at least one of the other co-owners has refused to agree to sell the property.

f. For property owned by an individual who is incompetent *and has no one authorized to sell real property on his behalf,* when court action is initiated for appointment of a guardian or conservator to secure the court's approval to dispose of the property, an initial effort to sell shall be deemed to have been made beginning the date the hearing for appointment of a guardian is placed on the court docket and continuing until the court authorizes sale of the property or *through the sixth month after the initiation of the court action, whichever comes first.* Any period of time in excess of six months to secure appointment of a guardian and authorization to sell by the court is not deemed reasonable and the property loses this exemption.

Upon authorization, and only upon authorization, the guardian must *place the property on the market according to the criteria in M1130.140 B.1.a-d and* make a continuing effort to sell the property *as described in M1130.140 B.3*.

2. Retroactive Exclusion

There will be applications received with property already listed for sale. Inform the applicant of Reasonable Efforts to Sell policy. If the real property was already listed for more than the CMV when the individual applied for Medicaid, a reasonable effort to sell was made for the retroactive period and the month of application if:

- the property was listed at no more than 100% CMV

  or

- the property was listed at or below 150% of CMV and the initial effort to sell requirement described above is met except for the listing price.

If the list price was initially higher than100% of the CMV, the listed sales price must be reduced to no more than 100% of the CMV to meet the continuing efforts to sell requirement.

If property was not listed when the application was filed or was listed higher than 150% of CMV, a reasonable effort to sell exclusion cannot be established for the retroactive period.

3. Continuing Effort to Sell

Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell until the property is sold or Medicaid coverage is canceled. *Depending on how the initial effort to sell was met, a continuing effort to sell is met as follows:*

a. *When the property was listed at no more than the CMV and the listing realtor verified that the property is unlikely to sell within 90 days of listing per M1130.140 B.1.a,* the listing agreement must continually *be renewed* at no more than 100% of the taxed assessed value, until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property *per M1130.140 B.1.b*, the recipient must personally try to sell the property by efforts described in B.1.c. above, for 12 months.

c. In the case of recipient who has personally advertised his property for a year without success *per M1130.140 B.1.c*, (the newspaper advertisements, "for sale" sign, do not have to be continuous; these efforts must be done for at least 90 days within a 12 month period), the recipient must then:

- subject his property to a realtor's listing agreement *(must be actively marketed)* priced at or below current market value; or
- meet the requirements of *M1130.140 B.1.b*. above, which are that the recipient must try to list the property and at least two realtors must refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

d. *When there is* jointly owned property *which a co-owner has refused to sell or when* the property is an interest in an undivided estate, and the initial effort to sell *was* met per *M1130.140 B.1.d., a* partition suit is necessary in order to liquidate the property *A* continuing reasonable effort to sell *the* property shall be demonstrated by filing suit with the court to partition the property <u>within 60 days of</u> <u>proving the property is otherwise unsaleable (in accordance with section B.1.e.)</u> and shall continue until the property is sold or 9 months, whichever is less. Any period of time in excess of 9 months to sell shall not be deemed reasonable and the property loses this exemption.

4. After Continuing Effort Has Been Established

Even when real property is excluded while reasonable efforts to sell it are met, the sale of real property for less than fair market value is subject to an asset transfer penalty for the Medicaid payment of long-term care services (see M1450). However, if the individual made a continuing effort to sell the property for 12 months, then the individual may sell the property between 75% and 100% of its tax assessed value without a penalty.

If the individual sells his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property was not listed with a realtor, that the sale price was the best price the recipient can expect to receive for the property at this time. In this situation a sale can take place for less than 75% of assessed value without penalty.

5. Date Property is Disregarded

After the applicant has demonstrated that his property is unsalable by following the procedures in Section B., the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to the month of application if the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in B.3.

S1130.150 INTERESTS OF INDIVIDUAL INDIANS IN TRUST RESTRICTED LANDS

A. Policy

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

B. Procedure

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

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

If verification is by phone, document the case record. Prepare a determination on the basis of the evidence.

C. References

- Income derived from individuals interests in trust or restricted lands, S0830.850
- Other resource exclusions from members of Indian tribes, S0830.830

M1130.160 OTHER REAL PROPERTY

A. Policy Principles

1. Countable

Ownership of other real property generally precludes eligibility. The property's equity value is counted with all other countable resources.

2. Exceptions

a. When equity value of the property, plus all other resources, does not exceed the appropriate resource limit;

b. The property is smaller than the county or city zoning ordinances allow:

- for home sites or building purposes, or
- property has less than the amount of road frontage required by the county or city for building purposes, and
- adjoining land owners will not buy the property;

c. The property has no access, or the only access is through the exempted home site;

d. The property is contiguous to the recipient's home site and the survey expenses required for its sale reduce the value of such property, plus all other resources, below applicable resource limitations; or

e. The property cannot be sold after a reasonable effort to sell it has been made.

B. Procedures for Determining the Countable Value of Real Property

The procedures for determining the countable value of real property, and examples, are found in Appendix 1 to this subchapter.

PERSONAL PROPERTY

M1130.200 AUTOMOBILES

A. Policy Principles

1. Automobile Defined

For ABD Medicaid purposes, "automobile" means any vehicle used for transportation. It thus can include, in addition to cars and trucks: boats, snowmobiles, animal-drawn vehicles, and animals *that are used for transportation. Animals that are kept primarily for recreational purposes, such as horses, are not considered vehicles if they are not used primarily for transportation.*

2. Current Market Value Defined

The CMV of an automobile is the average trade-in value listed in the NADA Guide.

3. Exclusion Regardless of Value

Ownership of one motor vehicle does not affect eligibility. One automobile, regardless of value, is excluded for the individual or a member of the individual's household.

4. Other Automobiles

Any automobile an individual owns in addition to the one excluded will be evaluated as a countable resource.

5. Rebuttal of NADA Value

If the individual disagrees with the NADA value, *he* must be given the opportunity to rebut it. Rebuttal evidence consists of one written appraisal for the automobile's value from a knowledgeable source, such as a used vehicle dealer or an automobile insurance company.

6. Rebuttal of Ownership

Assume that the individual owns the automobile if his name appears on the title or note or if he is listed as the owner in Division of Motor Vehicles' records. The principle of "equitable ownership," however, applies to situations in which one individual's name appears on the records of ownership but another person actually paid for and uses the automobile. If the applicant or enrollee wishes to rebut ownership of a vehicle, he must be given the opportunity to provide evidence that he does not have equitable ownership in the vehicle. Rebuttal evidence consists of:

- *a statement from the applicant/enrollee* ***and*** *the other individual indicating why the automobile is listed in the applicant's/enrollee's name, including the person who actually uses the automobile and in whose possession it is kept, and*
- *cancelled checks or records from the lender indicating that the other individual has made all payments on the automobile.*

If the applicant/enrollee does not use the automobile and can provide documentation that another person has made all the payments on the automobile, it is ***not*** *a resource to the applicant/enrollee.*

B. Operating Policy-- More than One Automobile Owned

1. General Rule

If more than one automobile is owned, one automobile will be excluded and the other will be a countable resource. The exclusion will apply to the automobile with the highest equity value.

2. Determining Equity Value

Use the following method to determine equity value:

- Determine the average trade-in value for each automobile from the NADA Guide. In the event the automobile is not listed, the value assessed by the locality for tax purposes may be used.
- Determine the equity value in each automobile by subtracting the debt from NADA value.
- Exempt the automobile with the highest equity value.

3. References

See M1110.400 for what values apply to resources.
See Appendix 1 for QDWI development.

M1130.300 LIFE INSURANCE

A. Definitions

1. Life Insurance Policy

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).

2. Face Value

Face value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. The face page of the policy may show it as such, or as the "amount of insurance"," the amount of the policy," "the sum insured," etc. A policy's FV does not include:

- the FV of any dividend addition, which is added after the policy is issued (see 5. below);
- 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).

3. Cash Surrender Value

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

4. Dividends

Periodically (annually, as a rule), the insurer 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 or by an addition or accumulation to an existing policy.

5. Dividend Additions and Accumulations

a. 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.

b. Accumulations

Dividend accumulations are dividends that the policy owner has constructively received but left in the custody of the insurer to accumulate as 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.

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.

6. Proceeds

Proceeds of a life insurance policy are the FV of the policy plus any additions payable at maturity or death.

Proceeds do not include dividends or interest that are left to accumulate in the policy (see 5.b. above). Also, proceeds do not include a policy's CSV.

7. Supplementary Contract

A supplementary contract is not a life insurance policy. It is an agreement whereby, when the policy matures or the insured dies, the proceeds are paid not in a lump sum, but in an alternative manner selected by the individual, usually as an annuity (see B.5. below).

8. Burial Insurance

A burial insurance policy is a contract whose terms preclude the use of its proceeds for anything other than payment of the insured's burial expenses.

NOTE: If a policy has a CSV to which the owner has access, the policy is not burial insurance for Medicaid purposes.

9. "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.

Most accelerated payment plans fall into three basic types, depending on the circumstances which cause or "trigger" the payments to be accelerated. These are the:

- **long-term care model**, which allows policyholders to access their death benefits should they require extended confinement in a care facility or, in some instances, health care services at home;

- **dread disease or catastrophic illness model,** which allows policyholders to access their death benefits if they contract or acquire one of a number of specified covered conditions; and

- **terminal illness model,** which allows policyholders to access their death benefits following a diagnosis of terminal illness where death is likely to occur within a specified number of months.

Some companies refer to these payments as "living needs", "accelerated death", or “viatical” payments.

Depending on the type of accelerated payment plan, receipt of accelerated payments may reduce the policy's FV by the amount of the payments and may reduce CSV in a manner proportionate to the reduction in FV. In some cases, a lien may be attached to the policy in the amount of the accelerated payments and a proportionate reduction in CSV results.

See B.6. below for policy regarding accelerated payments and E. below for procedures.

B. Policy

1. Life Insurance as a Resource

A life insurance policy owned by the individual is a resource if it generates a CSV. Its value as a resource is the amount of the CSV.

A life insurance policy which is irrevocably assigned to another person is not a resource to the individual, but it needs to be evaluated as an asset transfer (subchapter M1450). When the life insurance policy is irrevocably assigned to a funeral home or trust to fund the individual's burial contract, go to section M1130.425.

2. Limited Exclusion

A life insurance policy is an excluded resource, **for individuals age 21 and over,** if its FV and the FV of any other life insurance policies the individual owns on the same insured total $1,500 or less. However, the FV of some policies does not count toward this $1,500 total (see 3. below). **Life insurance policies on individuals under age 21 are excluded from resource evaluations.**

We do **not** include the FV of dividend additions in determining whether a policy is a countable or excludable resource. If the policy is a countable resource, we include the **CSV** of dividend additions in determining the resource value of the policy.

3. FV of Burial and Certain Term Insurance Not Counted

In determining whether the total FV of the life insurance policies an individual owns on a given insured is $1,500 or less, the FV of the following are not taken into account:

- burial insurance policies; and
- term insurance policies that do not generate a CSV.

4. Relation to Burial Fund Exclusion

The maximum of *$3,500* that can be excluded as set aside for the burial expenses of an individual must be reduced by the FV of:

- any burial insurance policy for the burial expenses of the individual;

  Exceptions: *Huff-Cook Mutual Burial Association life insurance policies (which may be designated as Care Plans on the policy) sold prior to April 7, 1993 do not reduce the $3,500 burial fund exclusion. Huff Cook life insurance policies sold from April 7, 1993 through November 30, 1993 reduce the burial fund exclusion. Huff-Cook/Settlers life insurance policies sold on or after December 1, 1993 do not reduce the $3,500 burial fund exclusion unless they are assigned to pay for a pre-need funeral contact.*

- any insurance policy on the life of the individual that is excluded under the life insurance exclusion in B.2. above;

- a life insurance policy of any value that was assigned to a funeral provider or of which a funeral provider has been made the irrevocable beneficiary, if the policy owner has irrevocably waived his or her right to, and cannot obtain, any CSV the policy may generate. The amount by which the $3,500 exclusion is reduced equals the face value of the policy MINUS the total cost of burial space items identified in the contract.

(See **M1130.410** for instructions regarding the burial fund exclusion and **M1130.410** C.1.d. for more discussion of burial insurance.)

5. Eligibility for Other Benefits

a. Supplementary Contracts

Supplementary contracts normally provide for an annuity. We treat such contracts in accordance with the instructions on filing for other benefits, for any benefit with choices about method of payment.

b. Accelerated Life Insurance Payments

Accelerated payments are not "benefits" for purposes of the Medicaid "filing for other benefits" provision. We do not require a policyholder to apply for accelerated payments as a condition of obtaining or retaining Medicaid eligibility.

6. Accelerated Life Insurance Payments

a. Income and Resources Treatment

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

b. Payments Not "Conversion of a Resource"

The receipt of an accelerated payment is not treated as a conversion of a resource for Medicaid purposes. This is because, under an accelerated arrangement, an individual receives proceeds from the policy, not the policy's resource value--which is its CSV.

C. Procedure Initial Application

1. Using the Individual's Records for Verification

a. Ask the individual to submit:

- all the life insurance policies he or she owns; and
- the most recent annual dividend statement issued for each policy.

b. For countable and excludable policies, use these records to verify:

- the owner;
- the insured;
- the FV;
- whether the policy pays dividends and, if it does, what option the individual selected for their disposition (i.e. accumulations, additions, applied to premiums, paid by check); and
- if dividend accumulations, their current amount.

c. Additionally, for countable policies, use these records to verify:

- whether the policy generates a CSV and, if it does,

- the current CSV (including the CSV of any dividend additions and any loans on the policy which reduce the CSV). *Some insurance policies include a CSV table. For policies that do not pay dividends, if the table lists a CSV value for the specific number of years the individual has owned the policy, no additional verification is needed.*

2. Contacting an Insurance Company or Agent for Verification

If examination of a policy does not reveal an item of information listed in 1. above, obtain that information from the individual's agent or the insurance company, subject to the operating assumptions in 4. below. Do so by phone, if possible, and document the information in the case record.

3. Exception to Verification

Do **not** verify employer-provided term insurance.

4. Operating Assumptions

Apply the following assumptions in determining what development is required. Absent evidence to the contrary, assume that a:

- term policy without a table of CSV's, if it appears otherwise complete, does **not** generate a CSV;
- policy that does not generate a CSV also does **not** pay dividends;
- policy issued by a nonparticipating or stock company does **not** pay dividends;
- policy issued by a participating or mutual company pays dividends.

NOTE: Identification of the kind of company usually follows its name on the face page of the policy.

5. Determination

a. General

Apply the policy in B. above to determine whether each insurance policy owned is a resource and, if it is, whether to count or exclude its CSV in the resource determination.

b. Dividend Additions

Do **not** include the **FV** of dividend additions in determining whether a policy in a countable or excluded resource (B.2. above)

If the policy is a **countable** resource, do include the **CSV** of dividend additions in determining the resource value of the policy.

If the policy is a **excluded** resource, do **not** include the CSV of dividend additions in determining the individual's countable resources.

c. Dividend Accumulations

Do not exclude dividend accumulations under the life insurance provision, even if you exclude the policy that pays the accumulations.

Count the accumulations as resources, even if you exclude the policy itself because the policy's FV is $1,500 or less unless the accumulations are excludable under another provision (for example, because they have been set aside for burial).

d. Income Treatment of Dividends

See S0830.500 C. regarding the income treatment of life insurance policy dividends.

D. Procedure Accelerated Life Insurance Payments

If an individual receives accelerated payments, and the payments do **not** preclude Medicaid eligibility due to excess income or resources, determine whether the FV and/or CSV of the policy must be verified.

Reverify the policy if, prior to receipt of the accelerated payments:

- the policy's CSV precluded Medicaid eligibility, but the individual may now be resource-eligible; or

- the policy was an excluded resource and its FV reduced the maximum burial fund exclusion available to the individual (see B.4. above).

If reverification is necessary, examine the policy and any other relevant documentation in the individual's possession to determine the effect of the accelerated payments on FV and CSV. If necessary, contact the life insurance company for the necessary information.

If the individual expects to receive accelerated payments in the future, explain the effect of any further reduction in the policy's FV on the maximum burial fund exclusion available (if applicable).

E. References

- Income treatment of life insurance dividends, S0830.500 C.
- Life insurance funded burial contracts, **M1130.425**.

M1130.400 BURIAL SPACES

A. Policy –The Exclusion

1. General

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

Cemetery plots are not *counted as resources, regardless of the number owned,* except when evaluating eligibility as QDWI. For QDWI, exclude one cemetery plot (see Appendix 1 to chapter S11). *Accept declaration regarding ownership of cemetery plots. Verification is not required*.

2. No Effect on Burial Funds Exclusion

The burial space exclusion is in addition to, and has no effect on, the burial funds exclusion (M1130.410).

3. Multiple Burial Spaces

When items other than cemetery plots serve the same purpose, exclude only one per person. For example, exclude a cemetery plot and a casket for the same person, but not a casket and an urn.

B. Definitions

1. Burial Space

A burial space is a(n).

- Gravesite (either an existing grave or a plot);
- crypt;
- mausoleum;
- casket;
- urn;
- niche; or
- other repository customarily and traditionally used for the deceased's bodily remains.

The term also includes 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.

For example, a contract for care and maintenance of the gravesite, sometimes referred to as endowment or perpetual care, can be excluded as a burial space.

2. Agreement Which Represents the Purchase of a Burial Space

An agreement which represents the purchase of a burial space is a contract with a burial provider for a burial space held for the eligible individual or a member of his/her immediate family.

3. Individual's Immediate Family

"Individual" means the Medicaid recipient or **applicant**. **" Immediate family" means:**

- 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.

4. 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 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).

Until the purchase price is paid in full, a burial space is not "held for" an individual under an installment sales contract or similar device if:

- the individual does not **currently** own the space;
- the individual does not **currently** have the right to use the space; and
- the seller is not **currently** obligated to provide the space.

Until all payments are made on the contract, the amounts paid may be considered burial funds. See M1130.410.

C. Procedure--Development and Documentation

1. General

The following procedures do **not** apply to installment burial contracts or insurance funded burial contracts. For installment contracts, see **M1130.420**. For insurance funded contracts, see **M1130.425**.

a. 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.

b. 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. Exclude only those spaces that are alleged to be for the burial of the individual, the spouse, or a member of the immediate family.

2. Agreements Which Represent the Purchase of a Burial Space

a. General

If the contract shows the purchase of a specified burial space at a specified price, determine whether such space is held for the individual or member of the individual's immediate family per B.4. above.

If the space is held for the individual, determine if the contract is irrevocable or revocable. If irrevocable, it is not a resource. If the contract is revocable, it is an excludable resource. (See **M1130.420** C.3. on single-purpose burial space contracts.)

b. Installment Contract

If the contract calls for installment payments, determine whether the value of the burial space has to be treated as burial funds (**M1130.420** C.5.c.).

D. References

Burial funds exclusion, M1130.410.
Prepaid burial contracts, **M1130.420**.
Interest earned on excluded burial space purchases agreements, S0830.501.

M1130.410 BURIAL FUNDS EXCLUSION

A. Policy Principle

Up to $3,500 of burial funds may be excluded for each member of the ABD assistance unit (i.e., the individual and the individual's spouse, if living together).

NOTE: Burial funds exclusion is separate and apart from burial space exclusion.

For QDWI, see Appendix 1 to chapter S11.

B. Definitions

1. Burial Funds

Burial funds are resources that have been specifically set aside and clearly designated in writing for the cremation or other burial-related expenses of the individual or the individual's spouse.

Burial funds may be:

- irrevocable burial trusts established on or after August 11, 1993 *(irrevocable burial trusts established **before** August 11, 1993 are not countable based on the law in effect at that time);*
- revocable burial trusts;
- revocable burial contracts;
- other revocable burial arrangements (including the value of certain installment sales contracts for burial spaces);
- cash;
- financial accounts (e.g., savings or checking accounts);
- other financial instruments with a definite cash value (e.g., stocks, bonds, certificate of deposit, life insurance policies, etc.).

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

NOTE: The entire amount of an irrevocable trust established on or after 8/11/93 by a funeral director for an individual for the purpose of paying for funeral and burial expenses is excluded if the following two step process is followed:

1) the individual signs a pre-need contract with a funeral home director promising prepayment in return for specific funeral merchandise and services and pays the agreed upon amount in the form of a direct cash payment or purchase of a life insurance policy or annuity to the funeral director, and

2) the funeral home director in turn places the money, life insurance policy or annuity into a trust.

2. Expenses for Burial Funds Exclusion Purposes

a. Expenses Included

Expenses included for burial funds exclusion purposes are generally those related to preparing a body for burial and any services prior to burial.

They usually include, for example: transportation of the body, embalming, cremation, flowers, clothing, services of the funeral director and staff, etc.

b. Expenses Not Included

Usually, expenses for items used for interment of the deceased's remains are not included for burial funds exclusion purposes. Such items may be subject to the burial space exclusion (**M1130.400**). However, items that do not qualify for the burial space exclusion, e.g., a space being purchased by installment contract, may be excluded under the burial fund exclusion.

C. Policy--General

1. Amount of Funds That Can Be Excluded

a. Maximum Exclusion

We can exclude up to $3,500 each in funds set aside for:

- the burial expenses of the individual; and
- the burial expenses of the individual's spouse (eligible or ineligible) .

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

Funds paid on an installment contract do **NOT** qualify for the **burial space exclusion.**

Funds paid on an installment contract for burial spaces may qualify for the burial fund exclusion.

b. Reductions in Maximum Exclusion

The maximum $3,500 that can be excluded from countable resources is reduced by:

- the face value of life insurance (not including term policies) owned by and insuring the individual and/or the individual's spouse, if the cash surrender value of such policies has been excluded from countable resources (cash surrender value of life insurance is excluded when the total face value per insured individual aged 21 or over does not exceed $1,500), and
- the face value (not including the value of burial space items) of an irrevocable burial trust established before 8/11/93 *or other irrevocable arrangement specifically designated for the purpose of meeting the individual's or spouse's burial expenses,* regardless of whether the arrangement is owned by the individual or someone else, and
- the face value of burial insurance, regardless of whether the burial insurance is owned by the individual or someone else, and

- the face value of burial contracts (not counting the value of burial space items), regardless of whether the contract is owned by the individual or someone else.

c. Exceptions Related to Huff-Cook/Settlers Policies

Huff-Cook Mutual Burial Association life insurance policies (which may be designated as Care Plans on the policy) sold prior to April 7, 1993 **do not reduce** the $3,500 burial fund exclusion.

Huff-Cook life insurance policies sold from April 7, 1993 through November 30, 1993 **reduce** the burial fund exclusion.

Huff-Cook/Settlers life insurance policies sold on or after December 1, 1993 **do not reduce** the $3,500 burial fund exclusion unless they are assigned to pay for a pre-need funeral contact.

d. EXAMPLE – Burial Fund Exclusion

Mrs. Brown has the following burial resources:

$2,000 designated savings account
$ 200 irrevocable burial contract

$3,500 maximum exclusion
- 200 irrevocable burial contract
$3,300 available exclusion
-2,000 excluded burial funds
$1,300 still available for exclusion

Treatment - We exclude the $2,000 savings account. Two years later, Mrs. Brown wants to add to her designated burial savings account, which now has a balance of $2,150 due to accumulated interest. She can increase the amount of excluded funds in the account by up to $1,300. Note that when determining the amount still available for burial fund exclusion, we disregard the amount of interest which accumulated in the account.

e. Subsequent Purchase of Excluded Life Insurance or Irrevocable Burial Contract

A subsequent purchase of an excluded life insurance policy or an irrevocable burial contract reduces the amount of the available burial funds exclusion as described in b. above. The reduction is effective the month after the month in which the life insurance or the irrevocable burial contract was purchased.

f. Burial Insurance

Burial insurance policies are not life insurance policies (see **M1130.300** for a definition of burial insurance). For Medicaid purposes, burial insurance is an irrevocable arrangement whose face value reduces the maximum burial funds exclusion by the policy's face value.

Exceptions: Huff-Cook Mutual Burial Association life insurance policies sold prior to April 7, 1993 do not reduce the $3,500 burial fund exclusion.

Huff-Cook/Settlers life insurance policies sold on or after December 1, 1993 do not reduce the $3,500 burial fund exclusion unless they are assigned to pay for a pre-need funeral contact.

e. Increases in Value of Burial Funds

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

2. Increases in Amount of Excluded Burial Funds

a. Designated Amount is $3,500

Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded from resources if left to accumulate and become part of the separate burial fund.

b. Designated Amount is Less than $3,500

Until $3,500 (or such other lesser amount established in accordance with C.1.b.) in burial funds has been designated, additional amounts can be excluded under the burial funds provision if the individual designates them for burial expenses. Interest on excluded burial funds is not included in determining if the $3,500 maximum has been reached.

c. ***Designated Amount is greater than $3,500***

While an individual may designate greater than $3,500 for burial, only up to $3,500 may be excluded for burial. The remainder of the designated amount will be evaluated as a countable resource. If the individual is determined eligible, interest and appreciation that accumulates on the excluded portion of the burial fund will be excluded. Interest and appreciation that accrue over time on the non-excluded portion will be evaluated as a countable resource.

3. Burial Funds Must Be Kept Separate from Non-burial-Related Assets

a. If burial funds are commingled with nonburial-related assets, the exclusion does not apply.

b. Examples

A single burial contract for $4,500 of burial services and $2,000 in burial spaces does not have to be separated into 2 contracts since the whole amount is burial-related, even though we can only exclude $3,500 of the contract as a burial fund.

A bank account containing $1,200, $500 of which is designated for burial and $700 of which is other funds the individual uses for living expenses, is **not** allowable and the $500 may **not** be excluded as a burial fund. If the $500 is moved to a separate account, the exclusion may be applicable the month in which the funds are separated.

4. Funds Used for Another Purpose

a. General

If some or all of the excluded funds were withdrawn and used for another purpose, the funds withdrawn may have been either transferred or retained as a resource. If the funds were transferred, the asset transfer policies in subchapter M1450 are applicable. If the funds have been retained as a resource, the resource policies in Chapter S11 are applicable. Any excluded funds remaining in the designated burial fund continue to be excluded.

b. Change of Form

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.

c. Examples - Use for Another Purpose

A loan against the cash surrender value (CSV) of a life insurance policy that has been designated for burial expenses **is not** use for another purpose **if** the loan is for the purchase of another burial fund.

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 set aside for the individual's burial.

5. When to Develop Use for Another Purpose

Determine if excluded burial funds have been used for some purpose other than as burial funds only if:

- there is some indication that excluded funds may have been used for another purpose, and
- the sum of the excluded funds (including any that may have been spent) and countable resources exceeded the applicable (individual or couple) resources limit as of the month in which the excluded funds may have been used for another purpose, and
- the individual was eligible for the month in which the excluded burial funds may have been used for another purpose.

6. How to Develop Use for Another Purpose

If the criteria in 1. above indicate a need to pursue the issue of use for another purpose:

- obtain the individual's signed statement as to whether any of the funds were so used and, if so, the amount;
- obtain any pertinent evidence, including signed statements from other individuals who may know about the funds in question.
- follow resource policy if funds have been retained as a resource.
- follow asset transfer policy if funds were transferred.

***7.* Deeming Considerations**

If the individual is a blind or disabled child under age 21 who lives with his parent, resources (and income) of the parent are deemed to the child. The burial funds exclusion applies to resources that belong to the parent and are designated as set aside for the burial expenses of the parent and/or his or her spouse.

D. Designation of Burial Funds

1. How Designation May Be Made

Burial funds may be designated by the applicant at the time of application or during the initial application processing period or by an enrollee at any time after eligibility has been determined. Burial funds may be designated by:

- an indication on the burial fund document (e.g., the title on a bank account); or
- a signed statement.

See Appendix 3 for a sample burial funds designation form. A printable version of the form is located *at* *http://spark.dss.virginia.gov/divisions/bp/me/training/index.cgi*.

2. Signed Statement Designating Burial Funds

A signed statement must include:

- 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.); and
- the date the individual first considered the funds set aside for the burial of the person specified.

3. Date of Intent

We accept the individual's allegation as to the date he or she first considered the funds set aside for burial unless there is evidence that the funds were used and replaced after that date.

4. Effective Date of Exclusion

Once the date that burial funds were considered set aside for burial has been established, the first month for which the exclusion affects resource determination is the latest of:

- 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 the month (or first month of retroactive period, if retroactive coverage is requested).

5. Designating Life Insurance as a Burial Fund

When designating a countable life insurance policy as a burial fund, the policy itself is designated. However, because the countable value of the policy is its cash surrender value, it is the cash surrender value at the time of designation that is applied toward the burial funds exclusion when determining countable resources.

If life insurance is designated as a burial fund, the individual can also designate any dividend accumulations on the life insurance policy (**M1130.300 A.5.b.**) as a burial fund. 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.

6. Designation Remains

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

- eligibility terminates or
- the individual states in writing that the funds are no longer set aside for burial.

E. Procedure-Initial Applications Development and Documentation

1. Ask About Burial Funds

Unless the individual is ineligible for a reason other than resources, inquire to determine the presence of excluded burial funds.

NOTE: Make sure the individual understands what we mean by a burial fund and the effect a burial fund could have on countable resources and income.

2. Verify Form and Separation of Funds

Verify that the funds meet the definition of burial funds in B.1. above and that the funds are separated from all other non-burial-related assets (C.3. above). Burial funds must meet both of these requirements before we can exclude them. If funds cannot be excluded, tell the individual why (e.g., if the funds are not separate from non-burial assets).

3. Determine Date Funds Set Aside for Burial

If an individual alleges having set aside funds for burial, determine the date they were first considered as set aside and document the file with supporting evidence.

- If the funds are already clearly designated (e.g., by the title of a savings account), accept any official record which shows the title of the account and which establishes that the designation was in effect prior to the month of application.
- If the funds are **not** already clearly designated, obtain the statement described in D. above.
- See D.4. above regarding effective date of the exclusion for funds considered set aside for burial prior to filing.

4. Verify Value of Funds

Verify the value of any burial funds to be excluded, using the instructions that apply to the specific resources in question.

5. Determine Amount of Exclusion Available

Document the file with evidence of:

- the face value of life insurance owned by and insuring the individual or the individual's spouse if the cash surrender value of such policies has been excluded from countable resources (cash surrender value of life insurance is excluded when the total face value per insured individual age 21 or over does not exceed $1,500), and
- the face value (not including the value of burial space items) of an irrevocable burial trust established before 8/11/93 or other irrevocable arrangement specifically designated for the purpose of meeting the individual's or spouse's burial expenses, regardless of whether the arrangement is owned by the individual or someone else, and
- the face value of burial insurance whether owned by the individual or someone else, and
- the face value of burial contracts (not counting the value of burial space items) whether the contract is owned by the individual or someone else.

Should the $3,500 maximum exclusion be reduced by life insurance, any irrevocable arrangement including an irrevocable burial trust established before 8/11/93, burial insurance, or a burial contract, document the amount by which the exclusion will be reduced, including the computation of the amount. To make this computation, you may use the electronic Burial Funds Exclusion Worksheet located at:
http://spark.dss.virginia.gov/divisions/bp/me/training/index.cgi.

F. Procedures-Renewal or a Reported Change

1. Verify Funds Already Excluded

If the case record shows excluded burial funds, verify the current amount. When $3,500 or less was initially designated as a burial fund, increases in the burial fund due to appreciation or accumulated interest are excluded even if they result in the total burial fund exclusion exceeding the $3,500 maximum.

If more than $3,500 was initially designated for burial funds exclusion, interest and appreciation that have subsequently accrued on the excluded portion of the burial fund are excluded. Interest and appreciation that have subsequently accrued on the countable portion are countable. To calculate the countable value of a burial fund at renewal or when a change is reported you may use the electronic "BFE Increased Value Determination Worksheet". The worksheet is located *on the Virginia Department of Social Services Local Agency web site (SPARK) at:* *http://spark.dss.virginia.gov/divisions/bp/me/training/index.cgi*.

Also, inquire whether designated burial funds continue to be maintained separately from non-burial-related assets (C3. above).

If the funds have decreased, see G. below.

2. Enrollee Wishes to Designate Funds

If an enrollee wishes to designate funds for burial, proceed as you would for an initial application. This applies whether no funds are currently excluded or less than $3,500 (excluding appreciation or accumulated interest) is currently excluded.

3. Apply Burial Funds-Related Income/ Resources Exclusions

See H. below.

G. Procedure-Burial Funds Are Used for Another Purpose

1. When to Evaluate Use for Another Purpose

Determine if excluded burial funds have been used for some other purpose only if:

- there is some indication that excluded funds may have been used for another purpose, and
- the sum of the excluded funds (including any that may have been spent) and countable resources exceeded the applicable (individual or couple) resources limit as of the month in which the excluded funds may have been used for another purpose, and
- the individual was eligible for the month in which the excluded burial funds may have been used for another purpose.

2. How to *Evaluate* Use for Another Purpose

If the criteria in 1. above indicate a need to pursue the issue of use for another purpose:

- obtain the individual's signed statement as to whether any of the funds were so used and, if so, the amount;
- obtain any pertinent evidence, including signed statements from other individuals who may know about the funds in question.

H. Procedure--Posteligibility Application of Burial Fund - Related Income/Resource Exclusions

1. Recipient Is Eligible for All Months During Period of Review

If the individual remained eligible throughout the period of review:

- exclude from income any interest earned on the excluded burial funds if that interest has been allowed to accumulate as part of such funds; and
- exclude from resources, in addition to the funds previously excluded,
- any interest on such excluded burial funds that has been excluded from income and any appreciation in the value of such excluded funds.

I. References

Burial space exclusion, M1130.400.`
Prepaid burial contracts, M1130.420.
Burial insurance, M1130.300.
Interest on excluded burial funds, S0830.501.
Insurance funded burial contracts, M1130.425.

M1130.411 BURIAL FUNDS EXCLUSION-- JULY 1, 1988 THROUGH JULY 31, 1994

A. Introduction

The instructions in **M1130.410** apply to the burial funds exclusion for July 1, 1988 through June 30, 1994 with the exceptions noted below**.**

B. Policy

1. Form of Burial Funds

For months prior to August 1, 1994 burial funds could be in the form of **any** resource, liquid or nonliquid.

2. Commingled Funds

For months prior to August 1, 1994, burial funds could be commingled with other resources (burial-related or nonburial-related), but the funds had to be separately identifiable in order to be excluded (S1130.700).

M1130.420 PREPAID BURIAL CONTRACTS

A. Definition

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.

B. Policy--General

1. Contract Is a Resource

If a burial contract is revocable or salable, it is a resource. However:

- any portion of the contract that clearly represents the purchase of burial spaces may be excludable, regardless of value (**M1130.400**); and
- some or all of any remaining value of the contract may be excludable as burial funds (**M1130.410**).

2. Contract Is Not a Resource

a. Contract Not Saleable

When a burial contract is funded totally by an irrevocable trust, irrevocably assigned life insurance policy or annuity, the contract is NOT saleable. Do not develop the prepaid burial contract further. Determine whether the trust, the life insurance policy or annuity is a resource using the following policy:

- trusts in sections M1120.200 through 202, M1140.400 through 404.
- life insurance in sections M1130.300 and M1140.310.

b. Contract Issued in Another State

If a burial contract is issued in another State and cannot be revoked or be sold without significant hardship, it is not a resource. However:

- any portion of the contract that represents burial **funds** reduces the $3,500 maximum otherwise available for the burial funds exclusion; but
- any portion that represents the purchase of burial spaces has no effect on the burial funds exclusion.

3. Contract Revocability

State law determines whether a contract is revocable. Some burial contracts may be partly revocable. For example, if the total value of an otherwise irrevocable contract exceeds the limit set for irrevocability by State law, the excess is revocable.

4. Burial Insurance and Burial Trusts

Prepaid burial contracts do not include burial insurance as defined in **M1130.300** or burial trusts as described in M1120.200.

5. Provider Places Funds in Trust

If an individual contracts with a provider of burial services and the **provider** places the funds in trust with the funeral provider named as the grantor on the trust document, this individual has purchased a preneed contract; this is a compensated "transfer" of funds.

C. Policy --Evaluations Contracts

1. 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. If an EW determines that such would be the case, the file must contain a determination to that effect.

- State law or contractual terms may require **mutual consent** of buyers 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 buyers, the file must reflect those facts.

NOTE: 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.

2. Value of Contract as a Resource

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

- the amount payable to the owner upon revocation; or

- if the contract is not revocable but is salable, its CMV.

3. Single Purpose Burial Space Contracts

a. General

Apply the burial space exclusion to any single-purpose burial space contract that is a resource **if:**

- the contract lists all of the burial spaces **and** either includes a value for each space or the total value of all the spaces combined; and

- the seller's obligation to provide those items is not contingent on further payment (as in certain installment contracts); i.e., the items are actually being held for the individual's future use.

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b. Exception
Treat as burial funds (i.e., as subject to the *$3,500* maximum or as reducing that maximum):

- the unidentified portion of a contract that implies it covers only burial spaces but does **not** identify some or all of the spaces, or does not include either a value for each burial space or the total value of all the spaces combined; and
- the amount paid on an installment contract for burial spaces if the contract does not entitle the person to the spaces until the full purchase price has been paid.

NOTE: Once full payment has been made, these items can become subject to the unlimited burial space exclusion because at the point of full payment the contract becomes an agreement representing the purchase of a burial space (M1130.400).

4. Single-Purpose Contracts for Burial Expenses

A single-purpose contract for burial expenses (M1130.410) includes only services that are consider burial **funds** and that are subject to, or reduce the amount of, the burial funds exclusion.

5. Contracts for Both Burial Spaces and Burial Expenses

a. Irrevocability Designation
If a combined contract designates which portion is irrevocable and which is not, that designation is controlling. That is, if the contract designates only the burial space purchase as irrevocable, the portion dealing with burial funds is revocable and is subject to the burial funds exclusion.

b. Maximum on Irrevocable Amount
Virginia does not have a set maximum irrevocable amount set by law. However, if a State has a law which sets a maximum on the amount that can be irrevocable, but the contract does not designate which part is irrevocable and the contract value exceeds the State maximum, we apply the maximum to burial **spaces** first.

- If space purchases exceed the maximum, we consider the excess revocable but subject to the burial space exclusion.
- If space purchases are less than the maximum, we apply the remainder of the maximum to burial funds items.

NOTE: Irrevocable burial funds reduce the amount available for excluding other burial funds.

c. Installment Contracts

We treat as burial funds the amount **paid** for any spaces and services in a combined contract being purchased in installments **if** the contract.

- does not entitle the individual to the spaces and services listed until the full purchase amount has been paid ; or
- relieves the seller of the obligation to provide the spaces and services listed at the price listed until the contract is paid in full.

Once the contract has been paid in full, we apply the space and funds exclusions as appropriate.

D. Procedure--Development and Documentation

1. General

a. **Develop** initially whether a prepaid burial contract exists and is a resource.

b. **Document** the file with respect to:
- revocability;
- liquidity (as needed); and
- value, if the contract is a resource or involves burial funds

c. In **posteligibility** situations:
- **develop and document** any newly acquired contract per a. and b. above;
- **do not redevelop** a contract if prior development showed that it is not a resource and does not contain burial funds;
- **redevelop and document** a contract if prior development showed that installment payments could affect applicability of the funds/space exclusions or that it included burial funds (revocable or irrevocable).

2. Valuing a Revocable Contract

For revocable burial contracts, State law usually sets refund guidelines that may vary by contract. If you cannot determine the refund amount by examining the contract, have the individual contact the provider or, if necessary, make the contact yourself.

3. Valuing an Irrevocable but Transferrable Contract

If a contract is irrevocable but can be liquidated some other way (e.g., through sale), **assume** that the contract's CMV is the amount that has been paid on it.

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.

4. Single-Purpose Contract

Develop and document the factors outlined in 1. above, following the guidelines above, as appropriate.

5. Contract for Both Spaces and Funds

a. Determine whether the contract designates which portion (if any) is irrevocable.

b. If designated, develop each portion as appropriate per **M1130.400** or **M1130.410.**

c. If the contract does not designate, apply the State maximum for irrevocability, if any, first to the total value of all burial spaces and then to the value of the burial funds. (See E. below for examples.)

Any burial spaces not covered are subject to the burial space exclusion. Any burial funds not covered are subject to the burial funds exclusion.

d. If you cannot determine which amounts represent the purchase of spaces and which represent burial funds, and which parts of the contract, if any, are irrevocable, the individual has not satisfactorily identified funds versus spaces. In that event, consider the entire contract as a resource in the form of burial funds.

E. Examples--

1. Installment Contract

a. Situation

An individual owns a revocable contract for his own burial. The contract, which covers both spaces and funds, gives the following breakout:

$ 700	- casket
350	- vault
200	- opening/closing
225	- embalming
300	- use of facilities
525	- services of director and staff
$2,300	- total value of contract

The contract provides that, until the full price of the contract has been paid, the seller has the option to be released from any obligation to provide the items and services at the contract price. Rather, the seller can charge prices current at the time of death, allowing a credit for amounts already paid.

b. Treatment

Until the contract has been paid in full, we consider all payments to be funds set aside for burial. Amounts paid in excess of the maximum available for exclusion as burial funds are countable resources.

When the contract has been paid in full, the spaces listed in a. above are subject to the burial space exclusion. The $1,050 value of the remaining items is subject to the burial funds exclusion.

M1130.425 LIFE INSURANCE FUNDED BURIAL CONTRACTS AND THE BURIAL SPACE/FUNDS EXCLUSIONS

A. Definitions

1. Life Insurance Funded Funeral Arrangements

A life insurance funded burial contract involves an individual purchasing a life insurance policy on his or her own life and then assigning, revocably or irrevocably, either the proceeds or ownership of the policy to a third party, generally a funeral provider. The purpose of the assignment is to fund a burial contract.

Life insurance funded burial contracts are **not** burial insurance (**M1130.300** A.8.).

2. Proceeds

Proceeds of a life insurance policy are the face value of the policy plus any additions payable at maturity or death. This does not include dividends, cash surrender value (CSV) or interest.

B. Policy-General

1. Operating Assumptions

We assume that the burial contract itself (without the insurance policy assigned to fund it) has no resource value. We also assume that the contract is not salable because it is a part of a larger arrangement involving life insurance that has been assigned to another party as payment for contract goods and services. This means that the value of the burial arrangement is the value of the life insurance policy.

2. State Limits on the Amount of Funeral Contracts That May Be Made Irrevocable

State limits on the amount of funeral contracts that can be made irrevocable generally address the face amount of the contract that can be made irrevocable. Since we are concerned with the irrevocable assignment of ownership of an insurance policy to fund a burial contract and not with the face amount of the contract itself, State dollar limits are usually of no consequence in evaluating the policy for Medicaid purposes unless State law specifically limits irrevocable assignment of ownership of insurance polices funding burial contracts.

3. Dividend Accumulations

We do not exclude from resources dividend accumulations of a life insurance policy as part of the value of the policy or the burial contract. Dividend accumulations are separate resources and must be designated separately in order to qualify for the burial funds exclusion. (See **M1130.300 A.5.b.** and **C.6.c**)

If ownership of the life insurance policy has been irrevocably assigned, we assume, absent evidence to the contrary, that the dividend accumulations are also assigned.

C. Policy--Effect Of Assignment of Ownership On Burial Exclusions

1. Revocable Assignment

a. Burial Spaces
The burial space exclusion does not apply. This is because the funeral provider has not received any payment and no purchase of burial spaces has been made. The provider has no obligation to provide any spaces until the individual dies and therefore no spaces are being held for the individual.

b. Burial Funds
The burial funds exclusion may apply. The resource value of the burial contract is equal to the CSV of the life insurance policy, subject to the *$3,500* burial funds exclusion.

c. Example
Mrs. Emma White has a burial contract funded by the revocable assignment of ownership of a life insurance policy. The face value of both the burial contract and the life insurance policy is *$5,000* and the CSV of the life insurance policy is currently *$3,700*. The total resource value of Mrs. White's burial contract is equal to the CSV of *$3,700.*

The burial space exclusion does not apply to Mrs. White's contract (per above). However, we can exclude *$3,500* of the CSV under the burial funds exclusion. The remaining $200 of the CSV will be considered a countable resource.

2. Irrevocable Assignment

a. Burial Spaces
The burial space exclusion may apply, depending on the nature of the contract (**M1130.400**.). Any portion of the contract that represents the purchase of a burial space has no effect on the burial funds exclusion.

b. Burial Funds
The life insurance policy and the burial contract are not resources for Medicaid purposes because the Medicaid recipient no longer owns them. The face value of the burial funds portion of the contract (if any) offsets the *$3,500* burial funds exclusion because the contract represents an irrevocable arrangement available to meet the individual's burial.

c. Example Mr. Bill Atkins made provision for his burial by irrevocably assigning ownership of a life insurance policy on his life to a funeral home to fund a burial contract. The face value of the life insurance policy is *$5,000.*

The burial contract identifies the purchase of $1,300 of burial spaces and *$3,700* of burial funds. The *$3,700* burial funds portion of the contract is not a resource, but, since the assignment of policy ownership is irrevocable, the *$3,700* burial funds portion exceeds the *$3,500* burial funds exclusion that he is entitled to so Mr. Atkins may not have any other excluded burial funds. The $1,300 space purchase is not a resource either, and does not reduce the burial funds exclusion.

D. Policy--Effect Of Assignment Of Proceeds On Burial Exclusions

1. Revocable Assignment

a. Burial Spaces
The burial space exclusion does not apply to the CSV of the life insurance policy. This is because the funeral provider has not received any payment and no purchase of burial spaces has been made. The provider has no obligation to provide any spaces until the individual dies and, therefore, no spaces are being held for the individual.

b. Burial Funds
The resource value of the burial contract is equal to the CSV of the life insurance policy. Treat the CSV according to the policy described in c. below.

c. Treatment of CSV

- If the face value of all life insurance policies on the individual's life is $1,500 or less, exclude the CSV under the life insurance exclusion (**M1130.300 B**.).

- If the face value of all policies exceeds $1,500, treat the CSV of the policy according to the burial funds exclusion, if applicable. See **M1130.410** for instructions on the burial funds exclusion.

d. Examples

- Ms. Lydia Fisher has a $1,300 burial contract funded by the revocable assignment of the proceeds of an insurance policy with a face value of $1,300 on her life. The CSV of the policy is $1,000. If this is the only life insurance policy she owns on her life, then the life insurance policy would be excluded under the life insurance exclusion and the burial exclusions would not apply.

The life insurance policy's face value of $1,300 reduces the maximum *$3,500* burial fund exclusion by that same amount. Ms. Fisher may have an additional *$2,200* in excluded burial funds.

- If Ms. Fisher has another life insurance policy on her life and the total face value of the two policies exceeds $1,500 (the life insurance exclusion does not apply), then the CSV may be excludable under the burial funds exclusion. No burial space exclusion applies per a. above.

2. Irrevocable Assignments

We are not aware of insurance companies that permit irrevocable assignment of policy proceeds without requiring the irrevocable assignment of ownership. Should you encounter this type of policy, submit a copy of the policy to the Regional Coordinator.

E. Policy--Life Insurance Policy Placed in a Trust

A life insurance company may provide an individual with the option of irrevocably transferring ownership of a revocable life insurance policy that funds a burial contract to a trust established by the company.

1. Treatment of Policy's CSV

If an individual assigns a life insurance policy to a trust the CSV (if any) will not continue to be a countable resource; if

- the individual neither owns nor has the legal right to direct the use of trust assets to meet his or her maintenance needs and
- **a revocably assigned life insurance policy funds a funeral contract and the policy is placed irrevocably in a trust then the policy's CSV is not a resource for Medicaid purposes.**

2. Treatment Of Dividends

If the policy's CSV is not a resource, assume, absent evidence to the contrary, that any dividends paid on the policy are also not a resource.

3. Individual Retains Right to Change Funeral Firm

Under an irrevocable trust arrangement, the life insurance policy's CSV is not a resource even if the individual retains the right to change the funeral firm that will provide the burial goods and services.

4. Burial Fund Exclusions Offset

A revocably assigned life insurance policy placed in an irrevocable life insurance trust is treated the same as a life insurance policy for which the ownership has been irrevocably assigned to fund a burial contract (see C.2 above). This means that the value of the burial funds portion of the contract (IF ANY) reduces the *$3,500* burial funds exclusion.

This is the case because the burial funds portion of the contract represents an irrevocable arrangement that is available to meet the individual's burial expenses.

F. Procedure--General

1. Development and Documentation

Follow instructions in **M1130.410** E. regarding the development and documentation of burial funds. See additional instructions below.

a. Life Insurance Policy

Examine the life insurance policy and document whether the ownership/proceeds of the policy have been assigned (revocably or irrevocably) and, if so, to whom.

If ownership or proceeds of the life insurance policy have been **revocably** assigned, follow regular life insurance development procedures. (See **M1130.300** C. for further development and documentation requirements.)

If ownership of the life insurance policy has been **irrevocably** assigned, apply the policy principles in C.2. above to determine the policy's resource status.

If an insurance policy that funds a funeral arrangement is placed **irrevocably in trust**, apply the policy principles in E. above to determine the policy's resource status. For out-of-state contracts contact the regional specialist.

In all cases, document the file with a copy of:

- the life insurance policy;
- the assignment; and
- any other related documents.

b. Options for Developing Policies Issued by Nonparticipating or Stock Companies

If the insurance policy funding the burial contract is issued by a nonparticipating or stock company (and therefore does not pay dividends), you may be able to curtail development as to the policy's CSV. You can use the CSV chart attached to the policy instead of contacting the life insurance company. See **M1130.300** C.5. for more information.

c. Burial Contract

Examine the burial contract and determine what items and/or arrangements have been contracted. Document the file with a copy of the burial contract.

2. Determine Applicability of Burial Space/Fund Exclusions

Apply the policy principles in C. and D. above and determine:

- the value of the contract that is excludable as a burial space (if any) (**M1130.400**); and
- the value of the contract that is excludable as burial funds (if any) (**M1130.410**).

Put your determination in the file.

G. Procedures--Redetermination Development

For a previously developed life insurance funded burial contract, redevelop and document the value of the contract using applicable life insurance development procedures if:

- ownership and/or proceeds of the policy have been **revocably** assigned (i.e., the CSV of the policy must be reverified); or
- ownership of the policy has been **irrevocably** assigned (or a revocably assigned policy has been placed irrevocably in trust) and the individual has other excluded burial funds (i.e., the value of the contract reduces the amount of other funds that may be excluded).

M1130.430 HOUSEHOLD GOODS AND PERSONAL EFFECTS

A. Policy Principle

Household goods and personal effects are excluded resources for Medicaid evaluations.

B. Definitions

1. Household Goods

Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use, and occupancy of the premises as a home. They include, but are not limited to: furniture, appliances, televisions sets, carpets, cooking and eating utensils, dishes, etc.

2. Personal Effects

Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to him or her. They include, but are not limited to: clothing, jewelry, personal care items, prosthetic devices, and educational or recreational items such as books, musical instruments, or hobby materials.

REAL OR PERSONAL PROPERTY

S1130.500 PROPERTY ESSENTIAL TO SELF-SUPPORT – OVERVIEW

A. Introduction

The Social Security Act provides for the exclusion from resources of property that the Secretary determines is so essential to an individual's means of self-support as to warrant exclusion.

B. Policy Principles

1. Categories Of Property Excluded Under This Provision

Resources excluded under this provision generally fall into 3 categories. Each is listed below and then described in more detail in a subsequent section.

a. Property Excluded Regardless of Value or Rate of Return

This category encompasses:

- property used in a trade or business (effective 5/1/90);
- property that represents government authority to engage in an income producing activity;
- property used by an individual as an employee for work (effective 5/1/90); and
- property required by an employer for work (before 5/1/90).

See S1130.501.

b. Property Excluded up to $6,000 Equity, Regardless of Rate of Return

This category includes **nonbusiness** property used to produce **goods** or **services** essential to daily activities. For example, it covers land used to produce vegetables or livestock **solely** for consumption by the individual's household. See S1130.502.

c. Property Excluded up to $6,000 Equity if it Produces a 6% Rate of Return

This category encompasses:

- property used in a trade or business in the period before 5/1/90;
- nonbusiness income-producing property. However, the exclusion does not apply to equity in excess of $6,000 and does not apply if the property does not produce an annual return of at least 6% of the excluded equity. If there is more than one potentially excludable property, the rate of return requirement applies individually to each. See S1130.503.

2. Current Use Criterion

Resources that are excluded under this provision must be in current use in the type of activity described. If not in current use, there must be a reasonable expectation that the required use will resume. See S1130.504.

3. Liquid Resources

Liquid resources are not considered property essential to self-support except when used as part of a trade or business.

C. Policy--Limitations On Development

It is not necessary to develop for the exclusion of property essential to self-support if:

- the combined value of the self-support property and other countable resources does not exceed the applicable resource limit;
- the value of other countable resources (including any equity over
- $6,000 when B.1.b. or c. is involved) exceeds the applicable resource limit;
- the individual is ineligible for a **nonfinancial** reason; or
- the property was excluded under the State plan in effect for October 1972 and the individual meets the "grandfathering" criteria.

D. Related Policies

1. Home Property

When an individual uses home property to perform self-support activities, the property is excluded under S1130.100, regardless of its value, rate of return, or current use.

2. Plan For Achieving Self-Support (PASS)

The primary differences between the exclusion of property essential to self-support and the exclusions provided for under a PASS (see *M0810.430*) are that the PASS exclusions:

- cover income as well as resources;
- apply to the blind and disabled, but not to the aged;
- have a time limit; and
- do not have an inherent dollar limit.

Consider the overall resource situation to ensure that the individual receives the benefit of the most advantageous exclusion for him or her.

*M*1130.501 ESSENTIAL PROPERTY EXCLUDED REGARDLESS OF VALUE OR RATE OF RETURN

A. Policy Principles

1. The Exclusion

The properties described in 2, 3, and 4 below are excluded as essential to self-support regardless of value or rate of return. However, they must be in current use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

2. 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 effective 5/1/90.

3. 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.

4. 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.

B. Development and Documentation--General

The rules in C., D., and E. below apply unless development can be eliminated in accordance with S1130.500 C.

C. Development and Documentation -- Property Used in a Trade or Business

1. Trade or Business Not Being Excluded

When an individual alleges owning trade or business property not already being excluded, consider if a valid trade or business exists, and if the property is in current use (see S1130.504). Obtain a statement giving the information below. Absent evidence to the contrary, accept the responses to items a.-d. Verify e. with the business tax returns.

a. a description of the trade or business;
b. a description of the assets of the trade or business;
c. the number of years it has been operating (see 4. below);
d. the identity of any co-owners;
e. the estimated gross and net earnings of the trade or business for the current tax year (see 3. below).

2. Redetermination of Excluded Trade or Business Property

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 (see S0820.230).

3. Use of Tax Returns

a. Use Most Recent Tax Return

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.

b. Current Tax Return Not Available

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

4. Questionable Trade or Business

If a trade or business has operated a year or less, or there is a question of bona fides, develop to determine whether a trade or business actually exists.

5. Liquid Resources Used in a Trade or Business

Effective May 1, 1990, 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.

D. Development and Documentation Government Permits

1. Individual's Statement

Permit Alleged

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.

If the property is not being used, see S1130.504 for development.

2. Supporting Evidence

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. If the individual cannot submit the necessary evidence, verify his or her allegations with the issuing agency. Do this by telephone if possible.

3. Common Government Permits

a. Alaska Limited Entry Fishing Permit (ALEFP)
An ALEFP is one of the two most commonly encountered types of property representing required government authority to engage in an income producing activity. Alaska's Commercial Fisheries Entry Commission first issued ALEFP's in 1973 to control commercial salmon fishing. These permits are required for individuals who engage in the fishing trade.

b. Tobacco Crop Allotment (TCA)
The TCA is the other most commonly encountered type of property representing government authority to engage in an income producing activity. It is issued by the U.S. Department of Agriculture's *(USDA)* Agricultural Stabilization and Conservation Services. It is required for the growing and selling of flue-cured tobacco, which is grown mostly in the southeastern United States. Do not confuse a TCA with a price support or subsidy, or a soil bank program.

Exclude a TCA only when the grower who has it is restricted to growing a certain quantity of the crop.

c. Tobacco Quota Buy-Out Program

The Tobacco Quota Buy-Out Program is administered by the USDA. The program involves a contract between the USDA and the land owner and/or the producer (the individual, other than the land owner, who grows the crop) and provides payments to the land owner and/or producer for their tobacco "base" or quotas. The unpaid balance of the contract is a countable resource.

E. Development and Documentation -- Personal Property Used by an Employee

1. Individual's Statement

If an individual alleges owning items that are used in his or her work as an employee, 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.

If the individual is temporarily not working (e.g., job loss, seasonal employment), or the property is not otherwise in current use, see S1130.504.

2. Supporting Evidence

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

S1130.502 ESSENTIAL PROPERTY EXCLUDED UP TO $6,000 EQUITY REGARDLESS OF RATE OF RETURN

A. Policy Principles

1. The Exclusion

Up to $6,000 of the equity value of nonbusiness property used to produce goods or services essential to daily activities is excluded from resources.

- CMV less balance of any recorded liens against the property

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.

2. Equity Exceeds $6,000

Any portion of the property's equity value in excess of $6,000 is not excluded under this provision.

3. Nonbusiness Property Producing Essential Goods or Services

Nonbusiness 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.

NOTE: While this category of property may encompass a vehicle used solely in a nonbusiness 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 S1130.200 A.).

B. Development and Documentation--Initial Applications and Posteligibility

1. Individual's Statement

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.

2. Supporting Evidence of Value

a. Real Property
Determine the CMV and, if necessary, the EV of real property in accordance with S1140.100.

b. 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.

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

3. Current Use Criterion

If the property is not in current use, see S1130.504 for development.

S1130.503 ESSENTIAL PROPERTY EXCLUDED UP TO $6,000 EQUITY IF IT PRODUCES A 6 PERCENT RATE OF RETURN

A. Policy Principles

1. The Exclusion

Up to $6,000 of the equity value of nonbusiness income producing property (and business income producing property for months of eligibility before May 1, 1990) can be excluded from resources if the property produces a net annual return equal to at least 6% of the excluded equity.

2. Equity Exceeds $6,000

Any portion of the property's equity value in excess of $6,000 is not excluded under this provision.

3. Rate of Return Less Than 6%

If the property produces less than 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 6% return (see C. below).

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

4. More Than One Income Producing Property

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

- the 6% return requirement applies individually to each; and
- the $6,000 EV limit applies to the total EV of all the properties meeting the 6% return requirement.

If all properties meet the 6% test but the total EV exceeds $6,000, that portion of the total EV in excess of $6,000 is not excluded under this provision.

B. Examples

1. Rental Property With an EV in Excess of $6,000

At redetermination, Mr. Cameron states that he now lives in an apartment and is renting out his formerly excluded home, which has an EV of $10,000. Even if the property produces a 6%rate of return, $4,000 of its equity cannot be excluded under this provision.

2. Multiple Income Producing Activities

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, its EV is excluded. Since the other property produces less than a 6% return, its EV is not excluded.

C. Operating Policy—Time Limit for Resumption of 6% Return

1. General Rule

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%. See E. below for development.

2. Initial Applications

In an 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.

3. Trade or Business in Operation for One Year or Less

If a trade or business has operated for a year or less, develop to determine whether a trade or business actually exists.

D. Development and Documentation—Non-business Property

1. Income Producing Real Property

a. Individual's Statement

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

- the number of years he 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.

b. 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 the 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 Medicaid 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). If it is necessary to verify EV, see S1140.042.

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

2. Income Producing Personal Property

See S1130.502 B. for development of the property's use and value. In addition, obtain the individual's statement giving net and gross income from the property for the current tax year. Verify the property's rate of return by reviewing a copy of Schedule E of Form 1040 for the tax year prior to filing or redetermination. If no tax return is available, obtain the appropriate evidence from the individual to establish the income alleged.

E. Development and Documentation--Rate of Return Less Than 6%

Apply these instructions in determining the excludability of nonbusiness income producing property (and business property for periods before May 1, 1990) when the tax return shows an earnings rate of less than 6%.

1. Individual's Explanation

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

2. Supporting Evidence

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.

NOTE: When no tax returns are available, use other evidence such as receipts, check registers, invoices, sales slips, bank statements, etc.

3. Circumstances Beyond The Individual's Control

a. Special Review

If evidence establishes that the earnings decline is for reasons beyond the individual's control, he or she has up to 24 months from the end of the tax year in which the earnings went below 6% to meet the 6% requirement. Set a special review to check progress after 12 months.

b. 12-Month Follow-up

If the 12-month follow-up shows that the activity is again producing a 6% return, further follow-up is necessary.

If the activity still is not producing 6% return but the individual is actively pursuing it, allow an additional 12 months.

If the individual has ceased actively pursuing the activity, include the value of the property in determining resources for the month after the month of review.

c. 24-Month Period Ends

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

S1130.504 ESSENTIAL PROPERTY--CURRENT USE CRITERION

A. Policy Principle

Property, including property used by an individual as an employee, must be in current use in the type of activity that qualifies it as essential 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.

B. Policy--Time Limit for Resumption of Use

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.

2. 12-Month Extension

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

C. Procedure--General

1. Individual's Statement

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.

2. Explanation to Individual

Explain that we can exclude the property for up to 12 months if resumption of the self-support activity can reasonably be expected to occur within that time.

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. However, see 5. below.

4. Intent To Resume Activity

a. Special Review Set
If the individual intends to resume use of the property, prepare a special review for 12 months from the date of last use.

b. Special Review Evaluation
In the month of special review, contact the individual to see whether he or she has resumed use of the property. If not, the property is a countable resource for the month after the month in which the 12-month period expired.

5. 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.

D. Procedure -- Disabling Condition

1. Individual's Statement

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.

2. Special Review

Prepare a special review as to whether up to an additional 12 months will be allowed for resuming use of the property.

NOTE: Medical review is not an indicator of an individual's intent or ability to do at least some work.

S1130.510 RESOURCES SET ASIDE AS PART OF A PLAN FOR ACHIEVING SELF-SUPPORT

A. Introduction

A plan for achieving self-support (PASS) allows blind and disabled (but not aged) individuals to set aside income and/or resources necessary for the achievement of its goals.

B. Policy Principle

Resources set aside as part of an approved PASS are excluded.

C. Development and Documentation

PASS resources are determined by SSI. See *M0810.430 for additional information about PASS.*

M1130.520 TRUSTS ESTABLISHED BETWEEN JULY 1, 1993 AND AUGUST 10, 1993

A. Introduction

Trusts established between July 1, 1993 and August 10, 1993 can have up to $25,000 disregarded from countable resources.

B. Definitions

1. MQT

A trust or similar legal device (SLD) is a legal instrument established other than by a will which:

Is established by an individual or spouse (also includes trusts established by a guardian or representative payee for an incompetent adult or any child);
The individual may be beneficiary of all or part of the funds;
Is either revocable or irrevocable;
Trustees have discretion (whether or not the discretion is actually exercised) in distributing funds to the beneficiary;
May or may not be established for purposes other than to enable the beneficiary to qualify for medical assistance.

2. "SLD"

An "SLD" is a legal instrument:

Under which the individual transfers or surrenders property to another individual;
In which a second individual has legal responsibility to manage the property for the first individual;
Which can include oral trusts, constructive trusts, and trusts created in law, in addition to trusts created by a written legal document; and
Which may not be labeled a "trust" but seems to meet all of the MQT criteria listed above.

C. Policy

Some trusts have provisions which place limits on the discretion of the trustee either directly or indirectly to make payments from the trust to the grantor when the grantor makes a Medicaid application, or requires medical, hospital, or long-term care services. **Any restricting clauses in trusts created after July 1, 1993, are void if they limit the discretion of the trustee when the grantor applies for Medicaid or needs medical, hospital, or long-term care services.**

1. Trusts Less Than $25,000

Trust(s) Less than $25,000 created after July 1, 1993 and before August 11, 1993

None of the principle is counted as a resource for single or multiple trusts created after July 1, 1993 and before August 11, 1993 when corpus or corpora **is less than $25,000.** The maximum **amount** of income payable from the trust according to its terms is considered available income whether or not it is actually paid to the applicant or recipient.

2. Trusts Greater Than $25,000

Trust(s) Greater than $25,000 created after July 1, 1993 and before August 11, 1993

A single trust or multiple trust created after July 1, 1993 and before August 11, 1993, when the corpus or corpora is more than $25,000, may have partial exclusion of the corpus.

D. Development/ Documentation

1. Verify Trust(s)

- **Obtain copy of trust(s) document(s).**
- Verify **current value of the** corpus or corpora of the trust(s).

2. Apply Disregard

a. Prorate $25,000 by the number of trusts

b. Subtract prorated amount from corpus or corpora of the trust(s).

3. Countable Resource

The remainder of the corpus or corpora of the trust(s)

- that may be paid under the terms of the trust
- without any limits imposed by **any** void restrictive clause
- is counted as an available resource to the applicant or recipient regardless of whether or not:
- the trust is irrevocable; or
- the trust was established for purposes other than to make the individual eligible for Medicaid; or
- the trustee exercises his discretion to distribute trust payments to the applicant/recipient.

E. References

Trusts Created After July 1, 1993 and Before August 11, 1993 with Corpus in Excess of $25,000, M1140.403.

RETAINED CASH AND IN-KIND PAYMENTS

S1130.600 RETROACTIVE SSI AND SS PAYMENTS

A. Definitions

1. Retroactive SSI Benefits

Retroactive SSI benefits -- which include any federally administered State supplementation -- 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.

2. Retroactive SS Benefits

Retroactive SS benefits are those issued in any month that is more than a month after the calendar month for which they are paid. Therefore, SS benefits for January that are issued in February are not retroactive, but SS benefits for January that are issued in March are retroactive.

B. Policy Principles

1. 9-Month Exclusion

The unspent portion of retroactive SSI and SS benefits received on or after 11/01/05 is excluded from resources for the nine (9) calendar months following the month in which the individual receives the benefits.

2. 6-Month Exclusion

The unspent portion of retroactive SSI and SS benefits received before 11/01/05 is excluded from resources for the six (6) calendar months following the month in which the individual receives the benefits.

C. Related Policies

1. Interest

Interest earned by funds excluded under this provision is not excluded from income under this provision. Develop interest per S0830.500.

2. Commingled Funds

See S1130.700 if excluded funds have been commingled with other funds.

S1130.601 DEDICATED ACCOUNTS FOR PAST-DUE BENEFITS DUE TO INDIVIDUALS UNDER 18 WHO HAVE A REPRESENTATIVE PAYEE

A. Background and Definitions

Section 213 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, enacted August 22, 1996, requires that when an eligible individual under age 18 is eligible for past-due Supplemental Security Income (SSI) monthly benefits which exceeds the amount specified in SSI policy, the representative payee ***must*** *establish a dedicated account in a financial institution into which the past-due benefits will be paid. Subsequent amounts of past-due benefits that exceed this amount must also be paid into this account.*

1. Dedicated Account

A dedicated account is an account in a financial institution, the sole purpose of which is to receive and maintain SSI past-due benefits which are required or allowed to be paid into such an account and the use of which is restricted by section 1631(a)(2)(F) of the Social Security Act. Funds other than those allowed by SSI policy may not be deposited into a dedicated account.

2. Past-Due SSI Benefits

Past-due SSI benefits are:

a. benefits due but unpaid which accrue prior to the month payment was effectuated;
b. benefits due but unpaid which accrue during a period of suspension for which the recipient was subsequently determined to have been eligible; and
c. any adjustment to benefits which results in an accrual of unpaid benefits.

B. Policy Principles

1. Resources

Past-due benefits and other underpayments described above deposited into a dedicated financial institution account and any accrued interest or other earnings on such an account are excluded from resources. For any month that funds other than accrued interest or other earnings on the account are commingled in this account, the exclusion does not apply to any funds in the account.

EXCEPTION: *Funds, other than past-due benefits, required by a financial institution to open the dedicated account may be commingled in the account, but only until the end of the month following the month that the past-due benefits are paid. However, these funds other than past-due benefits in the account are* ***not*** *excluded from resources.*

2. Interest and Other Earnings

Interest and other earnings (e.g., dividends) earned on and left to accrue in the excluded dedicated account are excluded from income and resources.

3. Exclusion During a Period of SSI Suspension or Termination

Restrictions on the use of funds in a dedicated account continue to apply during a period of suspension of SSI benefits (e.g., status S06), non-pay (e.g., status N04), and eligibility but no payment (status E01). The exclusion from resources of the funds in the account continues to apply during a period of suspension, non-pay, or eligibility but no payment, prior to termination (i.e,, the 12 months prior to status T31).

Once an individual's eligibility has been terminated, the exclusion of the funds in a dedicated account cannot be carried over if the individual establishes a new period of SSI eligibility by filing a new application for SSI. Reopening of a prior period of eligibility following termination is not a new period of eligibility and, therefore, the exclusion may be reapplied. Any remaining funds are a countable resource.

4.. Nine (9)-month Exclusion of SSI Underpay-ments from Resources

When an individual receives past-due benefits that ***may*** *be, but have not yet been, deposited into a dedicated account, the exclusion in S1130.600 applies for the lesser of 9 months or until the payee deposits the payment into the dedicated account.*

S1130.605 NETHERLANDS WUV PAYMENTS TO VICTIMS OF PERSECUTION

A. Background

The Netherlands' Act on Benefits for Victims of Persecution 1940-1945, WUV (Wet Uiterking Vervlgingsslachtoffers), 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.

B. Policy

1. The Resource Exclusion

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

2. Interest on Unspent Payments

Interest earned on unspent WUV payments *prior to July 1, 2004* is not excluded from income or resources. *Interest earned on unspent WUV payments on or after July 1, 2004 is excluded from income and resources* (See S0830.500 for development.)

C. Procedure

1. When to Develop

When an individual would otherwise be ineligible due to excess resources, determine if applying this exclusion would permit eligibility. If the exclusion would permit eligibility, develop per 2. below.

NOTE: If the individual is resources-eligible even without the application of this exclusion, it is not necessary to develop under this section.

2. Development and Documentation

If an individual alleges that his/her resources include unspent Netherlands WUV payments:

a. Using the documents in the individual's possession, 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). See S0830.725C. for the address and phone number. If the individual has no documentation and the Consulate General of the Netherlands is unable to provide the information, then accept the individual's signed allegation of the amount(s) and the date(s) of receipt.

b. Obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the payments; and
c. Document the case record that the individual's resources include unspent WUV payments that are excludable.

D. References

Excluded funds commingled with nonexcluded funds, S1130.700
Income exclusion, Netherlands WUV payments, S0830.725

S1130.610 GERMAN REPARATIONS PAYMENTS

A. Introduction

"German reparations payments" are made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution, or German Restitution Act. These payments may be made periodically or in a lump sum.

B. Policy

1. The Exclusion

Unspent German reparations payments are excluded from resources. The exclusion applies only if it would affect eligibility for Medicaid.

2. *Interest on Unspent Payments*

Interest earned on unspent German reparations payments prior to July 1, 2004 is not excluded from income or resources. Interest earned on unspent German reparation payments on or after July 1, 2004 is excluded from income and resources.

C. References

Excluded funds have been commingled with other funds, S1130.700.
Interest earned by conserved German reparations payments is not excluded from income by this provision, S0830.260.
The exclusion of German reparations payments from income, S0830.710.

D. Development and Documentation--Initial Application

If an individual alleges that his or her resources include German reparations payments, obtain a statement to:

the date(s) and amount(s) of such payment(s); and
the date(s) and amount(s) of any corresponding account deposit(s).

Absent evidence to the contrary, accept the allegation.

E. Development and Documentation--Posteligibility

The redetermination development for German reparations payments is the same as the initial application development.

S1130.615 AUSTRIAN SOCIAL INSURANCE PAYMENTS

A. Background

The nationwide class action law suit, Bondy v. Sullivan, involved Austrian social insurance payments which were based, in whole or in part, on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act. These paragraphs grant credits to 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. Not all Austrian social insurance payments are based on Paragraphs 500-506.

B. Policy

1. The Resource 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.

Austrian social insurance payments **not** based on wage credits granted under Paragraphs 500-506 are **not** excluded from resources under this provision.

2. Interest On Unspent Payments

Interest earned on unspent Austrian social insurance payments *prior to July 1, 2004 is not excluded from income or resources. Interest earned on unspent* Austrian social insurance payments *on or after July 1, 2004 is excluded from income and resources.*

C. Procedure--Initial Applications and Posteligibility

1. When to Develop

When an individual would otherwise be ineligible due to excess resources, determine if applying this exclusion would permit eligibility. If the exclusion would permit eligibility, develop per 2. below.

If the individual is resources-eligible even without the application of this exclusion, it is not necessary to develop under this section.

2. Development and Documen-tation

If an individual alleges that his or her resources include unspent Austrian social insurance payments:

a. Determine whether the payments are counted as income, per S0830.715.

   If the payments **are** counted as income, this resource exclusion does **not** apply. If the payments are **not** counted as income, go to b.

b. Obtain a signed statement from the individual as to the date(s) and amount(s) of any account deposits corresponding to the Austrian social insurance payments. Apply the policy in B. above and exclude the unspent payments from the determination of countable resources.

D. References

Excluded funds commingled with nonexcluded funds, S1130.700
Income exclusion, Austrian social insurance payments, S0830.715

S1130.620 DISASTER ASSISTANCE

A. Policy

1. The Exclusion--December 1, 1988 and Continuing

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.**

To be excluded from resources, the funds must be excludable from income per S0830.620.

2. Interest on Excluded Funds

Interest earned on funds excluded under this provision is excluded from income and from resources. (For months prior to December 1988, interest was excluded from income and resources for as long as the funds themselves were excluded.)

B. Procedure

1. When to Develop

Develop this exclusion only when an individual alleges the receipt of assistance excludable under this provision and the exclusion would permit eligibility.

2. Evidence of Excludability

Follow the instructions in S0830.620. If the file contains evidence that the disaster assistance is excluded from income, use the same evidence to establish that the assistance is excluded from resources.

3. Document the Determination

Summarize the basis for the exclusion in the case record. Show the amount excluded and the first month and year that the exclusion applies.

C. References

Payments for repair or replacement of lost, damaged, or stolen excluded resources, S1130.630.

Identifying excluded funds that have been commingled with nonexcluded funds, S1130.700.

S1130.630 CASH AND IN-KIND ITEMS RECEIVED FOR THE REPAIR OR REPLACEMENT OF LOST, DAMAGED, OR STOLEN EXCLUDED RESOURCES

A. Policy-Time Periods

1. The Policy

Cash and in-kind receipts (ISM or other) 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.

2. Extension for Good Cause

a. General
For cash receipts, 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.

b. Definition-Good Cause
Good cause is present if circumstance 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.**

c. Victims of Hurricane Andrew
Effective March 17, 1994, for victims of Hurricane Andrew only (which occurred in August 1992 and affected South Florida and Louisiana), the period within which the cash or in-kind replacement is not treated as resources can be extended for up to an additinal 12 months beyond the 9-month extension in a. above if the individual continues to show good cause.

NOTE: The total exclusion period for victims of Hurricane Andrew cannot exceed 30 months (9-month initial period, 9-month good cause extension period, additional 12-month good cause extension).

B. Policy-Funds Not Treated as Resources

1. Funds Subject to Policy

There are no restrictions on where cash and/or in-kind items come from for purpose of this policy (e.g., it may come from an insurance company, a Federal or State agency, a public or private organization, or an individual).

However, funds received from the following sources are to be excluded in accordance with S1130.620 rather than these instruction:

- **the Disaster Relief and Emergency Assistance Act;**
- **some other Federal statute because of a presidentially declared major disaster,**
- **comparable assistance received from a state or local government; or**
- **a disaster assistance organization.**

(See S0830.620 for income treatment)

2. Interest on Funds Not Treated as Resources

Interest earned by funds not treated as resources under this provision is not treated as income and resources for the period during which the funds themselves are not considered resources.

3. Funds for Temporary Housing

This policy applies to funds received for the purchase of temporary housing.

4. Personal Injury Payments

This policy does not apply to funds received on account of personal injury.

C. Policy-Intended Use

1. During First 9 Months

What the individual intends to do with the funds does not affect their treatment for the first 9 months.

2. Role in Extension for Good Cause

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.

3. 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.

D. Procedure

1. When to Develop

When an individual would otherwise be ineligible due to excess resources, determine if applying this policy would permit eligibility. If the policy would permit eligibility, develop per the following instructions.

Note: If the individual is resources-eligible even without the application of this policy, it is not necessary to develop under this section.

2. Evidence

a. General
Make sure the evidence show 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.

b. Individual's Records
Obtain a copy of any evidence the individual has.

c. Verification from Source
If the individual cannot provide evidence that suffices for a determination, obtain the necessary information from the source of the payment(s). Do so by telephone, if possible.

3. Recontact

a. Initial 9-Month Period
Contact the individual at least 30 days before the initial 9-month period expires to determine if a good cause extension is necessary and if the individual qualifies for the extension.

b. Victims of Hurricane Andrew
For victims of Hurricane Andrew only, recontact the individual at least 30 days before the expiration of the 9-month extension, if applicable, to determine if an additional extension is needed.

If, after the 9-month extension for good cause, you grant an additional extension under the Hurricane Andrew provision and that extension is:.

- **for 6 months or less: Review at least 30 days before the extension period expires to determine if continuation of the good cause extension is warranted.**
- **in excess of 6 months: At the mid-point of the extension period recontact the individual.**

4. Recontact Evidence Requirements

a. Obtain evidence of the amount of payment(s) not treated as resources that are still unspent.

b. If payment(s) remain unspent, but the individual alleges:

- **good cause (see A.2. above); and**
- **the intent to use the funds for their designated repairs or replacement;**

obtain his/her signed statement regarding intent. Also have the individual submit evidence to substantiate the allegation of good cause, e.g., letters from contractors, etc.)

5. Determination

a. No Extension for Good Cause
If the evidence does not establish good cause, include the unspent payment(s) in determining countable resources as of the first moment of the first month after the month in which the policy is no longer applicable.

b. Extension
If such 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 (plus up to an additional 12 months in the case of victims of Hurricane Andrew), repeating development steps 3. and 4. above, as appropriate.

E. References

- **Excluded funds commingled with nonexcluded funds, S1130.700.**
- **Income treatment of items to replace or repair resources that have been lost, damaged, or stolen, S0815.200.**

S1130.640 BENEFITS EXCLUDED FROM BOTH INCOME AND RESOURCES BY A FEDERAL STATUTE OTHER THAN TITLE XVI

A. Introduction

Many Medicaid income and resource exclusions are specified by Federal statutes other than title XVI.

B. Procedure

See S0830.099 for a list of exclusions and a guide to instructions about exclusions specified by other Federal statutes. Follow those instructions.

C. Reference

Funds excluded by other statutes are commingled with other funds, see S1130.700.

S1130.660 AGENT ORANGE SETTLEMENT PAYMENTS

A. Background

See S0830.730.

B. Policy -The Exclusion

Unspent Agent Orange settlement payments are excluded from resources.

C. Policy-Applicability

The exclusion applies only if it would permit eligibility.

D. Policy - General

1. Income Exclusion

See S0830.730.

2. Interest *on Unspent Payments*

Interest earned *on unspent* Agent Orange settlement payments *prior to July 1, 2004* is not excluded *from income or resources. Interest earned on unspent Agent Orange settlement payments on or after July 1, 2004 is excluded from income and resources.* See S0830.500 for development.

3. Commingled Funds

See S1130.700.

E. Development and Documentation -- Initial Applications

If an individual alleges that his or her resources include unspent Agent Orange settlement payments:

- verify the date(s) and amount(s) of such payment(s) in accordance with S0830.730; 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 allegation regarding deposits.

F. Development and Documentation --- Post Eligibility

The redetermination development for Agent Orange payments is the same as the initial applications development.

S1130.665 VICTIM'S COMPENSATION PAYMENTS

A. Policy

1. The Exclusion

Effective for resource determination made for the month of May 1991 and any subsequent months, 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.

2. Interest on Unspent Payments

Interest earned on unspent victim's compensation payments is **not** excluded from income or resources by this provision (S0830.500).

B. Procedure--Initial Claims and Post-Eligibility

1. When to Develop

Develop this exclusion only when an individual alleges the receipt of compensation excludable under this provision and the exclusion would permit eligibility.

2. Development and Documentation

If an individual alleges that his or her resources include unspent victim's 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.

Obtain a statement as to the date(s) and amount(s) or any account deposits corresponding to the victim's compensation payment(s).
Assist the individual as necessary.

3. Acceptable Evidence

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.

If the individual is unable to submit acceptable evidence, attempt to obtain the needed information over the phone through a contact with the agency that issued the victims' compensation payment.

C. Reference

Commingled funds, S1130.700.

S1130.670 RELOCATION ASSISTANCE PAYMENTS

A. Policy --Federal Relocation Assistance

1. The Exclusion

Relocation assistance is provided to persons displaced by projects which acquire real property. 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. Unlike state or local, there is no time limit on the exclusion for federal relocation assistance (see B.1. below). To be excluded under this provision, the payments must be of the type described in S0830.655B.

2. Interest on Unspent Payments

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision (S0830.500).

B. Policy -- State or Local Relocation Assistance

1. The Exclusion

Effective for resource determinations made for the month of May 1991 and subsequent months, unspent relocation assistance payments from a State or local government are excluded from resources for 9 months.

To be excluded from resources under this provision, the payments must be of the type described in S0830.655C.

2. Payments Received Prior to May 1991

Payments received in August 1990 through April 1991 also can be excluded from resources under this provision beginning in May 1991. The payments can be excluded only for the number of months that remain in the 9-month period following the month of receipt as of May 1991.

EXAMPLE: The 9-month period for a relocation assistance payment received in January 1991 would be February through October 1991. However, the payment may be excluded from resources only for the months of May through October 1991.

3. Interest on Unspent Payments

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision (S0830.500).

C. Procedure -- Initial Applications and Posteligibility

1. When to Develop

When an individual would otherwise be ineligible due to excess resources, determine if applying this exclusion would permit eligibility. If the exclusion would permit eligibility, develop per 2. below.

NOTE: If the individual is resources-eligible even without the application of this exclusion, it is not necessary to develop under this section.

2. Development and Documentation

If an individual alleges that his/her resources include unspent relocation assistance payments:

- follow the procedures in S0830.655D.;
- document the date(s), type(s) and amount(s) of such payments(s); and
- obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the payments.

D. References

Commingled funds, S1130.700.

*M*1130.675 TAX ADVANCES AND REFUNDS RELATED TO EARNED INCOME TAX CREDITS *AND THE TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION AND JOB CREATION ACT OF 2010*

A. Policy

1. EITC Related Refunds

Effective with resource determinations made for the month of January 1991, an unspent Federal tax refund or payment made by an employer related to Earned Income Tax Credits (EITC's) is excluded from resources **only for the month following the month** the refund or payment is received.

Interest earned on unspent tax refunds related to EITC's is **not** excluded from income or resources by this provision (S0830.500).

2. Tax Relief…Act of 2010 Related Refunds and Advance Payments

*Federal tax refunds or advance payments received after December 31, 2009 are **not** to be counted as resources for **12 months following the month** of receipt according to Section 728 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312). This provision applies to tax refunds or advance payments received after December 31, 2009 but before January 1, 2013.*

*Interest earned on unspent tax refunds related to the Tax Relief Act is **not** excluded from income or resources by this provision (S0830.500).*

B. Procedure--Initial Claims and Post-Eligibility

1. When to Develop

Develop *these* exclusions only when an individual alleges the receipt of assistance excludable under this provision and the exclusion would permit eligibility.

2. Development and Documentation

If an individual alleges that his or her resources include unspent EITC and/*or Tax Relief Act related* refunds or payments:

- verify the source, date(s), and amount(s) of such refund(s) or payment(s) in accordance with S0820.400, and
- obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the EITC *and/or Tax Relief Act* refunds or payments.

C. References

Commingled funds, S1130.700.

S1130.680 RADIATION EXPOSURE COMPENSATION TRUST FUND PAYMENTS

A. Background

Fallout emitted during the U.S. Government's atmospheric nuclear testing in Nevada during the 1950's 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. Public Law 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) who 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.

B. Policy

1. Resource Exclusion

Unspent payments received from the RECTF are excluded from resources.

2. Interest On Unspent RECTF Payments

Interest earned on unspent RECTF payments prior to July 1, 2004 is not excluded from income or resources. Interest earned on unspent RECTF payments on or after July 1, 2004 is excluded from income and resources.

C. Procedure

1. When to Develop

When an individual would otherwise be ineligible due to excess resources, determine if applying this exclusion would permit eligibility.

If the exclusion would permit eligibility, develop per 2. below.

NOTE: If the individual is resources-eligible even without the application of this exclusion, it is not necessary to develop under this section.

2. Development and Documentation

a. Obtain Documentation

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

- document such payments in accordance with S0830.740; and
- obtain a statement as to the date(s) and amount(s) of any financial institution (e.g., checking or savings) account deposits corresponding to the RECTF payments.

b. If Necessary, Contact DOJ

If the individual does not have, and cannot obtain, the documentation in 2.a. above, contact the DOJ. Address correspondence to:

The Radiation Exposure Compensation Program
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

Provide the DOJ with the individual's name and Social Security number (SSN). When writing on behalf of a survivor, include the survivor's name and SSN.

D. References

- Excluded funds commingled with non-excluded funds, S1130.700.
- Exclusion of RECTF payments from income, S0830.740.

M1130.685 WALKER V. BAYER SETTLEMENT PAYMENTS

A. Policy

Section 4735 of the Balanced Budget Act of 1997 (P.L. 105-33) states that payments described in this subsection from the settlement of the Susan Walker v. Bayer Corp., et.al., class action lawsuit are NOT counted as income in determining eligibility for Medicaid. Payments described in this subsection are:

a. payments made from any fund established pursuant to a class settlement in the case of Susan Walker v. Bayer Corp., et.al., 96-C-5024 (N.D.III.); and

b. payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement of Walker v. Bayer Corp., et.al., and that is signed by all affected parties on or before the later of

- December 31, 1997, or
- the date that is 270 days after the date on which such release is first sent to the persons to whom the payment is to be made.

Any interest earned on these funds *prior to July 1, 2004* is not excluded. *Any interest earned on these funds on or after July 1, 2004 is excluded from income and resources.*

B. Procedure

Information received by claimants in this lawsuit shows that claimants can choose to receive the payment in one of three ways - in a lump sum, a structured settlement, or a special needs trust. Regardless of which form the individual chooses, the payment(s) are excluded if the above requirements are met.

Verify the source of the funds from a letter from the individual's attorney or a copy of the check which identifies the payor as a Walker v. Bayer settlement account.

COMMINGLED FUNDS

S1130.700 IDENTIFYING EXCLUDED FUNDS THAT HAVE BEEN COMMINGLED WITH NONEXCLUDED FUNDS

A. Policy Principle

Otherwise excludable funds must be identifiable in order to be excluded.

B. Operating Policy

1. Identified vs. Segregated

Identifiability does not require that excluded funds be kept physically apart from other funds (e.g., in a separate bank account).

2. Operating Assumption

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

3. Effect of Account Transactions

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 (see 4. below).

4. 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.

C. Development and Documentation - Initial Application and Posteligibility

1. Evidence

Obtain a **complete** history of account transactions back to the initial deposit of excluded funds. Use the individual's own records if possible.

2. Determination

a. 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.

b. Record in case 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.

D. Examples

1. 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 nonexcluded funds.

- Of the new $1,300 balance, $800 is excluded as retroactive SSI 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.

2. 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 nonexcluded funds.

- The individual withdraws $400. The remaining $100 is excluded.
- The individual then deposits $100 in nonexcluded 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.

3. Interest

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.

DETERMINING THE COUNTABLE VALUE OF *HOME & CONTIGUOUS* PROPERTY

Definitions

1. *"Assessed value" means the tax assessed value that a tax assessor's office places on real property for tax purposes; the tax assessed value is the current fair market value (FMV) of real property. In Virginia, all real property is assessed at 100% of its current FMV, so the assessed value of real property is the current FMV of the property.*

2. *"Equity value" means the property's assessed value minus the balance due on the lien (a mortgage or a court-ordered judgment) against the property,* ***when the lien is in the Medicaid applicant's name, when the Medicaid applicant is one of the individuals listed on the lien, or when the Medicaid applicant is one of the owners subject to the lien, meaning that he is responsible for paying the lien. If the Medicaid applicant is not subject to the lien, the balance due on the lien is <u>not subtracted from the value of the property</u>. If the Medicaid applicant is one of two or more individuals subject to the lien, then ONLY the Medicaid applicant's <u>fractional share</u> of the lien balance is deducted from the applicant's share of the property's value.***

3. *"Home property exclusion" means an exclusion for the plot of land on which the home is located. The excluded home lot size may vary according to the locality's building requirements. For localities with a set minimum building lot size, use the lesser of:*
   - *the plat;*
   - *the survey; or*
   - *the locality's minimum size for a building lot.*

   For localities with no minimum building lot requirements, use the lesser of:
   - *the plat;*
   - *the survey; or*
   - *one acre.*

   If the equity value of countable contiguous property causes resources to exceed the maximum limit, re-evaluate the home property applying the definition of the home used in the State Plan for Medical Assistance in Virginia in effect on January 1, 1972. At that time, a "home" meant the house and lot used as the individual's principal residence and all contiguous property ***essential to the operation of the home regardless of value (M1130.100 B.2)****.*

4. *"Life estate interest" is a limited type of ownership in real property. 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 interest but does not have title to the property and normally cannot sell the property or pass it on as an inheritance.*

5. *"Remainderman" is the term used when an individual has an ownership interest in the real property, but does not have the right to possess and use the property until termination of the life estate interest.*

A. Procedure #1: Property Owned by One Owner

Step 1 - Determine the *whole* property's assessed value, the assessed value of the excluded house and homesite, and *determine* the balance due on all liens against the property *if the Medicaid applicant is subject to the lien(s).*

Step 2 - Assessed value of excluded house and homesite
+ $5,000 Exclusion
Excluded property value

Step 3 - *Whole* property assessed value
- Excluded property value
Contiguous property *assessed* value

Step 4 - Contiguous property *assessed* value
÷ *Whole* property assessed value
Portion of *whole* property value represented by the contiguous property
x Balance due on the lien(s) *in applicant's name*
Contiguous property lien amount

Step 5 - Contiguous property *assessed* value
- Contiguous property lien amount
Contiguous property equity value = *Contiguous property countable value*

Step 6 – If the contiguous property's countable value causes excess resources, determine if the contiguous property can be excluded for another reason, such as income-producing. Re-evaluate the home property applying the definition of the home used in the State Plan for Medical Assistance in Virginia in effect on January 1, 1972. At that time, a "home" meant the house and lot used as the principal residence and all contiguous property ***essential to the operation of the home regardless of value****.*

EXAMPLE #1 (one-owner property, *not re-evaluated*):

Example #1, Step 1:
Whole property assessed value = $81,500
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $64,000
Balance due on property's mortgage *(applicant is the only owner subject to the lien)* = $72,000

Example #1, Step 2:
$64,000 Assessed value of *house &* homesite
+ 5,000 Exclusion
69,000 Excluded property value

Example #1, Step 3:
$81,500 *Whole* property assessed value
- 69,000 Excluded property value
$12,500 Contiguous property *assessed* value

Example #1, Step 4:
$ 12,500.00 Contiguous property *assessed* value
÷ 81,500.00 Total property assessed value
.1533 Portion of *whole* property value represented by the contiguous property
x 72,000.00 Balance due on lien
11,037.60 Contiguous property lien amount

Example #1, Step 5:

$12,500.00 Contiguous property *assessed* value
- 11,037.60 Contiguous property lien amount
$ 1,462.40 Contiguous property equity value

Example #1, Step 6:

The property does not produce any income and is not used to produce goods or services that are essential to the operation of the home.

$ 1,462.40 contiguous property *countable* value

B. Procedure #2: Joint Ownership, Undivided Estate or Unprobated Estate, *one owner subject to lien*

Step 1 - Determine the *whole* property's assessed value, the assessed value of the excluded house and homesite, and *determine* the balance due on all liens against the property *if the Medicaid applicant is subject to the lien(s).*

Step 2 - **When a partition suit is necessary to liquidate the property** *because at least one owner does not agree to sell the contiguous property***:** Determine the shared partition costs for liquidating the property. Use the average cost of partitioning in the locality where the property is located, based on the **assessed** (not equity) value of the *whole* property.
If a partition suit is NOT necessary to liquidate the property (all the owners agree to sell it), **do not** subtract any partition costs or attorneys' fees; insert zeros in the formula in place of partition costs and attorney's fees.

Step 3 - Assessed value homesite property
+ $5,000 Exclusion
Excluded property value

Step 4 - *Whole* property assessed value
- Shared partition costs
Countable assessed value
- Excluded property value
Contiguous property *assessed* value

Step 5 - Contiguous property *assessed* value
÷ *Whole* property assessed value
Portion of *whole* property value represented by the contiguous property
x Balance due on the lien(s)
Contiguous property lien amount
÷ *Number of owners subject to lien*
Applicant's share of contiguous property lien amount

Step 6 - Contiguous property *assessed* value
÷ *Applicant's ownership share*
Applicant's share of contiguous property assessed value
- *Applicant's share of contiguous property lien amount*
Applicant's share contiguous property equity value
- Applicant's attorney fees
Contiguous property countable value

Step 7 – If the contiguous property's countable value causes excess resources, determine if the contiguous property can be excluded for another reason, such as income-producing. Re-evaluate the home property applying the definition of the home used in the State Plan for Medical Assistance in Virginia in effect on January 1, 1972. At that time, a "home" meant the house and lot used as the principal residence and all contiguous property ***essential to the operation of the home regardless of value****.*

EXAMPLE #2 (undivided joint ownership, *one owner subject to lien, not re-evaluated*):

An applicant owns a 1/3 interest in his home, lot, and 4 acres of contiguous property. There is a lien on this property with a balance due of $10,000. *The applicant is the only owner subject to the lien.* The assessed value of the house and homesite lot is *$40,000* and the 4 acres of contiguous property has an assessed value of $60,000 ($100,000 *is the whole property's* assessed value). *One owner, not the applicant, does not agree to sell the contiguous property*. The estimated shared cost of partitioning is $2,000 and the applicant's attorney's fees will be $1,000.

Example #2, Step 1:

Whole property's assessed value = $100,000
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $40,000
Contiguous property (4 acres) = $60,000
Balance due on *whole* property's mortgage = $10,000

Example #2, Step 2:

Shared partition costs = $2,000
Applicant's attorney's fees = $1,000

Example #2, Step 3:

$ 40,000	Assessed value of homesite
+ 5,000	Exclusion
45,000	Excluded property value

Example #2, Step 4:

$100,000	*Whole* property assessed value
- 2,000	Shared partition costs
98,000	Countable assessed value
- 45,000	Excluded property value
53,000	Contiguous property *assessed* value

Example #2, Step 5:

$ 53,000	Contiguous property *assessed* value
÷ 100,000	*Whole* property assessed value
.53	Portion of *whole* property value represented by the contiguous property
x 10,000	Balance due on the lien(s)
5,300	Contiguous property lien amount
÷ *1*	*Number of owners subject to lien*
5,300	*Applicant's share of contiguous property lien amount*

Example #2, Step 6:

$ 53,000.00 Contiguous property *assessed* value
÷ 3 *Applicant's ownership share*
17,666.67 Applicant's share of contiguous property assessed value
- *5,300.00 Applicant's share of contiguous property lien amount*
12,366.67 Applicant's share contiguous property equity value
- 1,000.00 Applicant's attorney fees
$11,366.67 **Contiguous property *equity* value**

Example #2, Step 7:

The property does not produce any income and is not used to produce goods or services that are essential to the operation of the home.
***$11,366.67* contiguous property countable value**

C. Procedure #3: Re-evaluated homesite, *partition required, multiple owners subject to lien*

Step 1 - Determine the *whole* property's assessed value, the assessed value of the excluded house and homesite, and *determine* the balance due on all liens against the property *if the Medicaid applicant is subject to the lien(s). If another owner is subject to the lien, calculate the applicant's share of the lien balance by dividing the lien balance by the number of owners subject to the lien. The formula will calculate the applicant's share of the lien balance that is against the contiguous property.*

Step 2 - **When a partition suit is necessary to liquidate the property:** Determine the shared partition costs for liquidating the property. Use the average cost of partitioning in the locality where the property is located, based on the **assessed** (not equity) value of the *whole* property.
If a partition suit is NOT necessary to liquidate the property (all the owners agree to sell it), do not subtract any partition costs or attorney's fees; insert zeros in the formula in place of partition costs and attorney's fees.

Step 3 - Assessed value *house &* homesite property
+ $5,000 exclusion
Excluded property value

Step 4 - Total property assessed value
- Shared partition costs
Countable assessed value
- Excluded property value
Contiguous property *assessed* value

Step 5 - Contiguous property *assessed* value
÷ *Whole* property assessed value
Portion of *whole* property value represented by the contiguous property
x Balance due on the lien(s)
Contiguous property lien amount
÷ *Number of owners subject to lien*
Applicant's share of contiguous property lien amount

Step 6 - Contiguous property *assessed* value
÷ *Applicant's ownership share*
Applicant's share of contiguous property assessed value
- *Applicant's share of contiguous property lien amount*
Applicant's share contiguous property equity value
- Applicant's attorney fees
Contiguous property countable value

Step 7 – If the applicant's countable equity in the contiguous property causes excess resources, re-evaluate the *property using the 1972 definition of* homesite to determine if the use of the contiguous land would mean more property excluded as the homesite. The $5,000 exclusion is NOT *applied* when the homesite is re-evaluated *using the 1972 definition of home and homesite*.
Determine how much of the contiguous property is actually used by the household as part of the homesite.

Step 8 - Assessed value of house and homesite
+ Value of additional contiguous property used for homesite
Excluded property value

Step 9 - *Whole* property assessed value
- Excluded property value
Contiguous property *assessed* value

Step 10 - Contiguous property *assessed* value
÷ *Whole* property assessed value
Portion of *whole* property value represented by the contiguous property
x Balance due on the lien(s)
Contiguous property lien amount
÷ *Number of owners subject to lien*
Applicant's share of contiguous property lien amount

Step 11 – Contiguous property *assessed* value
÷ *Applicant's ownership share*
Applicant's share of contiguous property assessed value
- *Applicant's share of contiguous property lien amount*
Applicant's share contiguous property equity value
- Applicant's attorney fees
Re-evaluated contiguous property countable value

Use the lesser of the Contiguous Property Countable Value *and the Re-evaluated Contiguous Property Countable Value*.

Step 12: If the individual still has excess resources, evaluate the contiguous property to determine if it can be excluded for another reason or a disregard applied, such as the exclusion or disregard applicable to income-producing property.

EXAMPLE #3 (re-evaluated homesite, *partition required, multiple owners subject to lien*):

Example #3, Step 1:

Applicant owns a 1/3 undivided share in his house, homesite and 10 contiguous acres; the *whole* property is *assessed at* $100,000. A partition suit is necessary to liquidate the contiguous property *because one*

owner does not agree to sell the property. The lien on the property is in the 3 owners' names, so the 3 owners are subject to the lien. The property does not produce any income to the applicant.

Assessed value of *whole* property = $100,000
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $40,000
Contiguous property assessed value = $60,000
Balance due on entire property's mortgage = *$12,000*

Example #3, Step 2:

Shared partition costs = $2,000
Applicant's attorney's fees = $1,000

Example #3, Step 3:

$ 40,000	Assessed value of homesite
+ 5,000	Exclusion
45,000	Excluded property value

Example #3, Step 4:

$100,000	*Whole* property assessed value
- 2,000	Shared partition costs
98,000	Countable assessed value
- 45,000	Excluded property value
53,000	Contiguous property *assessed* value

Example #3, Step 5:

$ 53,000	Contiguous property *assessed* value
÷ 100,000	*Whole* property assessed value
.53	Portion of *whole* property value represented by the contiguous property
x *12,000*	Balance due on the lien(s)
$ 6,360	Contiguous property lien amount
÷ 3	*Number of owners subject to lien*
2,120	*Applicant's share of contiguous property lien amount*

Example #3, Step 6:

$53,000.00	Contiguous property *assessed* value
÷ 1/3	*Applicant's ownership share*
17,666.67	*Applicant's share of contiguous property assessed value*
- 2,120.00	*Applicant's share of contiguous property lien amount*
15,546.67	*Applicant's share contiguous property equity value*
- 1,000.00	Applicant's attorney fees
14,546.67	Contiguous property countable value

$14,546.67 causes the applicant to have excess resources, so the homesite is re-evaluated for actual use *using the 1972 definition of homesite*.

Example #3, Step 7:

The applicant says that of the contiguous 10 acres, 1 is used for a garden to grow produce used by the household, 1 acre is used for the livestock raised for home consumption, ½ acre is used for the family cemetery, and 1 acre is used for the septic system; a total of 3.5 additional acres are used as the homesite. *The property does not produce any income.*

Assessed value of *whole* property = $100,000
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $40,000
Assessed value 10 contiguous acres = $60,000 ÷ 10 = 6,000 per acre
$6,000 value per acre x 3.5 acres = $21,000 additional property value excluded *as homesite*

Example #3, Step 8:

$ 40,000 Assessed value of homesite
+ 21,000 Value of additional property excluded as homesite
$ 61,000 Excluded property value

Example #3, Step 9:

$100,000 *Whole* property assessed value
- 2,000 Shared partition costs
98,000 Countable assessed value
- 61,000 Excluded property value
37,000 Contiguous property *assessed* value

Example #3, Step 10:

$ 37,000.00 Contiguous property *assessed* value
÷ 100,000.00 *Whole* property assessed value
.37 Portion of property value represented by the contiguous property
x *12,000.00* Balance due on the lien(s)
$ *4,440.00* Contiguous property lien amount
÷ *3* *Number of owners subject to lien*
1,480.00 *Applicant's share of contiguous property lien amount*

Example #3, Step 11:

$ 37,000.00 Contiguous property *assessed* value
÷ *1/3* *Applicant's ownership share*
12,333.33 *Applicant's share of contiguous property assessed value*
- *1,480.00* *Applicant's share of contiguous property lien amount*
10,853.33 *Applicant's share contiguous property equity value*
- 1,000.00 Applicant's attorney fees
9,853.33 *Re-evaluated* contiguous property countable value

Because *the $9,853.33 re-evaluated value* is less than *the $14,546.67 value first determined*, the countable value of the applicant's contiguous property is *$9,853.33*. The applicant has excess resources and is not eligible for ABD Medicaid.

D. Procedure #4: One Owner (Remainderman), One Life Interest Owner, Lien

Step 1 – When the Medicaid applicant is a remainderman and lives on the property in which he owns a remainder interest, determine the age of the life interest owner, determine the whole property's assessed value, the assessed value of the excluded house and homesite, and determine the balance due on all liens against the property if the Medicaid applicant is subject to the lien(s). No estimated costs of selling the remainder interest are deducted from the countable value.

Step 2 – Calculate the assessed value of the contiguous property:
Assessed value of excluded house and homesite
+ $5,000 Exclusion
Excluded property value
Whole property assessed value
- Excluded property value
Contiguous property assessed value

Step 3 – The applicant is the remainderman on this property – determine the value of the remainder interest in the contiguous property which will be countable EVEN IF the life interest holder does NOT agree to sell the life interest.
Contiguous property assessed value
X Remainder interest factor based on life interest owner's age (from table in M1140.120)
Remainder interest value

Step 4 – Calculate the contiguous property lien amount – the portion of the lien that is against the contiguous property:
Contiguous property assessed value
÷ Whole property assessed value
Portion of whole property value represented by the contiguous property
x Balance due on the lien(s) to which applicant is subject
Contiguous property lien amount

Step 5 – Calculate the countable value of the remainder interest in contiguous property:
Remainder interest value
- Contiguous property lien amount
Countable value of remainder interest in contiguous property

Step 6 - If the contiguous property's countable value causes excess resources, determine if the contiguous property can be excluded for another reason, such as income-producing. Re-evaluate the home property applying the definition of the home used in the State Plan for Medical Assistance in Virginia in effect on January 1, 1972. At that time, a "home" meant the house and lot used as the principal residence and all contiguous property ***essential to the operation of the home regardless of value****.*

Example #4 - One Owner (Remainderman), One Life Estate Owner, Lien:

Example #4, Step 1:

Whole property assessed value = $81,500
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $64,000
Balance due on property's lien (applicant is the only owner subject to the lien) = $10,000
Life interest owner is 71 years old

Example #4, Step 2:

$64,000 Assessed value of excluded house and homesite
+ 5,000 Exclusion
$69,000 Excluded property value
$81,500 Whole property assessed value
- 69,000 Excluded property value
$12,500 Contiguous property assessed value

Example #4, Step 3:

The life interest owner is 71 years old.

$ 12,500.00 Contiguous property assessed value
X .41086 Remainder interest factor based on life interest owner's age (from table in M1140.120)
$ 5,135.75 Remainder interest value

Example #4, Step 4:

$ 12,500 Contiguous property assessed value
÷ 81,500 Whole property assessed value
.1534 Portion of whole property value represented by the contiguous property
X 10,000 Balance due on the lien(s)
$ 1,534 Contiguous property lien amount

Example #4, Step 5:

$5,135.75 Remainder interest value
- 1,534.00 Contiguous property lien amount
$3,601.75 Countable value of remainder interest in contiguous property

Example #4, Step 6:

The contiguous property's countable value of $3,601.75 causes excess resources. The contiguous property does not produce any income. The home property is re-evaluated for actual use using the 1972 definition of home property.

The applicant says that of the contiguous 5 acres, 1 acre is used for a garden to grow produce used by the household and 1 acre is used for the septic system; a total of 2 additional acres are used as the homesite.

Assessed value of whole property = $81,500
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $64,000
Assessed value 5 contiguous acres = $17,500 ÷ 5 = $3,500 per acre
$3,500 value per acre x 2 acres = $7,000 additional property value excluded as essential to homesite

$64,000 Assessed value of home & homesite
+ 7,000 Value of additional property excluded as homesite
$ 71,000 Excluded home property value

$81,500 Assessed value of whole property
-71,000 Excluded home property value
10,500 Contiguous property assessed value

The life interest owner is 71 years old.

$ 10,500.00 Contiguous property assessed value
X .41086 Remainder Interest Factor Based on Life Interest Owner's Age (from table in M1140.120)
$4,314.03 Remainder interest value

$ 10,500 Contiguous property assessed value
÷ 81,500 Whole property assessed value
.1288 Portion of whole property value represented by the contiguous property
X 10,000 Balance due on the lien(s)
$ 1,288 Contiguous property lien amount

$4,314.03 Remainder interest value
-1,288.00 Contiguous property lien amount
$3,026.03 Re-evaluated countable value of remainder interest in contiguous property

Because $3,026.03 is less than $3,601.75, the re-evaluated countable value of the applicant's remainder interest in the contiguous property is used for the contiguous property countable value, and is added to all other resources to determine eligibility.

$3,026.03 contiguous property countable value.

E. Procedure #5: Joint Owners (Remaindermen), One Life Estate Owner, Lien

This is home and contiguous real property that is owned jointly (undivided estate) and is subject to a life interest owner; the Medicaid applicant is one of the owners (remaindermen). The Medicaid applicant lives on the property in which he owns a remainder interest. Because there is a life interest owner of this property and life estate property cannot be divided, ***no*** *estimated partition costs & attorney's fees are deducted from the value of the Medicaid applicant's remainder share.*

Step 1 - Determine the total property assessed value, the assessed value of the excluded house and homesite, the balance due on all liens against the property if the applicant is subject to the lien, and the age of the life interest owner.

Step 2 – Calculate the assessed value of the contiguous property:

Assessed value of excluded house and homesite
+ $5,000 Exclusion
Excluded property value

Whole property assessed value
- Excluded property value
Contiguous property assessed value

Step 3 – The applicant is one of the remaindermen owners of this property – determine the value of the remainder interest in the contiguous property which will be countable EVEN IF the life interest holder does NOT agree to sell the life interest.
Contiguous property assessed value
X Remainder interest factor based on life interest owner's age (from table in M1140.120)
Remainder interest value

Step 4 – Calculate the contiguous property lien amount – the portion of the lien that is against the contiguous property:
Contiguous property assessed value
÷ Whole property assessed value
Portion of whole property value represented by the contiguous property
x Balance due on the lien(s) to which the applicant is subject
Contiguous property lien amount

Step 5: Calculate the equity value of applicant's share of the remainder interest in contiguous property:
Remainder interest value
÷Number of remaindermen (joint owners of property)
Applicant's share of remainder interest
- Contiguous property lien amount
Equity value of applicant's remainder interest = Countable value of contiguous property

Step 6 - If the countable value of the contiguous property causes excess resources, determine if the contiguous property can be excluded for another reason, such as income-producing. Re-evaluate the home property applying the definition of the home used in the State Plan for Medical Assistance in Virginia in effect on January 1, 1972. At that time, a "home" meant the house and lot used as the principal residence and all contiguous property ***essential to the operation of the home regardless of value****.*

Example #5 Joint Owners (Remaindermen), One Life Estate Owner, Lien

An applicant owns ½ remainder interest (2 owners) in non-home, non-business real property; there is one life interest owner, age 80. There is a lien on this property and the applicant is the only remainderman owner subject to the lien. The lien balance due is $10,000. The assessed value of the property is $181,500. The life interest owner agrees to sell, but the other remainderman owner does not agree to sell. No estimated costs of partitioning or selling the property are deducted.

Example #5, Step 1:

Whole property assessed value = $181,500
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $64,000
Balance due on property's lien (applicant is the only owner subject to the lien) = $10,000

***Example #5, Step 2**: – Calculate the assessed value of the contiguous property:*

$64,000 Assessed value of excluded house and homesite
+ 5,000 Exclusion
$69,000 Excluded property value

$181,500 Whole property assessed value
- 69,000 Excluded property value
$112,500 Contiguous property assessed value

***Example #5, Step 3** –Determine the value of the remainder interest in the contiguous property; life interest owner is 80 years old.*

$112,500.00 Contiguous property assessed value
X .56341 Remainder interest factor based on life interest owner's age (from table in M1140.120)
$63,383.63 Remainder interest value

***Example #5, Step 4** – Calculate the contiguous property lien amount – the portion of the lien that is against the contiguous property:*

$112,500 Contiguous property assessed value
÷181,500 Whole property assessed value
.6198 Portion of whole property value represented by the contiguous property
x 10,000 Balance due on the lien(s)
$ 6,198 Contiguous property lien amount

***Example #5, Step 5:** Calculate the equity value of applicant's share of the remainder interest in contiguous property:*

$63,383.63 Remainder interest value
÷ 2 Number of remaindermen (joint owners of property)
$31,691.82 Applicant's share in remainder interest in contiguous property
- 6,198.00 Contiguous property lien amount
$25,493.82 Equity value of applicant's remainder interest

$25,493.82 countable value of contiguous property

Example #5, Step 6:

The $25,493.82 countable value of the contiguous property causes excess resources. The contiguous property cannot be excluded because it does not produce income. The home property must be re-evaluated for actual use using the 1972 home property definition.

The applicant says that of the contiguous 5 acres, 1 acre is used for a garden to grow produce used by the household and 1 acre is used for the septic system; a total of 2 additional acres are used as the homesite. The property does not produce any income.

Assessed value of whole property = $181,500
Assessed value of homesite (the excluded house, homesite, buildings, etc.) = $64,000
Assessed value 5 contiguous acres = $117,500 ÷ 5 = $23,500 per acre
$23,500 value per acre x 2 acres = $47,000 additional property value excluded as essential to homesite

$ 64,000 Assessed value of home & homesite
+ 47,000 Value of additional property excluded as homesite
$111,000 Excluded home property value

$181,500 Assessed value of whole property
-111,000 Excluded home property value
$ 70,500 Contiguous property assessed value

The life interest owner is 80 years old.

$ 70,500.00 Contiguous property assessed value
X .56341 Remainder interest factor based on life interest owner's age (from table in M1140.120)
$39,720.41 Remainder interest value

$ 70,500 Contiguous property assessed value
÷ 181,500 Whole property assessed value
.3884 Portion of whole property value represented by the contiguous property
X 10,000 Balance due on the lien(s)
$ 3,884 Contiguous property lien amount

$39,720.41 Remainder interest value
- 3,884.00 Contiguous property lien amount
$35,836.41 Re-evaluated countable value of remainder interest in contiguous property

Because the $35,836.41 re-evaluated countable value is less than $39,720.41, the re-evaluated value of the applicant's remainder interest in the contiguous property, $35,836.41, is used for the contiguous property countable value of the property and is added to all other resources to determine eligibility.

$35,836.41 contiguous property countable value

ABD Home Property Evaluation Worksheet

I. $5,000 Exclusion

1. **Assessed Value (AV)**
   (1a) *House & homesite* _____
   (1b) Contiguous+_____
   (1c) Total AV =_____

2. **Enter Lien *Balance Due*** _____

3. AV *house & homesite (*1a) _____
4. Exclusion + $5,000
5. Excluded Property =_____

6. Total AV (1c) _____
7. *Partition Costs -_____
8. Countable AV =_____

9. Excluded Property (5) -_____

10. Contiguous Property *AV*=_____

11. Total AV (1c) ÷_____
12. % Contiguous Property =_____

13. Lien *Balance* (2) X_____

14. Lien on ***Contiguous*** Property =_____

15. Contiguous Property *AV* (10) _____

16. Lien on Contiguous Property (14) -_____

17. Equity in Contiguous Property =_____

18. Applicant's Share ÷_____

19. Countable Equity Contiguous Property =_____

20. *Applicant's Attorney Fees -_____

21. Countable Equity *in* Contiguous Property =_____

If countable equity + all other countable resources exceed resource limit, go to Section II.

Use if jointly owned, undivided or unprobated estate *and partition is required

II. *January 1972* Use of Land *Home* Exclusion

22. #Acres Used/Essential to Home _____
23 Assessed Value Per Acre X_____
24. *Additional* Exclusion =_____

25. AV House *& homesite (1a)* _____

26. *Additional* Exclusion (24) +_____

27. Excluded Property =_____

29. Total AV (1c) _____

30. *Partition Costs -_____

31. Countable AV =_____

32. Excluded Property (27) -_____

33. Contiguous Property *AV*=_____

34. Total AV (1c) ÷_____

35. % Contiguous Property =_____

36. Lien *Balance* (2) X_____

37. Lien on ***Contiguous*** Property =_____

38. Contiguous Property *AV* (33) _____

39. Lien *on* Contiguous Property (37) -_____

40. Equity in Contiguous Property =_____

41. Applicant's Share ÷_____

42. Countable Equity Contiguous Property =_____

43. *Applicant's Attorney Fees -_____

43. Countable Equity/Contiguous Property =_____

Compare line 21 to line 43. Countable resource is the lesser of the two.

Burial Fund Designation

CASE NAME
CASE NUMBER

I hereby designate the funds described below for burial.

RESOURCE DESIGNATED		**OWNER**	
Description (Include name of financial institution, insurance company, location, account number or policy number, etc.)	**Designated for Whom**	**Date First Considered Designated**	**Value**

RESOURCE DESIGNATED		**OWNER**	
Description (Include name of financial institution, insurance company, location, account number or policy number, etc.)	**Designated for Whom**	**Date First Considered Designated**	**Value**

RESOURCE DESIGNATED		**OWNER**	
Description (Include name of financial institution, insurance company, location, account number or policy number, etc.)	**Designated for Whom**	**Date First Considered Designated**	**Value**

SIGNATURE	DATE

DETERMINING THE COUNTABLE VALUE OF NON-HOME REAL PROPERTY

Definitions

1. "Assessed value" means the tax assessed value that the tax assessor's office places on the real property for tax purposes; the tax assessed value is the current fair market value (FMV) of the real property. In Virginia, all real property is assessed at 100% of its current FMV, so the assessed value of the real property is the current FMV of the property.

2. "Equity value" means the property's assessed value minus the balance due on the lien (a mortgage or a court-ordered judgment) against the property, **when the lien is in the Medicaid applicant's name, when the Medicaid applicant is one of the individuals listed on the lien, or when the Medicaid applicant is one of the owners subject to the lien, meaning responsible for paying the lien. If the Medicaid applicant is not subject to the lien, the balance due on the lien is <u>not subtracted from the value of the property</u>. If the Medicaid applicant is one of two or more individuals subject to the lien, then ONLY the Medicaid applicant's <u>fractional share</u> of the lien balance is deducted from the applicant's share of the property's value.**

3. "Life estate interest" is a limited type of ownership in real property. 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 interest but does not have title to the property and normally cannot sell the property or pass it on as an inheritance.

4. "Remainderman" is the term used when an individual has an ownership interest in the real property, but does not have the right to possess and use the property until termination of the life estate interest.

A. <u>Procedure A: Non-business Real Property Owned by One Owner, Not Producing Income</u>

Step 1 - Determine the total property assessed value and the balance due on all liens against the property that are in the applicant's name.

Step 2 - Property assessed value
<u>- Lien amount balance (when Medicaid applicant is subject to the lien)</u>
Equity value

<u>Example A1 (one-owner non-business, non-income-producing property):</u>

Example #A1, Step 1:

Total property assessed value = $81,500
Balance due on property's mortgage (applicant is subject to the lien) = $72,000

Example #A1, Step 2:

$81,500	Total property assessed value
- 72,000	Lien balance
$ 9,500	Equity value

$9,500 is countable value

B. <u>Procedure B: Non-business Real Property Owned by One Owner, producing income</u>

Step 1 - Determine the total property assessed value and the balance due on all liens against the property to which the Medicaid applicant is subject.

Step 2 - Property assessed value
<u>- Lien amount balance (the applicant is subject to the lien)</u>
Equity value of property

Step 3 - The real property is not business property, so determine if the $6,000 disregard applies to the property because the property is essential to self-support (S1130.502 and S1130.503):

Ask: Does property produce goods/services essential to the individual's daily activities?

If yes, subtract the $6,000 disregard from the equity value, regardless of how much income the property produces – no rate of return is calculated.

If no, does the property produce net annual income (after all expenses are subtracted from the gross annual income produced by the property) that equals or exceeds 6% of the property's **excluded equity** value?

If yes, subtract the $6,000 disregard from the equity value.

If no, do not subtract the $6,000 disregard.

<u>Example B1 (one-owner non-business, income-producing property, essential to daily living - M1130.502):</u>

Example #B1, Step 1:

Total property assessed value = $81,500
Balance due on property's mortgage (applicant is subject to the lien) = $72,000

Example #B1, Step 2:

$81,500 Total property assessed value
<u>- 72,000 Lien balance</u>
$ 9,500 Equity value

Example #B1, Step 3:

Does property produce goods/services essential to the individual's daily activities?

Yes – property is used as a garden for the individual's household's consumption – only any excess not used by the household is sold, and the individual receives only $100 a year from selling the excess. Rate of return is not calculated because the property is used to produce goods essential to the individual's daily activities.

$ 9,500 Equity value
<u>- 6,000 Disregard</u>
$ 3,500 Countable value of property

Example #B2 (one-owner non-business, income-producing property, NOT essential to daily living – M1130.503):

Example #B2, Step 1:

Total property assessed value = $90,500
Balance due on property's mortgage (applicant is subject to the lien) = $70,000

Example #B2, Step 2:

$90,500 Total property assessed value
- 70,000 Lien balance
$20,500 Equity value

Example #B2, Step 3:

Does property produce goods/services essential to the individual's daily activities? No.

Does the property produce net annual income (after all expenses are subtracted from the gross annual income produced by the property) that equals or exceeds 6% of the excluded equity value? Because the equity value is over $6,000, the excluded equity value cannot exceed $6,000; the rate of return is calculated on the maximum $6,000 excluded equity value.

Calculate rate of return:

$10,000 Gross annual income from property
- 2,000 Annual expenses to produce income
$ 8,000 Net annual income from property

$6,000 Excluded equity value of property
X .06 6%
$ 360 6% of equity

Because $8,000 net annual income from the property exceeds $360 (6% of the excluded equity value), the property produces the required rate of return and the $6,000 disregard is subtracted from the equity value to determine the countable value of the property:

$ 20,500 Equity value
- 6,000 Disregard
$ 14,500 Countable value of property

Example #B3 (one-owner non-business, income-producing, NOT essential, equity < $6,000 – M1130.503):

Example #B3, Step 1:

Total property assessed value = $12,500
Balance due on property's mortgage (applicant is subject to the lien) = $7,000

Example #B3, Step 2:

$12,500 Total property assessed value
- 7,000 Lien balance
$ 5,500 Equity value

Example #B3, Step 3:

Does property produce goods/services essential to the individual's daily activities? No.

Does the property produce net annual income (after all expenses are subtracted from the gross annual income produced by the property) that equals or exceeds 6% of the excluded equity value? Yes.

Calculate rate of return:

$2,000 Gross annual income from property
- 100 Annual expenses to produce income
$1,900 Net annual income from property

$5,500 Equity value of property
X .06 6%
$ 330 6% equity

Because the $1,900 net annual income from the property exceeds $330 (6% of the excluded equity value of $5,500), the property produces the required rate of return and the $6,000 disregard is applicable. Because the equity value of the property is less than $6,000, the entire equity value is subtracted from the equity value to determine the countable value of the property:

$ 5,500 Equity value
-5,500 Disregard
$ 0 Countable value of property

C. Procedure C: Real Property Owned by One Owner (Remainderman) and One Life Interest Owner

Step 1 - Determine the age of the life interest owner, the property's assessed value and the balance due on the lien against the property when the applicant is subject to the lien. If there is more than one owner subject to the lien, determine the number of owners subject to the lien.

Step 2 - The applicant is the remainderman on this property – determine the value of the remainder interest in the property which will be countable EVEN IF the life interest holder does NOT agree to sell the life interest. No estimated costs of selling the remainder interest are deducted:

Assessed value of property
X Remainder interest factor based on life interest owner's age (from table in M1140.120)
Remainder interest value
- Lien balance (or portion) if applicant is subject to the lien
Countable value of remainder interest in property

Example #C1 - Real Property Owned by One Owner (Remainderman) and One Life Interest Owner:

Example #C1, Step 1:

Total property assessed value = $81,500
Balance due on property's mortgage; applicant is NOT subject to the lien = $72,000

Example #C1, Step 2:

The life interest owner's age is 60 years old.

$81,500.00 Assessed value
X .25509 Factor from table for life interest owner 60 years old
$20,789.84 Remainder interest value
- 0 Lien balance (applicant is not subject to the lien)
$20,789.84 Equity value of remainder interest

$20,789.84 countable value of real property

D. Procedure D: Joint Ownership - Undivided Estate or Unprobated Estate

This is non-home real property that is owned jointly (undivided estate).

Step 1 - Determine the total property assessed value and the balance due on all liens against the property to which the applicant is subject. If there is more than one owner subject to the lien, determine the number of owners subject to the lien.

Step 2 - **When a partition suit is necessary to liquidate the property:** Determine the shared partition costs for liquidating the property. Use the average cost of partitioning in the locality where the property is located, based on the **assessed** (not equity) value of the TOTAL property.

If a partition suit is NOT necessary to liquidate the property (all the owners agree to sell it), do not subtract any partition costs or attorneys' fees; insert zeros in the formula in place of partition costs and attorneys fees.

Step 3 - Assessed value of property
- Shared partition costs
Assessed value less shared partition costs

Step 4 - Assessed value less shared partition costs
÷ Applicant's ownership share of property
Applicant's share
- Balance due on the lien(s) (or portion) when applicant is subject to the lien
- Applicant's attorney fees
Applicant's equity value

Step 5 – When the property produces income to the applicant, determine if the $6,000 disregard can be subtracted from the Applicant's Equity Value (S1130.502 and S1130.503):

Ask: Does property produce goods/services essential to the individual's daily activities?

If yes, subtract the $6,000 from the Applicant's Equity Value, regardless of how much income the property produces to the applicant – no rate of return is calculated.

If no, does the property produce net annual income (after all expenses are subtracted from the gross annual income produced by the property) that equals or exceeds 6% of the property's **excluded equity** value (the excluded equity value cannot exceed $6,000)? If yes, subtract the $6,000 disregard from the Applicant's Equity Value. If no, do not subtract the $6,000 disregard.

Example #D1 (undivided joint ownership, producing income):

Example #D1 - An applicant owns a 1/3 interest in non-home, non-business real property. There is a lien on this property; the applicant and another owner are subject to the lien that has a balance due of $10,000. The assessed value of the property is $100,000. A co-owner does not agree to sell, so a partition suit is required to sell the property. The estimated shared cost of partitioning is $2,000 and the applicant's attorney's fees will be $1,000. The property produces $200 per year gross income to the applicant; there are no expenses to produce the income.

Example #D1, Step 1:

Assessed value of total property = $100,000
Balance due on entire property's mortgage = $10,000
Applicant's one-half share of lien balance = $5,000

Example #D1, Step 2:

Shared partition costs = $2,000
Applicant's attorney's fees = $1,000

Example #D1, Step 3:

$100,000 Total property assessed value
- 2,000 Shared partition costs
98,000 Assessed value less shared partition costs

Example #D1, Step 4:

$98,000 Assessed value less shared partition costs
÷ 3 Applicant's ownership share of property owners
$32,666.67 Applicant's share
- 5,000.00 Applicant's share of balance due on the lien
- 1,000.00 Applicant's attorney fees
$26,666.67 Applicant's equity value

Example #D1, Step 5:

Does property produce goods/services essential to the individual's daily activities? No

Does the property produce net annual income (after all expenses are subtracted from the gross annual income produced by the property) to the applicant that equals or exceeds 6% of the excluded equity value ($6,000)? If yes, subtract the $6,000 disregard from the Applicant's Equity Value. If no, do not subtract the $6,000 disregard.

Calculate rate of return:

$6,000 Excluded equity value of property
X .06 6%
$ 360 6% Rate of Return

Since the annual net income received from the property is $200, which is **less than** the required rate of return of $360, the $6,000 disregard **is not** subtracted when determining the countable value of the property:

$26,666.67 Applicant's equity value
- 0 Disregard
$26,666.67 Countable value of real property

E. Procedure E: Joint Owners (Remaindermen), One Life Interest Owner, produces income

This is non-home real property that is owned jointly (undivided estate), has one life interest owner, and the property produces income to the applicant who is one of the owners (remaindermen). No $6,000 disregard is applicable to remainder interests in real property. No estimated partition costs & attorney's fees are deducted because the property is subject to a life estate interest.

Step 1 - Determine the total property assessed value and the balance due on all liens against the property to which the applicant is subject. When there is more than one owner subject to the lien, determine the number of owners subject to the lien to determine the Medicaid applicant's share of the lien balance. No estimated partition costs & attorney's fees are deducted.

Step 2 - Determine value of the remainder interest in the property (M1140.120) regardless of whether the life interest owner agrees to sell the life interest, using the age of the life interest owner:

Assessed value of property
X Remainder interest factor based on life interest owner's age (from table in M1140.120)
Remainder interest value

Step 3: Remainder interest value
÷Applicant's ownership share of remaindermen (joint owners of property)
Applicant's share of remainder interest
- Lien balance (or portion) when applicant is subject to lien
Countable value of property

Example #E1 - Joint Owners (Remaindermen),1 Life Interest Owner, produces income:

An applicant owns ½ remainder interest in non-home, non-business real property; there is one life interest owner, aged 80 years. There is a lien on this property; the applicant is the only owner who is subject to the lien. The balance due on the lien is $10,000. The assessed value of the property is $81,500. The life interest owner agrees to sell, but the other remainder owner does not agree to sell. No estimated costs of partitioning or selling the property are deducted. No $6,000 disregard for income-producing property is allowed on a remainder interest.

Example #E1, Step 1:

Total property assessed value = $81,500
Balance due on property's mortgage (applicant is only owner subject to lien) = $10,000

Example #E1, Step 2:

The life interest owner's age is 80 years old.

$81,500.00	Total property assessed value
X .56341	Factor from table for life interest owner's Age (80 years old)
$45,917.92	Value of remainder interest

Example #E1, Step 3:

$45,917.92	Value of remainder interest
÷ 1/2	Applicant's ownership share of remainder interest (joint owners of property)
$22,958.96	Applicant's share of remainder interest
- 10,000.00	Lien balance (applicant is the only owner subject to lien)
$12,958.96	Countable value of property

$12,958.96 countable value of property

CHAPTER M11
RESOURCES

SUBCHAPTER 40
TYPES OF COUNTABLE RESOURCES

S1140 Changes

Updated With	Effective Date	Pages Changed
UP #9	4/1/13	pages 2, 17
TN #97	9/1/12	Table of Contents, page i Table of Contents page ii was removed. pages 2, 16-19, 26, 26a
TN #96	10/1/11	pages 12-12a, 24
TN #93	1/1/10	pages 13-15 pages 24, 25
TN #91	5/15/09	pages 11-12a

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TYPES OF COUNTABLE RESOURCES

S1140.001 PURPOSE OF SUBCHAPTER

Introduction

This subchapter contains instructions for the development of resources whose value ordinarily will count toward the resource limit. Use these instructions only after you have made certain that the property at issue:

- is a resource, based on instructions in the S1110 and S1120 subchapters; and
- is not an excluded resource, based on instructions in the S1130 subchapter.

M1140.010 GENERAL VERIFICATION REQUIREMENTS -- INITIAL APPLICATIONS

A. Development and Documentation-- Any Resources

1. General Rule: Verify

Except as indicated in 2. and B. below, always verify the value of resources for any month for which you must determine eligibility.

If an applicant appeals a denial related to a particular resource, the evidence in the file must clearly establish the value of that resource. It must do so even if the issue under appeal is not the value itself (e.g., when the issue under appeal is ownership). This requirement ensures that at each level in the appeals process, the file contains complete documentation of the resource in question.

2. Exceptions to the General Rule

You do not have to verify the value of resources for a given month if:

- the resource is **totally** excluded, regardless of its value; or
- the individual is ineligible for that month for a nonfinancial reason.

3. Values That Apply to Resources

See S1140.042 and M1110.400 for detailed instructions on "current market value (CMV) and "equity value" (EV).

Develop the EV of a resource whenever:

- the CMV of all countable resources exceeds the applicable limit; and
- the individual alleges a debt against the resource.

You do **not** have to develop the EV for a resource if the CMV of all countable resources does not exceed the applicable limit.

See S1110.510 for developing the value of a resource when there is a **shared ownership**.

B. Development and Documentation-Exceptions for Liquid Resources Only

1. Cash on Hand

Accept an allegation of cash on hand, regardless of amount. Never ask to see or count cash.

2. Government-Issued Debit Cards

Government-administered benefits may be issued via government-sponsored debit cards, such as the Direct Express Debit MasterCard used for Social Security, Supplemental Security Income, Railroad Retirement and other government benefits. If the debit card account is funded solely by deposits from a government program, the money in the debit card account, minus any income deposited to the account for the month, is considered cash on hand and is countable unless otherwise excluded. See subchapter S1130 for information about benefits that are excluded as resources.

Debit cards that are *not government-sponsored* (e.g. the Green Dot pre-paid Visa or MasterCard) are considered bank accounts *even if the individual's government benefits are deposited into the debit account*. See S1140.200.

C. Development and Documentation--Photocopying Restrictions

U.S. Government Securities and Obligations

It is legal to photocopy checks issued by the Federal Government, U.S. Savings Bonds, Treasury notes, and other securities and obligations of the U.S. Government **only if** the photocopies are:

- in black and white; and
- of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of the item illustrated.

Photocopying Not Legal

If equipment limitations or restrictions imposed by State or Federal law do not permit legal photocopying of a document, make a certification from the original document involved. If the document appears to have been altered in some way, certify it "as is" with a notation as to the apparent alteration.

S1140.020 GENERAL VERIFICATION REQUIREMENTS -- POSTELIGIBILITY

A. Development and Documentation-- Any Resources

Evaluation of continued eligibility is required for redetermination and changes. Different types of Medicaid coverage may require additional months to be evaluated, i.e., QMB and SLMB reevaluation may require retroactive and ongoing medically needy evaluation. The following instructions apply to any period of review.

1. Value During Past Months

a. **Ineligibility for Entire Period**
You do not have to verify the value of resources for a period of review, **if** for the **entire** period, the individual is ineligible because of a nonfinancial reason.

b. **Eligibility for One or More Months**
Verify the value of resources for any month being reviewed for which the individual is not ineligible based on a. above.

2. Value in Current Month

As at initial application, always verify the value of resources for any month for which you must determine eligibility.

You do not have to verify the current value of resources if the individual is ineligible for a nonfinancial reason.

3. Developing Value When An Appeal is Filed

See S1140.010A.1. if an individual appeals a termination of Medicaid coverage due to the value of particular resource.

B. Development and Documentation--Non-Liquid Resources

1. General Rule-Apply Current Value

Use the current value of a nonliquid resource in determining resources for any months evaluated due to redetermination or change unless:

- the specific instructions for developing that resource say not to; or
- evidence indicates that it would be inappropriate to do so, as may be the case with a resource that continually appreciates in value.

2. Exception Chart

If the resource is...	then see...	regarding
real property	S1140.100 D.2	use of the tax-assessed value.
foreign property	S1140.100 G.3	the retroactive application of current foreign exchange rates
an automobile	M1130.200 C.4	use of the current N.A.D.A Guide.

C. Development and Documentation-Liquid Resources

1. General Rule--Verify Verify the value of liquid resources for each month covered by an application unless 2 below applies.

2. Exception--Cash As in initial, accept the individual's allegation.

D. Related Policy

1. Photo-copying Restrictions See M1140.010 D. for photocopying restrictions imposed by Federal or State law.

2. Current Market Value/Equity Value See M1110.400 for detailed instructions on CMV and EV.

See M1140.010 A.3. for what values to apply to resources.

3. Shared Ownership See S1110.510 for developing the value of a resource when there is shared ownership.

4. Determining Equity Value See S1140.042.

S1140.030 OWNERSHIP

A. Operating Policy--Liquid Resources

1. Assumption For presumably liquid resources (S1110.305), assume that the person whose name is shown as owner owns the entire resource. If more than one owner is shown, assume that each has equal ownership interest.

2. Exceptions: Checking/ Savings Accounts and Time Deposits See S1140.200 and S1140.205 for checking and savings accounts. See S1140.210 for time deposits.

B. Operating Policy-Nonliquid Resources For presumably nonliquid resources (S1110.310), assume, absent some indication to the contrary, that an individual's allegation of sole ownership is correct.

S1140.042 DETERMINING EQUITY VALUE

A. Operating Policy

Develop the equity value of a resource (liquid or nonliquid) when an individual alleges a debt against it and the difference between equity and CMV could mean the difference between eligibility and ineligibility.

B. Development and Documentation

1. Statement

If an individual alleges a debt against the resource in question, obtain his or her signed description of the debt.

2. Verification

a. **Verify,** at a minimum:

- the outstanding principal balance of any month for which a determination must be made; and
- **Obtain** a copy of the agreement or note that establishes the debt. If this does not provide all the information needed, you may use other records of the individual, the creditor, or both.

3. Determining the Countable Value of Real Property

The procedures for determining the countable value of real property are found in Appendix 1 to subchapter S1130.

C. Example-Equity Value Permits Eligibility for Limited Time

The Rounds, an aged couple, file for Medicaid in January 1994. Their countable liquid resources total $1,500. They also own nonhome real property with a CMV of $2,000, which would cause their total resources to exceed the $3,00 limit.

However, there is a mortgage on the land with an outstanding principal balance of $800. Thus, the property's equity value ($1,200) currently permits eligibility.

Payments on the mortgage reduce the outstanding principal balance by $80 a month. At that rate, the property's equity value will reach $1,520 in May 1994, and resources will exceed the limit.

S1140.044 RESOURCES WITH ZERO VALUE

A. Policy Principal

Property that meets the definition of a resource (S1110.100 B.1.) is a resource even if it has no value to count; i.e., has a CMV of zero (S1110.100 B.2.).

B. Operating Policy

An unsuccessful attempt to sell property at its estimated CMV may suggest that the property has a lesser CMV than estimated, but does not necessarily mean that the property has no CMV at all.

C. Related Policies

1. Reasonable Efforts to Sell

For the effect of reasonable but unsuccessful efforts to sell real property see M1130.140.

2. Conversion of a Resource

Should property that has been determined to have no CMV be sold, the proceeds of the sale represent the conversion of a resource, not income (S1110.600 B.4.).

REAL PROPERTY

S1140.100 NON-HOME REAL PROPERTY

A. Definition

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 a home (M1130.100).

B. Operating Policy--Assumptions

1. Sole Ownership

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

2. Marketability

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

C. Development and Documentation 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.

D. Development and Documentation Current Market Value

1. Tax Assessment Notice

a. **When to Use**
Obtain a copy of the most recently issued tax assessment notice for the property . Base the CMV on this assessment.

b. **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. Knowledge-able Source Estimate

a. **When to Use**
If an individual owns property which does not have a tax assessment, in order to establish CMV, have the individual obtain an estimate of the property's CMV from a knowledgeable source.

b. What The Estimate Must Show
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 request).

c. **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);
- 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.

d. **Assisting The Individual**
If the individual is incapable of obtaining an estimate, lend assistance. If you obtain an estimate by phone, be sure to record all pertinent facts in file.

If you cannot obtain an estimate by phone, you can contact a knowledgeable source for an estimate by mail.

e. **Obtaining More Than One Estimate**
If you doubt the validity of an estimate furnished by the individual, obtain an estimate from an additional knowledgeable source.

E. Development and Documentation Equity Value

1. When to Develop

See S1140.040 A.3.

2. Evidence

a. The allegation of an encumbrance (any legal debt, such as a mortgage, lien, loan, purchase contract, security interest, etc.) must be supported with evidence of:

- the original amount owed;
- the outstanding principal balance; and
- the schedule and amount of payments due on the principal balance.

b. Have the individual submit a copy of the **note or agreement** establishing the encumbrance.

c. Verify with the creditor (by phone, if possible) any required information that the note or agreement does not show (normally, this will be the outstanding principal balance).

3. Special Review

If, because of scheduled payments on the debt, the equity value of the property may cause the individual's resources to exceed the resource limit before the next scheduled redetermination, establish a special review.

4. Exempt and Nonexempt Property with Single Encumbrance

If there is an encumbrance on the property only the prorated share of the encumbrance on the countable assessed value will be used to determine the countable equity value.

Example: An applicant owns a home, lot and four acres of contiguous property. The contiguous property is assessed at $15,000, but the equity is only $3,000. $5,000 of the assessed value of $15,000, would be exempt as home property. The portion of the equity value of $3,000 relating to the countable $10,000 portion of the land would then be included as a countable resource.

The portion of the equity value, $10,000 divided by $15,000 is .666. Therefore, .666 of $3,000 equity or $1,998 is countabl**e.**

5. Determine the Countable Value

The procedures and an example for determining the countable value of real property with an encumbrance are found in Appendix 1 to subchapter S1130.

F. Development and Documentation Foreign Property

1. General

Foreign property is subject to the same rules as domestic property.

2. Obtaining Evidence of Legal Bars

a. **General**
Evidence of a legal bar to the sale of property, or to removing the proceeds of a sale from the country, makes CMV development unnecessary. If the individual alleges such a bar, try to verify it by phone before going through the development in 3. below. Document the information you obtain.

b. **Acceptable Source of Information**
Acceptable sources of information are a consulate, mission, or embassy of the country, or our own Department of State. The number of the General Information Desk at State is (202) 647-4000. Contact your regional office if you need help.

3. Obtaining Evidence General

If an individual does not have the documents necessary to support a determination of ownership and CMV or equity value, he or she may be able to write for them, directly or with the aid of a local nationality organization.

- 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.

4. CMV Estimate in Foreign Currency

If the CMV estimate is in foreign currency, contact a local bank for the current exchange rate. Apply the current rate retroactively and prospectively unless the individual provides reliable evidence of a different rate.

5. Effect of Partial Restrictions

a. 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.

b. 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.

c. If the individual has already sold property and can remove a portion of the proceeds before the next scheduled redetermination:

- document the appropriate amount as unearned income for the expected month of receipt; and
- if, in your judgement, the amount to be received is likely to affect eligibility based on resources for the month after receipt, set a special review for the month after receipt to make a resource determination.

M1140.110 OTHER PROPERTY RIGHTS

A. Introduction

1. Mineral Rights

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

2. Timber Rights

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

3. Easements

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

4. Leaseholds

A leasehold gives one party control over certain property of another party for a specified period. In some States, a "lease for life" can create a life estate under common law. See M1140.110A.6 for life estates.

5. Water Rights

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

6. Life Estates

a. General

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.

b. Life Estate Created Prior to August 28, 2008

The value of a life estate created prior to August 28, 2008 is not counted as a resource. Exception: The value of a life estate owned by a QDWI enrollee is countable, regardless of the date on which it was created.

c.* Life Estate Created On or After August 28, 2008 *but Before February 24, 2009

The value of a life estate created on or after August 28, 2008 *but before February 24, 2009* is a countable resource to the owner of the life estate unless the life estate is excluded under one of the real property exclusions contained in Chapter S1l. Exception: The value of a life estate owned by a QDWI enrollee is countable, regardless of the date on which it was created.

The value of a life estate in real property on which the individual resides and considers to be his home is excluded. If the individual leaves the property but retains a life estate, and the property is not occupied by a spouse or dependent child, the value of the life estate becomes a countable resource unless it is excluded under one of the real property exclusions contained in Chapter S11.

d. Life Estate Created on or after February 24, 2009

The value of a life estate created on or after February 24, 2009 is not counted as a resource. Exception: The value of a life estate owned by a QDWI enrollee is countable, regardless of the date on which it was created.

7. 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.

B. Development and Documentation

1. General

Treat the items in A. above as real property and develop ownership and value per S1140.100. See 4. below for additional instructions regarding life estates and remainder interests.

2. Mineral Rights

a. 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.

b. 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 in S1140.100 D.2.c.:

- the Bureau of Land Management;
- the U.S. Geological Survey;
- any mining company that holds leases.

3. Lease for Life

Refer any "lease for life" agreement and related information to the regional coordinator for a determination of whether it creates a life estate under State law.

4. Value of Life Estate

a. General

The value of a life estate created on or after August 28, 2008 but before February 24, 2009 is a countable resource to the owner of the life estate unless the life estate is excluded under one of the real property exclusions contained in Chapter S1l.

***b.* Calculate Value of Life Estate**

To determine the countable value of a life estate, use the table in S1140.120, *Life Estate and Remainder Interest Tables.* Multiply the CMV of the property by the “life estate” decimal that corresponds to the *applicant’s or enrollee’s* age. Record the result *in the case record*.

If there is more than one life estate owner, divide the *CMV* of the real property by the number of people *owning* a life estate interest. Multiply the prorated *CMV* of the property by the life estate decimal that corresponds to the *applicant's or enrollee's* age. Record the result *in the case record*.

***c.* Life Estate *Interest Owned by Another Person* Affects Property Value**

Any countable equity value of real property *is* affected if it is:

- subject to someone else having life estate interest, or
- the applicant/recipient transfers real property *and retains* a life estate interest, thus affecting the *real property* value *used to calculate the uncompensated value of the* asset transfer.

See S1140.120, Life Estate and Remainder Interest Tables to determine *the value* of *the life estate interest*.

5. Value of Remainder Interest

a. General

A "remainder" interest in real property is the term used when an individual has an ownership interest in the real property, but usually does not have the right to possess and use the property until termination of the life estate interest. The individual who owns a remainder interest in real property is called the "remainderman." An individual's ownership of a remainder interest in real property must be evaluated to determine the real property's countable value.

b. Calculate Value of Remainder Interest – One Remainderman

To determine the countable value of a remainder interest when only one individual owns the remainder interest, use the table in S1140.120, Life Estate and Remainder Interest Tables. Multiply the CMV of the real property by the "Remainder" decimal that corresponds to the ***life estate owner's age.*** *The result is the value of the remainder interest. Record the result in the case record.*

c. Calculate Value of Remainder Interest – Two or More Remaindermen

*To determine the countable value of a remainder interest when more than one individual owns a remainder interest in the property, divide the CMV of the real property by the number of remainder interests owned. Multiply the prorated CMV of the property by the "****Remainder"*** *decimal that corresponds to the* ***life estate owner's age****. If a remainderman is subject to a lien against the property, subtract the remaining balance or portion of the balance from the CMV value. The result is the countable value of the remainder interest. Record the countable value calculation and result in the case record.*

6. Examples in S1130 Appendix 1 and Appendix 4

See Appendix 1 and Appendix 4 to subchapter S1130 for instructions for, and examples of, determining the countable value of life estate and remainder interests in real property.

S1140.120 LIFE ESTATE AND REMAINDER INTEREST TABLES

EXHIBIT--TABLE -UNISEX LIFE ESTATE OR REMAINDER TABLE

AGE	LIFE ESTATE	REMAINDER
0	*.97188*	*.02812*
1	*.98988*	*.01012*
2	*.99017*	*.00983*
3	*.99008*	*.00992*
4	*.98981*	*.01019*
5	*.98938*	*.01062*
6	*.98884*	*.01116*
7	*.98822*	*.01178*
8	*.98748*	*.01252*
9	*.98663*	*.01337*
10	*.98565*	*.01435*
11	*.98453*	*.01547*
12	*.98329*	*.01671*
13	*.98198*	*.01802*
14	*.98066*	*.01934*
15	*.97937*	*.02063*
16	*.97815*	*.02185*
17	*.97700*	*.02300*
18	*.97590*	*.02410*
19	*.97480*	*.02520*
20	*.97365*	*.02635*
21	*.97245*	*.02755*
22	*.97120*	*.02880*
23	*.96986*	*.03014*
24	*.96841*	*.03159*
25	*.96678*	*.03322*
26	*.96495*	*.03505*
27	*.96290*	*.03710*
28	*.96062*	*.03938*
29	*.95813*	*.04187*
30	*.95543*	*.04457*
31	*.95254*	*.04746*
32	*.94942*	*.05058*
33	*.94608*	*.05392*
34	*.94250*	*.05750*
35	*.93868*	*.06132*

EXHIBIT--TABLE -UNISEX LIFE ESTATE OR REMAINDER TABLE

AGE	LIFE ESTATE	REMAINDER
36	*.93460*	*.06540*
37	*.93026*	*.06974*
38	*.92567*	*.07433*
39	*.92083*	*.07917*
40	*.91571*	*.08429*
41	*.91030*	*.08970*
42	*.90457*	*.09543*
43	*.89855*	*.10145*
44	*.89221*	*.10779*
45	*.88558*	*.11442*
46	*.87863*	*.12137*
47	*.87137*	*.12863*
48	*.86374*	*.13626*
49	*.85578*	*.14422*
50	*.84743*	*.15257*
51	*.83674*	*.16126*
52	*.82969*	*.17031*
53	*.82028*	*.17972*
54	*.81054*	*.18946*
55	*.80046*	*.19954*
56	*.79006*	*.20994*
57	*.77931*	*.22069*
58	*.76822*	*.23178*
59	*.75675*	*.24325*
60	*.74491*	*.25509*
61	*.73267*	*.26733*
62	*.72002*	*.27998*
63	*.70696*	*.29304*
64	*.69352*	*.30648*
65	*.67970*	*.32030*
66	*.66551*	*.33449*
67	*.65098*	*.34902*
68	*.63610*	*.36390*
69	*.62086*	*.37914*
70	*.60522*	*.39478*

EXHIBIT--TABLE -UNISEX LIFE ESTATE OR REMAINDER TABLE

AGE	LIFE ESTATE	REMAINDER
71	*.58914*	*.41086*
72	*.57261*	*.42739*
73	*.55571*	*.44429*
74	*.53862*	*.46138*
75	*.52149*	*.47851*
76	*.50441*	*.49559*
77	*.48742*	*.51258*
78	*.47049*	*.52951*
79	*.45357*	*.54643*
80	*.43659*	*.56341*
81	*.41967*	*.58033*
82	*.40295*	*.59705*
83	*.38642*	*.61358*
84	*.36998*	*.63002*
85	*.35359*	*.64641*
86	*.33764*	*.66236*
87	*.32262*	*.67738*
88	*.30859*	*.69141*
89	*.29526*	*.70474*
90	*.28221*	*.71779*
91	*.26955*	*.73045*
92	*.25771*	*.74229*
93	*.24692*	*.75308*
94	*.23728*	*.76272*
95	*.22887*	*.77113*
96	*.22181*	*.77819*
97	*.21550*	*.78450*
98	*.21000*	*.79000*
99	*.20486*	*.79514*
100	*.19975*	*.80025*
101	*.19532*	*.80468*
102	*.19054*	*.80946*
103	*.18437*	*.81563*
104	*.17856*	*.82144*
105	*.16962*	*.83038*
106	*.15488*	*.84512*
107	*.13409*	*.86591*
108	*.10068*	*.89932*
109	*.04545*	*.95455*

FINANCIAL INSTITUTION ACCOUNTS

M1140.200 CHECKING, SAVINGS *AND DEBIT CARD* ACCOUNTS

A. Operating Policies

1. Ownership

Assume that the person designated as owner in the account title owns all the funds in the account (see S1140.205 regarding joint accounts).

2. Right to Withdraw Funds

Absent evidence to the contrary, assume that the person shown as owner in the account title has the legal right to withdraw funds from the account.

3. Fiduciaries

A fiduciary's right to withdraw funds is the same as the owner's right to withdraw them.

4. *Right to Withdraw* - Examples of Evidence to the Contrary

a. 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 were her fiduciary or his resources were deemed available to her.

b. Withdrawals Require Authorization of Third Party

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

c. "Blocked" Accounts

If State law specifically requires the funds be made available for the care and maintenance of an individual, assume, absent evidence to the contrary, that they are that individual's resource. This is true despite the fact that the individual or his/her agent is required to petition the court to withdraw funds for the individual's care. Refer to regional coordinator any questions regarding State law on "blocked accounts."

5. Right to Use for Support and Maintenance

Absent evidence to the contrary, assume that an individual who owns and has the legal right to withdraw funds from a bank account also has the legal right to use them for his or her own support and maintenance.

6. *Right to Use* - Examples of Evidence to the Contrary

a. 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 resources (S1110.100).

6. Examples of Evidence to the Contrary

a. 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 resources (S1110.100).

EXAMPLE: An account is titled, "Aristotle Iris by Hester Pry, Representative Payee," where Ms. Pry is an officer of the institution in which Mr. Iris lives. A statewide court order prohibits such officers from using the funds of an institutionalized person for support and maintenance provided by the State. Therefore, the funds in the account are not a resource while Mr. Iris is in the institution.

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

7. Debit Card Accounts

Debit cards that are *not government-sponsored* (e.g. the Green Dot pre-paid Visa or MasterCard) are considered bank accounts *even if the individual's government benefits are deposited into the debit account*.

If the debit card is sponsored by a government program such as the Social Security Administration and the individual cannot deposit other money into the account, the money in the debit card account, minus any income deposited to the account for the month, is considered cash on hand and is verified by the client's statement of the balance in the account. See M1140.010.

B. Development and Documentation Initial Applications and Post-eligibility

1. Informing the Individual of Reporting Responsibilities

Be sure the individual understands that:

- he must report any bank account on which his or her name appears, regardless of any special purpose for which the account may have been established or whose money is in it;
- DSS may use other statements or forms to obtain information from any bank account or financial institution to verify the allegations.

2. Curtailing Development

Do not verify account balances under any of the following circumstances:

a. the individual alleges that his name does not appear on any accounts, and there is no evidence to the contrary;

b. the individual is ineligible for a non-financial reason.

3. Minimum Documentation - Account Balances Must Be Verified

Document, in addition to the balances themselves;

- the name and address of the financial institution;
- the account number(s); and
- the exact account designation.

***4.* Determining the Value of a Bank Account**

There is no single method for determining the countable value of a bank account. The countable value is the lower of:

- the balance before income is added, or
- the ending balance minus any income added during the month.

Funds cannot be both income and a resource in the same month. Income that has been added to a bank account during the month must be subtracted from the ending balance to ensure that the income is not also counted as a resource.

***5.* Requesting Information from Financial Institutions**

When it is necessary to request account information from a financial institution (FI), have the individual sign an authorization for release of the information.

If a financial institution refuses to provide the information needed for a determination, try to obtain its cooperation by explaining why assistance is required. If the institution still refuses to provide the information, inform the individual and ask him or her to try to get the information from the institution .

6. *Acceptable Financial Institution Information*

a. Acceptable Forms of FI Records

1. *FI original records that appear to be complete and unaltered;*
2. *FI records other than bank statements issued by the FI, when individual:*
   - *alleges that no transactions have occurred that the records do not show; or*
   - *alleges that such transactions have occurred and provides appropriate evidence of them;* ***and***
   - *the records, the allegation regarding additional transactions, and the alleged current account balance (on the application or renewal form) reflect a complete and consistent picture of the account;*
3. *Records verified by telephone contact with the FI and documented in the case record.*

b. Examples of Acceptable FI Records Other than Bank Statements

- *passbooks,*
- *the individual's check register,*
- *bank statements or account activity information printed from the FI's website and submitted by the individual,*
- *account ledgers,*
- *ATM transaction receipts, and*
- *deposit or withdrawal slips.*

Accept an FI document in the format in which it is provided by the FI or the individual if it meets the criteria in M1140.200 B.6 above.

***c*. Balance Information**

The financial institution may show the opening balance for the first day of a given month or the closing balance for the last business day of the previous month. Accept either, the amount will be the same. See M1110.001 for monthly determinations of resource eligibility.

C. Development and Documentation--Posteligibility Only

If you discover a previously undeveloped checking or savings account after eligibility has been established, develop account balances and interest for the period that a determination can cover.

S1140.205 JOINT CHECKING AND SAVINGS ACCOUNTS

A. Introduction

The instructions in S1140.200, except for A.1. (ownership), apply to all checking and savings accounts. The instructions in this section, which apply to joint accounts only, supplement those in S1140.200.

B. Operating Policy--Rebuttable Ownership Assumptions

1. Account Holders Include One Or More Applicants or Recipients and No Deemors

Assume that all the funds in the account belong to the applicant(s)/ recipient(s), in equal shares if there is more than one applicant or recipient.

2. Account Holders Include One or More Deemors

Provided that none of the account holders is an applicant or recipient (in which case the assumption in 1. above would apply), assume that all the funds in the account belong to the deemor(s), in equal shares if there is more than one deemor.

C. Development and Documentation--Initial Applications and Posteligibility

1. Informing the Individual

Inform the individual:

- of the applicable ownership assumption;
- of the corresponding income implications (S0810.130); and
- of his or her right to provide evidence rebutting the ownership assumption, if he or she disagrees with it.

2. Individual Wishes to Rebut

a. Rebuttal Statement

If an individual wishes to rebut the applicable ownership assumption, obtain his or 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.

b. Required Evidence

In addition, inform the individual that he or she must submit the following evidence:

- 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 or 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.

c. Determination

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. However, such funds can be deemed available to the individual if the account holder to whom they belong is a deemor. Document the determination in file.

NOTE: You must verify joint account balances if an individual rebuts ownership of any of the funds in an account.

S1140.210 TIME DEPOSITS

A. Introduction

1. Time Deposits

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 (C.D.s) and savings certificates are common forms of time deposits.

2. Penalties for Early Withdrawal

Withdrawal of a time deposit before the specified period expires incurs a penalty, which usually is imposed against the principal. This penalty does not prevent the time deposit from being a resource, but does reduce its value as a resource.

3. Early Withdrawal Prohibited

On rare occasions, the terms of a time deposit will prohibit early withdrawal altogether.

B. Operating Policy

1. Ownership

The assumptions regarding ownership of bank accounts (S1140,200 and S1140.205) apply to time deposits.

2. Early Withdrawal Prohibited

a. **Principal**
If the owner of a time deposit cannot under any circumstances withdraw it before it matures, it is not a resource. It becomes a resource (not income) on the date it matures, and may affect countable resources for the following month.

b. **Interest**
If the owner has no access to the interest before the deposit matures, accrued interest is not a resource and is income in the month the deposit matures (not before then).

3. Value as a Resource

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.

C. Related Policy--Interest

See S0830.425 regarding the treatment of interest for income purposes.

D. Development and Documentation

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. Contact the financial institution only to obtain information the individual's records do not provide.

S1140.215 CONSERVATORSHIP ACCOUNTS

A. Definitions

1. Conservatorship Account

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.

2. "Individual"

For Medicaid purposes the "individual" for whom a conservatorship account is held may be a applicant, recipient, or other person whose resources are deemable to the applicant or recipient.

B. Policy

The following policy does not apply to trusts, which are discussed in S1120.200.

1. Assumption of Availability for Support and Maintenance

If State law requires that funds in a conservatorship account be made available for the care and maintenance of an individual, we 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.

A State statute may not specifically address the issue of whether funds in a conservatorship account must be made available for the care and maintenance of the individual. Other State statutes or case law may specifically prohibit the use of funds held in the conservatorship account for general support of the individual in certain circumstances. Eligibility Workers (EW) should follow regional instructions regarding availability presumptions that apply in those States.

2. Examples of "Evidence to the Contrary"

Examples of evidence of the contrary include (but are not limited to):

- restrictive language in the court order that established the account or in a subsequent court order;
- State or local procedural rules for the withdrawal of funds from the account; and
- local court practices regarding withdrawal of funds.

3. Requirement to Petition Court for Release of Funds

The fact that an individual or his/her agent must petition the court for withdrawal of funds does not mean that the funds may be assumed to be unavailable for the individual's support and maintenance (and, therefore, not a resource for Medicaid purposes).

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. If the court approves requests to withdraw funds in order to provide support and maintenance, and only disapproves requests for non-essential items, the funds are considered available and a resource for Medicaid purposes. The EW should review the

history of petitions for (and approvals and denials of) withdrawal of funds. If a denial by the court appears to be an exception rather than the rule, the funds may be determined to be a resource for Medicaid purposes.

C. Procedure

1. Follow Regional Instructions

Refer to regional instructions regarding State law, State or local rules, or local court practices regarding the conditions under which funds held in conservatorship accounts may be withdrawn.

2. Obtain the Individual's Allegation

Obtain over the individual's signature an allegation regarding:

- who can withdrawn 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.

If the court has restricted use of funds in the account **at the individual's or his/her agent's request**, obtain the individual's allegation as to whether the restriction(s) can be removed by request or petition.

3. Obtain Evidence as Necessary

If you must verify the value of the funds (see S1140.010 or S1140.020 for general verification requirements) or if the individual's allegations suggest that funds in the conservatorship account are not a resource for Medicaid purposes, ask the individual to submit evidence regarding the account. Obtain evidence to document the issues which must be addressed. 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 doucments or evidence in the individual's possession pertaining to the conservatorship account.

4. Make Resource Determination

Document in the case record your determination as to whether the funds in the account are a resource for Medicaid purposes. Refer to regional instructions, as applicable.

If the court has restricted use of funds in the account at the individual's or his/her agent's request and the registration(s) can be removed at the individual's or agent's request or petition, determine that the funds are a resource for Medicaid purposes.

If due to the complexity of the conservatorship account or the history of petitions for funds, you are unable to determine the status of the account for Medicaid resource purposes, refer to the case to the Regional Specialist.

D. Examples

The following examples illustrate policy and procedures for conservatorship accounts.

1. 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.

The EW consults the regional specialist on conservatorship or "blocked" accounts and determines that, under State law, the funds in an account such as this may be assumed to be available for the individual's support and maintenance. Therefore, the EW determines that the funds in the account are a resource for Medicaid purposes.

2. Funds Not Available for Support and Maintenance

Same situation as above. However, regional instructions indicate that State law restricts the use of personal injury funds held in conservatorship accounts to medical expenses only. Since the funds are not available for food, clothing, or shelter, the EW determines the funds are not a resource.

3. Petition for Withdrawal of Funds Denied

The Medicaid recipient, a 2-year-old child, has received a $100,000 medical malpractice award. The court order requires that the child's parents petition the court for withdrawal of funds. The parent/payee alleged that a recent petition for withdrawal of funds was denied.

The EW asks the payee to submit evidence of the petition in question and all prior petitions. Examining the evidence, the EW concludes that all but one petition for withdrawal of funds were approved for the general support and maintenance of the child. The court denied one petition, citing the intended use of the funds. The court characterized the intended use as "nonessential for the child's care."

Since the one denied petition does not negate the presumption that the funds are available for the child's support and maintenance, the EW concluded that the funds are a resource for Medicaid purposes.

OTHER COMMON INVESTMENT VEHICLES

S1140.220 STOCKS

A. Introduction

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.

B. Operating Policy

1. Co-Ownership

Absent evidence to the contrary, assume that each owner owns an equal share of the value of the stock.

2. Salability

Absent evidence to the contrary, assume that the owner of shares of stock can sell them at will at current value.

3. Broker Fees

Broker fees do not reduce the value that stocks have as resources.

D. Development and Documentation

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 or her obtain a statement from the firm. Provide assistance as needed.

2. Value--Publicly Traded Stocks

a. **Which Value to Use**

The CMV of a stock is its closing price on the previous business day. 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.

b. **Sources of Information**

The closing price of a stock on a given day can usually be found in the next day's regular or financial **newspaper.**

As a last resort, contact a local **securities firm.** Record the appropriate closing price and the source of the information.

3. Value--Stock That Is Not Publicly Traded

a. **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.

b. **Evidence**
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.

Keep the statement or a photocopy of it in the file.

S1140.230 MUTUAL FUND SHARES

A. Introduction

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.

B. Development and Documentation

The development guidelines for stocks in S1140.220, apply to mutual funds shares. Many newspapers contain a separate table showing the values of funds not traded on an exchange.

S1140.240 U.S. SAVINGS BONDS

A. Introduction

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 have a mandatory retention period:

- 6 months for Series E, EE and I bonds issued prior to 2/1/03,
- 12 months for Series EE and Series I bonds issued on or after 2/1/03, and
- 6 months for Series H and HH bonds.

U.S. Savings Bonds are resources the first month following the mandatory retention period.

NOTE: The mandatory retention period is the same for both paper and electronic Series EE and I bonds. Series E bonds have not been issued since June 1980.

B. Operating Policy

1. Sole Ownership

The individual in whose name a U.S. Savings Bond is registered owns it (the Social Security Number shown on the bond is not proof of ownership).

2. Co-Ownership

The co-owners own equal shares of the value of the bond.

3. Status as Resources

a. General

U.S. Savings Bonds are not resources during a mandatory retention period. They are resources (not income) as of the first day of the month following the mandatory retention period.

b. Co-ownership Without Access

A U.S. Savings Bond is not a resource to a co-owner if another co-owner has and will not relinquish physical possession of it.

C. Development and Documentation

1. Ownership

***a.* Paper Bonds**

Have the individual submit any bonds that he or she has an ownership interest in. Use the name(s) shown on the bond to determine ownership per B.1. or B.2. above.

***b.* Electronic Bonds**

When an individual alleges ownership of electronic savings bonds, document bond ownership by asking the individual to download a record of his bond holdings from the Treasury Department. (see C.3.b below).

2. Status as Resources

If the individual alleges that he or she cannot submit a bond because a co-owner has and will not relinquish physical possession of it, obtain from the co-owner a signed statement verifying that the co-owner:

- has physical possession of the bond;
- will not allow the individual to cash the bond; and
- will not cash the bond and give the individual his or her share of its value.

3. Value

a. Series E, EE, and I paper bonds

- **On-line Verification** at: http://www.publicdebt.treas.gov/sav/savcalc.htm
- Current copy of the Table of Redemption Values for US Savings Bonds
- **Bank Verification** As a last alternative, obtain the value by telephone from a local bank and record it. The bank will need the series, denomination, date of purchase and/or date.

b. Series E, EE, and I electronic bonds

- Ask individual to obtain his "Current Holdings" list from the Treasury web site at: http://www.savingsbonds.gov/
- Use Current Holding Summary to verify number of bonds, face value, issue dates, confirmation numbers and value.

c. Series H and HH Bond After Maturity

After maturity, the redemption value of a series H or HH bond is its face value. Verification of value per a. or b. above is unnecessary.

4. Photocopy

Document the file with a photocopy or certification of the bond(s). See **S1140.010 C**. on photocopying U.S. Government obligations.

5. Follow-up, if Appropriate

If an individual owns a U.S. Savings Bond which, upon maturity, may cause countable resources to exceed the limit, recontact the recipient shortly before the bond matures in order to redevelop the value of countable resources.

S1140.250 MUNICIPAL, CORPORATE, AND GOVERNMENT BONDS

A. Introduction

1. Bond

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

2. Municipal Bond

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

3. Corporate Bond

A corporate bond is the obligation of a private corporation.

4. Government Bond

A government bond, as distinct from a U.S. Savings Bond (see S1140.240), is a **transferable** obligation issued or backed by the Federal Government.

B. Operating Policy

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.

C. Documentation

Documentation instructions for stocks (S1140.220) also apply to bonds.

M1140.260 ANNUITIES

A. Introduction

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. For Medicaid purposes, an annuity means a contract or an agreement by which one receives fixed, non-variable payments on an investment for a lifetime or a specified number of years. An annuity must be issued by an insurance company, bank, or other registered or licensed entity approved to do business in the state in which the annuity was established.

B. Operating Policy

1. Revocable Annuity

An annuity that names revocable beneficiaries is considered to be an available resource because it can be surrendered, cashed in, assigned, transferred or have the beneficiary changed. Annuities are presumed to be revocable when the annuity contract does not state that it is irrevocable. The countable value of the revocable annuity is the amount of the funds in the annuity minus any fees required for surrender.

2. Annuities Purchased with Assets of a Third Party

Annuities purchased with the assets of a third party such as those received through a legal settlement are not considered to be countable resources.

3. Annuity Purchased Prior to February 8, 2006

An annuity *purchased* prior to February 8, 2006, is considered a countable resource if the annuity can be surrendered. The countable value of the annuity is the amount of the funds in the annuity minus any fees required for surrender.

4. Annuity Purchased on or after February 8, 2006

A non-employment related annuity purchased by or for an individual on or after February 8, 2006, using that individual's assets will be considered an available resource <u>unless it meets all of the following criteria</u>: the annuity

a. is irrevocable;
b. is non-assignable;
c. is actuarially sound; and
d. provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

If the annuity does not meet the criteria listed above, the balance of the annuity is a countable asset regardless of whether or not the individual can access the balance (e.g. because periodic payments have begun).

Prior to receiving long-term care services paid by Medicaid, all annuities purchased by the institutionalized individual or the community spouse on or after February 8, 2006, must name the Commonwealth of Virginia as the primary beneficiary for at least the total amount of medical assistance paid on behalf of the institutionalized individual. If there is a community spouse or minor or disabled child, the Commonwealth must be named as the remainder beneficiary behind the spouse or minor or disabled child.

For individuals applying for long-term care services, annuities owned by either the applicant or the applicant's spouse must also be evaluated using the policy in M1450.200 to determine whether an uncompensated asset transfer has occurred.

S1140.300 PROMISSORY NOTES, LOANS, AND PROPERTY AGREEMENTS

A. Introduction

1. General

The context of the instruction in this section is the individual as the creditor (lender of money, seller of property) and, therefore, as the owner of the promissory note, loan, or property agreement.

See S1120.220 for additional information on notes, loans and property agreements.

2. 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.

3. Loan

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 State law. A written loan agreement is a form of promissory note.

4. 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 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.

B. Operating Policy

1. Real Estate Contracts Prior to Settlement

When an individual enters into a contract for the sale of real estate, he or she 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 individual cannot convert it to food or shelter. The contract is a property agreement whose status and value as a resource must be determined in accordance with this section.

2. Value as a Resource Assumption

Assume that the value of a promissory note, loan, or property agreement as a resource is its outstanding principal balance unless the individual furnishes reliable evidence that it has a CMV of less than the outstanding principal balance (or no CMV at all).

C. Development and Documentation – Written Agreement

1. Copy of Agreement

Obtain a copy of the agreement for the file. Cease development if including the original balance in countable resources does not cause ineligibility.

2. Principal Balance

If including the original balance in countable resources causes ineligibility and payments have been made, obtain evidence of the outstanding principal balance.

Cease development if including the outstanding principal balance in countable resources does not cause ineligibility.

3. Rebuttal Rights

If including the outstanding principal balance in countable resources causes ineligibility, **inform the individual** that we will use the outstanding principal balance in determining resources unless he or she submits:

- evidence of a legal bar to the sale of the agreement ; or
- an estimate from a knowledgeable source, showing that the CMV of the agreement is less than its outstanding principal balance.

4. Knowledgeable Sources

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

D. Related Policy

1. Loans and the Borrower

See S1120.220 on how to determine whether the proceeds of a loan are income or a resource to the borrower.

2. Home Replacement Funds Exclusion

See S1130.110 when a contract is from the sale of an excluded home.

3. Individuals Requesting Long-term Care

For individuals requesting Medicaid payment for long-term care who have purchased promissory notes, loans, or mortgages on or after February 8, 2006, see M1450.540.

M1140.305 CONTINUING-CARE RETIREMENT COMMUNITY ENTRANCE FEES

A. Introduction

Continuing-care or life-care retirement communities generally provide guaranteed care for the life of the individual in return for a set entrance fee as well as monthly maintenance fees. If the applicant has entered into a continuing-care contract or agreement with a retirement community, the entrance fee paid by the individual to the retirement community must be evaluated.

B. Operating Policy

An individual's entrance fee paid to a continuing-care retirement or life-care retirement community that collects an entrance fee upon admission shall be considered an available resource if:

- *the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;*
- *the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing-care or life-care contract and leaves the retirement community; and*
- *the entrance fee does not confer an ownership interest in the continuing-care retirement community or life-care community.*

C. Development and Documentation

1. Copy of Contract/ Agreement

Obtain a copy of the contract or agreement. If one or more of the conditions in B. above is not met in the terms of the contract, do not develop the contract further as a resource..

2. Countable Value of Entrance Fee

If all of the conditions in B. above are met in the terms of the contract or agreement, determine the countable value of the entrance fee. Contact the retirement community to determine:

- *the amount of the entrance fee actually paid if the contract or agreement stipulates installment payments, and*
- *whether any amount has been refunded to the applicant.*

Subtract any amount that the retirement community has refunded from the amount paid. Document the resulting balance in the case record as a countable resource.

M1140.310 LIFE INSURANCE

A. Introduction

This section provides broad policy principles concerning the treatment of life insurance policies for Medicaid purposes. Detailed instructions on the development and, where applicable, the exclusion of life insurance are contained in M1130.300.

B. Policy Principles

1. Countability Based on Total Face Value

If the combined face values of all the life insurance policies an individual, owns on a given insured age 21 or older, exceed $1,500, the cash surrender value of any such policy is a resource to the individual.

2. Policies Whose Face Values Are Not Taken into Account

For purposes of determining whether the combined face values of all the life insurance policies an individual owns on a given insured age 21 or older, exceed $1,500, the face values of the following are not taken into account:

- term insurance that does not have a cash surrender value; and
- burial insurance; i.e., insurance whose terms preclude the use of policy proceeds (proceeds include any cash surrender value) for any purpose other than payment of the insured's burial expenses.

TRUSTS

M1140.400 TRUSTS ESTABLISHED BY A WILL

A. Policy

If a Medicaid applicant or recipient is the named beneficiary in a trust established by a will, determine from the terms of the trusts, what income or principal is available to the applicant or recipient. If the trust is "discretionary" determine what part of the corpus or income the trustee is making available to the applicant or recipient. Any corpus or income which the trustee does not make available cannot be counted in determining Medicaid eligibility.

M1140.401 TRUSTS WHICH WERE NOT CREATED BY A WILL

A. Policy

This section deals with the countable value of trusts or similar legal devices which were not established by a will. The trust may be revocable or irrevocable. The date the trust was established will affect how the trust is evaluated for Medicaid eligibility.

For detailed instructions on Trust Property, see:

- M1120.200, Trust Property
- M1120.201, Trust Established on or After August 11, 1993
- M1120.202, Trust Established for Disabled Individual on or After August 11, 1993
- M1130.520, Trust Established Between July 1, 1993 and August 10, 1993
- M1140.402, Medicaid Qualifying Trust (Created Prior to August 11, 1993)
- M1140.403, Trust(s) Created After July 1, 1993 and Before August 11, 1993 With Corpus in Excess of $25,000

M1140.402 MEDICAID QUALIFYING TRUSTS (CREATED PRIOR TO AUGUST 11, 1993)

A. Introduction

A "Medicaid qualifying trust" is a trust, or similar legal device, established (other than by a will) by an individual or an individual's spouse prior to August 11, 1993. Under this trust the individual may be beneficiary to all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

EXCEPTION: A trust or initial trust decree established **prior** to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded is not "Medicaid Qualifying Trust."

B. Trust Restrictions Not Recognized

The requirements of this section shall apply without regard to:

- whether or not the Medicaid qualifying trust is irrevocable or
- is established for purposes other than to enable a grantor to qualify for Medicaid; or
- whether or not the trustee(s) exercises his discretion to distribute any payments to the individual.

C. Development

1. Countable Value

The **maximum** amount of payments permitted under the terms of a "Medicaid Qualifying Trust" to be distributed to the grantor, **if** the trustee exercised his discretion to the **fullest** extent possible, shall be considered available in determining the grantor's eligibility for Medicaid.

D. Exception

A trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded is not a "Medicaid Qualifying Trust."

E. References

M1120.200, Trust Property
M1120.201, Trusts Established on or after August 11, 1993.

M1140.403 TRUST(S) CREATED AFTER JULY 1, 1993 AND BEFORE AUGUST 11, 1993 WITH CORPUS IN EXCESS OF $25,000

A. Policy

Single or multiple trusts created after July 1, 1993 and before August 11, 1993, with corpus or corpora in excess of $25,000, will have the excess over $25,000 evaluated for countable resources for Medicaid eligibility.

B. Trust Restrictions Not Recognized

The following will not affect the evaluation of the countable value, regardless of whether or not the trust:

- is irrevocable; or
- established for purposes other than to make the individual eligible for Medicaid; or
- the trustee exercises his discretion to distribute trust payments to the applicant/recipient.

C. Development/ Documentation

1. Countable Value

a. Verify the current value of the corpus or corpora of the trust(s).

b. Prorate $25,000 by the number of trusts.

c. Subtract the amount in b. above from the corpus or corpora of the trust(s).

d. The remainder of the corpus or corpora of the trust(s)

- that may be paid under the terms of the trust,
- without any limits imposed by any void restrictive clauses within the trust

is counted as an available resource.

e. The maximum amount of income payable from the trust according to its terms is considered available income whether or not it is actually paid to the applicant/recipient.

D. References

Trusts Established Between July 1, 1993 and August 11, 1993, M1130.520

M1140.404 TRUSTS ESTABLISHED ON OR AFTER AUGUST 11, 1993

A. Introduction

The enactment of OBRA 93 affects the treatment of trusts. For purposes of determining the countable value of a trust for an individual's eligibility for Medicaid, the rules specified in this section shall apply to a trust established by such individual on or after August 11, 1993.

For the purposes of determining an individual's eligibility for Medicaid, the rules specified below shall apply to a trust established by such individual.

EXCEPTION: Certain trusts established for disabled individuals
See M1120.202.

B. Policy

1. Who Establishes Trust

a. Individual Establishes Trust

An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

- the individual,
- the individual's spouse,
- a person, including a court or administrative body (i.e., Power of Attorney, etc.), acting at the direction or upon the request of the individual or the individual's spouse.

b. Funeral Director Establishes Trust

A funeral home director who operates his business in Virginia can legally establish an irrevocable trust for an individual for the purpose of paying for funeral and burial expenses. Under a "two-step" process, funds transferred from the individual to the funeral home are deemed a compensated transfer for value when the amount of the funds transferred does not exceed the value of the goods and services purchased. The entire amount of the trust is exempt when placed in an irrevocable trust by the funeral director.

The "two step" process occurs when:

1) the individual signs a preneed contract with a funeral home director promising prepayment in return for specific funeral merchandise and services and pays the agreed upon amount in the form of a direct cash payment or purchase of a life insurance policy or annuity to the

funeral director;

2) then, the funeral home director in turn places the money, life insurance policy or annuity into a trust, established by a person other than the individual.

2. Treatment of Assets in Trust

In the case of a trust, the corpus of which includes assets of an individual and assets of any other person or persons, the provisions of this section shall apply to the portion of the trust attributable to the assets of the individual.

This section shall apply without regard to:

- the purpose for which a trust is established,
- **whether the trustee has or exercises any discretion under the trust,**
- any restrictions on when or whether distributions may be made from the trust, or
- any restriction on the use of distributions from the trust.

3. Revocable Trust

In the case of a revocable trust:

a. the corpus of the trust shall be considered resources available to the individual.

b. Payments from the trust to or for the benefit of the individual shall be considered income of the individual.

c. Any other payments from the trust shall be considered assets disposed of by the individual.

4. Irrevocable Trust

a. Payment Can Be Made To Individual

When there are any circumstances under which payment from the trust corpus or income could be made to or for the benefit of the individual, the following rules apply:

- payments from the trust corpus or income which are made to or for the benefit of the individual shall be considered **income** to the individual;

- income from the trust corpus that could be paid to the individual is considered a **resource** to the individual;

- the portion of the trust corpus that could be paid to the individual is considered a **resource** to the individual;

- a payment from the trust that is NOT made to or for the benefit of the individual shall be considered a transfer of assets by the individual.

NOTE: An irrevocable trust for burial is a trust from which payment will be made for the benefit of the individual.

b. Payment CANNOT Be Made To Individual

1) When all or any portion of the corpus of the trust cannot be paid under any circumstances to the individual, all (or any such portion) of the trust corpus shall be considered a transfer of assets. The effective date of the transfer of assets is the date the trust was established.

2) Any income earned by the corpus of the trust, from which no payment could be made (under any circumstances) to the individual, shall be considered a transfer of income.

c. Under the provisions of Section 55-19.5 of the Code of Virginia, clauses in a trust which foreclose or prohibit payments to an individual if he requires nursing home or medical care, or if he applies for Medicaid, are void. However, if a trust has been written in another state in which such clauses are legally enforceable, the date payment is foreclosed by such a clause is a transfer of assets that occurs on the date the payment is foreclosed.

d. In determining the value of the trust assets transferred, include all payments made from the trust after the date the trust was established or, if later, the date payment to the individual was foreclosed.

If the individual adds funds to the trust after these dates, the addition of those funds is considered to be a new transfer and effective on the date the funds are added.

M1140.500 WORKERS' COMPENSATION MEDICARE SET-ASIDE ARRANGEMENT ACCOUNTS

A. Introduction

A Workers' Compensation Medicare Set-aside Arrangement (WCMSA) is an arrangement which allocates a portion of a Workers' Compensation settlement for future medical expenses. The initial amounts of any set asides are determined on a case-by-case basis and are reviewed by the Centers for Medicare and Medicaid Services (CMS). Most WCMSAs will be placed in interest bearing accounts and are self-administered by applicants/enrollees, or by a competent administrator.

Funds authorized by a WCMSA are unearned income in the month of receipt, and any amount retained following the month of receipt is a countable resource. Section S0830.235 contains information on Workers' Compensation payments.

B. Operating Policy

1. Ownership

Assume that the person designated as owner in the account title owns all the funds in the account.

2. Right to Withdraw Funds

Absent evidence to the contrary, assume that the person shown as owner in the account title has the legal right to withdraw funds from the account.

3. Fiduciaries

A fiduciary's right to withdraw funds is the same as the owner's right to withdraw them.

4. Right to Use for Support and Maintenance

Although funds are intended for specific medical expenses, there are no legal restrictions as to how an individual uses the funds. Assume that an individual who owns and has the legal right to withdraw funds from a WCMSA also has the legal right to use them for his own support and maintenance.

C. Development and Documentation

The development and documentation instructions for checking and savings accounts contained in section S1140.200 apply to WCMSA accounts.

S1140.990 RESOURCES GUIDE -- OPTIONAL DESK AID

A. Introduction This section provides:

- general information about various investment vehicles encountered; and
- serves as a guide to appropriate instructions which follow this table.

INDEX

Term	See	Cross Reference
Balanced Fund Bond	E.4. C.	See Mutual Fund below. Interest, Capital Gains, Security Trades
CATS (Certificate of Accrual on Treasury Securities) CD (Certificate of Deposit)	D.3. B.4.	See U. S. Government Security below. Disqualified Interest, Forfeit Interest, Interest
Checking Account Common Stock	B. F.1.	Interest Dividends, Co-op Dividends, In-kind Dividends, Capital Gains
Convertible Bond Corporate Bond	C.1.c. C.1.	See Corporate Bond below. Interest, Capital gains, Security Trades
Federal Agency Security	D.4.	See U.S. Government Security below.
FREDDIE MAC	D.4.	See U.S. Government Security below.
GINNIE MAE	D.4.	See U.S. Government Security below.
Growth Fund Income Fund IRA (Individual Retirement Account) Junk Bond Keogh Account	E.2. E.3. H. C.1.d. H.	See Mutual Fund below. See Mutual Fund below. Varies with type of investment See Corporate Bond above. See Indiv. Retirement Account below.
MMDA (Money Market Deposit Account) Money Market Fund Municipal Bond	B.3. E.6. C.2.	Interest See Mutual Fund below. Interest, Capital Gains, Security Trades

Term	See	Cross Reference
Municipal Bond Fund Mutual Fund	E.5. E.	See Mutual Fund below. Disqualified Interest, Dividends, In-Kind Dividends, Interest
NOW Account Option Passbook Account Preferred Stock Savings Account Savings Bond Savings Certificate Stock	B.2. G. B.1. F.2. B.1. D.5. B.4. F.	Interest Security Trades, Capital Gains See Savings Account below. Dividends, In-kind Dividends Interest See U.S. Savings Bond below. See Certificate of Deposit above. See Common and Preferred Stock above.
Super NOW Account Tax-exempt Bond Term Account TIGER (Treasury Investment Growth Receipts) Time Account Treasury Bill (T-Bill)	B.2. C.2. B.4. D.3. B.4. D.1.	See NOW Account above. See Municipal Bond above. See Certificate of Deposit above. See U.S. Government Security below. See Certificate of Deposit above. See U.S. Government Security below.
Treasury Bond	D.2.	See U.S. Government Security below.
Treasury Note	D.2.	See U.S. Government Security below.
UIT (Unit Investment Trust)	C.3.	Interest, Security Trades
U.S. Government Security	D.	Interest, Security Trades, Capital Gains
U.S. Savings Bond Zero Coupon Bond	D.5. C.4.	Interest Interest, Capital Gains, Security Trades

B. Description of Checking and Savings Accounts

1. Savings Accounts

Savings accounts pay interest unless the financial institution has a minimum balance requirement and the account does not meet this requirement. Account owners can make deposits and withdrawals at any time in any amount. Develop per S1140.200 - .205.

2. Now and Super Now Accounts

NOW (Negotiable Order of Withdrawal) accounts are interest-bearing checking accounts. Super NOW accounts are money market checking accounts. They have higher interest rates than NOW accounts. Develop per S1140.200 -.205.

3. MMDA (Money Market Deposit Accounts)

MMDA's allow banks to compete with mutual fund money markets. They are interest-bearing checking accounts. Develop per S1140.200 -.205.

4. CD (Certifi-cate of Deposit)

A CD is a bank deposit that cannot be withdrawn for a certain period of time or that can be withdrawn early only with a penalty. Develop per S1140.210.

C. Description of Bonds

1. Corporate Bonds

Develop corporate bonds in accordance with the instructions in S1140.250.

a. General Type
Corporations sell corporate bonds to raise capital. There are two types:

- **debentures**, which are backed by the issuer's full faith and credit and
- **mortgage backed bonds**, which are backed by a lien on the company's assets.

b. Two Forms of Each Type
Corporate bonds are issued in two forms:

- **registered,** which pay interest to their registered owner; and
- **bearer** or **coupon** bonds, which pay it to whomever holds the bond.

c. Convertible Bonds
Convertible bonds are debentures that can be exchanged for a specified number of shares of a company's common stock.

d. Junk Bonds
High risk bonds are called junk bonds.

e. Interest
Corporate bonds usually pay a fixed rate of interest for a fixed period of time--annually, semi-annually, or quarterly.

2. Municipal or Tax Exempt Bonds

Municipal bonds are to city, county and State governments and authorities what corporate bonds are to corporations. They are exempt from Federal taxes and often are exempt from State and local taxes as well. Most municipal bonds are one of two general types:

- general obligation bonds, which are backed by the full faith and credit of the issuing municipality and supported by the taxing power; and
- revenue bonds, which are backed by the project being financed and the revenue or user fees it generates.

Other types of municipals are: limited-tax bonds, anticipation notes, industrial development bonds, and life-care bonds.

Develop municipal bonds in accordance with the instructions in S1140.250.

3. UIT (Unit Investment Trust)

A UIT is a package of bonds in a portfolio. One can buy share of the package for $1 to $1,000 per share with a minimum investment of $750 to $5,000, depending on the trust. The interest rate usually is fixed at purchase and does not change. Units usually are sold or redeemed through the trust sponsor.

4. Zero Coupon Bonds

Zero coupon bonds usually are issued by corporations. They do not pay current interest; accrued interest is paid at maturity. The U.S. Government does not issue zero coupon bonds directly. However, see TIGER and CATS.

5. Buying and Selling Bonds

Bonds usually are bought and sold through brokers, securities dealers, or other investors. They may sell for more or less than their face value or purchase price, depending on a variety of factors.

6. Reading Bond Quotations

The following is a typical bond quotation, showing from left to right:

- the name and the issuer (AT&T);
- the bond's nominal or coupon rate (3 7/8 percent);
- the last two digits of the year in which the bond matures (1990);
- the current yield (5.6 percent);
- the number of bonds traded during the year (54,000);
- the highest, lowest, and last price of the bond for the period covered by the quotation (bond prices are quoted on a par of 100, so the last price of 69 1/4 equals $692.50).
- the net change in the bond price.

	CURRENT	SALES				
ISSUE	YIELD	1000's	HIGH	LOW	CLOSE	CHANGE
AT&T 3 7/8	5.6	54	69 3/4	69 1/4	69 1/4	-3/8

D. Description of U.S. Government Securities

1. Treasury Bills (T-Bills)

T-Bills are short-term obligations that require a minimum investment of $10,000. Certificates are not issued for T-Bills; they are registered in book form at the Treasury Department and receipts are provided as proof of purchase. T-Bills can be sold before maturity. Develop in accordance with S1140.250.

2. Treasury Notes and Bonds

Treasury notes and bonds are similar to T-Bills but have longer maturities and a lower minimum investment requirement. They have been registered in book entry form since July 1986 but were sometimes issued as bearer bonds before then. Develop per S1140.250.

3. Tiger and Cats

These are Government securities issued with a zero coupon concept. The broker removes the interest coupons from the security and sells it at a big discount with a long maturity. Accrued interest is then paid at maturity. These bonds can be sold before maturity. Develop in accordance with S1140.250.

4. Federal Agency Securities

Some of the Federal agencies with charters to issue securities are:

- the Federal Home Loan Bank Board;
- the Federal Home Loan Mortgage Corporation (FREDDIE MAC);
- the Export-Import Bank; and
- the Government National Mortgage Association (GINNIE MAE).

Minimum investment requirements range from $1,000 to $25,000. Develop per S1140.250.

5. U.S. Savings Bonds

U.S. Savings Bonds are registered, nontransferable Treasury securities Develop per S1140.240.

E. Description of Mutual Funds

1. General

"Mutual fund" is a term that encompasses a wide range of investments. Basically, it is a pool of assets (stocks, bonds, etc.) managed by an investment company. A mutual fund share represents ownership interest in this pool as opposed to a particular stock or bond. Develop mutual funds per S1140.230.

2. Growth Funds

The primary objective of these funds, also known as performance funds and hedge funds, is aggressive long term growth of investment rather than current income. Dividends typically are low.

3. Income Funds

The objective is current income through high dividends and interest, as opposed to capital gains.

4. Balanced Funds

The objective is a balance of growth and income.

5. Municipal Bond (Tax Exempt Fund)

The fund invests in tax-exempt bonds and the interest is passed along to holders on a tax-exempt basis.

6. Money Market Funds

The fund invests in conservative vehicles such as T-Bills and bank certificates. The minimum investment usually is $1,000, but may be less. Income may fluctuate daily based on interest rates. Money market funds often have a check-writing feature.

7. Buying and Selling Mutual Funds

"Load" funds are sold through a broker who collects a commission. "Noload" funds usually are purchased directly from the fund (no commission) and often are advertised in newspapers and magazines.

8. Reading Mutual Fund Quotations

The format of the following table is typical of those shown in newspapers and financial publications, showing from left to right:

- the names of the funds available for each management group (in this case, four funds managed by the Fund Founders Group);
- the high and low values for the preceding 52-week period;
- the most recent closing price;
- the change over the previous week; and
- the fund's income and capital gains totals for the previous 12 months.

Fund Founders Group	52 Weeks H	52 Weeks L	Close	Week's Change	Income*	Capital Gains
Growth n.	8.77	6.28	6.37	-0.08	0.157	2.505
Income n.	15.18	13.72	13.87	+ 0.01	1.273	0.232
Mutual	11.56	9.74	9.98	- 0.07	0.426	0.706
Special n.	37.11	22.88	23.54	- 0.13	1.900	1.395

n = no-load
*= last 12 months

F. Description of Stocks

1. Common Stocks

Common stock usually is held in the form of a certificate registered in the owner's name. Dividends usually are paid quarterly and may vary with company earnings.

- "Listed" stocks are those listed on the NYSE, AMEX, or on one of the regional exchanges such as Boston, Philadelphia, or Chicago.
- Over-the-counter (OTC) stocks, which include "penny" stocks, are not listed on the major exchanges. They usually are reported in the National Association of Security Dealers Automated Quotations (NASDAQ) system.

2. Preferred Stock

Preferred stock receives preference with respect to dividends and, in case of bankruptcy, the distribution of assets. Preferred stock dividends:

- are paid at a fixed rate;
- must be paid before common stock dividends can be paid; and
- must be made up later, when not paid timely, whereas common stock dividends may be skipped.

3. Reading Stock Quotations

Stock tables vary little from publication to publication. The following quote is typical, showing from left to right:

- the standard abbreviations of the name of the company (Philadelphia Electric in this case), followed by "pf" for preferred stock on the second line;
- the dividend amount;
- the price-to-earnings ratio;
- sales volume, in thousands;
- the day's high, low, and closing prices (22 3/4 = $22.75); and
- the change in price from the previous day.

NAME	DIV	PE	SALES	HIGH	LOW	LAST	CHG
Phi El	2.20	9	4323	22 7/8	22 5/8	22 3/4	- 1/8
Phil E pf	4.30	-	50	42 3/4	42 3/4	42 3/4	-

G. Description of Options

1. General

An option is the right to sell or buy something at a specified price by a specified date. The "something" is usually stock, but there are options on interest rates, stock market indexes, commodity futures, and other items as well. An option to sell is called a "put." An option to buy is a "call." The value of an option depends on:

- the length of the contract (3, 6, or 9 months);
- the difference between the CMV of the item and the price at which the put permits it to be sold or the call permits it to be bought; and
- the volatility of the item (how much its CMV is expected to fluctuate).

2. Buying and Selling Options

Options can be sold through a broker. If the CMV of an item goes up in relation to a call price, the value of the option increases. If it goes down, the value of the option decreases. The reverse is true for a put.

3. Reading Option Quotations

There are several exchanges across the country that list option prices for about 300 stocks: the Chicago Board of options Exchanges (CBOE), AMEX, the Philadelphia Stock Exchange, and the Pacific Stock Exchange. Transactions on these exchanges are listed in financial publications and many newspapers.

Although a stock option contract controls 100 shares of stock, options are quoted on the price per share. If a contract sells for $300, the cost per share is $3. Options come due and are quoted for each January, April, July and October.

The following example is a typical options quotation and shows, from left to right:

- the name of the stock (Tandy), the expiration month (April) and per-share price of the option ($30 for put option on line 2);
- the number of contracts sold (996 on line 2);
- the high, low, and closing prices for a contract ($56.25, $25, and $37.50, respectively, on line 2); and
- the net change in the value of the contract ($6.25).

Name, Expiration Date, and Price	Sales	High	Week's Low	Last	Net Change
Tandy Apr.30	1317	4 3/4	2 3/4	3 1/8	- 1/8
Apr. 30p	996	9/16	1/4	3/8	-1/16

H. Description of IRA (Individual Retirement Account) and Keogh Account

The terms IRA and Keogh account refer to retirement plans. They do not identify the underlying investment vehicle, which can be a bank account, CD, mutual fund, etc. Develop IRA's and Keogh accounts in accordance with the section(s) that deal with the underlying investment vehicle.

Chapter M11, Appendices

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QDWI *(*QUALIFIED DISABLED AND WORKING INDIVIDUALS*)*

A. Introduction

This appendix contains the policy regarding resources that are treated differently for the QDWI covered group. The resource policy for QDWI individuals is identical to SSI resource policy. The policy in this appendix applies to QDWI evaluations only.

B. QDWI Resource Evaluation

Resource treatment and evaluations used in QDWI evaluations are listed in:

- S1110 Resources, General;
- S1120 Identifying Resources;
- S1130 Resource Exclusions; and
- S1140 Countable Resources.

C. Resources Treated Differently

The following types of resources are treated differently for QDWI individuals. The differences are:

- automobiles*
- burial fund exclusions - maximum amount of $1,500
- burial plots - only one space per individual and immediate family members
- home property*
- household goods and personal effects*
- inheritances and unprobated estates*
- life estates*
- real property whose sale would cause undue hardship, due to loss of housing, to a co-owner*
- real property following reasonable but unsuccessful efforts to sell

The policy for counting resources marked with *an asterisk is contained* in this appendix.

D. References

Information on how to treat other types of resources of a QDWI individual is found within each of the following sections:

M1130.400 Burial Spaces
S1130.410 Burial Fund Exclusions
M1140.110 Countable Life Estate Interest

DETERMINING *QDWI* ELIGIBILITY BASED ON RESOURCES

S1110.600 FIRST-OF-THE-MONTH (FOM) RULE FOR MAKING DETERMINATIONS

A. Policy Principle -- the FOM Rule

We make all resources determinations as of the first moment of a calendar month.

B. Policy Principle -- Significance of the FOM Rule

1. Increase in Value of Resources

We consider any increase in the value of an individual's resources in the resources determination as of the first moment of the month following the month in which:

- the value of an existing resource increases (e.g., the value of a share of stock goes up or installment payments increase a property's equity value);
- an individual acquires an additional resource (e.g., inherits property); or
- an individual replaces an excluded resource with one that is not excluded (e.g., sells an excluded automobile for nonexcluded cash).

2. Decrease in Value of Resources

We consider any decrease in the value of an individual's resources in the resources determination as of the first moment of the month following the month in which:

- the value of an existing resource decreases (e.g., the value of a share of stock goes down);
- an individual spends a resource (e.g., withdraws $150 from a savings account to pay bills); or
- an individual replaces a countable resource with one that is not countable (e.g., trades a countable piece of real property for an excluded automobile).

3. Treatment of Assets Under Income and Resources Counting Rules

When an individual receives something in cash or in kind during a month, we evaluate it under the appropriate income-counting rules in that month. If the individual retains the item into the month following that of receipt, we evaluate it under the resource-counting rules. Thus, we do not evaluate the same asset under two sets of counting rules for the same month.

4. Receipts from the Sale, Exchange, or Replacement of a Resource

If an individual sells, exchanges, or replaces a resource, what he/she receives in return is not income. It is a different form of resource. This includes assets which have never been subject to resources counting because the owner sold, exchanged, or replaced them in the same month in which he/she received them.

The concept of such transactions not producing income does not apply to receipts from the sale of timber, minerals, or other like items which are part

of the land.

C. Example--Receipt of a Resource Considered as Income and Exchanged in Same Month

Miss Laramie, a disabled individual, received a $350 unemployment insurance benefit on January 10 at which time it was unearned income. On January 18, she used the $350 to purchase several shares of stock; i.e., she exchanged one resource (cash) for another resource (stock). We never counted the $350 cash payment as a resource because Miss Laramie exchanged it for stock in the month of receipt. The stock is not income; it is a different form of resource. Since a resource is not countable until the first moment of the month following the receipt, we first count the stock in the resources determination made as of February 1.

S1120.215 INHERITANCES AND UNPROBATED ESTATES

A. Introduction

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.*

B. Operating Policy

1. When to Develop

We develop for this type of resource only if:

- *the property in question is not excludable under any of the provisions in S1110.210 B.; and*
- *counting the property's value would result in excess resources.*

2. 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 distribution are uncontested.*

3. When Unprobated Estate Can Be a Resource

We do not consider that an inheritance is a resource until the month following the month in which it meets the definition of income. See S0830.550 for the income rules on inheritances. Thereafter, if retained, we evaluate the property as a resource.

C. Development and Documentation

1. Ownership Interest

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 that the situation meets the criteria in B.*

2. Sole vs. Shared

Follow S1110.510 and S1140.030 to determine and document whether there are other owners and, if so, whether the individual needs their consent to sell his/her share of the property.

3. 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. Some States do not require the consent of other heirs in order for a co-owner to sell property.*

- *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. It is subject to the resource counting rules the month following the month it meets the definition of income.*

4. Value of Resource

a. *CMV - Develop the property's CMV (and EV, if appropriate) following guidelines in S1140 for the particular type of property involved.*

b. *Shared Ownership*

- *For real property, and most personal property, see S1140.030 B.*
- *For checking/savings accounts and time deposits, see S1140.205 and S1140.210.*

REAL PROPERTY

S1130.100 THE HOME

A. Policy Principles

1. Exclusion of the Home

An individual's home, regardless of value, is an excluded resource.

2. Definition of the Home

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 can include:

- *the shelter in which he or she lives;*
- *the land on which the shelter is located; and*
- *related buildings on such land.*

3. Principal Place of Residence

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.

4. Individual Owns The Land

For purposes of excluding "the land on which the shelter is located" (A.2. above), it is not necessary that the individual own the shelter itself.

EXAMPLE: *If an individual lives on his or her own land in someone else's trailer, the land meets the definition of home and is excluded.*

5. Extent of Property To Which The Exclusion Applies

a. Land

The home exclusion applies not only to the plot of land on which the home is located, but to 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.

b. Buildings

The home exclusion applies to all buildings on land excluded per a. above.

6. Property That No Longer Serves As The Principal Place of Residence

a. General Rule

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.

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.

b. Exceptions to General Rule

Even if the individual leaves the home without the intent to return, the property remains an excluded resource for as long as:

- *a spouse or dependent relative of the individual continues to live there while the individual is institutionalized; or*
- *its sale would cause undue hardship, due to loss of housing, to a co-owner of the property.*

7. Dependent Relative Defined

a. ***Dependency*** *may be of any kind (financial, medical, etc.).*

b. ***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.*

B. Development and Documentation - Initial Claims

1. Ownership

a. Use of Allegation

Accept an individual's allegation of home ownership unless the file raises a question about it (e.g., a life estate is involved, the individual is under age 18, does not live with a parent, and does not live with someone else). If there is a question, have the individual submit one of the items of evidence listed in b. - d., below.

b. Evidence of 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 laws in cases where the home is unprobated property).

c. Evidence of Personal Property Ownership (e.q., a Mobile Home)

- **title;**
- **current registration.**

d. **Evidence of Life Estate or Similar Property Rights**

- deed;
- will;
- other legal document**.**

e. Equitable Ownership

Virginia does not recognize equitable ownership of real property.

2. *Principal Place of Residence -- Operating Assumption*

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.*

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;*
- *which 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 file.*

4. *Evidence Indicates Nonadjoining Property*

a. 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*
- ***develop*** *the nonadjoining portion per S1140.100 (Nonhome Real Property) or S1130.500 (Property Essential to Self-Support), as applicable.*

b. 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, from public records, or by the Eligibility Worker (from direct observation).

The tax assessment information may be in the form of a tax assessment notice or obtained from the appropriate tax jurisdiction and recorded in case record

c. 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.*

d. 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.

5. Absences From The Home

a. Summary of Development

If the individual is in an institution, determine whether a spouse or dependent relative is living in the home (see b. below).

If no spouse or dependent relative is living the home, or if the absence is for a reason other than institutionalization, determine:

- *whether the individual intends to return to the home (see c. below); and*
- *if not, whether the sale of the home would cause undue hardship, due to loss of housing, to a co-owner (see D.1. below).*

NOTE: *If a previously undeveloped absence from the home has ended, assume that the individual always intend to return. The absence, regardless of duration, will not affect the home exclusion.*

b. Spouse or Dependent Relative Development

Obtain a signed statement from the individual as to:

- *whether anyone is living in the home while the individual is in the institution;*
- *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.

c. "Intent to Return" Development

If the individual has left his or her home but intends to return to it, see D. below for the necessary development.

NOTE: *"Intent to return" development applies only to the* ***continued*** *exclusion of property which met the definition of the individual's* ***home*** *prior to the time the individual left the property. See A.2. above for the definition of "home."*

C. Procedure – Post-eligibility

If, after Medicaid eligibility is established, an individual receives real property - for example, as an inheritance or gift - which may be excludable as his/her home, apply the policy and procedures in A. and B. above to determine whether the home exclusion applies.

Redevelop the exclusion from resources of an individual's home only if something raises a question about the correctness of the original determination or indicates that the exclusion may no longer apply (e.g., a change of address).

If the individual has left his or her home but intends to return to it, see D. below.

D. Procedure -- "Intent to Return Home" Development

1. Obtain Statement

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 representative payee, obtain the "intent" statement from the payee.*

This statement governs the "intent to return" determination unless the statement is self-contradictory (see 2. through 4. below).

2. 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."

3. 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 in the intensive care unit of a hospital. She tells the Eligibility Worker that her doctor believes she may not be able to leave the hospital 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 hospital. Based on her statement, "intent to return home" is established.*

Example: *The recipient's home was partially destroyed by fire. He does not know when the necessary repairs will be completed. In the meantime, he is living with his sister. He states he intends to return to the former residence as soon as possible. Based on his statement, "intent to return home" is established.*

4. Obtaining More Information If Needed

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.

S1130.130 REAL PROPERTY WHOSE SALE WOULD CAUSE UNDUE HARDSHIP, DUE TO LOSS OF HOUSING, TO A CO-OWNER

A. Policy Principles

1. Exclusion

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.*

2. 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.*

B. Development and Documentation-- Initial Applications and Post-Eligibility

1. Allegations 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 (see S1130.100 B.1.b.-d.).*

If co-ownership is not proven, skip to 3. below. Otherwise, obtain the statement in 2. below.

2. 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*
- *has other living quarters readily available.*

Apply the policy principle in A. above to determine whether, on the basis of the statements of the individual and the co-owner, 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).

3. Determination-Not Undue Hardship

If the property cannot be excluded on the basis of undue hardship:

- *document the file to that effect;*
- *issue appropriate notice.*

4. Determination-Undue Hardship

If the property can be excluded on the basis of undue hardship:

- *document the file to that effect;*
- *issue appropriate notice.*

S1130.140 REAL PROPERTY FOLLOWING REASONABLE BUT UNSUCCESSFUL EFFORTS TO SELL

A. Policy Principles

Real property that an individual has made reasonable but unsuccessful efforts to sell will be excluded from resource evaluation 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.

B. Policy Reasonable Efforts to Sell/Buy

1. Reasonable Efforts to Sell -

The individual must make reasonable efforts to sell excess nonliquid 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.

2. Reasonable Efforts to Sell Real Property

a. The individual/couple agrees in writing to:

- sell excess nonliquid resources at their current market value (CMV); and

b. Within 30 days of signing an agreement, 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.

NOTE: Reasonable efforts must be evaluated in consideration of the individual's circumstances and must not be restricted to "traditional" sales methods such as employing a real estate agent.

c. Except for gaps of no more than 1 week, the owner must maintain efforts of the type listed in a. above; and

d. The owner must not reject any reasonable offer to buy the property and must accept the burden of demonstrating to DSS's satisfaction that he rejected an offer because it was not reasonable.

3. Reasonable Offer to Buy Real Property

We 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.

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

b. Significance of Good Cause

- Without good cause, failure to meet the criteria outlined in 1. or 2. 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 in 1. or 2. above means that the exclusion continues.

C. Examples - Good Cause

1. No Offer to Buy	The individual makes good faith efforts to sell excess nonliquid resources (or is prevented from doing so by circumstances beyond his/her control) but receives no offer to buy them.
2. Reliance on an Offer That Does Not Result in a Sale	A legitimate or apparently legitimate offer to buy an excess nonliquid resource halts further efforts to sell it for a prolonged period of time, and the prospective buyer subsequently cannot or will not complete the purchase.
3. 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 within the disposal period.
4. 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.
5. 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.)

PERSONAL PROPERTY

S1130.200 AUTOMOBILES

A. Policy Principles

1. Automobile Defined	For Medicaid purposes, "automobiles" means any vehicle used for transportation. It thus can include, in addition to cars and trucks: boats, snowmobiles, animal-drawn vehicles, and even animals.

2. Current Market Value Defined

The CMV of an automobile is the average price an automobile of that particular year, make, model and condition will sell for on the open market (to a private individual) in the particular geographic area involved.

3. Exclusion Regardless of Value

One automobile is excluded regardless of value if, for the individual or a member of the individual's household, it is:

- necessary for employment;
- necessary for the treatment of a specific or regular medical problem;
- modified for operation by, or the transportation of, a handicapped person; or
- necessary, because of climate, terrain, distance or similar factors, for the

4. Alternate Exclusion--Up to $4,500 Of CMV

If **no** automobile is excluded per 3. above, up to $4,500 of the **CMV** of **one** automobile is excluded. If the CMV exceeds $4,500, the excess counts as a resource unless the automobile can be excluded under some other provision. Equity value is not a consideration for purposes of this exclusion.

5. Other Automobiles

Any automobile an individual owns in addition to the one wholly or partly excluded per 3. or 4., and which cannot be excluded under another provision is a resource in the amount of its equity value.

B. Operating Policy--More Than One Automobile Owned

1. General Rule

The exclusion applies in the manner most advantageous to the individual.

2. Example--One of Two Cars is Totally Excluded

If one of two cars can be excluded as necessary for medical treatment, and the other will be a countable resource, the exclusion applies to the car with the greater equity value regardless of which car is used to obtain medical treatment.

3. Example--Neither of Two Cars is Totally Excluded, One Is Excluded to $4,500 of CMV

Mr. Smith owns two cars. One has a CMV of $8,000 and an equity value of $500. The other, which has been paid off, has a CMV and equity value of $2,500. Neither can be excluded based on use.

Applying the $4,500 exclusion to the car with the $8,000 CMV would leave $3,500 of the CMV of that car as a countable resource. It also would leave the $2,500 equity value of the other car as a countable resource.

Applying the $4,500 exclusion to the car with the $2,500 CMV excludes that car entirely, leaving only the $500 equity value of the other car to be included among countable resources. Therefore, the exclusion applies to the car with the $2,500 CMV.

C. Development and Documentation-- Initial Applications

1. Status as Automobile

a. Use of Allegation
For the purpose of determining whether a vehicle is used for transportation (i.e., whether it is an automobile for Medicaid purposes), accept the individual's account of its use unless a question arises. If a vehicle is not being used for transportation, find out why.

b. Vehicle Not Used for Transportation

- A temporarily broken down vehicle normally used for transportation still qualifies as an automobile. One that has been junked or that is used only as a recreational vehicle (such as a boat used weekends on the lake) does not.

Vehicles that do not meet the definition of an automobile are personal property. The value they have as a resource is their equity value, and the personal effects exclusion does not apply to them.

2. Ownership

Absent evidence to the contrary, accept the individual's allegation as to sole or joint ownership and his or her proportionate share of joint ownership. Resolve any questions by examining the title, the current year's registration, or the bill of sale. Place in file a photocopy of the document examined or record the relevant facts in case record.

3. Exclusion Regardless of Value

Absent evidence to the contrary, accept the individual's allegation as to the presence of a factor that would qualify the automobile for exclusion regardless of value.

4. CMV Based On N.A.D.A. Guides

a. Description of Vehicle
When the value of an automobile must be developed, get a description complete enough to enable you to find it in one of the N.A.D.A. guides discussed below, e.g.: 1982 Chevrolet Caprice, V-6, 2-door.

b. N.A.D.A. Official Used Car Guide
This publication gives values for popular foreign and domestic cars and light trucks up to 8 years old. Use as the automobile's CMV the average **trade-in** value shown for it in the most recently published of these two issues, regardless of the period of time covered by the determination.

c. N.A.D.A. Older Car Guide
This publication gives values for popular cars and trucks from 8 to 18 years old. Use the average trade-in value shown in the most recently published January-April issue.

If the automobile is more than 18 but less than 25 years old, use the value shown for it at 18 years old.

d. Other N.A.D.A. Guides
N.A.D.A. also publishes guides on mobile homes, recreational vehicles, boats, motorcycles, and mopeds.

5. Rebuttal of N.A.D.A. Value

a. When Rebuttal Applies
If the N.A.D.A. guide value affects eligibility and the individual disagrees with it, give him or her the opportunity to rebut it.

b. Rebuttal Evidence
Rebuttal evidence can consist of N.A.D.A. guides and/or of a written appraisal of the automobile's CMV obtained by the individual at his or her own cost from a disinterested knowledgeable source, such as a used car of truck dealer or an automobile insurance company.

c. Determination
Document a rebuttal determination in case record.

6. Exceptions To Use of N.A.D.A. Guide Values

The following circumstances preclude use of the N.A.D.A. guides:

- The guides do not list the make and/or model of the vehicle.
- The guides list but do not show a value for the make and/or model of the vehicle.
- The vehicle is a car or truck 25 or more years old.
- The vehicle is any motorized vehicle other than a car or truck, or is a nonmotorized vehicle (e.g., an animal or animal-drawn vehicle).

7. Knowledgeable Source Estimate

When one of the exceptions in 6. above applies, or other circumstances make use of the N.A.D.A. guides inappropriate, get a CMV estimate from a disinterested knowledgeable source.

Provide the contact with a complete description of the vehicle, including year, make, model, number of doors, equipment, etc. Absent evidence to the contrary, such as that the vehicle is damaged or is in "mint" condition, assume it to be in average condition.

Inform the contact that the estimate should show what the vehicle would sell for on the open market in the geographic area covered by local media. If the estimate is obtained by telephone, document the file with all the pertinent facts.

D. Development and Documentation-Posteligibility

1. Exclusion Regardless Of Value

If an automobile has been excluded regardless of value, it is not necessary to redevelop the exclusion or the value.

2. Exclusion To $4,500 of CMV

a. General
It is not necessary to redevelop the CMV of a vehicle that has been excluded to $4,500 of its CMV unless the CMV in excess of $4,500 affects eligibility.

b. Exception
Always redevelop the collector value of an antique or other collectible

E. Related Policy

If a vehicle cannot be excluded under this provision, consider the possibility of its exclusion as property essential to self-support (S1130.500), or as part of a plan for achieving self-support.

S1130.430 HOUSEHOLD GOODS AND PERSONAL EFFECTS

A. Policy Principles

1. Items Excluded Regardless Of Value

a. One wedding ring and one engagement ring per individual are excluded regardless of value.

b. Prosthetic devices, wheelchairs, hospital beds, dialysis machines and **other items required by a person's physical condition** are excluded regardless of value **if** they are not used extensively and primarily by other members of the household.

2. Exclusion Of Up To $2,000 Equity Of Other Items

A general exclusion of up to $2,000 applies to the total equity value of household goods and personal effects other than those excluded regardless of value. Any portion of the total equity in excess of $2,000 is not excluded under this provision.

B. Definitions

1. Household Goods

Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use, and occupancy of the premises as a home. They include, but are not limited to: furniture, appliances, televisions sets, carpets, cooking and eating utensils, dishes, etc.

2. Personal Effects

Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to him or her. They include, but are not limited to: clothing, jewelry, personal care items, prosthetic devices, and educational or recreational items such as books, musical instruments, or hobby materials.

3. Items Of Unusual Value

An item of unusual value is one whose CMV exceeds $500.

4. Durable Items

Durable household goods and personal effects include furniture, major appliances, expensive carpets and jewelry, and other items that retain a significant resale value over time.

Durable items do **not** include:

- anything treated as an item of unusual value;
- ordinary cooking and eating utensils;
- small appliances;
- linens;

- clothing; or
- household furnishings of little value.

C. Development and Documentation--Initial Claims

1. Wedding And Engagement Rings

If only one wedding and/or engagement ring per individual is alleged, exclude it without further development. Treat additional such rings in accordance with the instructions below.

2. Allegation Of No Items Of Unusual Value, Or Of Only One Such Item With A CMV of $1,000 Or Less

Absent evidence to the contrary, accept the allegation. Assume that the total equity value of all household goods and personal effects is $2,000 or less. No further development is required.

3. Allegation Of Items Of Unusual Value Whose Total CMV Exceeds $1,000

a. Ask if the individual's physical condition requires any of the items. If the answer is "No," record it in the *case record* and skip to c. below for the additional development required.

If the answer is "Yes," record it in the case record with the following information:

- what the condition is;
- why the item is required for that condition (unless the reason is obvious);
- the extent to which the individual uses the item; and
- the extent to which any other member of the household uses the item.

b. **Determine,** based on the allegations, whether any of these items is excluded per A.1.b. above.

If, after exclusion of appropriate items per A.1.b., the alleged total CMV of the remaining items of unusual value does not exceed $1,000, **discontinue development.** Otherwise, proceed according to c. below.

c. Have the individual list all durable items and the estimated value of each. If the sum of their alleged value and the alleged value of the nonexcluded items of unusual value does not exceed $2,000, **cease development.** If it does exceed $2,000, proceed according to d. below.

d. **Verify** the CMV of any item of unusual value not excluded per A.1.b. Use any reliable evidence of CMV the individual can submit, such as a recent sales slip or appraisal, or insurance coverage, or obtain an estimate from a knowledgeable source, such as a local merchant.

NOTE: Insurance appraisals and amounts of insurance coverage often reflect replacement value (the amount it would cost to purchase a

similar item new) rather than CMV. Do not use replacement value in lieu of CMV.

If the verified CMV of all nonexcluded items of unusual value and the alleged CMV of all durable items totals $2,000 or less, **cease development.** Otherwise, proceed according to e. below.

e. **Determine** whether any of the durable items (i.e., that are not items of unusual value) can be excluded per A.1.b. above. If they can, and if the verified CMV of all nonexcluded items of unusual value and the alleged CMV of the remaining durable items then totals $2,000 or less, **cease development.** Otherwise, proceed according to f. below.

f. **Verify** the CMV of the nonexcluded durable items. If the verified total CMV of all nonexcluded items of unusual value and nonexcluded durable items is $2,000 or less, **cease development.** Otherwise, proceed according to g. below.

g. If the portion of the total CMV that exceeds $2,000 affects eligibility, **determine** the equity value of any item on which the individual alleges there is an encumbrance. If total equity value then exceeds $2,000, that portion of the equity in excess of $2,000 cannot be excluded under this provision.

S1140.110 OTHER PROPERTY RIGHTS

A. Introduction

For resources other than a life estate, apply development and documentation located in S1140.110 to QDWI evaluations.

B. Life Estate

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.

For QDWI evaluations, a life estate in real property, other than the home property, is counted as a resource ***regardless of when the life estate was established.*** *Follow the policy in M1140.110 for determining the countable value of a life estate.*

A life estate in home property does not need to be developed as the home is an excluded resource.

QMB, SLMB, QI AND ABD 80% FPL

A. Introduction

This section contains information regarding the resources that are treated differently for *QMB, SLMB, QI and ABD 80% FPL covered groups. The differences are:*

- home property,
- inheritances and unprobated estates, and
- real property whose sale would cause undue hardship, due to loss of housing, to a co-owner.

B. Resource Evaluation

Resource treatment and evaluation used *for QMB, SLMB, QI and ABD 80% FPL determinations are listed in:*

- S1110 Resources, General,
- S1120 Identifying Resources,
- S1130 Resource Exclusions and
- S1140 Countable Resources

C. Resource Policy Exceptions

Sections of policy that apply only to QMB, SLMB, QI and ABD 80% FPL evaluations are:

- S1120.215 Inheritances and Unprobated Estates
- S1130.100 The Home
- S1130.130 Real Property Whose Sale Would Cause Undue Hardship, Due to Loss of Housing to a Co-owner

The detailed information on these resources is below.

S1120.215 INHERITANCES AND UNPROBATED ESTATES

A. Introduction

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.

B. Operating Policy

1. When to Develop

We develop for this type of resource only if:

- the property in question is not excludable under any of the provisions in S1110.210 B.; and
- counting the property's value would result in excess resources.

2. 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 distribution are uncontested.

3. When Unprobated Estate Can Be a Resource

We do not consider that an inheritance is a resource until the month following the month in which it meets the definition of income. See *S0830.550* for the income rules on inheritances. Thereafter, if retained, we evaluate the property as a resource.

C. Development and Documentation

1. Ownership Interest

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 that the situation meets the criteria in B.

2. Sole vs. Shared Ownership

Follow S1110.510 and S1140.030 to determine and document whether there are other owners and, if so, whether the individual needs their consent to sell his/her share of the property.

3. 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. Some States do not require the consent of other heirs in order for a co-owner to sell property.

- 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. It is subject to the resource counting rules the month following the month it meets the definition of income.

4. Value of Resource

a. CMV - Develop the property's CMV (and EV, if appropriate) following guidelines in S1140 for the particular type of property involved.

b. Shared Ownership

- For real property, and most personal property, see S1140.030 B.
- For checking/savings accounts and time deposits, see S1140.205 and S1140.210.

REAL PROPERTY

S1130.100 THE HOME

A. Policy Principles

1. Exclusion of the Home

An individual's home, regardless of value, is an excluded resource.

2. Definition of the Home

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 can include:

- the shelter in which he or she lives;
- the land on which the shelter is located; and
- related buildings on such land.

3. Principal Place of Residence

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.

4. Individual Owns The Land But Not The Shelter

For purposes of excluding "the land on which the shelter is located" (A.2. above), it is not necessary that the individual own the shelter itself.

EXAMPLE: If an individual lives on his or her own land in someone else's trailer, the land meets the definition of home and is excluded.

5. Extent of Property To Which The Exclusion Applies

a. Land

The home exclusion applies not only to the plot of land on which the home is located, but to 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.

b. Buildings

The home exclusion applies to all buildings on land excluded per a. above.

6. Property That No Longer Serves As The Principal Place of Residence

a. General Rule

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.

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..

b. Exceptions to General Rule
Even if the individual leaves the home without the intent to return, the property remains an excluded resource for as long as:

- a spouse or dependent relative of the individual continues to live there while the individual is institutionalized; or
- its sale would cause undue hardship, due to loss of housing, to a co-owner of the property

7. Dependent Relative Defined

a. Dependency may be of any kind (financial, medical, etc.).

b. 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.

B. Development and Documentation--Initial Claims

1. Ownership

a. Use of Allegation
Accept an individual's allegation of home ownership unless the file raises a question about it (e.g., a life estate is involved, the individual is under age 18, does not live with a parent, and does live with someone else). If there is a question, have the individual submit one of the items of evidence listed in b. - d. below.

b. Evidence of 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).

c. Evidence of Personal Property Ownership (e.g., a Mobile Home):

- title;
- current registration.

d. Evidence of Life Estate or Similar Property Rights

- deed;
- will

- other legal document**.**

e. Equitable Ownership

Virginia does not recognize equitable ownership of real property.

2. Principal Place of Residence -- Operating Assumption

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.

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;
- which 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 file.

4. Evidence Indicates Nonadjoining Property

a. Individuals 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
- **develop** the nonadjoining portion per S1140.100 (Nonhome Real Property) or S1130.500 (Property Essential to Self-Support), as applicable.

b. 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, from public records, or by the Eligibility Worker (from direct observation).

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

c. 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.

d. 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.

5. Absences From The Home

a. Summary of Development

If the individual is in an institution, determine whether a spouse or dependent relative is living in the home (see b. below).

If no spouse or dependent relative is living in the home, determine:

- whether the individual intends to return to the home (see c. below); and
- if not, whether the sale of the home would cause undue hardship, due to loss of housing, to a co-owner (see D.1. below).

NOTE: If a previously undeveloped absence from the home has ended, assume that the individual always intend to return. The absence, regardless of duration, will not affect the home exclusion.

b. Spouse or Dependent Relative Development

Obtain a signed statement from the individual as to:

- whether anyone is living in the home while the individual is in the institution;
- 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.

c. "Intent to Return" Development

If the individual has left his or her home but intends to return to it, see D. below for the necessary development.

NOTE: "Intent to return" development applies only to the **continued** exclusion of property which met the definition of the individual's **home** prior to the time the individual left the property. See A.2. above for the definition of "home."

C. Procedure – Post-eligibility

If, after Medicaid eligibility is established, an individual receives real property - for example, as an inheritance or gift - which may be excludable as his/her home, apply the policy and procedures in A. and B. above to determine whether the home exclusion applies.

Redevelop the exclusion from resources of an individual's home only if something raises a question about the correctness of the original determination or indicates that the exclusion may no longer apply (e.g., a change of address).

If the individual has left his or her home but intends to return to it, see D. below.

D. Procedure -- "Intent to Return Home" Development

1. Obtain Statement

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 representative payee, obtain the "intent" statement from the payee.

This statement governs the "intent to return" determination unless the statement is self-contradictory (see 2. through 4. below).

2. 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."

3. Factors Not to Consider

Do not consider other factors, such as the individual's ages, 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 in the intensive care unit of a hospital. She tells the Eligibility Worker that her doctor believes she may not be able to leave the hospital 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 hospital. Based on her statement, "intent to return home" is established.

Example: The recipient's home was partially destroyed by fire. He does not know when the necessary repairs will be completed. In the meantime, he is living with his sister. He states he intends to return to the former residence as soon as possible. Based on his statement, "intent to return home" is established.

4. Obtaining More Information If Needed

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.

S1130.130 REAL PROPERTY WHOSE SALE WOULD CAUSE UNDUE HARDSHIP, DUE TO LOSS OF HOUSING, TO A CO-OWNER

A. Policy Principles

1. Exclusion

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.

2. 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.

B. Development and Documentation--Initial Applications and Post-Eligibility

1. Allegations 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 (see S1130.100 B.1.b.-d.).

If co-ownership is not proven, skip to 3. below. Otherwise, obtain the statement in 2. below.

2. 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
- has other living quarters readily available.

Apply the policy principle in A. above to determine whether, on the basis of the statements of the individual and the co-owner, 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).

3. Determination-Not Undue Hardship

If the property cannot be excluded on the basis of undue hardship:

- document the file to that effect;
- issue appropriate notice.

4. Determination-Undue Hardship

If the property can be excluded on the basis of undue hardship:

- document the file to that effect;
- issue appropriate notice.