TABLE OF CONTENTS

INTRODUCTION **1**

1. BACKGROUND **1**

1.1. LEGAL BASE 1

2. FUNDING **2**

3. APPLICABLE POLICY **2**

3.1. PART I 2

3.2. PART III 3

4. ELIGIBILITY RULES **3**

5. ELIGIBILITY PROCESS **3**

6. PAYMENTS/RECONCILIATION **8**

7. COMPUTER SYSTEMS **8**

8. FORMS **8**

Introduction

The Auxiliary Grant Program (AG) is a financial assistance program that provides supplemental income to low income individuals who are aged, blind, or disabled and reside in assisted living facilities (ALF) or adult foster care homes (AFCH). To be eligible for this program, individuals must meet the eligibility requirements specified in this manual. The AG payment is a money payment that is issued directly to the eligible individual.

1. Background

Virginia's AG program is an out growth of the federally mandated State SSI Supplementation Program that began when SSI was implemented to replace Old Age Assistance (OAA), Aid to the Permanently and Totally Disabled (APTD), and Aid to the Blind (AB) Programs that had existed under Titles I, X, and XIV of the Social Security Act. Those benefits were paid at a higher rate than was to be paid under SSI, meaning that individuals who were transferred from them to SSI would have received a cut in benefits. To prevent this, the Mandatory State SSI Supplementation Program began.

States were required to develop a program that would supplement the SSI payments of those who would have been negatively impacted or the states would lose Medicaid funding. Virginia's response was to establish the AG program. AG initially covered only those that were mandated to be covered, SSI recipients. It was later expanded to include individuals who were ineligible for SSI due to excess income but who met all other SSI eligibility requirements.

1.1. Legal Base

- In 1972 Public Law 92-603 abolished the Old Age Assistance (OAA), Aid to the Permanently and Totally Disabled (APTD), and Aid to the Blind (AB) Programs that had existed under Titles I, X, and XIV of the Social Security Acts and established the Supplemental Security Income (SSI) Program under Title XVI. The SSI program was implemented in 1974.

- A later amendment to Title XVI required that the individual income of aged, blind, or disabled persons be maintained at December 1973 levels. Section 212 of PL 93-66 addressed the loss of Medicaid funds. These cases were called "mandatory supplementation cases". States were given the option of having their supplementation program administered by the federal government or administering their own program. Virginia opted for self administration.

- In 1973, the Virginia General Assembly passed legislation permitting the Departments of Social Services and the Visually Handicapped to establish an Auxiliary Grants (AG) Program (*Code of Virginia*, Section 63.1-25.1).

- The Virginia Department of Social Services' State Board and the Department for the Visually Handicapped expanded the Auxiliary Grants Program in July 1974 to include (no later than November 1, 1974) aged, blind, or disabled persons in assisted living facilities who had insufficient funds to meet their needs as established by the State Board. This part of the program was called "optional supplementation" to distinguish these cases from the December 1973 cases.
    - It is no longer necessary to distinguish mandatory supplementation cases from optional ones as Virginia has increased its supplemental payments to a level that exceeds the mandated level.
- In 1984, the Virginia General Assembly passed legislation which gave the Department of Social Services sole responsibility for operating the program.
- Effective October 1, 2002, the Virginia General Assembly passed legislation repealing the *Code of Virginia,* Section 63.1-25.1 and replaced it with Section 63.2-800.

2. Funding

The AG program is funded by a combination of state and local funds. State funds comprise 80% of the funds and local funds comprise the remaining 20%. State funds are authorized by the General Assembly and the local funds are authorized by the governing body of each locality.

3. Applicable Policy

The policy that is applicable to AG is contained in two parts of Volume II, Part I and Part III. Where there is overlap between the two sections, the policy in Part III takes precedence.

3.1. Part I

Part I addresses administrative procedures and is applicable to several programs including AG. The policy in Part I includes:

- Chapter A – Introduction
- Chapter B – Application Procedures
- Chapter C - Nondiscrimination
- Chapter D – Safeguarding of Information
- Chapter E – Fair Hearings

- Chapter F - Fraud
- Chapter G – Improper Payments

Note: Part I is not online.

3.2. Part III

Part III contains ten chapters and is specific to AG. It addresses the eligibility requirements and determination procedures. The procedures differ for the two groups that are potentially eligible for AG, SSI recipients and non-SSI individuals. SSI recipients are those who receive an SSI money payment. Non-SSI individuals are those who are ineligible for SSI due to excess income. The primary differences are in the income and resource eligibility requirements.

To address those differences, separate income and resource chapters were developed. The titles of the chapters are the key to whom the chapters apply. If the title includes SSI Recipient in the title it applies only to SSI recipients, i.e. Chapter D - SSI Recipients' Eligibility. If the title includes Non-SSI, it applies only to those individuals who do not receive SSI, i.e. Chapter E - Non-SSI Resource Eligibility. If the title does not include either of those phrases it applies to both groups.

4. Eligibility Rules

As a federally mandated program established to supplement the SSI program, the AG program is required to use SSI policy to determine eligibility. Some variations do exist as state law can establish additional eligibility requirements. Virginia law has established some variances in both non-financial and financial eligibility criteria but most of the eligibility rules are the same as SSI's.

One of Virginia's variances limits AG eligibility to those individuals who reside in an adult living facility (ALF) or an adult foster care home (AFCH).

5. Eligibility Process

Determining eligibility for AG is a multiple step process. The following chart summarizes those steps. Detailed information is given in the subsequent chapters of this manual.

STEPS	ELIGIBILITY DETERMINATION ACTIONS

STEPS	ELIGIBILITY DETERMINATION ACTIONS
Step 1	Chapter B - 1.3 A written application document is received. Is the application signed? Yes – Pend the application in Med Pend. Continue No – The application is invalid. Return the application to the applicant. Stop. Review Medicaid eligibility.
Step 2	Chapter B – 7.3 Review the application and issue a written request for required verifications. Continue
Step 3	Evaluate the verifications that were provided. Did the individual provide all required non-financial and financial verifications? Yes – Continue No – Deny the application and send the individual a Notice of Action. Stop. Review Medicaid eligibility.
Step 4	Chapter C Evaluate individual's non-financial eligibility. Did the individual meet all non-financial eligibility criteria? Yes – The individual is eligible non-financially. Continue No – Deny the application and send the individual a Notice of Action. Update the case status in Med Pend. Stop. Review Medicaid eligibility.
Step 5	Chapter D Is the individual an SSI recipient? Yes – The individual is income and resource eligible. Determine his/her grant amount. Go to Step 9. No – Continue

STEPS	ELIGIBILITY DETERMINATION ACTIONS
Step 6	Chapter G Evaluate any resource transfers the individual made from 36 months prior to the date of application through the processing date. Did the individual make any resource transfers during this period that impacts his current eligibility? Yes – Compute the period of ineligibility and notify the individual of it. Deny the application and send the individual a Notice of Action and a Transfer of Resources Notice. Update the case status in Med Pend. Stop. Review Medicaid eligibility. No – Continue
Step 7	Chapter E Evaluate the non-SSI individual's resource eligibility. A. Determine the individual's net countable resources. • Determine the value of each resource. • Subtract the appropriate resource exclusion from the full value of the resource. The result is the resource's net countable value. • Total the net countable values. The result is the individual's total net countable resource value. B. Is the total net countable resource value equal to or less than the regular resource limit ($2000)? Chapter E - 5 Yes – The individual is resource eligible. Go to Step 9. No – The individual is ineligible for regular AG due to excess resources. Continue.
Step 8	Chapter F Evaluate the individual's potential eligibility for Conditional Benefits. A. Divide the individual's resources into two classifications, liquid and non-liquid.

STEPS	ELIGIBILITY DETERMINATION ACTIONS
	• Total the value of the non-liquid resources and • Total the value of the liquid resources. B. Is the total net countable value of the individual's non-liquid resources greater than the regular resource limit ($2000)? Yes - Continue Chapter E - 5 No - Deny application due to excess resources and send a Notice of Action. Update the case status in Med Pend. Stop. Review Medicaid eligibility. C. Is the total net countable value of the individual's liquid resources equal to or less than the Conditional Benefits resource limit (three times the SSI payment amount for one)? Yes – Continue. No – Deny application due to excess resources and send a Notice of Action. Update the case status in Med Pend. Stop. Review Medicaid eligibility.
Step 9	Chapters H & I Evaluate the individual's income. A. Determine the individual's net countable unearned income. • Total the individual's gross unearned income. • Subtract all appropriate income exclusions. • The result is the individual's net countable unearned income. B. Determine the individual's total net countable earned income. • Total the individual's gross earned income. • Subtract all appropriate income exclusions.

STEPS	ELIGIBILITY DETERMINATION ACTIONS
	• The result is the individual's total net countable earned income. C. Add the individual's total net countable unearned income to the individual's total net countable earned income. • The result is the individual's total net countable income. Continue.
Step 10	Chapter J Determine the non-SSI individual's income eligibility and the amount of unmet need for both SSI and non-SSI recipients. A. Determine the appropriate ALF/AFCH rate. B. Add the Personal Needs Allowance. The result is the AG Limit. C. Subtract the individual's total net countable income. • The result is the individual's unmet need. Is the result equal to or greater than $.01? Yes – The individual is income eligible and in need. Continue No – The individual is ineligible for AG. Deny the application and send a Notice of Action. Update the case status in Med Pend. Stop. Review Medicaid eligibility.
Step 11	Was the individual resource ineligible for regular AG and potentially eligible for Conditional Benefits? (Step 8) Yes - Did he/she sign the Agreement To Sell Property? Yes - He/she is eligible for Conditional Benefits. Continue No – He/she is ineligible for AG due to excess resources. Deny the application and send a Notice of Action.

STEPS	ELIGIBILITY DETERMINATION ACTIONS
	Update the case status in Med Pend. No – He/she is eligible for regular AG benefits. Continue.
Step 12	Chapter J Determine the individual's grant amount. A. Round the individual's unmet need to the nearest dollar. • The rounded amount is the grant amount. B. Complete the documents necessary to issue the check. C. Approve the application and send a Notice of Action or the Conditional Benefits Notice, as appropriate. D. Update case status in Med Pend and enroll the individual in MMIS.

6. Payments/Reconciliation

The AG payments are issued monthly at the beginning of the month for the month of issuance. The payment amounts are based on projected income and then are reconciled periodically thereafter. Reconciliation requires the recomputation of prior months' payment amounts using the actual income received in those months and correcting any over or underpayments. Reconciliation is required as AG is a means tested program.

7. Computer Systems

Med Pend is the computer system used to track AG and Medicaid applications and to provide management reports. Workers must enter the case as pending when the application is received and update the system at denial, approval, redetermination, closure and change of residence. The MMIS system is the Medicaid enrollment system. Workers must enter approved cases and update the system as changes in residence, medical coverage, and eligibility occur.

8. Forms

Forms used for AG applications or eligibility determinations are located on SPARK at http://spark.dss.virginia.gov/divisions/dgs/warehouse.cgi or http://spark.dss.virginia.gov/divisions/dfs/as/forms.cgi. Examples of some AG forms can also

be found in Chapter K of this manual.

TABLE OF CONTENTS

APPLICATION PROCESSING - INTRODUCTION **1**

1. 1.REQUEST FOR ASSISTANCE **1**

1.1. .INTERVIEW NOT REQUIRED 1
1.2. .APPLICATION FOR AG IS AN APPLICATION FOR MEDICAID 1
1.2.1. *Medicaid Evaluation* *1*
1.3. RIGHT TO APPLY FOR ASSISTANCE 2
1.4. APPLICATIONS 2
1.4.1. *Complete Applications* *2*
1.4.2. *.Incomplete Applications* *2*
1.4.3. *.Invalid Applications* *3*

2. WHO CAN SIGN THE APPLICATION **3**

2.1. SIGNATURE BY MARK 3
2.2. DESIGNATED AUTHORIZED REPRESENTATIVE 4
2.3. INDIVIDUAL CANNOT SIGN 4
2.4. GUARDIAN/CONSERVATOR 6
2.4.1. *Verification* *7*
2.5. FAMILY SUBSTITUTE REPRESENTATIVE 7
2.5.1. *Verification* *7*
2.6. NO SUBSTITUTE REPRESENTATIVE EXISTS 7
2.6.1. *Verification* *8*
2.6.2. *Pursuit of Guardianship* *8*

3. PLACE OF APPLICATION **10**

3.1. FILED IN WRONG LOCALITY 10
3.2. NON-VIRGINIA RESIDENT 10

4. DATE OF APPLICATION **10**

5. INFORMATION TO BE GIVEN TO INDIVIDUAL **11**

6. ASSISTANCE UNIT (AU) **11**

7. PROCESSING APPLICATIONS **12**

7.1. ELIGIBILITY ESTABLISHED 12
7.2. APPLICATION TIME STANDARDS 12
7.2.1. *.Early Processing* *13*
7.2.2. *Exceptions To The 45-Day Processing Timeframe* *13*
7.2.3. *Notice of Action To Extend The Pending Period* *13*
7.3. VERIFICATION REQUIREMENTS 14
7.4. ELIGIBILITY DECISIONS ON APPLICATIONS 14
7.4.1. *.Withdrawals* *15*
7.4.2. *.Denial of AG* *16*
7.4.3. *.Approval of AG* *17*
7.5. .NOTICES 19

TABLE OF CONTENTS

8. PROCESSING RENEWALS 20

8.1. RENEWAL DATE 20
8.2. SSI RECIPIENTS 20
8.3. NON-SSI INDIVIDUALS 20
8.3.1. *Renewal Application Received Late 21*
8.3.2. *Verification Requirements 21*
8.4. ELIGIBILITY DECISIONS ON RENEWALS 22
8.4.1. *Failure to Comply 22*
8.4.2. *.AG Closure 23*
8.4.3. *.AG Suspension 25*
8.4.4. *AG Approval/Continuing Eligibility 29*
8.5. NOTICES 30

9. PROCESSING CHANGES (PARTIAL REVIEWS) 30

9.1. REPORTING CHANGES 31
9.1.1. *.Failure To Report Timely 31*
9.2. CHANGE TIME STANDARDS 32
9.2.1. *.Increase In Grant Amount 32*
9.2.2. *Termination/Decrease In The Grant 33*
9.3. VERIFICATION REQUIREMENTS 33
9.3.1. *Verification Not Provided 34*
9.4. ELIGIBILITY DECISIONS ON CHANGES 34
9.5. INELIGIBILITY/CLOSURE 35
9.6. SUSPENSION 366
9.6.1. *Suspension Procedures - Ineligible for One Month Only 36*
9.6.2. *Suspension Procedures - Awaiting SSI Decision 38*
9.7. CONTINUING ELIGIBILITY 39
9.7.1. *.Grant Amount Remains Unchanged 39*
9.7.2. *.Grant Increases 40*
9.7.3. *Grant Decreases 40*
9.8. .NOTICES TO INDIVIDUAL AND PROVIDER 41

10. NOTICES 41

10.1. AG NOTICE OF ACTION 41
10.1.1. *.Initial Application/Reapplication 41*
10.1.2. *.Renewal or Change 42*
10.2. CONDITIONAL BENEFITS NOTICE 422
10.2.1. *Initial Application/Reapplication 42*
10.2.2. *Renewal or Change 42*
10.3. ADVANCE NOTICE OF PROPOSED ACTION 433
10.3.1. *Time Frames 43*
10.4. TRANSFER OF RESOURCES NOTICE 43
10.4.1. *.Initial Application/Reapplication 44*
10.4.2. *.Renewal or Change 44*
10.5. PROVIDER/DSS COMMUNICATION FORM 44

TABLE OF CONTENTS

10.5.1. *.Use of the Form* *44*

Application Processing - Introduction

Applicants for an Auxiliary Grant (AG) must file a written request for assistance, report changes in their situation and provide verification of eligibility factors. An individual's eligibility must be renewed each year. Workers are required to evaluate the applications and to take action on them within certain time frames. This chapter addresses procedures for submitting and processing applications from the point of initial submission through renewals and changes in the individual's situation. It also specifies the time frames in which actions must be taken and individual's rights and reporting responsibilities.

1. Request For Assistance

A written and signed application is required for all initial applications, reapplications, and renewals. The application form to be used is the Application for Benefits. The Eligibility Review Part A, and the Eligibility Review Part B, may be used for renewals.

1.1. Interview Not Required

A personal interview is not required to determine AG eligibility. The individual or his representative may be contacted to clarify or request additional information.

1.2. Application For AG Is An Application For Medicaid

An application for AG is also an application for Medicaid and, if the individual incurred medical expenses in the three months prior to the month of application, it is also an application for retroactive Medicaid.

1.2.1. Medicaid Evaluation

1.2.1.1. Retro Medicaid

Determine retroactive Medicaid eligibility based on the Medicaid Manual, Volume XIII.

1.2.1.2. Ongoing Medicaid – AG Approval

An individual that is found eligible for AG is eligible for Medicaid. No separate Medicaid evaluation is required.

Exceptions:

If an individual fails to assign his rights to medical support and payment for medical care to the Department of Medical Assistance Services (DMAS), he/she is not eligible for Medicaid. The failure to assign rights does not impact AG eligibility.

1.2.1.3. Ongoing Medicaid – AG Denial

If AG is denied, determine Medicaid eligibility based on the Medicaid Manual, Volume XIII.

1.3. Right To Apply For Assistance

An individual cannot be refused the right to complete an application for him/herself (the applicant) or any other individual for whom he/she is authorized to apply, and under no circumstances can an individual be discouraged from asking for assistance for him/herself or any person for whom he/she is legally responsible or authorized to represent. An individual may be assisted with the application by an individual of his choice.

1.4. Applications

When an AG application is received it must be reviewed to determine if it is a complete application. An application may be complete, incomplete or invalid.

1.4.1. Complete Applications

A complete application is one that includes answers to all questions relevant to the AG program and is signed by the applicant or the applicant's representative. The application is accepted and an eligibility determination is made.

1.4.2. Incomplete Applications

An incomplete application is one that is signed by the applicant or the applicant's representative but does not include answers to any or all of the relevant questions. The application is accepted and the individual is contacted to obtain the missing information. It is not necessary to return the application to the individual. The information may be obtained in writing or verbally. If the information is obtained verbally, the date of the contact and the information received must be documented in the case record.

1.4.3. Invalid Applications

An invalid application is one that is not signed or is signed by someone that is not authorized to apply for the individual. The application is not accepted and must be returned to the individual for whom assistance is requested. A letter of explanation must be included with the returned application.

Note: The application has multiple spaces for signatures. The application is valid if the individual or his/her representative signs in either the space labeled "Applicant's or Authorized Representative's Signature or Mark" or the one labeled "Name of Person Completing Application". The application must be signed in one of these spaces to be valid. A signature on the front of the application is not sufficient.

2. Who Can Sign the Application

The application must be signed by the individual for whom assistance is requested unless the individual's condition precludes him/her from doing so or he/she has designated an authorized representative to apply for him/her. If the individual is unable to sign the application the individual's guardian, conservator or a family substitute relative may apply for him/her.

Note: Under no circumstances may an employee of, or an entity hired by a medical service provider who stands to obtain Medicaid payment file an AG/Medicaid application on behalf of an individual who cannot designate an authorized representative.

2.1. Signature By Mark

If the individual cannot sign his or her name but can make a mark, the mark must be correctly designated (the individual's first and last name and the words "his mark" or "her mark" must be printed adjacent to the mark) and witnessed by one person as in the example below.

Example: John Doe, his mark

Witness's signature: _____

2.2. Designated Authorized Representative

The individual may authorize any adult to serve as his/her authorized representative to apply for AG. The statement designating the authorized representative must be in writing and is valid until (1) the application is denied, or (2) AG enrollment is cancelled, or (3) the individual changes his authorized representative by submitting a written statement revoking the prior designation or naming a new representative.

2.3. Individual Cannot Sign

When an individual cannot sign an initial or renewal application follow the procedure in the chart below. Detailed information follows.

STEPS	WHEN AN INDIVIDUAL CANNOT SIGN AN APPLICATION ACTIONS
Step 1	Has the individual been judged legally incapacitated by a court of law, as evidenced by a copy of the conservator or guardian certificate of appointment in the record? **YES:** The authorized representative is the appointed conservator or guardian. **STOP** **NO:** The individual is competent. **CONTINUE**
Step 2	Does the individual have an attorney in fact who has the power of attorney to apply for AG for the individual as evidenced by a copy of the power of attorney document in the record? **YES**: The authorized representative is the attorney in fact. **STOP** **NO:** **CONTINUE**
Step 3	Has the individual signed a written statement authorizing a person (or staff of an organization) to apply for AG on his behalf? **YES:** The authorized representative is the person or organization authorized by the individual to represent him. **STOP** **NO:** **CONTINUE**

STEPS	WHEN AN INDIVIDUAL CANNOT SIGN AN APPLICATION ACTIONS
Step 4	Is the individual able to sign or make a mark on an AG application form? **YES:** Ask the individual for his signature or mark on the application form or for a written statement authorizing someone to apply for AG on his behalf. Give the individual 10 working days to return the completed and signed application. If the completed and correctly signed application is not returned by the specified date, the application is invalid. Deny AG. **STOP** **NO:** **CONTINUE**
Step 5	Does the individual have a family substitute representative? **YES:** The authorized representative is the relative identified above who is willing and able to act on the individual's behalf. **STOP** **NO:** **CONTINUE**
Step 6	Does the individual have a diagnosis or condition that causes him/her to be unable to sign the application? **YES:** Verify the inability through a written statement from the individual's doctor. **CONTINUE** **NO:** The individual must sign or make a mark on the application or designate an authorized representative in writing. **STOP**

STEPS	WHEN AN INDIVIDUAL CANNOT SIGN AN APPLICATION ACTIONS
Step 7	Has anyone started guardian proceedings? **YES:** If action has been initiated to obtain a guardian for the individual, request verification that the action is on the court docket. Give 10 days for this verification to be provided. If the verification is provided within the 10 day period, continue to pend the application/ the individual's eligibility until the guardian or conservator is appointed. **NO:** Submit an "Eligibility Worker Referral - Medicaid Referral to APS to Request Assessment for Guardianship" form to the Adult protective Services (APS) unit. Continue pending the application/renewal until an APS decision has been made. **CONTINUE**
Step 8	Was a guardian/conservator appointed? **YES:** Give the guardian/conservator 10 days to return the completed and signed application. If the completed and correctly signed application is not returned by the specified date, the application is invalid. **NO:** The individual must sign or make a mark on the application or designate an authorized representative in writing. Give the individual 10 days to return the completed and signed application. If the completed and correctly signed application is not returned by the specified date, the application is invalid.

2.4. Guardian/Conservator

A guardian is a person appointed by a court of competent jurisdiction to be responsible for the personal affairs of an incapacitated individual, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, and therapeutic treatment, and if not inconsistent with an order of commitment, residence.

A conservator is a person appointed by a court of competent jurisdiction to be responsible for the financial affairs of an incapacitated individual.

When an individual has been determined to be incompetent, his/her guardian or conservator must complete and sign the application for AG.

2.4.1. Verification

Request a copy of the guardian or conservator documents for the case record.

2.5. Family Substitute Representative

When it is reported that an individual cannot sign the application and the individual does not have a guardian, conservator, attorney in fact or designated authorized representative, one of the relatives listed below who is willing to take responsibility for the individual's AG business will be the individual's "family substitute" representative. The family substitute representative will be, in this preferred order, the individual's:

- Spouse,
- Adult child,
- Parent,
- Adult sibling,
- Adult grandchild,
- Adult niece or nephew, or
- Aunt or uncle.

2.5.1. Verification

Verification of relationship and inability to sign are not required.

2.6. No Substitute Representative Exists

If the individual is unable to sign the application and does not have an attorney in fact, authorized representative, or family substitute representative, steps must be taken to determine if the individual is in need of a guardian.

2.6.1. Verification

The individual's inability to sign the application must be verified by a written statement from the individual's doctor that says that the individual is not able to sign the AG application because of the individual's diagnosis or condition.

2.6.2. Pursuit of Guardianship

Determine if anyone has begun the process to have a guardian or conservator appointed for the individual.

2.6.2.1. Action Has Been Initiated

If action has been initiated to obtain a guardian for the individual, meaning a court guardianship hearing is scheduled on the court docket, request verification that the action is on the court docket. Give 10 days for this verification to be provided.

2.6.2.1.1. Verification Provided

If the verification is provided within the 10 day period,

- **Intake**

  Continue pending the application until the guardian or conservator is appointed. If the application is still pending after 45 days, send a Notice of Action to the individual to extend the pending application.

- **Renewals**

  If all other eligibility factors continue to be met, continue the individual's eligibility until the guardian or conservator is appointed

2.6.2.1.2. Verification Not Provided

If the verification is not provided within the 10 day period, assume action has not been initiated and follow the procedures below.

2.6.2.2. Action Has Not Been Initiated

If guardianship/conservator procedures have not begun or have not been verified as being on the court docket, use the "Eligibility Worker Referral - Medicaid Referral to APS to Request Assessment for Guardianship" form to refer the individual to the Adult Protective Services (APS) unit in the local agency.

Continue an individual's eligibility or to pend an initial application until the APS investigation is completed.

2.6.2.2.1. Guardianship Will Not Be Pursued

If the completed APS investigation concludes that guardianship proceedings will not be initiated, the application must be signed by the individual, or the individual must sign a statement designating an authorized representative. Give the individual 10 days to return the signed application to the agency.

If the application form is not signed by the individual or the authorized representative and returned to the agency by the specified date, deny the application because it is invalid.

2.6.2.2.2. Guardianship Will Be Pursued

Continue an individual's eligibility or to pend the initial application until a guardian is appointed.

2.6.2.2.2.1. Guardian Appointed

Give the guardian/conservator 10 days to return the completed and signed application. If the completed and correctly signed application is not returned by the specified date, the application is invalid.

3. Place of Application

Initial applications and renewals are to be filed in the Virginia locality in which the individual last resided outside of an institution or an adult foster care home.

Note: Both public and private pay ALFS are considered institutions for AG purposes. ALFS are facilities licensed by Virginia Department of Social Services, Division of Licensing Programs for four or more individuals. Institutions also include hospitals, mental health facilities, nursing facilities, etc.

3.1. Filed In Wrong Locality

If the application is filed in a locality in which an individual does not have residence, the receiving agency must immediately forward the application to the locality of residence. The date of application will be the date it was received in the first agency.

- For example Ms. Smith lived in Hampton prior to going into the ALF. The locality that is responsible for eligibility is Hampton D.S.S.
- Ms. Smith moved in temporarily with her son who lives in Newport News before relocating to the Alf. Hampton D.S.S. is responsible for determining eligibility for AG.
- Ms. McCoy lived with her daughter in Virginia Beach for about a year and has no other residence in Virginia Beach. She has abandoned her home in Hampton with the intent to live in Virginia Beach with her daughter before going into an ALF. Virginia Beach is responsible for determining eligibility for AG.

3.2. Non-Virginia Resident

If the person did not have a prior residence in a Virginia locality or it cannot be determined where the individual last resided, the agency that serves the area in which the individual's adult living facility/adult foster care home is located will be responsible for determining initial and continuing eligibility.

4. Date of Application

The date of application is the date the signed application is received by a local department of social services. If the application is filed in a locality in which an individual does not

have residence, the receiving agency must immediately forward the application to the locality of residence. The date received in the original locality will be the date of application.

5. Information To Be Given To Individual

At the initial determination and at each renewal the individual must be given the following information.

- The individual must be given the "Virginia Department of Social Services Benefit Programs" booklet at initial application and reapplication. It does not have to be given at renewal.
- It is the individual's responsibility:
  - To provide accurate and complete information to the best of his/her ability.
  - To report changes in his/her situation within 10 days of the date the change occurred. The individual must be given a Notification of Change form.
- Failure to provide accurate and complete information or to report a change within ten days of the date the change occurs may result in prosecution for fraud.
- If the individual appears to meet SSI income standards, he/she must make application to SSI within fifteen calendar days.
- If the individual appears to be eligible for other financial benefits, he/she must make application for those benefits within a specified timeframe.
- The name of the social services agency responsible for providing social services.
- The eligibility requirements for AG and how the grant is computed.
- The requirement to verify all eligibility factors within the specified time frame.
- If eligibility factors cannot be verified, he/she will be ineligible.
- The right to dispute the current market value established for real and personal property if ineligibility results.

6. Assistance Unit (AU)

The composition of the AU determines whose income and resources will be used in determining financial eligibility. The assistance unit consists of the AG applicant only.

Exception: The AU contains both the applicant and his/her spouse when

- **As of the first moment of the month of application**
  - They were married to each other; and
  - They lived in the same household
- **Each entered an ALF/AFCH in that month;**
- **Each applied for AG in that month; and**
- **Each were determined eligible for AG for that month**

This situation can exist only in the month of application.

A **household** is common living quarters and facilities under domestic arrangements that create one economic unit. Sharing a room in an institution is not living in the same household.

7. Processing Applications

An eligibility determination begins with the receipt of a written application, continues through the verification, evaluation and documentation of each eligibility factor, and is completed at the point an eligibility decision is made, all appropriate notices are sent, and computer systems are updated.

AG and Medicaid eligibility are determined from the month of application forward. If appropriate, eligibility for retro Medicaid is determined using the Medicaid manual, Volume XIII. There is no retro eligibility for AG.

7.1. Eligibility Established

Eligibility is established when it is determined that the individual meets all eligibility requirements. Ineligibility is established at the point it is determined the individual does not meet an eligibility requirement. The worker must use the Evaluation of Eligibility to document the evaluation of each eligibility requirement.

7.2. Application Time Standards

Action to approve or deny a case must be taken within 45 days of receipt of an application. The 45-day processing period begins on the date a signed application is received in the agency. The date the approval or denial notice is mailed to the individual must be within that period. If action to approve or deny an application is not taken within 45 days the timely processing requirements have not been met.

7.2.1. Early Processing

The agency may take action prior to the 45th day of the processing period. However, an early decision will have to be reevaluated in the following situations.

- The application was denied for failure to provide verifications and the individual provides the verification prior to the end of the 45th day.
- The application was denied due to the inability to locate the individual and the individual contacts the agency prior to the 45th day.

7.2.2. Exceptions To The 45-Day Processing Timeframe

Applications whose processing is delayed beyond the 45-day processing period due to one of the following situations is not considered untimely but must be processed within the time frames noted below.

- The agency is unable to take action through no fault of its own. The pending status of the application must be continued for an additional 15 days. Final action must be taken at the end of the 15-day extension.

  Examples – Case held pending the determination of Conditional Benefit eligibility; case held pending the licensure of the ALF or approval of the AFCH.

- A disability determination is pending with SSI or Disability Determination Services (DDS). Action must be taken when a disability decision is made.
- An individual who must apply for SSI within 15 calendar days has applied, but the SSI decision is pending. Action must be taken when a decision is made on the SSI application.
- A guardianship determination is pending. Action must be taken when a guardian is established or it is determined one is not needed.

7.2.3. Notice of Action To Extend The Pending Period

When an application will not be processed by the 45th day, a Notice of Action must be mailed to the individual on the 45th day. The notice must state that the application is still pending and the reason action was not taken within the 45 day processing period.

7.3. Verification Requirements

The individual is responsible for providing verification of all eligibility factors. The Manual addresses each eligibility factor and the appropriate source for the verification.

- The individual must be notified in writing of the items that must be verified and the date by which the verifications must be received.
- The individual must be given a minimum of ten calendar days to return the verifications. Additional time may be allowed in situations where the individual may have difficulty in obtaining the required verifications in the ten day time frame.
- If the individual asks for help in obtaining the required verifications, the eligibility worker must attempt to obtain them.
- If the required verifications are not provided and the eligibility worker is unable to obtain them, eligibility cannot be determined and the application must be denied.

7.4. Eligibility Decisions on Applications

An AG and Medicaid eligibility decision must be made on each application and the individual and his representative must be notified of that decision.

Possible decisions include:

- **Withdrawal**
  - Individual requests that the application be withdrawn.
  - The agency is unable to locate the individual.
- **Denial**
  - The agency determines the individual is ineligible based on his failure to meet one or more of the non-financial or financial eligibility requirements.
- **Approval**

- The agency determines the individual meets all eligibility requirements.

7.4.1. Withdrawals

7.4.1.1. Voluntary Withdrawal

An individual may voluntarily withdraw his application at any time prior to an eligibility decision being made on the application. This may be done by verbal request or by a signed statement indicating the wish to withdraw the application.

The worker must:

- Document the withdrawal in the case record.
- Update the MEDPEND system, using "W" as the case disposition code.
- Send the AG Notice of Action to the individual and his representative to confirm the individual's decision to withdraw. Cite this manual reference.

7.4.1.2. Unable to Locate

If reasonable efforts to locate the individual are unsuccessful and the individual does not contact the agency so that an eligibility decision can be made within the 45-day processing period, the application will be considered withdrawn.

Reasonable efforts have been made when the agency is unable to reach the individual by phone and agency mail to the individual has been returned by the post office indicating no known forwarding address.

The worker must:

- Document the agency's attempts to locate the individual and the withdrawal in the case record.
- Update the MEDPEND system, using "W" as the case disposition code.
- Send the Notice of Action to the individual and his representative to confirm the individual's decision to

withdraw the AG and Medicaid applications. The Notice of Action must include the agency's attempts to locate the individual and request that he contact the agency. Cite this manual reference.

7.4.1.2.1. Individual Contacts Agency

If the individual contacts the agency prior to the 45th day, the application must be reopened and eligibility determined.

7.4.2. Denial of AG

Action to deny an application is taken at the point an eligibility determination finds the individual does not meet one or more of the eligibility requirements.

If the individual is ineligible in the application month and/or subsequent months but is eligible in the processing month, deny the appropriate months and approve for the processing month. See Chapter B - 7.4.3 for approval procedures.

7.4.2.1. Denial Procedures

The worker must:

- Document the denial and the reason for it in the case record.
- Assure substantiation of ineligibility is included in the case record.

  Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.

- Update the MEDPEND system, using “D” as the case disposition code.
- Evaluate retro and ongoing Medicaid eligibility based on the Medicaid Manual, Volume XIII.
  - **If eligible for Medicaid,**

- Document the approval in the case record assuring that each eligibility factor is addressed.
- Assure that all supporting verifications are in the case record.
- Enroll the individual for Medicaid in the MMIS system.

- **If ineligible for Medicaid**
  - Document the denial and the reason for it in the case record.
  - Assure substantiation of ineligibility is included in the case record.

    Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.

- Send a Notice of Action to the individual and his representative to notify them of the AG and the Medicaid denial or approval. State the reason the AG and Medicaid applications were denied and cite the appropriate AG and Medicaid manual references.
  - If the application is denied due to the implementation of a period of ineligibility due to an uncompensated transfer of resources, a Transfer of Resources notice must be sent with the Notice of Action.

- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been denied.

7.4.3. Approval of AG

Action to approve an application is taken at the point an eligibility determination finds that all eligibility requirements are met.

7.4.3.1. Entitlement Begins – Regular AG

Entitlement to regular AG begins the first month in which all eligibility factors are met. Entitlement cannot begin prior to the month of application. There is no retroactive period for AG.

- If the individual entered the ALF or AFCH in the application month, entitlement will begin on the date the individual entered the ALF or AFCH.
- If the individual entered the ALF or AFCH prior to the month of application, entitlement will begin on the first of the month of application.
- If the individual does not meet all eligibility criteria within the month of application but meets all criteria in a subsequent month, entitlement will begin the first of the month in which all eligibility criteria are met.
- If the individual entered the ALF or AFCH in a month subsequent to the month of application, entitlement will begin on the date the individual entered the ALF or AFCH.

7.4.3.2. Entitlement Begins – Conditional Benefits

Entitlement to Conditional Benefits begins the first month after the individual receives written notification that his Agreement to Sell Property has been received and accepted.

- The date of acceptance is 5 days from the date the Conditional Benefits Notice is mailed unless the individual shows that he/she did not receive it within the 5-day period.
- If the Conditional Benefits Notice is handed to the individual, the date of acceptance is that date.

7.4.3.3. Approval Procedures

The worker must:

- Document the approval in the case record assuring that each eligibility factor is addressed.

- Assure that all supporting verifications are in the case record.
- Enter the appropriate data in the local payment system.
- Evaluate retro Medicaid eligibility based on the Medicaid Manual, Volume XIII.
- Evaluate Medicaid Eligibility. Eligibility for AG equals eligibility for ongoing Medicaid if the individual met the Declaration of Citizenship and the **Assignment of Rights requirements.**
    - **Met**
        - Enroll the individual for Medicaid in the MMIS system.
    - **Not met**
        - Document the denial and the reason for it in the case record.
- Update the MEDPEND system, using "G" as the case disposition code.
- Send the "Notice of Action" or the "Conditional Benefits Notice", as appropriate, to the individual and their representative to notify them of the AG and Medicaid decisions.
    - If Medicaid is denied, state the reason the Medicaid application was denied and cite the appropriate manual reference.
- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been approved.

7.5. Notices

The individual, his representative, and the ALF/AFCH provider must be notified in writing of the application decision. See Chapter B – 9.

8. Processing Renewals

Eligibility for all AG and Medicaid recipients must be renewed annually and all eligibility factors subject to change must be reverified. If a renewal is not completed, continuing eligibility cannot be determined and the case must be closed.

A renewal begins with the receipt of a written application from a non-SSI individual or the review of SVES data for an SSI recipient, continues through the verification, evaluation and documentation of each eligibility factor, and is completed at the point an eligibility decision is made, all appropriate notices are sent, and computer systems are updated.

Eligibility is established when it is redetermined that the individual meets all eligibility requirements. Ineligibility is determined at the point the individual does not meet one of the eligibility requirements. The worker must use the Evaluation of Eligibility to document the evaluation of each eligibility requirement.

8.1. Renewal Date

The initial renewal date is twelve months from the month of application. (The month of application is counted as the first month in the twelve month period.) Subsequent renewal dates will be twelve months from the last renewal month.

Example: Application was filed in March 2006. The renewal date will be February 2007. The renewal process must be completed and the MMIS system updated by the system cutoff date in February. If completed timely, the next renewal date will be February 2008.

8.2. SSI Recipients

An SSI recipient does not have to file a written application to complete his/her annual renewal. The renewal process for an SSI recipient is completed by verifying continued receipt of SSI through SVES, verifying the individual's residence in an ALF/AFCH, documenting the case record, and notifying the individual of the results of the renewal.

The renewal must be completed by the MMIS cutoff date in the renewal month.

8.3. Non-SSI Individuals

A written application is required to complete an annual renewal for a non-SSI individual. "Review Forms Parts A & B" must be mailed to the individual in sufficient time to allow for the return of the application, the provision of all required verifications, and the completion of an eligibility determination by the MMIS cutoff

date in the renewal month. The individual must be given a minimum of ten days to return the completed renewal application.

8.3.1. Renewal Application Received Late

If the renewal application is not returned timely, but is received

- Prior to the effective date of closure due to failure to complete a renewal, the application must be processed as a renewal.

  If the renewal is completed after the scheduled renewal date, the next renewal date will be twelve months from the month the renewal application was received by the agency. (The month the renewal application is received is counted as the first month in the twelve month period.)

- After the effective date of closure, a complete Application for Benefits must be submitted and the application must be processed as a reapplication. If the individual submitted Parts A & B, send the individual an Application for Benefits giving him/her 10 days to return the completed document. If the application is returned within 10 days, use the date Parts A & B were received as the individual's application date.

8.3.2. Verification Requirements

All eligibility factors subject to change must be reverified. The Manual addresses each eligibility factor and the appropriate source for the verification.

- Blindness and disability do not have to be reverified unless it is reported that the individual is no longer blind or disabled.

- The individual must be notified in writing of the items that must be verified and the date by which the verifications must be received.

- The individual must be given a minimum of ten calendar days to return the verifications. Additional time may be allowed in situations where the individual may have difficulty in obtaining the required verifications in the ten day time frame.

- If the individual asks for help in obtaining the required verifications, the eligibility worker must attempt to obtain them.

- If the required verifications are not provided and the eligibility worker is unable to obtain them, eligibility cannot be determined and the case must be closed.

8.4. Eligibility Decisions on Renewals

An AG and Medicaid eligibility decision must be made on each application for renewal and each failure to submit a renewal application. The individual and his representative must be notified in writing of that decision.

Possible decisions include:

- **Failure to comply**
  - The individual did not submit a renewal application. Case will be closed.
- **Closure**
  - The agency determines the individual is ineligible based on his failure to meet one or more of the non-financial or financial eligibility requirements. The case must be closed.
- **Suspension**

An individual's grant is suspended when

  - The individual is ineligible for one month only.
  - The worker is unable to determine the individual's continuing eligibility while awaiting an SSI eligibility decision.
- **Approval/Eligibility Continues**
  - The agency determines the individual meets all eligibility requirements and eligibility will continue.

8.4.1. Failure to Comply

If an individual does not submit a renewal application, continuing eligibility cannot be determined. The case must be closed.

8.4.1.1. Procedures

The worker must:

- Retain a copy of the cover letter that was sent to the client that stated the date by which the renewal application was to be returned.
- Document the closure and the reason for it in the case record.
- Close the case in the local payment system.
- Close the case in MMIS.
- Close the case in Med Pend.
- Send the "Advance Notice of Proposed Action" to the individual and his representative to notify them of the AG and Medicaid closures. State the reason the AG and Medicaid cases were closed and cite the appropriate AG and Medicaid manual references
- Send the "Provider/DSS Communication Form" to the ALF/AFCH to notify the provider that the AG has been closed.

8.4.2. AG Closure

When the worker determines the individual is ineligible based on his failure to meet one or more of the non-financial or financial eligibility requirements the case must be closed.

8.4.2.1. Closure Procedures

The worker must:

- Document the closure and the reason for it in the case record.
- Assure substantiation of ineligibility is included in the case record.

  Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.

- Evaluate Medicaid eligibility based on the Medicaid Manual, Volume XIII.
  - **If eligible for Medicaid**
    - Document the approval in the case record assuring that each eligibility factor is addressed
    - Assure that all supporting verifications are in the case record.
    - Close the individual's coverage in the MMIS system as an AG individual and reopen it under the individual's new covered group.
    - Send a "Notice of Action" to the individual and his representative to notify them that Medicaid eligibility continues.
  - **If ineligible for Medicaid**
    - Document closure and reason in the case record
    - Assure substantiation of ineligibility is included in the case record.

      Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.
- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the AG and, if appropriate, Medicaid closures. State the reason the AG and Medicaid applications were closed and cite the appropriate AG and Medicaid manual references
- At the end of the 10 day advance notice period,
  - Close the case in the local AG payment system
  - Close the AG case in MMIS
  - Close the AG case in Med Pend

- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been closed.

8.4.3. AG Suspension

An individual's grant will be suspended when the worker determines the individual is ineligible for one month only or when the worker is unable to determine the individual's continuing eligibility while awaiting an SSI eligibility decision. A grant will be suspended for the reasons and the time periods listed below.

- The individual's receipt of a one time payment will cause ineligibility for a month.
- Inability to verify eligibility for a month.
- An individual who is required to apply for SSI has applied but SSI has not made a decision. The grant will continue to be suspended until an SSI decision is made.

Note: Suspension procedures does not apply to situations in which an individual's payment amount is reduced to zero but remains AG eligible. Zero payment might occur due to payment reconciliation, application of penalties for misuse of burial funds, etc.

8.4.3.1. Suspension Procedures - Ineligible for One Month Only

The worker must

- Document the ineligibility, the suspension, and the reason for it in the case record
- Assure substantiation of ineligibility is included in the case record

  Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.

- Evaluate Medicaid eligibility based on the Medicaid Manual, Volume XIII.
  - **If eligible for Medicaid**

- Document the change in the case record assuring that each changed eligibility factor is addressed
- Assure that all supporting verifications are in the case record
- Close the AG Medicaid case in MMIS
- Reopen the individual in his new Medicaid covered group in MMIS
- Update the renewal date in MMIS.
- Send a "Notice of Action" to the individual and his representative to notify them that Medicaid eligibility continues.

o **If ineligible for Medicaid**

- Document the closure and the reason for it in the case record.
- Assure substantiation of ineligibility is included in the case record.
- Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.
- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the Medicaid closure. State the reason Medicaid was closed and cite the appropriate Medicaid manual references. This may be included on the AG Advance Notice of Proposed Action.
- At the end of the 10-day advance notice period, close the case in MMIS.

- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the AG suspension. State the reason for the suspension, cite the

appropriate AG manual reference, and state the date the grant will be reinstated.

- At the end of the 10-day advance notice period, suspend the case in the local AG payment system.
- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been suspended.
- Reinstate AG and Medicaid for the following month. Send a "Notice of Action" to the individual and his representative to notify them of the reinstatement.
- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been reinstated.

8.4.3.2. Suspension Procedures - Awaiting SSI Decision

The worker must

- Document the suspension and the reason for it in the case record
- Assure the case record contains substantiation of the reason for the suspension, verification that the SSI application has been filed
- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the AG suspension. State the reason for the suspension, and cite the appropriate AG manual reference
- At the end of the 10-day advance notice period, suspend the case in the local AG payment system
- Set a special review, in Med Pend, to check the status of the SSI decision every 30 days
- Evaluate Medicaid eligibility based on the Medicaid Manual, Volume XIII.

- **If eligible for Medicaid**
  - Document the change in the case record assuring that each changed eligibility factor is addressed
  - Assure that all supporting verifications are in the case record
  - Close the AG Medicaid case in MMIS
  - Reopen the individual in his new Medicaid covered group in MMIS
  - Update the renewal date in MMIS.
  - Send a "Notice of Action" to the individual and his representative to notify them that Medicaid eligibility continues.
- **If ineligible for Medicaid**
  - Document the closure and the reason for it in the case record.
  - Assure substantiation of ineligibility is included in the case record.
  - Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.
  - Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the Medicaid closure. State the reason Medicaid was closed and cite the appropriate Medicaid manual references.
  - At the end of the 10-day advance notice period, close the case in MMIS.

- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been suspended.
- Upon receipt of an SSI decision, evaluate the change.

8.4.4. AG Approval/Continuing Eligibility

The agency determines the individual meets all eligibility requirements and eligibility will continue.

8.4.4.1. Grant Amount Remains Unchanged

No financial changes have occurred.

The worker must:

- Document the continuing eligibility in the case record assuring that each eligibility factor is addressed
- Assure that all supporting verifications are in the case record.
- Update the appropriate data in the local payment system
- Update the renewal date and other data in the MMIS system
- Send a "Notice of Action" to the individual and his representative to notify them of continued AG and Medicaid eligibility.

8.4.4.2. Grant Increases

There has been a decrease in the individual's income or level of need.

The worker must:

- Document the approval in the case record assuring that each eligibility factor is addressed
- Compute the new grant
- Assure that all supporting verifications are in the case record.
- Enter the appropriate data in the local payment system
- Update the renewal date in MMIS system

- Send a "Notice of Action" to the individual and his representative to notify them of continued AG and Medicaid eligibility.

8.4.4.3. Grant Decreases

The individual's income increased or there was an increase his level of need.

The worker must:

- Document the approval in the case record assuring that each eligibility factor is addressed
- Compute the new grant
- Assure that all supporting verifications are in the case record.
- Enter the appropriate data in the local payment system
- Update the renewal date in the MMIS system
- Send the "Advance Notice of Proposed Action" to the individual and his representative to notify them of continued AG and Medicaid eligibility and the decrease in the grant amount.

8.5. Notices

The individual and his representative must be notified in writing of the renewal decision. The type of action to be taken determines the specific notice to be used.

9. Processing Changes (Partial Reviews)

When a change in an eligibility factor occurs between renewals, a partial review of the individual's case is required to determine if eligibility continues and if the amount of the grant is correct.

The evaluation of a change begins with the receipt of information that a change has occurred and continues through the verification and evaluation of the change, documentation in the case record, updating of appropriate computer systems, and the mailing of a notice to the individual.

9.1. Reporting Changes

The individual must report changes in his/her situation within 10 days of the date the change occurred. The report may be verbal or in writing.

- If the individual has more than one agency worker and reports a change to any one of them, the responsibility to report has been met.

  Information that appears in the Medicaid MMIS system, in an IVES report, or that is available through the SVES inquiry system is considered to be changes that have been reported to the agency and the individual's requirement to report has been met.

  The eligibility worker is responsible for identifying these changes and must take action on them within the time frames noted in Chapter B - 9.2.

9.1.1. Failure To Report Timely

If the individual fails to report a change timely, a change that was not otherwise known to the agency, determine if the change resulted in an increase or decrease in the individual's grant.

9.1.1.1. Grant Increase

Implement the change as instructed in Chapter B - 8.4.4.2.

- The individual is entitled to supplements from the month of change forward. The supplements will be addressed at the point the impacted months are reconciled. See Reconciling Payments Chapter J – 7.

9.1.1.2. Grant Decrease

Determine if an overpayment has occurred. Implement the change as instructed in Chapter B - 8.4.4.3.

- Determine the month in which the change occurred and should have been reported.

- Use the Change Time Standards in Chapter B - 9.2 below to determine the month the change should have been implemented had it been reported timely.

  - Overpayments occurred in the month the change should have been implemented and each subsequent

month that occurred prior to the actual implementation of the change.

Example: Individual's support income increased on January 1st. He reported the change in April. An Advance Notice of Proposed Action was mailed notifying him that his grant would be decreased effective June.

The individual should have reported the change by January 11th. The change would have been implemented for March, the second month following the month in which the change was to be reported. Overpayments occurred in March, April, and May.

- Determine the total amount of the overpayment.
- Take action to recover the total overpayment as directed in Chapter L.

9.2. Change Time Standards

Action must be taken on reported changes within a timeframe that permits the worker to meet the effective date guidelines given below.

9.2.1. Increase In Grant Amount

9.2.1.1. Increase in Grant Amount Due to Income Change

Action must be taken within 30 days of the date the change was reported. The individual will be due supplements for each month impacted by the change. The supplements will be issued at the point the impacted period is reconciled. See Reconciling Payments Chapter J – 7.

9.2.1.2. Increase In Grant Amount Due To An Increase In ALF & AFCH Rates

Increases made necessary by an increase in the monthly rate permitted to be charged by an ALF/AFCH, must be made retroactive to the effective date of the rate increase. The supplements must be issued at the point the determination is made. Do not wait until the impacted months are reconciled.

Example: The AG rate increases effective January 1. Case action is taken on February 5. The increase must be effective January 1. A supplement is required for January and February and is initiated on February 5.

9.2.2. Termination/Decrease In The Grant

If a decrease in the amount of the grant or termination of assistance is required, the reduced payment or nonpayment of assistance must be effective as soon as administratively possible, the first of the month following the end of the 10-day advance notice period, but no later than the second month following the month in which the change is reported.

Example: A change is reported on July 26. Action must be taken by the August Med Pend cutoff date (approximately August 16) to make the decrease effective September 1.

9.2.2.1. Advance Notice

The individual must be given 10 days advance notice of a proposed decrease or termination of his grant. Unreduced payments issued during the advance notice period are not over payments.

Example: On July 10th the individual reported that his income increased effective July 1st. On July 23rd the EW computes the new grant amount and prepares an "Advance Notice of Proposed Action". The advance notice period is 10 days, July 24th through August 2nd. The notice will state the reduced grant will be effective September 1st. The EW can take action to reduce September's grant on August 3rd. The August grant is not an overpayment.

Exception to the 10-day advance notice requirement

- The individual requests the case be closed.
- The individual's death has been verified.
- The individual was discharged from the facility.

9.3. Verification Requirements

All changes in eligibility requirements must be verified.

- A request for a case to be closed must be made in writing and be signed and dated by the individual or his representative.

- The individual must be notified in writing of the items that must be verified and the date by which the verifications must be received.

- The individual must be given a minimum of 10 days to return the verifications. Additional time may be allowed in situations where the individual may have difficulty in obtaining the required verifications in the ten day time frame.

- If the individual asks for help in obtaining the required verifications, the eligibility worker must attempt to obtain them.

9.3.1. Verification Not Provided

If the required verifications are not provided and the eligibility worker is unable to obtain them, continued eligibility cannot be determined and the case must be closed.

9.4. Eligibility Decisions on Changes

An eligibility decision must be made on each reported change. The individual and his representative must be notified in writing of that decision.

Possible decisions include:

- **Ineligibility/Closure**

  - The agency determines the individual is ineligible based on his failure to meet one or more of the non-financial or financial eligibility requirements and the case must be closed.

  - The agency receives information verifying the death of the individual.

  - The individual requests his case be closed.

- **Suspension**

  An individual's grant is suspended when

  - The individual is ineligible for one month only.

  - The worker is unable to determine the individual's continuing eligibility while awaiting an SSI eligibility decision.

- **Eligibility Continues**

The agency determines the individual meets all eligibility requirements and eligibility will continue.

9.5. Ineligibility/Closure

When the agency determines the individual is ineligible based on his failure to meet one or more of the non-financial or financial eligibility requirements, the individual requested the case closed, or the individual died, the case must be closed.

The worker must

- Assure substantiation of ineligibility is included in the case record.

  Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.

- Evaluate Medicaid eligibility based on Medicaid Manual, Volume XIII.
  - **If Medicaid eligible**
    - Document the change in the case record assuring that each changed eligibility factor is addressed.
    - Assure that all supporting verifications are in the case record.
    - Close the AG Medicaid case in MMIS.
    - Reopen the individual in his new Medicaid covered group in MMIS
    - Send a “Notice of Action” to the individual and his representative to notify them that Medicaid eligibility continues.
  - **If Medicaid ineligible**
    - Document the closure and the reason for it in the case record
    - Assure substantiation of ineligibility is included in the case record.
      - Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.

- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the AG and, if appropriate, Medicaid closures. State the reason AG and Medicaid were closed and cite the appropriate AG and Medicaid manual references.

- At the end of the 10-day advance notice period close the case in the local AG payment system, the MED Pend system, and, if appropriate, MMIS.

  - **Exception: A 10-day advance notice period is not required when an individual requests his case closed.**

- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been closed.

9.6. Suspension

An individual's grant will be suspended when the worker determines the individual is ineligible for one month only or when the worker is unable to determine the individual's continuing eligibility while awaiting an SSI eligibility decision. A grant will be suspended for the reasons and the time periods listed below. Medicaid eligibility based on AG eligibility ends at the point the AG payment is suspended. Medicaid eligibility for the suspension period will have to be evaluated based the Medicaid Manual, Volume XIII.

Reasons for suspension:

- The individual's receipt of a one-time payment will cause ineligibility for a month.

- Inability to verify eligibility for a month.

- An individual who is required to apply for SSI has applied but SSI has not made a decision. The grant will continue to be suspended until an SSI decision is made.

9.6.1. Suspension Procedures - Ineligible for One Month Only

The worker must

- Document the ineligibility, the suspension, and the reason for it in the case record.

- Assure substantiation of ineligibility is included in the case record.

Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.

- Evaluate Medicaid eligibility based on the Medicaid Manual, Volume XIII.
  - **If Medicaid eligible**
    - Document the change in the case record assuring that each changed eligibility factor is addressed.
    - Assure that all supporting verifications are in the case record.
    - Close the AG Medicaid case in MMIS
    - Reopen the individual in his new Medicaid covered group in MMIS.
    - Send a "Notice of Action" to the individual and his representative to notify them that Medicaid eligibility continues.
  - **If Medicaid ineligible**
    - Document the closure and the reason for it in the case record.
    - Assure substantiation of ineligibility is included in the case record.

      Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.
    - Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the Medicaid closure. State the reason Medicaid was closed and cite the appropriate Medicaid manual references. This information can be included on the AG Advance Notice of Proposed Action.
    - At the end of the 10-day advance notice period close the case in MMIS.
- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the AG suspension. State the

reason for the suspension, and cite the appropriate AG manual reference.

- At the end of the 10-day advance notice period, suspend the case in the local AG payment system.
- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been suspended.
- Reinstate AG and Medicaid for the following month. Send a "Notice of Action" to the individual and his representative to notify them of the reinstatement.
- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been reinstated.

9.6.2. Suspension Procedures - Awaiting SSI Decision

The worker must

- Document the suspension and the reason for it in the case record.
- Assure the case record contains substantiation of the reason for the suspension, verification that the SSI application has been filed.
- Evaluate Medicaid eligibility based on the Medicaid Manual, Volume XIII.
  - **If Medicaid eligible**
    - Document the change in the case record assuring that each changed eligibility factor is addressed.
    - Assure that all supporting verifications are in the case record.
    - Close the AG Medicaid case in MMIS.
    - Reopen the individual in his new Medicaid covered group in MMIS.
    - Send a "Notice of Action" to the individual and his representative to notify them that Medicaid eligibility continues.
  - **If Medicaid ineligible**

- Document the closure and the reason for it in the case record.
- Assure substantiation of ineligibility is included in the case record.
- Example: If the individual is ineligible due to excess income, the case record must include verification of the income and the calculations used to determine ineligibility.
- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the Medicaid closure. State the reason Medicaid was closed and cite the appropriate Medicaid manual references.
- At the end of the 10-day advance notice period close the case in MMIS.

- Send an "Advance Notice of Proposed Action" to the individual and his representative to notify them of the AG suspension. State the reason for the suspension, and cite the appropriate AG manual reference.
- At the end of the 10-day advance notice period, suspend the case in the local AG payment system.
- Set a special review to check the status of the SSI decision every 30 days.
- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been suspended.
- Upon receipt of an SSI decision, evaluate the change.
  - See Chapter B.8 for renewal procedures and Chapter B.9 for change procedures.
- Send the Provider/DSS Communication Form to the ALF/AFCH to notify the provider that the AG has been reinstated.

9.7. Continuing Eligibility

The agency determines the individual meets all eligibility requirements and eligibility will continue.

9.7.1. Grant Amount Remains Unchanged

No financial changes have occurred.

The worker must:

- Document the change in the case record assuring that each changed eligibility factor is addressed.
- Assure that all supporting verifications are in the case record.
- Send a "Notice of Action" to the individual and his representative to notify them of continued AG and Medicaid eligibility.

9.7.2. Grant Increases

There has been a decrease in the individual's income or level of need.

The worker must:

- Document the change in the case record assuring that each changed eligibility factor is addressed.
- Compute the new grant.
- Assure that all supporting verifications are in the case record.
- Enter the appropriate data in the local payment system.
- Send a "Notice of Action" to the individual and his representative to notify them of the increased grant amount.

9.7.3. Grant Decreases

The individual's income increased or there was a decrease his level of need.

The worker must:

- Document the change in the case record assuring that each eligibility factor is addressed.
- Compute the new grant.
- Assure that all supporting verifications are in the case record.

- Send the "Advance Notice of Action" to the individual and his representative to notify them of the decrease in the grant amount.

- At the end of the 10 day advance notice period, enter the appropriate data in the local payment system. The effective date of a decrease will be the first of the month following the expiration of the advance notice period.

9.8. Notices to Individual and Provider

The individual and his representative must be notified in writing of the results of the change evaluation. The type of action to be taken determines the specific notice to be used. The provider must be notified if the change results in the individual's ineligibility. See Chapter B – 9.5.

10. Notices

The individual and his representative must be notified in writing of decisions on applications, renewals, and the results of change evaluations. The type of action to be taken determines the specific notice to be used.

The provider must be notified of initial eligibility decisions and any changes that result in the individual's ineligibility. The Provider/DSS Communication Form is used to notify the providers. This form is located on SPARK at http://spark.dss.virginia.gov/divisions/dgs/warehouse.cgi.

10.1. AG Notice of Action

The "AG Notice of Action" is used to notify an individual of the approval or denial of his/her initial application or reapplication for regular AG and when his/her annual renewal or change evaluation results in continued eligibility at the same or higher payment level.

10.1.1. Initial Application/Reapplication

The notice must be mailed at the time a decision is made on the application and within the 45-day processing period.

- If a decision has not been made by the 45th day, a "Notice of Action" must be mailed to the individual on the 45th day. The notice must

state that the application is still pending and the reason action was not taken within the 45 day processing period.

10.1.2. Renewal or Change

The notice must be mailed at the time a decision is made.

10.2. Conditional Benefits Notice

The "Conditional Benefits Notice" is a multipurpose form. It is used to notify an individual of his/her potential eligibility for Conditional Benefits, approval of Conditional Benefits, and the termination of Conditional Benefits. See Chapter F.

10.2.1. Initial Application/Reapplication

The "Conditional Benefits Notice" is used at two points in the application eligibility determination process.

10.2.1.1. Potential Eligibility

The "Conditional Benefits Notice" must be mailed within the 45-day processing period to inform the individual of his ineligibility for regular AG due to excess non-liquid resources and his potential eligibility for Conditional Benefits. An "Agreement to Sell Non-Liquid Resources" must be sent with the notice.

10.2.1.2. Eligibility Approved

The "Conditional Benefits Notice" must be mailed at the point it is determined the individual is eligible for Conditional Benefits. It must be mailed within 60 days from the date of application.

10.2.2. Renewal or Change

The "Conditional Benefits Notice" is used as an advance notice of proposed action to notify an individual that he/she is no longer eligible for Conditional Benefits.

10.2.2.1. Time Frames

The individual must be given a minimum of 10 days advance notice before his/her case can be closed.

- The "Conditional Benefits Notice" must be completed

and mailed at least 11 days prior to the effective date of the proposed case closure. The notice must state the effective date, the reason for the action, and cite the supporting manual reference.

- The effective date of the closure will be the first of the month following the expiration of the advance notice period.

10.3. Advance Notice of Proposed Action

The "Advance Notice of Proposed Action" is the form used to notify an individual that his/her renewal or change has been evaluated and that

- Eligibility continues but the grant amount will be reduced,
- The grant is being suspended, or
- Eligibility no longer exists.

10.3.1. Time Frames

The individual must be given a minimum of 10 days advance notice before an adverse action can be taken on the case.

Exception: A 10-day advance notice period is not required when an individual requests case closure.

- The "Advance Notice of Proposed Action" must be completed and mailed at least 11 days prior to the effective date of the proposed decrease or case closure. The notice must state the effective date, the reason for the action, and cite the supporting manual reference.
- The effective date of an adverse action will be the first of the month following the expiration of the advance notice period.

10.4. Transfer of Resources Notice

The Transfer of Resources Notice is used to notify an individual that they are ineligible for a period of time due to the uncompensated transfer of resources, to inform them of their right to claim undue hardship and to notify them of any

adjustments made to the period of ineligibility. See Chapter G.

10.4.1. Initial Application/Reapplication

The "Transfer of Resources Notice" is to be sent with the Notice of Action.

10.4.2. Renewal or Change

The "Transfer of Resources Notice" is to be sent with the "Advance Notice of Proposed Action."

10.5. Provider/DSS Communication Form

The Provider/DSS Communication Form is used to notify the provider of the eligibility decision. The form is also used as means of communication between the local DSS and the assisted living facility or adult foster care home provider. They can exchange information regarding:

- The AG and Medicaid eligibility status of a patient;
- Admission or discharge of a patient to home, hospital, another ALF/AFCH, or an institution, or to report the death of a patient;
- Other information known to the provider that might cause a change in the eligibility status.

10.5.1. Use of the Form

The form may be initiated by either the local DSS or the provider of care. The local DSS must complete the form for each applicant at the time initial eligibility is determined. A new form must be prepared by the local DSS whenever there is any change in the patient's circumstances that results in the individual's ineligibility.

The provider must use the form to show admission date, to request information on AG or Medicaid eligibility status, to request a Medicaid recipient I.D., or to notify the local DSS of changes in the patient's circumstances, discharge or death.

TABLE OF CONTENTS

NON-FINANCIAL ELIGIBILITY - INTRODUCTION **2**

1. IDENTITY **2**

1.1. VERIFICATION 2
1.1.1. Primary Verification Documents *3*
1.1.2. Secondary Evidence Documents *4*
1.1.3. No Available Primary Or Secondary Verification Document *5*
1.1.4. List of Unacceptable Documents *6*
1.1.5. Questionable Documents *7*
1.1.6. Responsibility for Verification *7*
1.1.7. Document Does Not Establish Identity *7*

2. COVERED GROUPS **7**

2.1. AGED 7
2.1.1. SSI/SSA/Railroad Retirement/Medicaid Recipient *8*
2.1.2. Mandatory SSI Applicant *8*
2.1.3. Non-SSI/Non-SSA Individual *8*
2.2. BLIND 8
2.2.1. SSI/SSA/Medicaid Recipient *9*
2.2.2. Railroad Retirement (RR) *9*
2.2.3. Mandatory SSI Applicant *9*
2.2.4. Former SSA/SSI/RR Disability Recipient *9*
2.2.5. Non-SSI/Non-SSA Individual *10*
2.3. DISABLED 10
2.3.1. SSI/SSA Recipient *10*
2.3.2. Mandatory SSI Applicant *10*
2.3.3. Non-SSI/Non-SSA Individual - Disability Determined By Other Source *11*
2.3.4. Non-SSI Individual - Disability Not Determined *12*

3. VIRGINIA RESIDENCE **16**

3.1. VERIFICATION 16

4. FUGITIVE FELONS & PAROLE VIOLATORS STATUS **16**

4.1. SSI RECIPIENTS 17
4.2. NON-SSI INDIVIDUALS 17
4.2.1. Individual is a Fugitive Felon *17*

5. SOCIAL SECURITY NUMBER **17**

5.1. VERIFICATION 17

6. LEVEL OF CARE ASSESSMENT (SCREENING) **17**

6.1. ADULT FOSTER CARE HOME (AFCH) ASSESSMENT 18
6.2.1 Assessors for Public Pay Individuals in an ALF Include The Following: *18*
6.2.2 An Assessment Of ALF Applicants And Residents Is A Process To: *19*
6.2.3 Uniform Assessment Instrument *20*
6.2.4 Procedures *20*
6.2.5 Current Assessment Not On File *21*

7. RESIDENCE IN AN ASSISTED LIVING FACILITY OR AN ADULT FOSTER CARE HOME **21**

7.1. RESIDING IN AN ALF OR AFCH 21
7.1.1. Verification Of Residing In An ALF *22*
7.1.2. Verification Of Residing In An AFCH *22*

TABLE OF CONTENTS

7.2. ASSISTED LIVING FACILITY - AUTHORIZED TO OPERATE 22
7.2.1. Licensing Continues 22
7.2.2. Verification 23
7.3. ADULT FOSTER CARE - APPROVED HOME 23
7.3.1. Verification 23
7.4. RESIDENCE ENDS 23
7.4.1. Procedures 24

8. RELATIONSHIP TO SSI 24

8.1. SSI DENIAL OR CLOSURE 25
8.1.1. Initial Application 25
8.1.2. Redetermination/Change 25
8.1.3. SSI Granted Based On An Appeal 25
8.2. MANDATORY APPLICATION FOR SSI 25
8.2.1. Does Not Appear To Meet SSI Income Standards 25
8.2.2. Appears To Meet SSI Income Standards 25

9. CITIZENSHIP AND ALIENAGE 28

9.1. DECLARATION OF CITIZENSHIP/ALIEN STATUS 28
9.2. AFFIDAVIT OF UNITED STATES CITIZENSHIP OR LEGAL PRESENCE IN THE UNITED STATES 28
9.2.1. Temporary Eligibility Period 28
9.2.2. Overpayments 29
9.3. CITIZENSHIP AND NATURALIZATION 29
9.3.1. SSI Recipient 29
9.3.2. Non-SSI Individual 29
9.4. ALIEN IMMIGRATION STATUS 34
9.4.1. SSI Recipient: 34
9.4.2. Non-SSI Individual: 34
9.4.3. Loss of Qualified Alien Status 39

10. APPLICATION FOR OTHER BENEFITS 47

10.1. TYPES OF BENEFITS FOR WHICH AN INDIVIDUAL MUST APPLY 47
10.1.1. Major Benefit Programs 47
10.1.2. Other Benefits 48
10.1.3. Identify Potential Eligibility For Other Benefits from: 48
10.2. STEPS TO MEET REQUIREMENT 49
10.3. PROCEDURE 49
10.4. APPLICATION IS VERIFIED 49
10.5. GOOD CAUSE 49
10.6. FAILURE TO COMPLY WITHOUT GOOD CAUSE 50
10.6.1. Initial Application 50
10.6.2. Redetermination/Change 50
10.6.3. Payments Excluded From Requirement to Apply 51

11. ASSIGNMENT OF RIGHTS AND COOPERATION 51

11.1. GOOD CAUSE 51
11.2. UNABLE TO ASSIGN RIGHTS 52
11.3. REFUSAL TO ASSIGN RIGHTS OR COOPERATE 52
11.3.1. Initial Application 52
11.3.2. Redetermination/Change 52
11.4. MEDICAID MANUAL REFERENCE 52

Non-Financial Eligibility - Introduction

Both SSI recipients and non-SSI individuals must meet the non-financial eligibility criteria at initial application, redetermination, and throughout their eligibility period. Criteria that are subject to change must be reevaluated at each redetermination and when changes in the individual's situation occur. Failure to meet a non-financial requirement will result in ineligibility for AG and/or Medicaid. See Chapter D-1 for the definition of SSI recipient.

Each non-financial eligibility factor listed in this chapter must be evaluated and documented on the Evaluation of Eligibility. The documentation must state that the applicant meets or does not meet the nonfinancial eligibility requirements.

1. Identity

Because of the growing problem of identity theft and false identity situations, each applicant is required to present documentary evidence of his/her identity. The worker must be certain the individual is who he/she claims to be (i.e., that the person existed and continues to exist). Identity evidence must:

- Have been issued at a later time and for a different purpose than the birth record; and
- Be of recent issuance to establish the individual's continued existence.
  - Generally, "recent" means a current, unexpired document.

Note: A birth record establishes a fact of birth (i.e., that the person was born) and the legal name at birth. It is not sufficient evidence to establish identity for AG purposes because it does not establish the person's continued existence. Therefore, AG does not accept a birth record as an identity document because it is not adequate evidence to show that the person is still alive. AG needs evidence that shows the individual continues to exist beyond the date of birth up to the present time.

1.1. Verification

An individual's identity must be verified at initial application and reapplication. Identity does not have to be reverified at redetermination, if it was previously verified.

SSI and SSA recipients' identity has been verified by SSA and does not have to be reverified.

Documents that are acceptable as verification of identity for non-SSI and non-SSA recipients are listed in two groups based on their relative probative value: primary verification and secondary verification.

- Primary verification documents have the highest probative value. They provide reliable evidence of an individual's identity.

- Secondary verification documents have lower probative value. They are less reliable sources of identity verification.

1.1.1. Primary Verification Documents

The individual must submit the document with the highest probative value when it is available. If the individual states the document with the highest probative value is expired or lost but can be replaced within 10 business days, the individual must obtain a current copy of the document.

Note: An alien's identity and alien status cannot both be verified by one document. Two documents are required, one for identity and one for alien status.

U.S. CITIZEN	ALIEN
Primary Evidence • U.S. driver's license (not expired) • U.S. State issued non-driver identity card (issued by the same State agency which issues driver's licenses and not expired) • U.S. Passport (not expired)* *For evidence of identity purposes, the passport must be currently valid (i.e., not expired).	**Primary Evidence** A current U.S. immigration document **AND** an unexpired foreign passport. • Form I-551, Permanent Resident Card (includes temporary I-551 stamp/machine readable immigrant visa (MRIV) in combination with an unexpired foreign passport when the I-551 Permanent Resident Card has not yet been issued) • Form I-94, Arrival/departure Record in combination with an unexpired foreign passport • Form I-766, Employment Authorization card • Form I-688B, Employment Authorization card • Form I-872, American Indian Card (see RM 00203.430A.3.; this card is issued only to members of the Texas Band of Kickapoos) **Note:** In some cases, the alien may have a current immigration document but not have foreign passport (e.g., a

U.S. CITIZEN	ALIEN
	refugee or when the applicant entered the U.S. without inspection or has an American Indian Card). In these situations accept the immigration document alone.

1.1.2. Secondary Evidence Documents

If primary evidence is not available (available means the document exists and the applicant can access or obtain it within 10 business days), request a secondary evidence document.

U.S. CITIZEN	ALIEN
Secondary Verification • U.S. military identification card (DOD Common Access Card) (active duty, retiree, national guard, or dependent) • Certificate of Naturalization • Certificate of U.S. Citizenship • U.S. Indian Tribal card approved by your AG consultant as an acceptable identity document • U.S. government employee identification card (Form OF-55, U.S. Government Identification, or other document issued by the employing agency) • Non-government employee identity card/badge card showing the applicant's	**Secondary Verification** When the applicant was not issued a U.S. immigration document, but meets the requirements for an SSN for non-work reasons, then any one of the following documents may be accepted as verification of identity: • U.S. driver's license (not expired) • U.S. State issued identity card (issued by same State agency which issues driver's licenses and not expired) • Canadian Band card (Certificate of Indian status) issued to Indian members of Canadian tribes • Marriage document • Medical record (clinic,

U.S. CITIZEN	ALIEN
name and either a photograph or the applicant's DOB • Marriage document showing in addition to the applicant's name either the applicant's DOB or age • Medical record (clinic, doctor, or hospital) showing, in addition to the applicant's name, the applicant's DOB or age **NOTE**: a receipt or a record of treatment recorded and maintained by the applicant or the applicant's family is **not** acceptable • Health insurance (other than a Medicare or Medicaid card) showing in addition to the applicant's name either a photograph of the person or the person's DOB (card must be current) • Life insurance policy for the person showing his/her age or DOB	doctor, or hospital) **NOTE:** A receipt or a record of treatment recorded and maintained by the applicant or the applicant's family is **not** acceptable. • Health insurance (other than a Medicare or Medicaid card) showing, in addition to the person's name, either a photograph of the person or his/her DOB • Life insurance policy for the person showing his/her age or DOB

1.1.3. No Available Primary Or Secondary Verification Document

When no primary or secondary verification document is available (available means the document exists and the applicant can access or obtain it within 10 business days), handle on a case-by-case basis. Consult with the supervisor to see if the other verification of identity the individual has might be acceptable. The supervisor must consult with the AG consultant to determine if it is acceptable. The AG consultant will use the SSI guidelines located at http://policy.ssa.gov/poms.nsf/lnx/0100203200#E to determine if the verification is acceptable.

1.1.4. List of Unacceptable Documents

The documents on the following list are not acceptable as verification of identity and cannot be used. These documents are generally issued based on the individual's statement.

- Library card
- Vehicle registration
- Voter's registration
- Rental or lease agreement or receipt
- Credit card (with or without a photo)
- Shopping card (e.g., grocery store, warehouse store)
- Check cashing card
- Organization membership cards
- Bank deposit slip
- Telephone/Utility bill
- Fishing/hunting license
- Identification cards issued by local sports teams
- Form W-2
- Any document issued by World Service Authority
- Any identity card/document issued by a commercial firm (e.g., United States Identification card produced by the commercial firm

United States Identification Card Systems, Inc.) because it is based on the purchaser's allegation alone

- Any identity card/document issued by a fictitious governmental organization or a private organization that purport to be governmental organizations (e.g., Moorish Consulate, Moorish National Bureau of Vital Statistics) because it is based on allegation alone

- Any document that is completed by the applicant (such as a blank immunization form where the parent or applicant completes the information identifying the individual).

1.1.5. Questionable Documents

If an identity document does not appear to be authentic, attempt to verify its authenticity with the issuing source. Photocopy both sides of the document. Make sure all information on the document can be read on the photocopies. If any information is not legible, write the information on the photocopy. Return the original document to the applicant and send the photocopy of the document to the issuing source to request verification.

1.1.6. Responsibility for Verification

The responsibility for providing acceptable verification of identity remains with the individual. If the issuing authority does not respond within appropriate processing time frames or confirms that the document is false, give the individual an opportunity to provide additional verification.

1.1.7. Document Does Not Establish Identity

If, after all attempts to verify identity, it appears that an applicant is not who he or she purports to be and cannot satisfactorily explain the discrepancy or the document submitted cannot be verified by the issuing agency, the AG application must be denied.

Tell the applicant that if he or she later obtains sufficient documentation to establish his or her true identity, he or she must reapply.

2. Covered Groups

An individual must meet an AG covered group in order to be eligible for AG. The AG covered groups are aged, blind and disabled. An individual's relationship to a covered group must be verified as directed below.

2.1. Aged

"Aged," means age 65 years or older. An individual must be age 65 or older to meet the aged covered group.

Note: An aged individual's Medicaid Aid Category is "012".

2.1.1. SSI/SSA/Railroad Retirement/Medicaid Recipient

An individual who receives SSI, SSA, Railroad Retirement or Medicaid as aged meets the aged definition for AG. Verify the individual's SSI/SSA eligibility via SVES (State Verification Exchange System) Verify the individual's Railroad Retirement based on age 65 or older through documentation provided to him by the Railroad Retirement Board (RRB) or by contacting the RRB at 1-800-808-0772 or 1-804-771-2997. Verify Medicaid eligibility as aged through documents in the case record.

Note: An individual whose SSI payment has been suspended is **not** considered an "SSI recipient" throughout the suspension period. An individual who has been classified as "presumptively" eligible for SSI is **not** considered an SSI recipient for AG or Medicaid purposes.

2.1.2. Mandatory SSI Applicant

An individual who is required to apply for SSI will have his age determined by SSI.

2.1.2.1. Initial Application

His application will be held pending until an SSI decision is made.

2.1.2.2. Redetermination/Change

His grant will be suspended until an SSI decision is made.

2.1.3. Non-SSI/Non-SSA Individual

For an individual who is not an SSI or SSA recipient, establish individual's age by his birth certificate. If the individual's birth certificate is not available, at least two other documents with information on age must be provided. Other documents may include a family bible, an insurance policy, a baptismal record, a census record, a marriage record, or a child's birth certificate.

2.2. Blind

Blindness is defined as having central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. Blindness can be determined by an ophthalmologist, optometrist, or any physician who can evaluate visual acuity as well as visual fields. Individuals who meet this definition are certified as blind by the Department for the Blind and Vision Impaired (DBVI) and are listed in the Virginia Registry of the Blind.

Note: A blind individual's Medicaid Aid Category is "032".

2.2.1. SSI/SSA/Medicaid Recipient

An individual who receives SSI, SSA, or Medicaid as blind meets the blindness definition for AG. Verify individual's SSI/SSA eligibility via SVES (State Verification Exchange System). Verify Medicaid eligibility as blind through documents in the case record.

Note: An individual whose SSI payment has been suspended is **not** considered an "SSI recipient" throughout the suspension period. An individual who has been classified as "presumptively" eligible for SSI is **not** considered an SSI recipient for AG or Medicaid purposes.

2.2.2. Railroad Retirement (RR)

An individual who receives Railroad Retirement as blind meets the blindness definition for AG. Verify his blindness through documentation provided to him by the Railroad Retirement Board (RRB) or by contacting the RRB at 1-800-808-0772 or 1-804-771-2997.

2.2.3. Mandatory SSI Applicant

An individual who is required to apply for SSI will have his blindness determined by SSI.

2.2.3.1. Initial Application

His application will be held pending until an SSI decision is made. (Chapter C – 8.2.2.3.1)

2.2.3.2. Redetermination/Change

His grant will be suspended until an SSI decision is made.

2.2.4. Former SSA/SSI/RR Disability Recipient

An individual who received SSA/SSI disability benefits or RR total disability benefits due to blindness in one or more of the 12 months preceding the AG application and whose benefits were terminated for a reason other than no longer meeting the blindness requirement continues to meet the disability or blindness definition.

Verify his SSI/SSA blindness through SVES or SSQL. Verify his RR status by contacting the RRB at 804-771-2997 or 1-800-808-0772.

2.2.5. Non-SSI/Non-SSA Individual

For an individual whose blindness has not been established, certification is required to meet the blindness covered group. The certification process is handled by the individual's doctor and DBVI. Call DBVI at 1-800-622-2155 to verify that an individual has been certified as blind.

2.3. Disabled

For an individual who is age 18 or older, disability is defined as the inability to do any substantial gainful activity (work) because of a severe, medically determinable physical or mental impairment which has lasted or is expected to last for a continuous period of not less than 12 continuous months, or which is expected to result in death.

Note: A disabled individual's Medicaid Aid Category is "052".

2.3.1. SSI/SSA Recipient

An SSI or SSA recipient who receives SSI or SSA as disabled meets the disabled definition for AG. Verify the individual's SSI/SSA eligibility via SVES or SSQL..

Note: An individual whose SSI payment has been suspended is **not** considered an "SSI recipient" throughout the suspension period. An individual who has been classified as "presumptively" eligible for SSI is not considered an SSI recipient for AG or Medicaid purposes.

2.3.2. Mandatory SSI Applicant

An individual who is required to apply for SSI will have his disability determined by SSI.

2.3.2.1. Initial Application

His application will be held pending until an SSI decision is made.

2.3.2.2. Redetermination/Change

His grant will be suspended until an SSI decision is made.

2.3.3. Non-SSI/Non-SSA Individual - Disability Determined By Other Source

For an individual who is not an SSI or SSA recipient, the disability definition is met if he/she:

2.3.3.1. Receives Railroad Retirement Full Disability Benefits

The Railroad Retirement Board (RRB) makes disability determinations for railroad employees. "Total" disability determinations mean the individual is disabled for all regular work. "Occupational" disability means the individual is disabled for regular railroad occupation, but is not "totally" disabled. Only "total" disability meets the AG disability covered group.

Verify his disability by contacting the RRB at 804-771-2997 or 1-800-808-0772, or through documentation provided to the individual by the RRB.

2.3.3.2. Receives Medicaid Assistance As A Disabled Individual

Verify his disability status by documents in the case record**.**

2.3.3.3. Previously Received SSI, SSA or Railroad Retirement

If the individual received SSI, SSA or Railroad Retirement full disability benefits in one or more of the 12 months preceding the AG application, and whose benefits were terminated for a reason **other than** no longer meeting the disability requirement, the individual meets the disability requirements.

Verify his SSI/SSA disability status through SVES or SSQL. Verify his RR status by contacting the RRB at 804-771-2997 or 1-800-808-0772.

2.3.3.4. Has Been Found To Be Disabled By The Disability Determination Services (DDS)

Verify his disability status by documents in the case record. If the individual alleges that he has been found to be disabled by the DDS but there is no disability determination on file, verify his status by contacting the DDS at 804-662-9222.

2.3.4. Non-SSI Individual - Disability Not Determined

An individual whose disability has not been established for a period covered by the AG application must be referred to Disability Determination Services **(**DDS) for a disability determination. This includes

- Individuals who are not required to apply for SSI due to excess income, and
- Individuals whose established disability period did not include the AG application month.

2.3.4.1. Referral to Disability Determination Services (DDS)

The Disability Determination Services (DDS) is a division of the Virginia Department of Rehabilitative Services (DRS). DDS makes determinations of medical eligibility for disability or blindness benefits under Social Security (SS), Supplemental Security Income (SSI), Medicaid, and AG programs. DDS makes its determinations of "disabled" or "not disabled" based upon federal regulations. The same definitions of disability and blindness and the same evaluation criteria are used for all four programs.

The following three forms are required to make a referral to DDS to request a disability determination:

- Disability Report Adult SSA-3368-BK to be completed by the individual.

  It is available at
  http://www.socialsecurity.gov/online/ssa-3368.pdf

- Authorization to Disclose Information to the Social Security Administration to be completed by the individual.

  It is available at
  http://www.socialsecurity.gov/online/ssa-827.pdf

- DDS Referral Form to be completed by the worker.

  It is available at
  http://spark.dss.virginia.gov/divisions/bp/files/me/forms/general/032-03-0095-08-eng.doc

2.3.4.1.1. Worker Responsibilities

The worker will send the "SSA Disability Report – Adult" and the "Authorization to Disclose Information to the Social Security Administration" forms to the individual within five working days of receipt of the AG application, giving the individual a minimum of 10 days to return the completed forms.

2.3.4.1.1.1. Forms Not Returned

If the completed forms are not returned within 45 days from the date of application, the individual does not meet the disabled covered group.

2.3.4.1.1.2. Incomplete Forms Returned

Return the incomplete forms to the individual with a cover letter explaining what information is missing, the date by which they must be returned, and that the forms are required to determine his/her eligibility. Require the return of the forms within the original 45 day processing period.

2.3.4.1.1.3. Completed Forms Returned

When the completed forms are returned, review them to assure they contain the needed information. If incomplete, follow the procedure above.

Send the completed "SSA Disability Report – Adult," the "Authorization to Disclose Information to the Social Security Administration," and the "DDS Referral" forms to:

Disability Determination Services Unit

9960 Mayland Dr., Suite 200
Richmond, VA 23233

2.3.4.1.1.4. DDS Processing Period

The DDS must make a disability determination within a period that will allow DSS to process the application within 90 days. If a response has not been received within that period, the worker must contact DDS to determine the status. Hold the application pending until a determination of disability is made.

The eligibility worker must report all changes in address, medical condition and earnings that occur during the pending period to DDS. When an AG application is denied for a nonfinancial reason not related to the disability determination, DDS must be notified immediately.

If a disability determination cannot be completed within the allotted time, DDS will notify the individual directly and send a copy of the correspondence to the worker.

The worker must send the individual and representative a "Notice of Action" stating the application will be held pending until a disability determination has been made.

2.3.4.1.1.5. Individual Is Deceased

When an individual who applies for a disability determination dies or is

deceased at the time of the AG application, the eligibility worker must immediately notify DDS of the individual's death and provide a copy of the death certificate, if available. DDS will determine if the disability requirement for AG eligibility was met.

2.3.4.1.1.6. Disability Determination Received

DDS will send the worker the individual's disability determination. The worker must complete the AG eligibility determination upon receiving notification of the individual's disability status. The worker must send the individual DDS's Notification of Disability Determination along with the AG Notice of Action. A copy of the disability notice must be retained in the case record.

2.3.4.1.2. DDS Responsibilities

The DDS must make a disability determination within a period that will allow DSS to process the application within 90 days, provided all medical information has been submitted.

If a disability determination cannot be completed within the allotted time, the DDS will notify the individual directly of the delay and, if appropriate, the need for additional information. A copy of the DDS's correspondence to the individual will be sent to the local agency eligibility worker.

The DDS will advise the local agency of the individual's disability status as soon as it is determined. The DDS will send the eligibility

worker a notice that is to be sent to the individual advising him of the outcome of his disability determination.

3. Virginia Residence

The individual must be a resident of Virginia. An individual's residence is the city or county within the state where the person last lived outside an institution or an adult foster care home.

Note: Both public and private pay ALFs are considered institutions for AG purposes.

- If the individual does not have residence in a Virginia locality or it cannot be determined where the individual last resided, the locality where the assisted living facility or adult foster care home is located is the individual's place of residence.
- Individuals placed in an assisted living facility in another state do not retain Virginia residency.
- An individual visiting in an area or who is there for another temporary purpose, such as hospitalization in a general hospital, is not considered to be living in the locality.

3.1. Verification

Residency is verified by the individual's statement unless questionable. If questionable, residency can be verified by agency records, court records, hospital records, written statement by a third party, or other appropriate means. Residence may be based on the individual's intent to reside in the locality.

4. Fugitive Felons & Parole Violators Status

An individual cannot be eligible for AG if he/she is a fugitive felon or a parole violator.

He is ineligible for AG if he/she is

- **Fleeing to avoid prosecution or custody for a felony under the laws of the place from which the individual flees.**

  To be considered "fleeing" an individual must have knowledge of an outstanding warrant. An individual must have an opportunity to document that he/she has fulfilled the requirements of the warrant,

- **Fleeing to avoid confinement after conviction for a felony under the laws of the place from which the individual flees, or**

- **In violation of a condition of probation or parole imposed under federal or state law.**

4.1. SSI Recipients

An SSI recipient's fugitive status was verified by SSI. No further verification is needed.

4.2. Non-SSI Individuals

The individual's statement on the application that he/she is not a fugitive felon or parole violator will be accepted if it is not questionable.

If his statement is questionable or if he/she states he/she is a fugitive felon or parole violator or if a third party reports that he/she is, verify his status through the appropriate law enforcement agency.

4.2.1. Individual is a Fugitive Felon

4.2.1.1. Initial Application

Send a "Notice of Action" to deny the AG application and determine Medicaid eligibility based on the Medicaid Manual, Volume XIII.

4.2.1.2. Redetermination/Change

Send an "Advance Notice of Proposed Action" and close the AG case. Determine Medicaid eligibility based on the Medicaid Manual, Volume XIII.

5. Social Security Number

The individual must provide a valid Social Security number (SSN) or must provide proof of application for a Social Security number.

5.1. Verification

- The individual's Social Security number will be verified through the SVES system. Retain a copy of the SVES report in the case record.

- Proof of application for a Social Security number will be verified by contact with SSA or by receipt of SSA Form SSA-2853.

Note: Some information can be verified using SSQL. Verify with SVES if information is not in SSQL.

6. Level Of Care Assessment (Screening)

6.1. Adult Foster Care Home (AFCH) Assessment

- The social worker in the local department of social services shall assess the adult to determine the need for adult foster care home (AFCH) placement. A DMAS-96 is not required for AG.

- Residents of an AFCH must be assessed at least once every 12 months. The twelve-month reassessment is based upon the date of the last assessment (e.g., original assessment, twelve-month reassessment, or assessment for change in level of care) and does not need to be performed in the same month as the financial eligibility redetermination.

6.2 Assisted Living Facility (ALF) Assessment

- All residents of and applicants to an ALF who apply for AG must be assessed, regardless of payment source or length of stay.

- Residents of an ALF must be assessed at least once every 12 months. The twelve-month reassessment is based upon the date of the last assessment (e.g., original assessment, twelve-month reassessment, or assessment for change in level of care) and does not need to be performed in the same month as the financial eligibility redetermination.

6.2.1 Assessors for Public Pay Individuals in an ALF Include The Following:

- Local Departments of Social Services;
- Area Agencies on Aging (AAA);
- Centers for Independent Living(CILs);
- Community Services Boards (CSB);
- Local Departments of Health;
- State facilities operated by the Department of Behavioral Health and Developmental Services (DBHDS)
- Acute care hospitals; or
- An independent physician contracting with DMAS to complete the UAI for ALF applicants and residents.
- Department of Corrections, Community Release Units

The above assessors may conduct initial assessments as well as annual reassessments with the exception of:

- State facilities operated by the DBHDS
- Acute care hospitals
- Department of Corrections, Community Release Units

6.2.2 An Assessment Of ALF Applicants And Residents Is A Process To:

- Evaluate the medical, nursing, developmental, psychological, and social need of each individual seeking ALF admission and continued placement;
- Analyze what specific services the individual needs; and
- Determine the level of care required by the individual by applying the criteria for ALF care. Two levels of care qualify an individual to receive services in an ALF, Residential Living and Assisted Living.
  - α Individuals meet the criteria for residential living when at least one of the following describes their functional capacity:
    - Rated dependent in only one of seven activities of daily living (ADLs) (i.e., bathing, dressing, toileting, transferring, bowel function, bladder function, and eating or feeding, or both);
    - Rated dependent in one or more of four selected instrumental activities of daily living (IADLs) (i.e., meal preparation, housekeeping, laundry, and money management); or
    - Rated dependent in medication administration.
  - α Individuals meet the criteria for assisted living when at least one of the following describes their capacity:
    - Rated dependent in two or more of seven ADLs; or

- Rated dependent in behavior pattern (i.e., abusive, aggressive, or disruptive)

6.2.3 Uniform Assessment Instrument

Assessors use the "Uniform Assessment Instrument" (UAI) to record the outcomes of their assessments.

Assessors use the "Medicaid Funded Long-term Care Service Authorization (DMAS-96)" to notify DMAS and the eligibility worker of the results of the initial assessments and the "Eligibility Communication Document" to notify them of the results of the annual redeterminations.

http://www.dmas.virginia.gov/downloads/forms/DMAS-96.pdf

http://spark.dss.virginia.gov/divisions/dfs/as/forms.cgi

6.2.4 Procedures

6.2.4.1 Intake

The eligibility worker must have a copy of a "Medicaid Funded Long-term Care Service Authorization (DMAS-96)" in the case record to substantiate that the individual's screening is in a current status. The worker does not need a copy of the UAI.

6.2.4.1.1 The DMAS 96 Must:

- Be signed by the social worker.
- For new residents, have been completed within 90 days prior to admission to the ALF.
- State that the "Medicaid Authorization Level of Care" is "11 = ALF Residential Living", "12 = ALF Regular Assisted Living"or "16 = Alzheimer's Assisted Living Waiver.

6.2.4.2 Ongoing

The eligibility worker must have a copy of the "Eligibility Communication Document" in the case record to substantiate that the individual's screening is in a current status.

6.2.4.2.1 "Eligibility Communication Document" Must:

- Be signed by the person that conducted the assessment.
- Have been completed within 12 months prior to the redetermination month.

6.2.5 Current Assessment Not On File

Eligibility cannot be determined without a DMAS 96 or an "Eligibility Communication Document" documenting an assessment has been done within the appropriate time frame.

- If the assessment has been completed, request a copy of the DMAS 96 from the agency that completed it.
- If the assessment has not been completed or the situation is unknown, send a written request for an assessment to the Adult Services Unit of the appropriate LDSS.
  - If one is received within the appropriate processing time frame, process the application.
  - If one is not received within the appropriate processing time frame, AG eligibility cannot be determined.

See Chapter B - 7 for application procedures and Chapter B - 8 for redetermination procedures.

7. Residence In An Assisted Living Facility Or An Adult Foster Care Home

The individual must be residing in an assisted living facility (ALF) that has been authorized to operate and is licensed by the Virginia Department of Social Services, or residing in an adult foster care home (AFCH) that has been approved by a local DSS.

Note: A group home licensed by the Department of Behavioral Health and Developmental Services is not eligible to be an auxiliary grant provider.

7.1. Residing In An ALF Or AFCH

An individual is residing in an ALF or AFCH if

- He is living in the ALF or AFCH at the time of approval of the application or

- He lived in the ALF or AFCH sometime during the period following the AG application but is not living there when action is taken on the application.

7.1.1. Verification Of Residing In An ALF

Verify an individual's residence in an ALF by:

- Telephone contact with the individual at the home,
- A visit to the individual at the home by a social services department employee,
- A statement from a department of social services worker that placement was made at the address on the license, or
- A written statement from an individual unconnected to the ALF that the individual resides in the facility/home.

7.1.2. Verification Of Residing In An AFCH

Verify an individual's residence in an AFCH by

- A statement from the placing Department of Social Services' social worker that the individual is in the foster care home.

7.2. Assisted Living Facility - Authorized To Operate

An ALF is authorized to operate when it is licensed and authorized to accept AG residents by the Virginia Department of Social Services. The local agency shall continue to provide payments to an eligible resident as long as the ALF in which he/she is living is licensed and authorized.

7.2.1. Licensing Continues

A facility continues to be licensed when

- **It is in the license renewal process.**
- **It is operating while appealing an adverse licensing decision.**

  The appeal process allows the appellant to pursue his appeal through VDSS and through a court hearing. The ALF continues to be licensed as long as it continues to appeal or until a final decision is made by the court.

- **It is operating during a change of ownership.**

An existing facility is authorized to operate during the first six months following a change in ownership as long as the new owner is fulfilling the licensure application and rate-setting requirements.

- **It is operating on a conditional license.**

7.2.2. Verification

Verify that the ALF is licensed to operate and is approved to accept AG recipients by the viewing the **AG Facilities Rates File** at http://spark.dss.virginia.gov/divisions/dfs/as/documents.cgi. If the facility is not listed, the facility is either not approved to accept AG recipients or is no longer licensed.

If questions arise regarding a facility's licensing status, contact the Licensing Unit located in the field office serving the local DSS.

If questions arise about a facility's authorization to accept AG recipients, contact the AG consultant.

7.3. Adult Foster Care - Approved Home

An AFCH is "approved" when the staff of the local social services agency has determined that the home meets the required standards.

Note: Adult foster care is not offered in every locality. An individual who is residing in AFC in one locality must have AG eligibility determined and payment issues by the locality in which he or she lived prior to entering AFC (or another institution)even if the individual's locality of origin does not offer an AFC program.

7.3.1. Verification

Verify the home's status by contacting the social services unit that approved the home.

or

Obtain a copy of the Agency Approved Provider Certificate

7.3.2. Expiration of Approval Period

The expiration date for the approval period should be set for the last day of the month in which approval is granted and be two years hence unless the approval is emergency, provisional, or suspended.

7.4. Residence Ends

An individual's residence in an ALF or AFCH and his eligibility for AG ends when

- He has been absent from the facility/home for 14 consecutive days. The 14 days begin the day following the day he/she left the facility,
- He has been discharged,
- He has left the home without planning to return, or
- Medical evidence indicates he/she will not be returning.

7.4.1. Procedures

7.4.1.1. Initial Application

Determine eligibility for the period the individual was in the ALF or AFCH. Determine Medicaid eligibility for the period after he/she left the home based on the Medicaid Manual, Volume XIII. Send the "Notice of Action".

See Chapter B - 7 for application procedures.

7.4.1.2. Redetermination/Change

Send an "Advance Notice of Proposed Action" to close AG case. Determine Medicaid eligibility based on the Medicaid Manual, Volume XIII.

If an AG individual returns to the facility/home prior to the effective date of closure, the absence will not affect his eligibility or his grant amount.

See Chapter B - 8 for redetermination procedures and Chapter B - 9 for change procedures.

8. Relationship to SSI

AG is limited to individuals who are SSI recipients and those who meet all of the SSI eligibility requirements except for income. This requires that an individual's SSI eligibility be evaluated. If an individual is ineligible for SSI for any reason other than income, the individual is ineligible for AG.

The eligibility worker must determine if an individual has applied for SSI within the last 12 months and if so, the results of that application. Approval or denial of the application

impacts AG eligibility. If the individual has not applied for SSI within the last 12 months, the worker must determine if the individual must file an SSI application.

8.1. SSI Denial or Closure

If an AG individual has been denied SSI or the SSI case has been closed within the last 12 months due to any reason other than excess income, he/she is not eligible for AG. The SSI denial stands until a subsequent SSI decision is made.

8.1.1. Initial Application

Deny the AG application and determine Medicaid eligibility based on the Medicaid Manual, Volume XIII. See Chapter B - 7 for application procedures.

If the individual's situation has changed and he/she appears eligible for SSI, recommend he/she reapply for SSI. Because the SSI denial stands until a subsequent decision is made, the AG application cannot be held pending beyond the 45 day processing period awaiting a new SSI decision.

8.1.2. Redetermination/Change

An Advance Notice of Proposed Action will be sent and the AG case will be closed. Determine Medicaid eligibility based on the Medicaid Manual, Volume XIII. See Chapter B - 8 for redetermination procedures and Chapter B - 9 for change procedures.

8.1.3. SSI Granted Based On An Appeal

If AG is denied or closed because of an SSI denial/closure and SSI is later granted as the result of an appeal, the AG application must be reinstated and eligibility determined back to the original month of application or closure.

8.2. Mandatory Application for SSI

If the individual is not receiving SSI and has not applied for it within the last 12 months and he/she:

8.2.1. Does Not Appear To Meet SSI Income Standards

Individual is not required to apply for SSI. Eligibility for AG will be determined using the non-SSI individual eligibility rules.

8.2.2. Appears To Meet SSI Income Standards

The individual must apply for SSI. The worker must give the individual a dated written notice that he/she must apply for SSI and the date by which he/she must provide verification that he/she has applied. The individual will be given 15 calendar days to file the application and return verification of it to the agency. The 15 day period will begin the day following the day the written notice is hand delivered to the individual or two days after the notice is mailed to the individual.

Example:

The written notice to the individual is

- Hand delivered on the 2nd of the month, the application must be filed and verification provided to the agency by the 17th.
- Mailed on the 2nd of the month, the application must be filed and verification provided to the agency by the 19th.

8.2.2.1. Verification Of SSI Application

The individual must provide verification that he/she applied for SSI.

Acceptable verification:

- A "Receipt for Your Claim for Supplemental Security Income" issued to the individual by SSI.
- Other documents from SSI that verifies the applicant and application date.
- If the individual cannot provide verification of his application but states he/she has applied, the worker can verify the application by telephoning the Social Security Administration.

8.2.2.2. An SSI Application Was Not Filed Within 15 Days:

8.2.2.2.1. Initial Application

Deny the AG application and determine Medicaid eligibility based on the Medicaid Manual, Volume XIII.

See Chapter B - 7 for application processing procedures.

If the application is denied prior to the 45th day and proof of SSI application is received by the 45th day, the application must be reopened and eligibility determined. Use the procedure in Chapter C – 8.2.2.3.1.

8.2.2.2.2. Redetermination/Change

An Advance Notice of Proposed Action will be sent and the AG case will be closed. Determine Medicaid eligibility based on the Medicaid Manual, Volume XIII.

See Chapter B - 8 for redetermination processing procedures and Chapter B - 9 for change processing procedures.

If proof of SSI application is received before the effective date of closure, the case must be reopened and eligibility determined. Use the procedure in Chapter C – 8.2.2.3.1.

8.2.2.3. Application For SSI Was Filed Within 15 Days:

8.2.2.3.1. Initial Application

This requirement is met in the month the SSI application is filed. The AG application will be held pending until an SSI decision is made.

If the 15 days for making the SSI application ends during the month following the month of AG application, the worker will determine the individual's AG eligibility as a non-SSI individual for the month the AG application was filed.

Example: The AG application is filed on February 27. The SSI application is filed March 7. If the individual is found eligible for SSI beginning with March, the agency will determine whether the individual meets non-SSI AG eligibility requirements for February.

See Chapter B - 7 for application procedures.

8.2.2.3.2. Redetermination/Change

Process the redetermination/change. See Chapter B - 8 for redetermination procedures.

9. Citizenship and Alienage

An individual must be a United States citizen or a lawfully admitted alien to be eligible for AG. The individual must verify his status, sign the Affidavit of United States Citizenship or Legal Presence in the United States and sign the Declaration of Citizenship/Alien Status form attesting to that status to meet this requirement. All citizens may be eligible but eligibility for aliens is limited to those that are determined "qualified aliens" as defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

9.1. Declaration of Citizenship/Alien Status

The Immigration Reform and Control Act (IRCA) requires as a condition of eligibility that the adult applicant declare in writing under penalty of perjury whether or not he/she is a citizen of the United States, and if not a citizen, that the individual is a lawfully admitted alien. Individuals who fail or refuse to sign the "Declaration of Citizenship/Alien Status" are not eligible.

The declaration is part of the Application for Benefits and is completed by signing the application. The applicant or his authorized representative may sign the application/"Declaration of Citizenship or Alien Status" for the applicant.

9.2. Affidavit of United States Citizenship or Legal Presence in the United States

If an individual is unable to verify his/her citizenship/alien status **and** has not provided a valid Social Security number (SSN) but has provided proof of application for an SSN, he/she may sign an "Affidavit of United States Citizenship or Legal Presence in the United States" form and be considered to have met the citizenship/alien status requirements for a temporary period.

9.2.1. Temporary Eligibility Period

If all other eligibility factors are met, the individual may be eligible for either:

- Ninety days or until such time that it is determined that he/she is not legally present in the United States, whichever is earlier, or
- Indefinitely if the individual provides a copy of a completed application for a United States birth certificate that has been filed and is pending and is actively being pursued in any state, the District of Columbia, or U.S. territory, or commonwealth.

- The temporary period will end upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist or that the applicant is not a U.S. citizen.

- In most situations, the issuance of a birth certificate or a finding that none exists will occur within 60 days. Extensions beyond that period must be supported by verification from the issuing office of the reason for delay.

9.2.2. Overpayments

If it is found the individual is not a citizen or a legally present alien, the payments issued during the temporary period are overpayments due to the individual's error. See Overpayment Volume I, Part I, Chapter G, 3.

9.3. Citizenship And Naturalization

A citizen or naturalized citizen of the U.S. meets the citizenship requirement for AG eligibility. Verification of citizenship varies based on whether the individual was born inside or outside the United States.

9.3.1. SSI Recipient

SSI requires verification of citizenship prior to an individual's approval for an SSI payment. Verification that an individual is an SSI recipient verifies the individual's citizenship for AG. Verify the SSI recipient's SSI eligibility via SVES (State Verification Exchange System).

9.3.2. Non-SSI Individual

Citizenship must be verified by one of the documents listed in the chart below.

VERIFICATION OF CITIZENSHIP	
Document	**Explanation**
A U.S. public birth record showing birth in: • one of the 50 U.S. States;	The birth record document may be issued by the State, Commonwealth, territory or local jurisdiction. It must have been issued before the person was 5 years of age.

VERIFICATION OF CITIZENSHIP	
Document	**Explanation**
• District of Columbia; • Puerto Rico; • Guam (on or after April 10, 1899); • Virgin Islands of the U.S. (on or after January 17, 1917); • American Samoa; • Swain's Island; or • Northern Mariana Islands (after November 4, 1986 NMI local time)	An amended birth record document that is amended after 5 years of age is not acceptable. **NOTE:** If the document shows the individual was born in Puerto Rico, Guam, the Virgin Islands of the U.S., or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen.
U.S. Passport	Issued by Department of State. A U.S. passport does not have to be currently valid to be accepted as evidence of U.S. citizenship, but must show a validity period of five or more years. **NOTE:** Young children were sometimes included on a parent's passport through 1980. U.S. passports issued after 1980 show only one person. **EXCEPTION:** Do not accept any passport as evidence of U.S. citizenship when it was issued with a validity period of less than 5 years. These are called “limited” passports.

VERIFICATION OF CITIZENSHIP	
Document	**Explanation**
Certification of Report of Birth (DS-1350)	The Department of State issues a DS-1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth, based on the information shown on the FS-240. When the birth was recorded as a Consular Report of Birth (FS-240), certified copies of the Certification of Report of Birth Abroad (DS-1350) can be issued by the Department of State in Washington, D.C. The DS-1350 contains the same information as the current version of the Consular Report of Birth FS-240. The DS-1350 is not issued outside the U.S.
Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240)	Issued by the Department of State Consular Office. A Consular Report of Birth can be prepared only at an American Consular Office overseas while the child is under the age of 18. Often issued to children born outside the U.S. to U.S. military personnel.
Certification of Birth Abroad (FS-545)	Before November 1, 1990, Department of State consulates also issued Form FS-545 along with the prior version of the FS-240. In 1990, U.S. consulates ceased to issue Form FS-545. Treat an FS-545 the same as the DS-1350.

VERIFICATION OF CITIZENSHIP	
Document	**Explanation**
United States Citizen Identification Card (I-197) or the prior version I-179	INS issued the I-179 from 1960 until 1973. It revised the form and renumbered it as Form I-197 and issued it from 1973 until April 7, 1983. The I-179 and I-197 were issued to naturalized U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings. Although neither form is currently issued, either form previously issued is still valid.
American Indian Card (I-872)	DHS issues this card to identify a member of the Texas Band of Kickapoos living near the U.S./Mexican border. A code "KIC" and a statement on the back denote U.S. citizenship.
Northern Mariana Card (I-873)	INS issued the I-873 to a collectively naturalized citizen of the U.S. who was born in the NMI before November 4, 1986. The card is no longer issued, but those previously issued are still valid.
Certificate of Naturalization (N-550)	DHS issued Certificates of Naturalization through Federal and State courts until December 1990 and through administrative naturalization after December 1990. DHS issues Certificates of Naturalization to people who are individually naturalized.

VERIFICATION OF CITIZENSHIP	
Document	**Explanation**
Certificate of Citizenship (N-560)	DHS issues Form N-560, generally upon request, to individuals who derive U.S. citizenship through a parent.
Certificate of Citizenship (N-561)	DHS issues Form N-561 as a replacement Certificate of Citizenship when the original N-560 has been lost, mutilated, or the person's name has changed.
Certificate of Naturalization (N-570)	DHS issues Form N-570 as a replacement Certificate of Citizenship when the original N-550 has been lost, mutilated, or the person's name has changed.

9.3.2.1. Citizenship Documents Not Available

If such documents are not available, citizenship must be verified through the nearest United States Citizenship and Immigration Services (DHS). Locations and telephone numbers are:

Norfolk Commerce Park

5280 Henneman Drive

Norfolk, Virginia 23513

Telephone - (757) 858-6183

4420 N. Fairfax Drive

Arlington, Virginia 22203

Telephone - (703) 235-4026

9.4. Alien Immigration Status

Eligibility for aliens is limited to those that are determined qualified aliens as defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. That definition includes specific statuses that may qualify and identifies the additional requirements they must meet for eligibility. A chart identifying the requirements for an individual to be designated a qualified alien is in Chapter C - 9.4.3.1.

If an individual is not a qualified alien, he/she is ineligible for an Auxiliary Grant.

9.4.1. SSI Recipient:

SSI requires verification of an alien's immigration status prior to the individual's approval for an SSI payment. Verification that an individual is an SSI recipient verifies the individual's alien status for AG. Verify the SSI recipient's SSI eligibility via SVES (State Verification Exchange System) or SSQL.

9.4.2. Non-SSI Individual:

Verification of an alien's immigration status must be completed before eligibility can be established. Failure to provide the needed verifications will result in ineligibility for AG.

Verification is a multi step process. The individual must provide information sufficient to establish his alien status and the eligibility worker must confirm that status through the DHS Systematic Alien Verification for Entitlements (SAVE) process.

Note: An alien's identity and alien status cannot both be verified by one document. Two documents are required, one for identity and one for alien status.

9.4.2.1. Verification

Step 1 - An alien must verify his immigration status by presenting the **original** version of an official document issued by the Department of Homeland Security (DHS). Photocopies of documents are not sufficient verification.

Review the documents provided and determine the action to take based on the following information.

If the alien has:

A. Documents contain an A-Number in the "A60 000 000" or "A80 000 000" series, go to Step 3.

B. Current DHS documents that verify his status, go to step 2.

C. An alien registration number but no DHS document, verify his identity and go to Step 2.

- If the alien does not provide verification of his/her identity, his immigration status cannot be determined, and he/she must be considered an unqualified alien.

D. No alien number and no DHS document, refer the individual to the DHS district office to obtain evidence of status. Give the individual a minimum of 10 days to provide verification of his status.

- Verification is provided, go to Step 2.

- Verification is not provided, individual is not eligible for AG.

E. An expired Resident Alien Card, I-551, go to Step 2.

F. Any expired document other than an expired Resident Alien Card, I-551, go to Step 3.

G. Only a letter from The DHS and the Office of Refugee Resettlement (ORR), it is necessary to obtain additional verification. These agencies issue letters that are used in lieu of or in conjunction with DHS forms to identify alien status. If the letter is the only document provided,

- For DHS letters, contact the local DHS office for assistance in identifying the alien's status. Go to Step 2.

- For ORR letters, contact the toll-free ORR Trafficking Verification Line at 866-401-5510. Do not verify ORR letters via the SAVE system.

H. DHS documents that do not have an Alien Registration Number (A Number) go to Step 3.

I. A DHS Fee Receipt, go to Step 3.

J. A Form I-181 or I-94 in a foreign passport that is endorsed "Processed for I-551, Temporary Evidence of Lawful Permanent Residence," and the I-181 or I-94 is more than one year old, go to Step 3.

K. A DHS application for or a change in status form, go to Step 3.

L. A document that raises a question of whether DHS contemplates enforcing departure, go to Step 3.

Step 2 – The worker must obtain verification of the alien's status through the DHS Systematic Alien Verification for Entitlements (SAVE) online system and compare it to the original DHS documents. This is the primary step in the SAVE process.

Once information has been obtained through SAVE, aliens with a permanent status are no longer subject to the SAVE process. Aliens with a temporary or conditional status are subject to SAVE at the time of application and at the time the temporary or conditional status is to expire.

A. Complete a SAVE online inquiry. You will need the individual's

- Alien registration number. It begins with an "A" and should be displayed on the alien's DHS document.
- Name
- Country of Origin

B. Compare the results with the original DHS document.

- If discrepancies are noted, go to Step 3. No negative action may be taken based on the automated verification only.
- If the primary verification coincides with the DHS documents, go to Step 4.

C. If the primary verification generates the message "Institute Secondary Verification" or "No File Found," go to Step 3.

D. The primary verification document must be filed in the case record.

Step 3 - The worker must obtain written verification of the alien's status from DHS. This is the secondary step in the SAVE process. SAVE regulations require, unless otherwise noted in Step 1, that the primary step, automated access, be attempted prior to initiating secondary verification.

A. Once the requirement to obtain secondary verification is determined, the agency must initiate the request within ten workdays.

B. The agency will complete the top portion of a Document Verification Request Form (Form G-845SS) http://www.uscis.gov/files/form/G-845Ss.pdf and attach

- Legible copies of the front and back of the alien DHS documents
- Copies of other documents used to make the initial alien status determination such as marriage records or court documents.

The attachments must be stapled to the upper left corner of the G-845S form.

Form G-845S should be completed as fully as possible by the submitting agency. It is essential that the form contain enough information to identify the alien.

The G-845S Supplement may be used to request the period of continuous presence in the U.S.A.

C. A photocopy of the completed G-845S form and the attached documents must be retained in the case record as evidence that the form has been forwarded to DHS.

D. Mail the form to the nearest U.S. Immigration and Naturalization Service (DHS). Locations and telephone numbers are:

Norfolk Commerce Park

5280 Henneman Drive

Norfolk, Virginia 23513

Telephone - (757) 858-6183

4420 N. Fairfax Drive

Arlington, Virginia 22203

Telephone - (703) 235-4026

E. Agency Action

When it is necessary to initiate a secondary verification, there may be a considerable period before the results of the secondary verification are available. Federal regulation 42 USC 1320b-7 specifies, "Pending such verification, the state may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status." If the applicant meets all other AG & Medicaid eligibility requirements, go to Step 4.

Step 4 – Aliens must meet 2 requirements to be eligible for AG

- The non-citizen must be in a "qualified alien" group and
- Meet the additional requirements defined for his specific qualified alien group.

The **Qualified Alien Groups & Eligibility Requirements** chart in Chapter C - 9.4.3.1 identifies the alien groups that are considered to be "qualified aliens" and spells out the additional requirements each qualified alien group must meet. The worker will use that chart to determine the alien's eligibility status.

A. Member of Qualified Alien Group

- If individual meets the additional requirements, he meets the non-financial alienage requirements.
- If individual does **not** meet the additional requirements, the individual does not meet alien requirements and is ineligible for AG. Determine the individual's eligibility for Medicaid Emergency Services based on the Medicaid Manual, Volume XIII

B. Not a Member of Qualified Alien Group

- The individual does not meet alien requirements and is ineligible for AG. Determine the individual's eligibility for Medicaid Emergency Services based on the Medicaid Manual, Volume XIII.

9.4.3. Loss of Qualified Alien Status

DHS can rescind an alien's status, not renew a status that was granted for a finite period of time, or adjust the alien's status to a different status. A previously eligible qualified alien who ceases to meet the alien eligibility criteria loses AG eligibility effective with the month following the month in which the change in alien eligibility occurs.

Note: If questions arise regarding an alien status that is not addressed in this section, contact the VDSS AG specialist. The specialist will use SSI alien policy in the POMS manual to resolve the issue. The policy is located at http://policy.ssa.gov/poms.nsf/lnx/0500502000!opendocument

9.4.3.1. Qualified Alien Groups & Eligibility Requirements

If the individual is:	Verified by:	Then he/she is:
An SSI Recipient	SVES	Always potentially eligible.
American Indian born in Canada who is at least 50% Indian blood or a non-citizen member of federally	DHS Form I-551 with the code S13, or An unexpired temporary I-551 stamp (with the code S13) in a Canadian passport or on Form I-	Always potentially eligible.

recognized Indian tribe.	94. Does **not** have an DHS document: Satisfactory evidence of birth in Canada, **and** A document that indicates the percentage of American Indian blood in the form of a birth certificate issued by the Canadian reservation, or a letter, card or other record issued by the tribe.	
Lawfully Admitted for Permanent Residence (LAPR), including Amerasian Immigrants as defined in section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988	Amerasian Immigrants Obtain the immigrant's Form I-551 with the code AM1, AM2, or AM3 or passport stamped with an unexpired temporary I-551 showing a code AM6, AM7, or AM8. **NOTE:** Amerasians who enter the U.S. as non-immigrants, (e.g., foreign students pursuing studies in the U.S.) are not qualified aliens. Parolee Under Section 212(d)(5) of the INA for 1 Year or More Obtain a currently valid Form I-94 that indicates the bearer has been paroled pursuant to section 212(d)(5) of the INA, with an expiration date of at least 1 year from the date issued or indefinite. In LAPR Status, Alleges Entry as a Refugee A classification code of RE6, RE7, RE8, or RE9 on Form I-551 indicates admission as a refugee. In LAPR Status, Alleges Previous Asylum Status If the alien alleges having been granted asylum within the previous 7 years, contact DHS using Form G-845S and G-845S supplement with a copy of Form I-551 attached	Potentially eligible only if the individual: Is blind or disabled and was lawfully residing in the U.S. on 8/22/96; or Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or Can be credited with 40 qualifying quarters (QQ) of work. ** **(IMPORTANT:** An LAPR alien who enters the U.S. on or after 8/22/96 cannot be eligible based on having 40 QQs for a 5-year period beginning on the LAPR alien's date of entry into the U.S. as a qualified alien; (See below.**) or Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or If none of the above conditions is met, the LAPR may be eligible for a maximum of 7 years beginning with the date one of the following occurred: Entered the U.S. as refugee within the last 7 years; or Was granted asylee status within last 7 years; or Had deportation withheld under section 243(h) of the INA, or removal withheld under section 241(b)(3) of the INA, within the last 7 years; or

Became a Cuban/Haitian entrant within the last 7 years; or

Entered the U.S. as Amerasian immigrant within the last 7 years.

****Establishing and Verifying 40 Qualifying Quarters (QQ) of Work**

Qualifying Quarters include those earned by the individual, earned by the individual's spouse during their marriage, and those that were earned by the individual's parents through the month the individual turned 18.

Obtain the DHS documents of and a "Social Security Administration Consent for Release of Information" form from each individual whose quarters are being claimed. File the Releases in the case record. Complete a SVES 40 Quarters of Coverage inquiry on each. The response will identify the QQ earned since 1978 but may not include the current year or two.

If the quarters from the missing period are needed to qualify, the individual must provide verification of the earnings. Compare the earnings received to the standards listed below. If the quarterly income equals or exceeds the quarterly standards, the quarter counts. If the yearly income exceeds the yearly standard, four quarters are counted.

Standards	Quarterly	Yearly
2000	$780	$3120
2001	$830	$3320
2002	$870	$3480
2003	$890	$3560

<table>
<tr>
<td></td>
<td></td>
<td>
<table>
<tr><td>2004</td><td>$900</td><td>$3600</td></tr>
<tr><td>2005</td><td>$920</td><td>$3680</td></tr>
<tr><td>2006</td><td>$970</td><td>$3880</td></tr>
</table>

If you need to compute quarters prior to 2000, obtain the appropriate figures by going to http://policy.ssa.gov/poms.nsf/lnx/0300301250.

Total the QQ. If any of the individuals whose quarters are being counted received Food Stamps, TANF, Medicaid, or SSI during any claimed quarter beginning with 1-1-1997, that quarter cannot be counted and must be deducted from the total. If the remaining total meets or exceeds 40 QQ, the applicant is potentially eligible.
</td>
</tr>
<tr>
<td>Refugee (sec. 207 of the INA)</td>
<td>Form I-94 annotated with stamp showing admission under section 207 of the INA. Derive the date of admission from the date of inspection on the Form I-94 refugee stamp. If the date is missing, verify with DHS.</td>
<td>
Potentially eligible only if the individual:
• Is blind or disabled and was lawfully residing in the U.S. on 8/22/96 (SI 00502.142); or
• Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or
• Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or
If none of the above conditions apply:
• Entered the U.S. as a refugee within the last 7 years, then eligibility limited to a maximum of 7 years from the date of status.
</td>
</tr>
</table>

Asylee (sec. 208 of the (INA)	Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA, a grant letter from the Asylum Office, or an order of an immigration judge	Potentially eligible only if the individual: • Is blind or disabled and was lawfully residing in the U.S. on 8/22/96; or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or If none of the above conditions apply: Was granted asylum within the last 7 years, then eligibility limited to a maximum of 7 years from the date of status.
Deportation withheld (sec. 243(h) of the INA as in effect prior to 4/1/97), or removal withheld (sec. 241(b)(3))	• Form I-688B annotated "274a.12(a)(10)", or • Form I-766 annotated "A10," or • The alien's copy of the order from an immigration judge showing deportation withheld under section 243(h) of the INA as in effect prior to 4/1/97, or removal withheld under section 241(b)(3) of the INA. Letter from asylum officer granting withholding of deportation under section 243(h) of the INA as in effect prior to 4/1/97 or withholding of removal under section 241(b)(3) of the INA	Potentially eligible only if the individual: • Is blind or disabled and was lawfully residing in the U.S. on 8/22/96; or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or If none of the above conditions apply: Was granted "withholding of deportation" or "withholding of removal" within the last 7 years, then eligibility limited to a maximum of 7 years from the date of status.
Conditional entrant (sec. 203(a)(7) of the INA as in effect prior to 4/1/80)	Form I-94 identifying the bearer as "REFUGEE-CONDITIONAL ENTRY" and a citation of section 203(a)(7) of the INA.	Potentially eligible only if the individual: • Is blind or disabled and was lawfully

	NOTE: The alien may also have a refugee employment authorization document, Form I-688B annotated "274a.12(a)(3)" or Form I-766 annotated "A3."	residing in the U.S. on 8/22/96; or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member.
Parolee (sec. 212(d)(5) of the INA) for a period of at least 1 year	Form I-94 with an expiration date of at least 1 year from the date issued or is indefinite.	Potentially eligible only if the individual: • Is blind or disabled and was lawfully residing in the U.S. on 8/22/96 (SI 00502.142); or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or If none of the above conditions apply: • Became a Cuban/Haitian entrant within the last 7 years, then eligibility limited to a maximum of 7 years from the date of status.
Battered alien, or alien whose child or parent is battered	**DHS Form I-797** indicating: **Case Type:** I-130 or I-136 **Notice Type:** Approval Notice **Section:** Sec. 204(a)(1)(A)(i) or Sec. 204(a)(1)(B)(i) or	Potentially eligible only if the individual: • Is blind or disabled and was lawfully residing in the U.S. on 8/22/96; or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active

	Sec. 204(a)(1)(A)(ii) or Sec. 204(a)(1)(A)(iii) or Sec. 204(a)(1)(B)(ii) or Sec. 204(a)(1)(A)(iv) or Sec. 204(a)(1)(B)(iii) OR **Final Order of Immigration Judge or Board of Immigration Appeals** granting suspension of deportation under sec. 244(a)(3) as in effect prior to 4/1/97 or cancellation of removal under sec. 240A(b)(2)	duty member. Is not living with the abuser. This must be verified.
Cuban/Haitian entrant under Section 501(e) of the Refugee Education Assistance Act of 1980	**CATEGORY 1** • DHS Form I-94 with stamp showing parole at any time as "Cuban/Haitian Entrant (Status Pending)", or • DHS Form I-94 with stamp showing parole (other than for law enforcement purposes) into the U.S. on or after 4/21/80. In addition, a national of Cuba or Haiti who has one of the following documents may be a Category 1B Cuban/Haitian entrant if the parole was for **other than** law enforcement purposes: • DHS Form I-688A annotated with codes "274a.12(a)(4)" or "274a.12(c)(11)," or • DHS Form I-688B annotated with codes "274a.12(a)(4)" or "274a.12(c)(11)," or • DHS Form I-766 annotated with code "A4" or "C11." **CAUTION:** An individual who has one of the following immigration documents <u>may</u> <u>or may not</u> be a Category 1 Cuban/Haitian entrant: • DHS Form I-551 (Alien Registration Card/Permanent Resident Card) with	Potentially eligible only if the individual: • Is blind or disabled and was lawfully residing in the U.S. on 8/22/96; or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or If none of the above conditions apply: Became a Cuban/Haitian entrant within the last 7 years, then eligibility limited to a maximum of 7 years from the date of status.

	code CU6, CU7, or CH6; or • Cuban or Haitian passport unexpired temporary I-551 stamp with code CU6, CU7, or CH6 DHS Form 1-94 with unexpired temporary I-551 stamp with code CU6, CU7, or CH6.	
Cuban/Haitian entrant under Section 501(e) of the Refugee Education Assistance Act of 1980	**CATEGORY 2(B)** • DHS Form I-221 (Order to Show Cause and Notice of Hearing); or • DHS Form I-862 (Notice to Appear), or • DHS Form I-122 (Notice to Applicant Detained for a Hearing Before an Immigration Judge) **CAUTION:** Do not accept copies of DHS forms, such as Form I-589 (Application for Asylum and Withholding of Removal), or I-485 (Application to Register Permanent Residence or to Adjust Status) or other application for immigration relief date stamped by EOIR. According to DHS, copies of documents have no probative value.	Potentially eligible only if the individual: • Is blind or disabled and was lawfully residing in the U.S. on 8/22/96; or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or If none of the above conditions apply: Became a Cuban/Haitian entrant within the last 7 years, then eligibility limited to a maximum of 7 years from the date of status.
Cuban/Haitian entrant under Section 501(e) of the Refugee Education Assistance Act of 1980	**CATEGORY 2(C)** • DHS receipt for filing Form I-589 (Application for Asylum and Withholding of Removal); or • Unexpired DHS employment authorization document (DHS Forms I-688A, I-688B or I-766) with code "274a.12(c)(8)" or "C8." **CAUTION:** Do not accept copies of DHS forms, such as Form I-589 (Application for Asylum and Withholding of Removal) or I-485 (Application to Register Permanent Residence or to Adjust Status). According to DHS, copies of documents have no probative value. **NOTE:** Submit an SSA-8510 signed by the claimant to DHS with request for verification if an application for asylum is involved	Potentially eligible only if the individual: • Is blind or disabled and was lawfully residing in the U.S. on 8/22/96; or • Is lawfully residing in the U.S. and was receiving AG or SSI benefits on 8/22/96; or • Is a veteran or active duty member of the Armed Forces; or is the spouse or dependent child of a veteran or active duty member; or If none of the above conditions apply: Became a Cuban/Haitian entrant within the last 7 years, then eligibility limited to a maximum of 7 years from the date of status.

10. Application For Other Benefits

A **non-SSI** individual must take all necessary steps to apply for and obtain any other financial benefits to which he/she is entitled based on his own activities or through his family circumstances if:

- Applying for the other benefit would result in additional income which could affect the individual's eligibility or payment amount and
- The benefits or assistance is not based on the individual's need.

Note: Payments such as child support, alimony, accelerated life insurance, etc., are not program benefits for which an individual must file.

Note: SSI recipients have met this requirement in the SSI application process.

10.1. Types Of Benefits For Which An Individual Must Apply

Programs to which an individual may be entitled and for which he/she must apply, if he/she appears to be entitled, include both public and private funds. Annuities, pensions, retirement, insurance benefits, and disability benefits are examples of these.

10.1.1. Major Benefit Programs

Major benefit programs to which an individual may be entitled and for which he/she must apply, if he/she appears to be entitled, include but are not limited to:

- Veterans' Compensation and Pensions, including apportionment of augmented dependents' benefits;
  - An individual is required to file for apportionment (direct payment) of an augmented VA benefit if he/she:
    - is the spouse of a living veteran and the veteran or surviving spouse receives VA compensation, pension, or educational benefits; and
    - does not reside with the designated beneficiary, the veteran; and
    - has not been denied apportionment since living apart from the designated beneficiary

- Social Security Title II Benefits (RSDI – Retirement, Survivors, and Disability Insurance)
- Railroad Retirement Benefits
- Unemployment Compensation
- Worker's Compensation
- Black Lung Benefits
- Civil Service and Federal Employee Retirement System Benefits
- Military Pensions

10.1.2. Other Benefits

Other benefits to which an individual may be entitled and for which he/she may have to apply, if he/she appears to be entitled, include but are not limited to the following.

- Private insurance company disability and income protection benefits when the individual has such a policy
- Private pension plan benefits
  - If an individual is eligible for periodic retirement benefits, he/she must apply for those benefits to be eligible for AG. If he/she has a choice between periodic benefits and a lump sum, he/she must choose the periodic benefits.
- Union benefits

10.1.3. Identify Potential Eligibility For Other Benefits from:

- Information obtained from the interview, including responses to leading questions.
- The individual's responses on an application.
- Inquiries received from another agency.
- Agency knowledge of pension plans and benefits.
- Third party reports.

- Computer system inquiries.

10.2. Steps to Meet Requirement

The necessary steps include

- Applying for the other benefit,
- Providing the source of the other benefit with the necessary information to determine the individual's eligibility for the benefit, and
- If found eligible, accepting payment.

10.3. Procedure

The worker must give the individual a dated written notice that he/she must apply for other benefits for which he/she is potentially eligible. The written notice must list the specific benefits for which the individual must apply and the date by which the application must be filed.

The individual will be given 30 days from the date of his receipt of the written notice to apply for the specified benefits. If the notice is mailed, the date of receipt will be assumed to be 5 days after the date shown on the notice.

Note: If the individual is otherwise eligible, do not delay processing the case pending evidence of the individual's compliance.

10.4. Application Is Verified

Check with the other benefit source or the individual, at the end of the 30 day period for filing to:

- Determine if there has been a final decision to approve or deny the claim, and
- Confirm that the claimant is cooperating in pursuit of the claim, and
- Document the file with the response. See Chapter B - 9 for change processing procedures.

If there has been no decision in the initial 30 days and the individual is not at fault, continue to follow up with the benefit source or the individual at 30-day intervals. Document the case regarding follow-ups and the final decision. Reevaluate eligibility when the final decision is received.

10.5. Good Cause

An individual meets this requirement, despite failure to apply for other benefits or take other steps necessary to obtain them, if the individual has good cause for not

doing so. For example, good cause exists if any one or more of the following situations apply. If good cause exists, document the case record.

- The individual is unable to apply for other benefits because of illness.

  Accept the individual's signed statement regarding the illness and schedule a follow-up for when the individual is expected to improve.

- It would be useless to apply because the individual had previously applied and the other benefit source turned him down for a reason that has not changed.

  Accept the individual's signed statement regarding the denial unless there is evidence to the contrary.

- The other benefit is no longer available. The reasons for unavailability may include a limited period for filing that has expired or contributed funds were withdrawn prior to the AG eligibility determination period.

  The individual must provide verification from the other benefit provider that the filing period has expired.

  Accept the individual's signed statement regarding the withdrawal unless there is evidence to the contrary.

10.6. Failure To Comply Without Good Cause

If the individual refuses to apply for a benefit or refuses to accept a benefit to which the individual is entitled, the individual will be ineligible for AG and Medicaid.

10.6.1. Initial Application

Deny the AG and Medicaid application and send a Notice of Action to the applicant and his representative.

If proof of SSI application is received after the denial but within the 45 day processing period, the application must be reopened and eligibility determined. See Chapter B - 7 for application processing procedures.

10.6.2. Redetermination/Change

An Advance Notice of Proposed Action will be sent and the AG and Medicaid case will be closed.

If proof of SSI application is received after the closure but before the effective date of closure, the case must be reopened and eligibility determined. See Chapter B - 8 for redetermination processing procedures and Chapter B - 9 for change processing procedures.

10.6.3. Payments Excluded From Requirement to Apply

Payments such as child support, alimony, accelerated life insurance, etc., are not benefits for which an individual must apply.

11. Assignment Of Rights And Cooperation

To be eligible for Medicaid, an individual must:

- Assign his rights to medical support and payment for medical care from any third party to the Department of Medical Assistance Services (DMAS),
- Cooperate with the agency in identifying (to the extent he/she is able) potentially liable insurers and other third parties, and
- Provide information to assist DMAS in pursuing payments from any third party who may be liable to pay for the individual's care and medical services.

The assignment of rights agreement is included in the “Application for Benefits”.

- By signing the application form the applicant is agreeing to assign his rights and meets the initial requirements.

Note: Assignment of rights is not an eligibility factor for AG.

11.1. Good Cause

A waiver of the requirement to cooperate in identifying and providing liable third party information is allowed if the individual claims good cause for not cooperating and the agency finds that good cause does exist. Good cause will exist when cooperation will result in reprisal against or cause physical or emotional harm to the individual.

The case record must be documented to reflect the reason the individual believes harm will occur and information to support the agency findings.

11.2. Unable To Assign Rights

If the individual is unable to assign his/her rights, a spouse, legally appointed guardian or conservator, attorney-in-fact (person who has the individual's power-of-attorney), or the representative can make the assignment. The failure of this person to assign the individual's rights will not affect the individual's eligibility for Medicaid.

11.3. Refusal To Assign Rights Or Cooperate

If an individual does not comply with the assignment of rights and cooperation requirements, he/she will remain AG eligible but will not be Medicaid eligible.

11.3.1. Initial Application

If otherwise eligible, approve AG and deny Medicaid. Send a Notice of Action that reflects the AG and Medicaid actions.

See Chapter B - 7 for application procedures.

11.3.2. Redetermination/Change

Send an Advance Notice of Proposed Action to close the Medicaid case.

See Chapter B - 8 for redetermination procedures and Chapter B - 9 for change procedures.

11.4. Medicaid Manual Reference

Refer to Medicaid assignment of rights in Volume XIII, M0250.200 for additional clarification.

TABLE OF CONTENTS

SSI RECIPIENTS' ELIGIBILITY - INTRODUCTION **1**

1. DEFINITION OF SSI RECIPIENT **1**

1.1. VERIFICATION 2
1.1.1. SSI Eligibility Ends *2*

2. NON-FINANCIAL REQUIREMENTS **2**

3. CHANGES **3**

4. RESOURCES **3**

4.1. VERIFICATION 3

5. INCOME ELIGIBILITY **3**

5.1. VERIFICATION 3

6. COUNTABLE INCOME FOR GRANT COMPUTATION **4**

6.1. VERIFICATION 4
6.1.1. Verification Periods *4*
6.1.2. Discrepancies *5*
6.2. PROJECTION OF INCOME 5

7. INCOME EXCLUSIONS **5**

7.1. COMMUNITY EXPENSES EXCLUSION 6
7.1.1. Verification *6*
7.2. CHILD AT HOME EXCLUSION 7
7.2.1. Exclusion Computation *7*
7.2.2. Verification *7*
7.3. SPOUSE AT HOME EXCLUSION 7
7.3.1. Exclusion Computation *7*
7.4. GUARDIANSHIP FEE EXCLUSION 8
7.4.1. Exclusion Amount *8*
7.4.2. Verification *11*

8. SSI OVERPAYMENTS **11**

8.1. DOUBLE COUNTING EXCEPTION 11
8.2. UNABLE TO DETERMINE IF EXCEPTION APPLIES 13
8.3. MULTIPLE OVERPAYMENTS 13
8.3.1. Exception *14*

9. SSI UNDERPAYMENTS **15**

10. RECONCILIATION OF PAYMENTS **15**

SSI Recipients' Eligibility - Introduction

This chapter defines "SSI recipient" and addresses the AG eligibility determination process for an individual who is an SSI recipient. An SSI recipient must apply for and meet the same AG non-financial eligibility requirements as a non-SSI recipient and the payment computation procedures are the same for both. The AG financial eligibility process differs for SSI recipients.

AG is a federally mandated program established to supplement the SSI program. As such, the AG program is required to use SSI policy to determine eligibility. Because SSI and AG use basically the same financial eligibility rules, an SSI recipient is deemed financially eligible for AG. Verification that an individual is an SSI recipient establishes that his/her income and resources have been verified and evaluated and that AG financial eligibility exists.

The SSI recipient's total countable income is determined by totaling the **gross** amount of SSI income and the **net** amounts of earned and unearned income counted by SSI and, if appropriate, subtracting the additional exclusions permitted by Virginia law. The result is used to determine the AG payment amount.

The following chapters are used in determining an SSI recipient's AG eligibility and payment amount. The other chapters include "Non-SSI" in the title and apply only to those individuals who do not receive SSI.

Chapter A – Introduction

Chapter B – Application Processing

Chapter C – Non-Financial Requirements

Chapter D – SSI Eligibility

Chapter J – Payment Computation and Issuance

1. Definition of SSI Recipient

An SSI recipient is an individual that has applied for, been approved for, and is receiving a money payment from the Supplemental Security Income.

Clarifications:

- Individuals whose SSI payments have been suspended are not receiving a money payment and are **not** considered SSI recipients during their suspension period.

- Individuals who are determined to be "presumptively eligible" for SSI receive an SSI payment but are **not** considered SSI recipients for AG purposes.
  - If the "final" SSI decision finds the individual is retroactively eligible for regular SSI, an AG payment must be made for any month during which the individual was eligible for an SSI payment.
- Individuals who are receiving "Conditional SSI Benefits" **are** considered SSI recipients for AG purposes.
- Individuals who have applied for SSI are not SSI recipients until they have been approved for and action is taken to issue them an SSI money payment.
- Individuals who are classified as 1619b by SSI **are** SSI recipients.

1.1. Verification

Verify an individual's SSI status through SVES. If there is a discrepancy between SVES and what is reported by the individual, contact SSI to notify them of the discrepancy and to obtain clarification of the individual's SSI status.

1.1.1. SSI Eligibility Ends

- **Due To Excess Income**

  Determine the individual's continuing AG eligibility as a non-SSI recipient.

- **Due To Any Other Reason**

  The individual is ineligible for AG. Evaluate ongoing Medicaid eligibility based on the Medicaid Manual, Volume XIII.

2. Non-Financial Requirements

An SSI recipient, that is applying for AG, must be evaluated on and meet the more restrictive AG non-financial eligibility criteria in this manual. See Chapter C.

3. Changes

AG recipients that are SSI recipients are required to report changes in their situation as noted the AG Manual, Chapter B. However, the worker cannot take action on reported income and resource changes until they are reflected in the SSI payment. Actions on other reported changes are to be reflected as required the AG Manual.

Notify SSI of any changes in the individual's situation by completing the "REFERRAL TO SOCIAL SECURITY ADMINISTRATION DSS/SSA-1 Part 2".

http://localagency.dss.virginia.gov/divisions/bp/files/fs/forms/general/032-03-0099-02-eng.doc

4. Resources

In determining SSI eligibility, SSI has verified and evaluated the individual's resources. They have determined what is and is not countable and have applied all appropriate exclusions. Based on this, an SSI recipient who has applied for AG is deemed to have met AG resource eligibility and transfer of resources procedures. The individual's resource eligibility will continue until his/her SSI eligibility ends.

4.1. Verification

Verification that an individual is an SSI recipient, as defined above, establishes the individual's resource eligibility. No further verification of resources is required.

5. Income Eligibility

In determining SSI eligibility, SSI has verified and evaluated the individual's income. They have determined what is and is not countable and have applied all appropriate federal income exclusions. Based on this, an SSI recipient who has applied for AG is deemed to have met AG income eligibility. The individual's income eligibility will continue until his/her SSI eligibility ends.

5.1. Verification

Verification that an individual is an SSI recipient, as defined above, establishes the individual's income eligibility. No further verification of income is required.

6. Countable Income For Grant Computation

In determining SSI eligibility, SSI has verified and evaluated the individual's income. They have determined what is and is not countable and have applied all appropriate federal income exclusions. Therefore, the worker will use the amounts determined by SSI as the individual's net earned and net unearned income.

The total countable monthly amount is calculated by adding the **gross** SSI payment amount to the **net** earned and **net** unearned income amounts as determined by SSI and subtracting the Virginia income exclusions. The balance is used to determine the individual's AG payment amount.

6.1. Verification

The **gross** amount of SSI and the **net** amounts of earned and unearned income must be verified through SVES. The individual does not have to provide verification of his/her income to the eligibility worker.

Note: There is one exception to counting the gross SSI amount, when an amount is being withheld to recover a prior SSI overpayment. See SSI Overpayments Chapter D - 8 below.

6.1.1. Verification Periods

6.1.1.1. Stable Income

To meet the definition of stable income, the SSI payment amount must be the same each month.

The verification period for stable income is the month prior to the month of application/redetermination or the month the income is reported.

The total monthly countable income received in the verification period will be used as the amount projected to be received for each month until the next redetermination or until a change in the SSI amount is reflected in SVES.

6.1.1.2. Fluctuating Income

To meet the definition of fluctuating income, the SSI payment amount received must vary from month to month. Normally SSI will vary from month to month when an individual receives other fluctuating income.

Note: All cases in which earned income is counted in determining the SSI payment will be evaluated as fluctuating income.

The verification period for fluctuating income will be the three months prior to the month of application/redetermination.

6.1.2. Discrepancies

If the amount of income reported by the individual differs from that shown in SVES, the amounts in SVES must be used. Advise the individual to report any income changes to SSI. Adjustments to the SSI payments will be reflected as they occur or at the point the AG payments are reconciled. See Reconciling Payments in Chapter J - 7.

6.2. Projection Of Income

Actual income received in the verification period is averaged to determine the projected monthly countable income. That figure will be used as the amount projected to be received for each of the next four months.

Note: The actual income is **not** converted to a monthly figure based on 4.3 weeks.

7. Income Exclusions

When SSI computes the countable income for SSI eligibility, all of the federal income exclusions allowed by SSI policy are deducted. The income exclusions do not have to be recomputed for AG because the **net** amounts of earned and unearned income are used to compute the AG payment. However, four additional state income exclusions are permitted by the AG Manual. If applicable, these exclusions are deducted from the individual's total countable income and the result is used in determining the AG payment amount.

	The State Income Exclusions Must be Applied In The Following Order
Step 1	Deduct the **Community Expenses Exclusion**
Step 2	Does the individual have a spouse and a minor child or a minor child at home? **Yes -** Deduct the **Spouse and Child/Child At Home Exclusion.** Go to Step 3. **No –** If the individual has a spouse but no child at home go to Step 3. If the individual does not have either a spouse or child at home, go to Step 4.
Step 3	Deduct the **Spouse At Home Exclusion**
Step 4	Deduct the **Guardianship Fee Exclusion**
Step 5	**The result is the total countable income to be used in determining the SSI recipient's AG payment.**

7.1. Community Expenses Exclusion

When an individual enters an ALF or AFCH and applies for AG in the same month, any income used to pay for expenses incurred prior to entering the ALF/AFCH is excluded from income for the month of entry. To be excluded, the expenses must be for things not related to the ALF or AFCH. This exclusion cannot be applied in subsequent months.

If an expense has been incurred but not paid, assume that the individual will pay the expense unless you have reason to question the situation.

Note: The month of entrance into the ALF or AFCH will be the month the home is licensed or approved if the individual was a resident prior to licensure/approval.

7.1.1. Verification

Use bills, receipts, contact with the provider, etc., to verify all community expenses. If none of these are available, the individual's written statement will be accepted.

7.2. Child At Home Exclusion

If the applicant/recipient has a spouse **and** minor children or just minor children at home who have applied and are ineligible for TANF for a reason other than resources, a portion of the applicant's/recipient's non-exempted income will be excluded to provide for the spouse and/or child at home.

7.2.1. Exclusion Computation

To determine the amount of the exclusion, total the income of the spouse and children and subtract it from the appropriate Medicaid Medically Needy Income level. The resulting amount will be deducted from the AG individual's net countable income as determined by SSI.

The Medically Needy limits are located in the Medicaid manual at M0810.002.

http://localagency.dss.virginia.gov/divisions/bp/files/me/manual/Manual/s08.pdf

7.2.2. Verification

Verify the spouse and children's income by documents in their possession. Verify the spouse and children's ineligibility for TANF through the ADAPT system.

7.3. Spouse At Home Exclusion

If the applicant/recipient has a spouse at home who has applied and is ineligible for **SSI** because he or she is not aged, disabled, or blind, a portion of the applicant's/ recipient's non-exempted income will be excluded to provide for the spouse at home.

Note: If the spouse is ineligible for SSI due to any other reason, the individual is not entitled to this exclusion.

7.3.1. Exclusion Computation

To determine the amount of the exclusion, total the income of the spouse and subtract it from the Medicaid Medically Needy Income Level for one. The resulting amount will be deducted from the AG individual's net countable income.

The Medically Needy limits are located in the Medicaid manual at M0810.002.

http://localagency.dss.virginia.gov/divisions/bp/files/me/manual/Manual/s08.pdf

Note: If there is a spouse and children at home, the Child At Home Exclusion must be used instead of this one.

7.3.1.1. Verification

Verify the spouse's income and SSI ineligibility by documents in his/her possession.

7.4. Guardianship Fee Exclusion

When the individual has a guardian or conservator, the fee paid to the guardian or conservator to manage the individual's income may be excluded from the individual's net countable income if the court order stated a fee would be paid.

The court order establishing the guardianship will specify what sources of income will be managed and the fee to be paid for managing those sources of income.

7.4.1. Exclusion Amount

The amount of the exclusion will equal the amount designated by the court order. The court order may state an exact amount or state the fee will be a percentage of the managed funds. The exclusion amount cannot exceed the amount designated by the court nor include fees for managing income that is not included in the court order.

7.4.1.1. Flat Fee

If the court order states the fee will be a flat fee, that amount will be the Guardianship Fee Exclusion amount. Deduct the amount from the countable income that remains after applying all other exclusions.

Example: Ms. Ash receives $623 a month SSI. The court order specified Mr. Birch would receive $10 a month for handling Ms. Ash's SSI. To obtain the net countable income:

$623	Non-exempted Income
-$10	Fee
$613	Net Countable Income

Note: When a flat fee has been set, this procedure is applicable whether the guardian/conservator does/does not handle the AG payment.

7.4.1.2. Fee Based On Percentage

If the court order states the fee will be a percentage of the managed funds, the worker will be responsible for computing the exclusion amount.

7.4.1.2.1. Managed Funds Do Not Include AG Payment

If the guardian/conservator will not manage the individual's AG, use the following procedure to determine the exclusion amount.

STEPS	Determining Guardianship Fees 1 ACTIONS
Step 1	Determine the gross amount of the individual's income that is managed by the guardian/conservator. Note: Do not include any income that is not addressed in the court order. The result will be considered the amount of income the guardian/conservator is managing.
Step 2	Multiply the total managed income by the percentage specified in the court order. The result will be the total guardianship fee.
Step 3	Compute the individual's AG payment allowing all appropriate exclusions including the Guardianship Fee Exclusion.

7.4.1.2.2. Managed Funds Include AG Payment

If the guardian/conservator will manage the individual's AG as well as other income, the guardianship fee must be computed using the following procedure.

STEPS	Determining Guardianship Fees 2 ACTIONS
Step 1	Determine the AG payment amount allowing all appropriate exclusions except the Guardianship Fee Exclusion. The result will be considered the amount of AG income the guardian/conservator is managing.
Step 2	Add the AG amount determined in Step 1 to the gross amount of all other income that is included in the court order. The result will be the total amount of managed income.
Step 3	Multiply the total managed income as determined in Step 2 by the percentage specified in the court order. The result will be the total guardianship fee.
Step 4	Recompute the individual's AG payment allowing all of the appropriate exclusions including the Guardianship Fee Exclusion.

7.4.2. Verification

Obtain a signed and dated statement from the guardian/conservator and a copy of the court order. The guardian's/conservator's statement must include the monthly amount and source of funds managed for the applicant/recipient and whether or not the guardian/conservator will manage the AG payment.

7.4.2.1. Verification Not Provided

If the proper verification is not provided, the exclusion cannot be allowed.

8. SSI Overpayments

When SSI determines an individual was overpaid SSI benefits in a prior period, they will recoup the overpayments from the individual's current benefits. The amount withheld to recoup a prior SSI overpayment may or may not be counted as current SSI income.

It is necessary to determine if the overpayment amount was counted in determining the AG payment for the period in which the overpayment occurred. If the SSI was not counted previously, the gross amount of SSI, the amount prior to deduction of the recoupment, will be counted in determining the current AG grant. If the SSI was counted previously, it will not be counted again. The double counting exception will apply and the net SSI amount, the amount remaining after the recoupment is deducted, will be used in determining the current AG grant.

8.1. Double Counting Exception

Double counting (i.e. counting SSI income twice) would result if:

- The individual **received** both AG and SSI at the time the overpayment of the SSI occurred; **and**
- The overpaid amount was included in figuring the AG payment.

Note: Do not apply the exception if the individual was AG eligible but no AG payment was issued for the months the overpayment occurred.

Procedure:

STEPS	Double Counting Exception Procedures ACTIONS
Step 1	Is any of the SSI being withheld to recover an overpayment? **Yes -** Go to Step 2. **No** - S**top**. Count the gross amount of the SSI payment.
Step 2	Review the case history to determine AG benefit payment dates. Did the individual **receive** AG when the alleged overpayment occurred? **Yes -** Go to Step 3. **No -** Include the amount being withheld to recover the overpayment when determining the amount of SSI income. **Stop**
Step 3	Verify when the overpayment occurred, the rate of recovery and the period of time of recovery by using documents in the individual's possession or by contacting the appropriate office or agency. Go to Step 4.
Step 4	Was the overpayment amount counted in determining the AG payment? **Yes -** Count the net SSI payment (exclude the amount being withheld to recover the overpayment when determining the amount of SSI income.) **No -** Count the gross SSI payment (include the amount being withheld to recover the overpayment when determining the amount of SSI income.)

Examples

1. Exception Applies

Joe Jones started receiving SSI benefits and AG benefits in 1/05. In 11/05, Mr. Jones received a notice explaining that he was overpaid $150 in SSI benefits from 4/05 through 8/05, and $30 would be withheld from his SSI benefit to recover the overpayment from 1/06 through 5/06.

Since the overpaid amount was already included in determining countable unearned income for the period 4/05 through 8/05, the $30 a month being withheld is not included in determining the amount of unearned income when computing Mr. Jones' AG benefit amount for 1/06 through 5/06. Count the net SSI payment.

2. Exception Does Not Apply

Alex Martin started receiving AG benefits and SSI benefits in 5/05. In 6/05 SSI determined Mr. Martin was overpaid a total of $600 SSI from 8/04 through 12/04.

To recover the SSI overpayment, his SSI benefit is reduced by $120 a month from 8/05 through 12/05. Since Mr. Martin did not receive AG benefits during the time he was overpaid, the $120 a month withheld to recover the overpayment is included in determining the amount of Mr. Martin's current SSI income. Count the gross SSI payment.

8.2. Unable To Determine If Exception Applies

If you are unable to determine if the exception applies, do **not** include the amount being withheld to recover an overpayment when determining the amount of unearned income. Count the net SSI payment.

8.3. Multiple Overpayments

When overpayments for two or more prior periods are being recovered at the same time, assume the amount being withheld is being used to repay the earlier overpayment first and subsequent overpayments in chronological order.

Example:

An individual receiving AG and SSI was overpaid in 2004 and 2005. For purposes of collecting the overpayment, recovery is allocated in chronological order, i.e., the 2004 overpayment is satisfied first and then collection begins for the 2005 overpayment.

8.3.1. Exception

When the double counting exception applies to some of the overpayment periods but not to all of them, assume the amount being withheld is being withheld first to repay any overpayments **not** subject to the exception. Apply this assumption regardless of the chronological order in which the overpayments occurred.

Example 1:

An individual receiving SSI was overpaid in 2004 and 2005. For purposes of collecting the overpayment, recovery is normally allocated in chronological order, i.e., the 2004 overpayment is satisfied first and then collection begins for the 2005 overpayment. However, in this example, the double counting exception applies only to the 2004 overpayment as the individual did not receive AG during the 2005 overpayment period.

The worker will assume the 2005 overpayment is satisfied first, meaning the gross SSI amount will be counted for the months over which the 2005 overpayment is recouped. When the 2005 recoupment ends, the 2004 recoupment will begin and the net amount of the SSI payment will be used in determining the AG payment amount.

Example 2:

Mr. Smith was overpaid $300 in VA benefits in 2004 and $500 in 2005. VA began withholding $100 a month in August 2005. The withholding will continue until the full $800 is recovered, August 2005 through March 2006. Mr. Smith reapplied and was approved for AG in July 2005.

The worker determined that Mr. Smith did not receive AG during the 2005 overpayment period but did receive AG during the 2004 period and that the overpaid amount was used in determining his AG. Therefore, the double counting exception applies to the 2004 overpayment but does not apply to the 2005 overpayment. The worker must consider that the withheld amount is being used to pay the 2005 overpayment first as the double counting exception does not apply to it. This means the $100 being withheld for the first five months, August through November 2005, will be counted as income in determining the AG payment. The $100 withheld for December 2005 through March 2006 will not be counted as income.

9. SSI Underpayments

SSI amounts paid to an individual to correct a prior under payment are SSI income in the month received. If the total countable income for the month of receipt reduces the grant amount to zero, no payment will be issued. The individual remains eligible for AG and Medicaid.

10. Reconciliation of Payments

All AG payments that are issued based on projected income must be reconciled periodically. Reconciliation of prior payments is using the actual income received to recalculate the payment amount for each month for which a projected amount of income was used and correcting any over or underpayments that occurred. Reconciliation procedures are found in Chapter J – Grant Computation and Issuance.

TABLE OF CONTENTS

NON-SSI INDIVIDUAL'S RESOURCE ELIGIBILITY - INTRODUCTION 1

1. RESOURCES DEFINED 1

1.1. PERSONAL PROPERTY 1
1.2. REAL PROPERTY 2
1.3. LIQUIDITY OF RESOURCES 2

2. RELATIONSHIP OF INCOME TO RESOURCES 2

2.1. CONVERSION OR SALE OF A RESOURCE 2
2.1.1. Verification 3

3. VALUES TO APPLY TO RESOURCES 3

3.1. CURRENT MARKET VALUE 3
3.2. EQUITY VALUE 3
3.3. ENCUMBRANCE 3

4. MONTHLY DETERMINATIONS 3

5. RESOURCE LIMITS 3

6. OWNERSHIP 4

6.1. SOLE OWNERSHIP 4
6.2. SHARED OWNERSHIP 4
6.2.1. Types of Shared Ownership 4
6.3. PROPERTY RIGHTS WITHOUT OWNERSHIP OF THE PROPERTY 6
6.3.1. Leasehold 7
6.3.2. Incorporeal Interests – Mineral and Timber Rights and Easements 7

7. PROPERTY ESSENTIAL TO SELF-SUPPORT EXCLUSION 1 – EXCLUDED REGARDLESS OF VALUE OR RATE OF RETURN 7

7.1. EXCLUSION 7
7.1.1. Trade Or Business Property 8
7.1.2. Government Permits 8
7.1.3. Personal Property Used By An Employee 8
7.2. CURRENT USE CRITERION 8
7.2.1. 12-Month Rule 8
7.2.2. 12-Month Extension 9
7.2.3. No Intent To Resume Activity 9
7.2.4. Change of Intent 9
7.3. TRADE OR BUSINESS 9
7.3.1. Redetermination 10
7.3.2. Verification 10
7.3.3. Questionable Trade Or Business 10
7.3.4. Liquid Resources Used In A Trade Or Business 11
7.4. GOVERNMENT PERMITS 11
7.4.1. Verification 11
7.5. PERSONAL PROPERTY USED BY AN EMPLOYEE 12
7.5.1. Verification 12

8. PROPERTY ESSENTIAL TO SELF-SUPPORT EXCLUSION 2 - EXCLUDED UP TO $6,000 EQUITY REGARDLESS OF RATE OF RETURN 12

8.1. EXCLUSION 12
8.1.1. Exception to the Exclusion 13

TABLE OF CONTENTS

8.2. CURRENT USE CRITERION 13
8.2.1. 12-Month Rule 14
8.2.2. 12-Month Extension 14
8.2.3. No Intent To Resume Activity 14
8.2.4. Change of Intent 14
8.3. VALUE 14
8.3.1. Real Property 14
8.3.2. Personal Property 15
8.4. VERIFICATION 15

9. PROPERTY ESSENTIAL TO SELF-SUPPORT EXCLUSION 3 - EXCLUDED UP TO $6,000 EQUITY IF IT PRODUCES A 6 PERCENT RATE OF RETURN 15

9.1. EXCLUSION 15
9.1.1. Exception to the Exclusion 16
9.2. CURRENT USE CRITERION 16
9.2.1. 12-Month Rule 17
9.2.2. Change Of Intent 17
9.3. COMPUTING THE RATE OF RETURN 18
9.4. RATE OF RETURN LESS THAN 6% 18
9.4.1. Earnings Rate Of Less Than 6%: 18
9.4.2. Time Limit For Resumption Of 6% Return 19
9.4.3. Operating At A Loss 19
9.5. MORE THAN ONE INCOME PRODUCING PROPERTY 19
9.6. EQUITY VALUE EXCEEDS $6000 19
9.7. VERIFICATION 20
9.7.1. Supporting Evidence 20

10. REASONABLE EFFORTS TO SELL REAL PROPERTY AFTER END OF 9 MONTHS OF CONDITIONAL BENEFITS EXCLUSION 20

10.1. EXCLUSION 21
10.2. CONDITIONAL BENEFITS OVERPAYMENT 21
10.3. NO RESUMPTION OF THE EXCLUSION AFTER TERMINATION OF ELIGIBILITY 21
10.4. EXPLANATION OF EXCLUSION 21
10.5. REASONABLE EFFORTS TO SELL 22
10.6. CONTINUING EFFORTS TO SELL 22
10.7. INDIVIDUAL MUST ACCEPT ANY REASONABLE OFFER 22
10.8. VERIFICATION OF EFFORTS TO SELL 23
10.9. SUPPORTING EVIDENCE 23
10.9.1. Real Property 23
10.9.2. Personal Property 23
10.10. GOOD CAUSE 24
10.10.1. Significance of Good Cause 24
10.10.2. Examples of Good Cause 24
10.10.3. Verification 25
10.11. FOLLOW-UP CONTACTS 25
10.11.1. Frequency of Contacts 26
10.12. INDIVIDUAL MAKING REASONABLE EFFORTS 26
10.13. INDIVIDUAL NOT MAKING REASONABLE EFFORTS 26

11. UNDUE HARDSHIP EXCLUSION - REAL PROPERTY 27

11.1. UNDUE HARDSHIP 27
11.2. ALLEGATION OF LOSS OF HOUSING FOR CO-OWNER 27
11.2.1. Required Statement From Resident Co-Owner 27

TABLE OF CONTENTS

11.3. HARDSHIP DETERMINATION 27

12. AGENT ORANGE PAYMENTS 28

12.1. EXCLUSION: 28
12.2. VERIFICATION 28

13. ANNUITIES 28

14. AUSTRIAN SOCIAL INSURANCE PAYMENTS 28

14.1. EXCLUSION: 29
14.2. VERIFICATION 29

15. AUTOMOBILES AND OTHER VEHICLES 29

15.1. EXCLUSION: 29
15.1.1. Month of Application 30
15.1.2. Ongoing Months 30
15.1.3. More Than One Vehicle Is Used For Transportation 30
15.1.4. Vehicle Is Temporarily Inoperable 30
15.2. VALUE 30
15.2.1. Rebuttal 31
15.3. VERIFICATION 31

16. BURIAL CONTRACTS 31

16.1. CONTRACT REVOCABILITY 31
16.1.1. Virginia 32
16.1.2. Kentucky 32
16.1.3. North Carolina 32
16.1.4. Tennessee 32
16.2. PROVIDER PLACES FUNDS IN TRUST 32
16.3. CONDITIONS FOR LIQUIDATION 33
16.4. VALUE 33
16.4.1. Rebuttal 33
16.5. RELATIONSHIP TO THE BURIAL SPACE AND BURIAL FUND EXCLUSIONS 33
16.5.1. Revocable Or Salable 33
16.5.2. Irrevocable And Not Salable 34
16.6. VERIFICATION 34

17. BURIAL FUNDS 34

17.1. EXCLUSION 34
17.1.1. Mandatory Reduction of Maximum Exclusion 34
17.1.2. Burial Funds To Which The Burial Fund Exclusion May Be Applied 35
17.1.3. Appreciation 35
17.1.4. Recalculation of Burial Fund Exclusion 35
17.1.5. Burial Funds Must Be Kept Separate 36
17.1.6. Effective Date of Exclusion 36
17.2. DESIGNATION OF BURIAL FUNDS 36
17.2.1. Length of Designation 37
17.2.2. Redesignation of Funds After Misuse 37
17.3. FUNDS USED FOR ANOTHER PURPOSE 37
17.3.1. Penalty — Funds Used For Another Purpose 38
17.4. LIFE INSURANCE DESIGNATED AS A BURIAL FUND 40
17.5. LIFE INSURANCE DIVIDENDS 40
17.6. VERIFICATION 41

TABLE OF CONTENTS

18. BURIAL INSURANCE 41

18.1. VERIFICATION 41

19. BURIAL SPACES 41

19.1. EXCLUSION 42
19.2. INDIVIDUAL'S IMMEDIATE FAMILY 42
19.3. HELD FOR 43
19.4. VERIFICATION: 43

20. BURIAL TRUSTS 43

20.1. BURIAL TRUSTS ESTABLISHED WITH FUNDS THAT HAVE BEEN IRREVOCABLY PAID TO THE FUNERAL PROVIDER 44
20.1.1. Value 44
20.1.2. Assistant Attorney General Review 44
20.1.3. Verification 44
20.1.4. Relationship to the Burial Fund Exclusion 45
20.2. BURIAL TRUSTS ESTABLISHED WITH THE INDIVIDUAL'S OR SPOUSE'S FUNDS 45
20.2.1. Value 45
20.2.2. Verification 45
20.2.3. Review 45

21. CASH 45

21.1. VERIFICATION 45

22. CERTAIN CASH TO PURCHASE MEDICAL OR SOCIAL SERVICES 46

22.1. EXCLUSION 46
22.1.1. Exception 46
22.1.2. Services That Are Not Income 46

23. CERTIFICATES OF DEPOSIT 47

24. CHECKING AND SAVINGS ACCOUNTS 47

24.1. VALUE 47
24.2. DEPOSITS OF INCOME 47
24.2.1. Allegation of Checks That Have Not Cleared the Bank 48
24.3. OWNERSHIP OF ACCOUNT 48
24.3.1. Fiduciaries 48
24.3.2. Individual Accounts 48
24.3.3. Joint Accounts 48
24.3.4. Ownership Rebuttal 48
24.4. RIGHT TO USE FOR SUPPORT AND MAINTENANCE 49
24.4.1. Examples of Evidence to the Contrary 50
24.4.2. Examples of Restricted Use 50
24.5. VERIFICATION 50

25. CHILD TAX CREDITS (CTC) 51

25.1. EXCLUSION 51
25.2. INTEREST 51
25.3. VERIFICATION 51

26. COMMINGLED FUNDS 52

26.1. NON-BURIAL RELATED EXCLUDED FUNDS 52

TABLE OF CONTENTS

26.2. EXCLUDED BURIAL FUNDS....52
26.3. INTEREST....52
26.4. DETERMINING THE EXCLUDED PORTION....52

27. CONSERVATORSHIP ACCOUNTS....54

27.1. ASSUMPTION OF AVAILABILITY FOR SUPPORT AND MAINTENANCE....54
27.1.1. Obtain the Individual's Allegation....54
27.1.2. Evidence to the Contrary....54
27.2. EXAMPLES PROCEDURES FOR CONSERVATORSHIP ACCOUNTS:....55
27.3. VERIFICATION....55

28. CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS) (FORMERLY ACTION) PAYMENTS....56

28.1. EXCLUSION....56
28.2. VERIFICATION....57

29. DEATH BENEFITS....57

29.1. VALUE OF RESOURCE....57
29.2. EXCLUSION....57
29.2.1. Exception — Bills Already Paid....58
29.2.2. Deductible Expenses....58
29.2.3. Verifying Expenses....58
29.3. VERIFICATION OF BENEFITS....58

30. DISASTER ASSISTANCE....58

30.1. EXCLUSION....59
30.2. INTEREST....59
30.3. VERIFICATION....59

31. EARNED INCOME TAX CREDITS....59

31.1. EXCLUSION....59
31.2. INTEREST....60
31.3. VERIFICATION....60

32. EDUCATIONAL FUNDS - GRANTS, SCHOLARSHIPS, FELLOWSHIPS, AND GIFTS....60

32.1. TITLE IV OF HEA OR BIA INVOLVEMENT....60
32.1.1. Exclusion....61
32.1.2. Interest and Dividends....61
32.1.3. Verification....62
32.2. OTHER GRANTS, SCHOLARSHIPS, FELLOWSHIPS, AND GIFTS....62
32.2.1. Exclusion....62
32.2.2. The Non-Excluded Portions....62
32.2.3. Excluded Funds Not Spent....62
32.2.4. Verification....62

33. FOOD STAMPS....63

33.1. EXCLUSION....63
33.2. VERIFICATION....63

34. GIFTS OF TRAVEL TICKETS....63

34.1. DOMESTIC TRAVEL TICKETS....64
34.1.1. Converted to Cash....64

TABLE OF CONTENTS

34.2. VERIFICATION 64
34.3. NON-DOMESTIC TRAVEL TICKETS 64
34.3.1. Verification 64

35. HOME PROPERTY 65

35.1. EXCLUSION 65
35.2. PROPERTY THAT NO LONGER SERVES AS THE PRINCIPAL PLACE OF RESIDENCE 66
35.3. INDICATION OF MORE THAN ONE RESIDENCE 66
35.4. OWNERSHIP 66
35.4.1. Verification 66
35.5. EVIDENCE INDICATES NON-ADJOINING PROPERTY 67
35.5.1. Individual Agrees With Evidence 67
35.5.2. Individual Disagrees With Evidence 67
35.6. ABSENCES FROM THE HOME 68
35.6.1. Dependent Relative 68
35.6.2. Intent To Return Home Development 69

36. HOME REPLACEMENT FUNDS 70

36.1. EXCLUSION 70
36.1.1. Interest 71
36.2. EXPLANATION TO INDIVIDUAL 71
36.3. STATEMENT OF INTENT 71
36.4. PROCEEDS 71
36.4.1. If Paid in a Lump Sum 71
36.4.2. If Paid in Installments 71
36.4.3. Verifying Proceeds of Sale 71
36.4.4. Allowable Uses Of Proceeds 72
36.4.5. Timely Use Of Proceeds 72
36.4.6. Proceeds Not Used Timely 72
36.5. VERIFICATION 73
36.6. PROCEEDS NOT USED TO REPLACE HOME 73

37. HOUSEHOLD GOODS AND PERSONAL EFFECTS 73

37.1. HOUSEHOLD GOODS ARE: 73
37.2. PERSONAL EFFECTS ARE: 73
37.3. EXCLUSION 74
37.4. VERIFICATION 74

38. INDIAN LANDS, RESTRICTED ALLOTTED 74

38.1. EXCLUSION 74
38.2. VERIFICATION 74

39. INHERITANCES AND UNPROBATED ESTATES 75

39.1. DATE OF RECEIPT 75
39.2. UNPROBATED ESTATE 75
39.3. OWNERSHIP INTEREST 76
39.4. STATUS AS A RESOURCE 76
39.5. VALUE OF RESOURCE 76
39.6. VERIFICATION 76

40. JAPANESE-AMERICAN AND ALEUTIAN RESTITUTION PAYMENTS 77

40.1. EXCLUSION 77

TABLE OF CONTENTS

40.2. INTEREST 77
40.3. VERIFICATION 77
40.3.1. U.S. 77
40.3.2. Canada 78

41. LIFE ESTATE AND REMAINDER INTEREST 78

41.1. LIFE ESTATES (WITHOUT POWERS) 78
41.1.1. Owner Can Do 78
41.1.2. Owner Cannot Do 78
41.1.3. Value of Life Estate 78
41.2. LIFE ESTATES WITH POWERS 79
41.3. REMAINDER INTERESTS 79
41.3.1. Value of Remainder Interest 79
41.4. VERIFICATION 79
41.5. UNISEX LIFE ESTATE OR REMAINDER TABLE 80

42. LIFE INSURANCE POLICIES 83

42.1. VALUE 83
42.2. EXCLUSION 83
42.2.1. Relation to Burial Fund Exclusion 84
42.3. FACE VALUE 84
42.4. CASH SURRENDER VALUE 84
42.5. LIFE INSURANCE DIVIDENDS 84
42.5.1. Additions 84
42.5.2. Accumulations 84
42.6. ACCELERATED LIFE INSURANCE PAYMENTS 85
42.6.1. Resource Value 85
42.7. VERIFICATION 85

43. LOANS 86

43.1. DETERMINING WHEN A LOAN COUNTS AS A RESOURCE 86
43.1.1. Eligible Individual Is The Borrower - All Loans 86
43.1.2. Eligible Individual Is The Lender 86
43.2. NEGOTIABLE AGREEMENT 87
43.3. BONA FIDE AGREEMENT 88
43.4. VERIFICATION 89
43.4.1. Forms 89

44. LOW INCOME ENERGY ASSISTANCE 89

44.1. EXCLUSION 89
44.2. VERIFICATION 89

45. MUNICIPAL, CORPORATE AND GOVERNMENT BONDS 90

45.1. VALUE 90
45.2. VERIFICATION 90

46. MUTUAL FUNDS 90

47. NAZI PERSECUTION, PAYMENTS TO VICTIMS OF 90

47.1. EXCLUSION 91
47.1.1. Interest 91
47.2. VERIFICATION 91

TABLE OF CONTENTS

48. NETHERLANDS WUV PAYMENTS TO VICTIMS OF PERSECUTION 91

48.1. EXCLUSION 91
48.1.1. Interest 92
48.2. VERIFICATION 92

49. NON-HOME REAL PROPERTY 92

49.1. OWNERSHIP 93
49.1.1. Sole Ownership 93
49.1.2. Shared Ownership 93
49.1.3. Ownership of a Leasehold 94
49.1.4. Ownership of Land and Mineral Rights 94
49.1.5. Ownership of Mineral Rights Only 94
49.2. CURRENT MARKET VALUE 94
49.2.1. Tax Assessment Notice 94
49.2.2. Knowledgeable Source Estimate 95
49.2.3. CMV Rebuttals 96
49.3. EQUITY VALUE 96
49.4. FOREIGN PROPERTY 96
49.4.1. Effect of Legal Restrictions 97
49.4.2. Verification 97

50. NORTH VIETNAM, PAYMENTS TO CERTAIN PERSONS CAPTURED AND INTERNED BY 98

50.1. EXCLUSION 98
50.2. INTEREST 98
50.3. VERIFICATION 98

51. OTHER PROPERTY RIGHTS 98

52. PROMISSORY NOTES AND PROPERTY AGREEMENTS 99

52.1. FOR THE BUYER (DEBTOR) 99
52.2. FOR THE SELLER (CREDITOR) 99
52.2.1. Property Agreements Prior to Settlement 99
52.2.2. Resource Value of the Agreement 100
52.2.3. Verification 100

53. RADIATION EXPOSURE COMPENSATION TRUST FUND 100

53.1. EXCLUSION 101
53.2. INTEREST 101
53.3. VERIFICATION 101

54. RELOCATION ASSISTANCE 101

54.1. FEDERAL RELOCATION ASSISTANCE EXCLUSION 102
54.1.1. Exception: Revenue Sharing 102
54.1.2. Interest 103
54.2. STATE OR LOCAL RELOCATION ASSISTANCE EXCLUSION 103
54.2.1. Interest 103
54.3. VERIFICATION 103

55. REPAIR/REPLACEMENT OF LOST, DAMAGED OR STOLEN RESOURCES PAYMENTS 103

55.1. EXCLUSION 103
55.1.1. Interest 104
55.1.2. 9-Month Extension for Good Cause 104

TABLE OF CONTENTS

55.1.3. Presidential-Declared Major Disasters *104*
55.1.4. Good Cause *104*
55.2. VERIFICATION 106

56. RETIREMENT FUNDS 106

56.1. RESOURCE OR INCOME 106
56.1.1. Periodic Payments *107*
56.1.2. Lump Sum Payments *107*
56.2. TERMINATION OF EMPLOYMENT 107
56.3. FUND NOT IMMEDIATELY AVAILABLE 107
56.4. VALUE 108
56.5. VERIFICATION 108
56.6. EXCESS RESOURCES/CONDITIONAL BENEFITS 108

57. RETROACTIVE RSDI AND SSI PAYMENTS (TITLE II AND TITLE XVI) 108

57.1. EXCLUSION 109
57.1.1. Written Notice *109*
57.2. VERIFICATION 109

58. REVERSE MORTGAGE 109

58.1. VERIFICATION 110

59. RICKY RAY HEMOPHILIA RELIEF FUND 110

59.1. EXCLUSION 110
59.2. INTEREST 111
59.3. VERIFICATION 111

60. STOCKS 111

60.1. OWNERSHIP 111
60.2. VALUE — PUBLICLY TRADED STOCKS 112
60.2.1. Verification *112*
60.3. VALUE — STOCK THAT IS NOT PUBLICLY TRADED 112
60.3.1. Verification *112*

61. TERM INSURANCE 113

61.1. VERIFICATION 113

62. TIME DEPOSITS (CERTIFICATES OF DEPOSIT AND SAVINGS CERTIFICATES) 113

62.1. OWNERSHIP 113
62.2. VALUE 113
62.2.1. Early Withdrawal *113*
62.2.2. Interest *114*
62.3. VERIFICATION: 114

63. TRUSTS 114

64. TRUSTS – GENERAL INFORMATION 116

64.1. DEFINITIONS 116
64.1.1. Asset *116*
64.1.2. Exculpatory Clause *117*
64.1.3. Grantor *117*
64.1.4. Spendthrift Clause or Spendthrift Trust *117*
64.1.5. Trust Beneficiary *117*

TABLE OF CONTENTS

64.1.6. Trustee 118
64.1.7. Trust Principal 118
64.2. TRUST EVALUATION 118
64.2.1. Procedures 118

65. TRUST TYPE A 119

65.1. TRUSTS ESTABLISHED WITH THE ASSETS OF AN INDIVIDUAL (OR SPOUSE) PRIOR TO 1/1/00....120
65.1.1. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Social Security Act 120
65.1.2. Pooled Trusts Established under Section 1917(d)(4)(C) of the Social Security Act 120
65.2. TRUSTS ESTABLISHED BY THIRD PARTIES (EITHER PRIOR TO OR AFTER 1/1/00)....121
65.3. TRUST TYPE A PROCEDURES....121
65.4. TRUSTS WHOSE PRINCIPALS ARE RESOURCES 124
65.4.1. Trust Principal 124
65.4.2. Trust Payments....125
65.5. TRUSTS WHOSE PRINCIPALS ARE NOT RESOURCES 125
65.5.1. Mandatory Trust Payments 125
65.6. VERIFICATION 128
65.6.1. Written Trust 128
65.6.2. Oral Trusts 128
65.6.3. Written and Oral 128

66. TRUST TYPE B 129

66.1. TRUST DEVELOPMENT PROCEDURES SUMMARY 129
66.2. TRUST RULES VERSUS TRANSFER RULES FOR ASSETS IN A TRUST 131
66.3. TRUST EVALUATION 131
66.3.1. Exculpatory Clause 132
66.4. VERIFICATION 132
66.4.1. Written Trust 132
66.4.2. Oral Trusts 132
66.4.3. Written and Oral 132
66.5. REVOCABLE TRUSTS 133
66.5.1. Disbursements To or for the Benefit of the Individual 133
66.5.2. Disbursements Not to or for the Benefit of the Individual....133
66.5.3. Value 133
66.5.4. Relationship to Transfer Penalty 134
66.6. IRREVOCABLE TRUSTS 134
66.6.1. Payments to an Individual....135
66.6.2. Payments on Behalf of/for the Benefit of an Individual 135
66.6.3. Value 135
66.6.4. Exceptions to Counting Irrevocable Trusts Established on or after 1/1/00 137

67. U.S. SAVINGS BONDS 150

67.1. MANDATORY RETENTION PERIOD....150
67.2. PAPER SAVINGS BONDS 151
67.2.1. Ownership....151
67.2.2. Access....152
67.2.3. Value of Paper Bonds 152
67.3. ELECTRONIC SAVINGS BONDS....153
67.3.1. Ownership....153
67.3.2. Beneficiary Registration 153
67.3.3. Access....154
67.3.4. Value 154

TABLE OF CONTENTS

68. VETERANS' CHILDREN WITH CERTAIN BIRTH DEFECTS PAYMENTS 154

68.1. EXCLUSION 155
68.2. VERIFICATION 155

69. VICTIMS' COMPENSATION PAYMENTS 155

69.1. EXCLUSION 155
69.2. INTEREST 155
69.3. VERIFICATION 155

Non-SSI Individual's Resource Eligibility - Introduction

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

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

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

Sections 1 through 6 of this chapter address general information regarding resources. Sections 7 through 11 address exclusions that may apply to more than one type of resource. Sections 12 through 69 address specific resources. Sections 12 through 69 are listed in alphabetical order. Other resource exclusions are addressed under the specific resource to which they apply.

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

1. Resources Defined

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

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

1.1. Personal Property

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

1.2. Real Property

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

1.3. Liquidity Of Resources

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

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

2. Relationship of Income to Resources

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

Example

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

2.1. Conversion Or Sale Of A Resource

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

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

Example

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

2.1.1. Verification

Verification of the conversion and the new resource is required for resource evaluation. See guidelines addressing the new resource type.

3. Values to Apply to Resources

A resource's value is its value as it existed on the first moment of the first day of the month in which it is being evaluated. For AG purposes, the value of a resource is the amount of an individual's/ couple's equity in it.

3.1. Current Market Value

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

3.2. Equity Value

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

3.3. Encumbrance

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

4. Monthly Determinations

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

5. Resource Limits

An individual (or couple) with countable resources in excess of the applicable limit (which is set by statute) is not eligible for AG. If countable resources do not exceed the applicable limit, they have no effect on the amount of the AG payment.

Individual $2000

Couple $3000

6. Ownership

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

6.1. Sole Ownership

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

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

6.2. Shared Ownership

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

6.2.1. Types of Shared Ownership

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

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

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

6.2.1.1.1. No Survivorship Rights

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

Example -

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

6.2.1.2. Joint Tenancy - Each Owner Has Same Interest

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

6.2.1.2.1. Survivorship Rights

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

6.2.1.2.2. Conversion to Tenancy-in-Common

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

6.2.1.3. Tenancy By The Entirety - Married Couples Only

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

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

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

6.2.1.3.1. Survivorship Rights

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

6.3. Property Rights Without Ownership of the Property

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

6.3.1. Leasehold

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

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

Note: A leasehold does not create a life estate in Virginia.

6.3.2. Incorporeal Interests – Mineral and Timber Rights and Easements

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

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

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

7.1. Exclusion

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

7.1.1. Trade Or Business Property

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

7.1.2. Government Permits

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

7.1.3. Personal Property Used By An Employee

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

7.2. Current Use Criterion

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

- It has been in use; and
- There is a reasonable expectation that the use will resume

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

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

7.2.1. 12-Month Rule

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

7.2.2. 12-Month Extension

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

7.2.2.1. Disabling Condition

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

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

7.2.3. No Intent To Resume Activity

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

7.2.4. Change of Intent

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

7.3. Trade Or Business

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

- A description of the trade or business;
- A description of the assets of the trade or business;
- The number of years it has been operating;

- The identity of any co-owners;
- The estimated gross and net earnings of the trade or business for the current tax year.

7.3.1. Redetermination

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

7.3.2. Verification

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

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

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

7.3.3. Questionable Trade Or Business

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

- The good faith intention of making a profit or producing income,
- Continuity of operations, repetition of transactions, or regularity of activities,
- Regular occupation,

- Holding out to others as being engaged in the selling of goods or services.

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

7.3.4. Liquid Resources Used In A Trade Or Business

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

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

7.4. Government Permits

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

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

7.4.1. Verification

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

7.5. Personal Property Used By An Employee

7.5.1. Verification

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

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

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

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

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

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

While this category of property may encompass a vehicle used solely in a non-business self-support activity (e.g. a garden tractor, or a boat used for subsistence fishing), it does not include any vehicle that is used for the individual’s transportation. See Automobile, Chapter E – 15.

8.1. Exclusion

Up to $6,000 of the **equity value** of non-business property used to produce goods or services essential to daily activities is excluded from resources. There is no requirement that the property produce a certain rate of return. The property must be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

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

8.1.1. Exception to the Exclusion

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

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

Resources Assumed to be Liquid

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

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

8.2. Current Use Criterion

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

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

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

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

8.2.1. 12-Month Rule

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

8.2.2. 12-Month Extension

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

8.2.2.1. Disabling Condition

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

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

8.2.3. No Intent To Resume Activity

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

8.2.4. Change of Intent

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

8.3. Value

8.3.1. Real Property

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

8.3.2. Personal Property

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

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

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

8.4. Verification

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

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

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

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

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

9.1. Exclusion

Up to $6,000 of the equity value of non-business income producing property can be excluded from resources if the property produces a net annual return equal to at least 6% of the **excludable equity**. The property must be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

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

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

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

9.1.1. Exception to the Exclusion

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

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

9.1.1.1. Resources Assumed to be Liquid

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

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

9.2. Current Use Criterion

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

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

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

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

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

9.2.1. 12-Month Rule

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

9.2.1.1. 12-Month Extension

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

9.2.1.1.1. Disabling Condition

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

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

9.2.2. Change Of Intent

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

9.3. Computing The Rate Of Return

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

Example

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

9.4. Rate Of Return Less Than 6%

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

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

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

Example

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

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

9.4.1. Earnings Rate Of Less Than 6%:

- Record the individual's explanation of the earnings decline in the file.
- Obtain evidence of prior years' earnings (e.g., tax returns for at least 2 years prior to the current tax year) to determine whether the activity has produced a 6% rate of return before.

- When no tax returns are available, use other evidence such as receipts, check registers, invoices, sales slips, bank statements, etc.

9.4.2. Time Limit For Resumption Of 6% Return

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

- **24-Month Period Ends**

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

9.4.3. Operating At A Loss

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

9.5. More Than One Income Producing Property

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

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

9.6. Equity Value Exceeds $6000

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

Example

Mr. Cameron states that he now lives in an ALF and is renting out his formerly excluded home, which has an EV of $7,000. If the property produces a 6% return, $6000 of its equity will be excluded and $1,000 will be a countable resource. The rent will be evaluated as unearned income.

9.7. Verification

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

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

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

9.7.1. Supporting Evidence

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

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

When an individual has received nine months of Conditional Benefits due to his ownership of excess real property during which he/she made continuing but unsuccessful reasonable efforts to sell, the reasonable effort to sell exclusion may be applied in determining his/her eligibility for regular AG benefits. The exclusion will apply if the individual continues to make reasonable efforts to sell or establishes good cause for failure to do so.

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

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

10.1. Exclusion

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

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

10.2. Conditional Benefits Overpayment

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

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

10.3. No Resumption of the Exclusion after Termination of Eligibility

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

10.4. Explanation of Exclusion

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

- The property will continue to be excluded for as long as reasonable efforts to sell it continue and counting it would cause resources to exceed the AG resource limit;
- The worker will continue to make periodic follow-up contacts and to request evidence of ongoing reasonable efforts to sell; and

- The individual is still responsible for informing the worker promptly of any offers to buy and for showing that any offer refused was not reasonable.

10.5. Reasonable Efforts to Sell

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

10.6. Continuing Efforts to Sell

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

- List the property with an agent; or

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

10.7. Individual Must Accept Any Reasonable Offer

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

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

Example

When the worker contacted Mrs. Darwin on September 19 to verify her continuing effort to sell, Mrs. Darwin stated that she had just refused an offer of $6,000 as being too low. Mrs. Darwin said she has no proof that $6,000 was unreasonable; it was her opinion that it was too low. The current market value of the property is $8000. The worker determines that the offer was reasonable ($6,000 is more than two-thirds of $8,000) and that Mrs. Darwin is no longer making reasonable efforts to sell. As of October 1, the property is a countable resource

10.8. Verification of Efforts to Sell

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

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

Evaluate those efforts against criteria in Reasonable Effort to Sell Chapter F–8.1.

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

10.9. Supporting Evidence

Ask the individual to submit all appropriate proof such as:

10.9.1. Real Property

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

10.9.2. Personal Property

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

- Any other evidence of reasonable efforts to sell property.

10.10. Good Cause

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

10.10.1. Significance of Good Cause

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

- With good cause, failure to meet the criteria above means that the exclusion continues.

10.10.2. Examples of Good Cause

- **No Offer to Buy**

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

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

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

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

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

- **Incapacitating Illness or Injury**

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

- **Part-Owner Dies**

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

10.10.3. Verification

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

10.11. Follow-up Contacts

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

Contact the individual in order to:

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

Document:

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

10.11.1. Frequency of Contacts

Contact the owner at 3-month intervals.

Exception:

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

10.12. Individual Making Reasonable Efforts

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

10.13. Individual Not Making Reasonable Efforts

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

11. Undue Hardship Exclusion - Real Property

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

11.1. Undue Hardship

Undue hardship would result if such co-owner:

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

11.2. Allegation Of Loss Of Housing For Co-Owner

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

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

11.2.1. Required Statement From Resident Co-Owner

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

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

11.3. Hardship Determination

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

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

12. Agent Orange Payments

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

12.1. Exclusion:

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

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

12.2. Verification

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

13. Annuities

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

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

14. Austrian Social Insurance Payments

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

14.1. Exclusion:

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

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

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

14.2. Verification

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

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

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

15. Automobiles and Other Vehicles

Vehicles include but are not limited to cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and even animals. Vehicles are resources.

15.1. Exclusion:

One vehicle per applicant/recipient is excluded regardless of the value if it is used for transportation. Absent evidence to the contrary, assume a vehicle is used for transportation.

A vehicle that has been junked or that is used only as a recreational vehicle (e.g., a boat or plane used for pleasure) doesn't qualify for this exclusion. Its equity value is a countable resource.

15.1.1. Month of Application

One vehicle per applicant/recipient is excluded if it is used for transportation of the eligible individual/couple or a member of the eligible individual's/couple's household.

Note: A vehicle may be excluded for each member of an AU.

15.1.2. Ongoing Months

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

15.1.3. More Than One Vehicle Is Used For Transportation

If the eligible individual owns more than one vehicle (two for an AU of two) that is used for transportation, the total exclusion applies to the vehicle with the greater equity value.

15.1.4. Vehicle Is Temporarily Inoperable

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

15.2. Value

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

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

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

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

15.2.1. Rebuttal

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

15.3. Verification

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

16. Burial Contracts

A prepaid (or preneed) burial contract is an agreement whereby the buyer pays in advance for a burial that the seller agrees to furnish upon the death of the buyer or other designated individual. Prepaid burial contracts do not include burial insurance or burial trusts. See Burial Insurance Chapter E -18 and Burial Trusts Chapter E -20.

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

16.1. Contract Revocability

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

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

16.1.1. Virginia

Code of Virginia Section 54.1-2328 specifies that all burial contracts may be terminated within the first 3 days of execution. After 3 days, only the designated provider of services can be changed. The contracts are not salable.

16.1.1.1. First 3 Days

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

16.1.1.2. After 3 Days

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

16.1.2. Kentucky

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

16.1.3. North Carolina

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

16.1.4. Tennessee

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

16.2. Provider Places Funds in Trust

When an individual irrevocably contracts with a provider of burial services and the provider places the funds in trust, the contract becomes part of the trust and has no separate resource value. Use the information found in Burial Trusts, Chapter E -20 to evaluate the trust.

16.3. Conditions for Liquidation

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

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

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

16.4. Value

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

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

16.4.1. Rebuttal

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

16.5. Relationship To The Burial Space And Burial Fund Exclusions

16.5.1. Revocable Or Salable

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

16.5.2. Irrevocable And Not Salable

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

16.6. Verification

Obtain a copy of the contract.

17. Burial Funds

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

17.1. Exclusion

A maximum of $1,500 **each** may be excluded for:

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

17.1.1. Mandatory Reduction of Maximum Exclusion

The individual (or spouse) may not be entitled to the maximum exclusion. If the individual’s assets include any of the following, the values of those assets must be subtracted from the $1500 maximum. The remaining value of the exclusion, if any, may be used to exclude designated burial funds.

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

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

17.1.2. Burial Funds To Which The Burial Fund Exclusion May Be Applied

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

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

17.1.3. Appreciation

Any appreciation in the value of excluded burial funds is also excluded from resources (and from income), even if the total of the burial funds plus the appreciation exceeds $1,500. This includes interest earned by burial funds, if the interest is left to accumulate as part of the funds.

17.1.4. Recalculation of Burial Fund Exclusion

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

17.1.5. Burial Funds Must Be Kept Separate

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

17.1.6. Effective Date of Exclusion

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

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

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

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

17.2. Designation of Burial Funds

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

Burial funds may be designated as such by:

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

- A signed statement. The "Burial Resource Statement" form may be used. The signed statement must show:
  - The value and owner of the resources;
  - For whose burial the resources are set aside;
  - The form(s) in which the resources are held (burial contract, bank account, etc);
  - The date the individual first considered the funds set aside for the burial of the person specified;
  - Acknowledgement of the penalty clause; and
  - Acknowledgement of the reporting requirements.

17.2.1. Length of Designation

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

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

17.2.2. Redesignation of Funds After Misuse

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

17.3. Funds Used For Another Purpose

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

- Transferring excluded burial funds from one form to another (e.g., from a certificate of deposit to a burial contract) is **not** use for another purpose.
- Use of a burial fund as collateral for a loan is use for another purpose because the loan creates an encumbrance on the funds. Since the funds are not available for the individual's burial as long as they are encumbered, the funds cannot be considered set aside for the individual's burial. This is true even if the loan is used for burial purposes.

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

17.3.1. Penalty — Funds Used For Another Purpose

With the exception noted below, if an individual uses excluded burial funds for a purpose other than the burial arrangements of the individual or the individual's spouse for whom the funds were set aside, the amount of **excluded funds used** will be withheld from future AG benefits. Excluded funds include the excluded accumulated interest earned on the excluded funds.

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

Exception:

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

17.3.1.1. Computing the Penalty

Use the following procedure to compute and apply the penalty.

	Funds Used for Another Purpose **Computing the Penalty**
Steps	**Actions**
Step 1	**Determine the individual's countable resources as of the first moment of the first day of the month in which the funds were used for another purpose.** Do not apply the Burial Fund Exclusion to the burial fund from which the funds were taken.

Steps	**Funds Used for Another Purpose** **Computing the Penalty** **Actions**
Step 2	**Compare the total resources to the resource limit.** If the countable resources are equal to or less than the limit, there is no penalty. If the countable resources exceed the limit, there will be a penalty. Go to Step 3.
Step 3	**Determine the amount of excluded funds that were used. The penalty only applies to the use of excluded funds (including excluded interest).** If the fund included excluded and non-excluded funds, assume the funds were used in the following order: non-excluded interest, non-excluded originally designated amounts, excluded interest, excluded originally designated amounts. EXAMPLE – At initial application an individual designated $2,000 as a burial fund. The worker excluded $1,500 and counted $500. Over time interest was added to the account. The account grew to $2,200 as of April. The worker determined the amount of interest earned on the excluded funds was $150, and $50 on the non-excluded funds. The totals for April were $1,650 excluded and $550 non-excluded. The individual used $750 for a non-burial purpose in April. The worker determined that the $750 used consisted of $50 in non-excluded interest, $500 in non-excluded funds, $150 in excluded interest and $50 in originally designated excluded burial funds.
Step 4	**The penalty will equal the total of the excluded funds and excluded interest that were used.** EXAMPLE - Penalty for above example - A penalty of $200 applies ($150 excluded interest and $50 originally designated excluded funds.)

Steps	Funds Used for Another Purpose Computing the Penalty Actions
Step 5	**Apply the penalty as soon as administratively possible. An advance notice of action must be sent.** Compute the grant as normal and subtract the penalty amount from the final grant amount. If the penalty exceeds the amount of one month's grant apply the remainder of the penalty to the following month's grant. Continue this process until the full penalty is recovered. Reduction of the grant to zero due to the application of the penalty will not be a reason to close the case. If all other eligibility factors are met, the individual will continue to be enrolled as eligible for AG and Medicaid. No grant will be issued.

17.4. Life Insurance Designated as a Burial Fund

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

Increases in cash value that occur after the first date the policy is excluded are considered appreciation in the value of excluded burial funds. As appreciation the full cash value is excluded, even if the total exceeds $1,500.

17.5. Life Insurance Dividends

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

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

17.6. Verification

Obtain

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

18. Burial Insurance

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

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

18.1. Verification

Obtain a copy of the policy.

19. Burial Spaces

A burial space is a:

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

The term burial space 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);
- Arrangements for the opening and closing of the gravesite; and
- A contract for care and maintenance of the gravesite sometimes referred to as endowment or perpetual care.

Non-excluded burial space items are countable resources.

19.1. Exclusion

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

The burial space exclusion is in addition to the burial funds exclusion.

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

19.2. Individual's Immediate Family

The individual's immediate family includes his or her:

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

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

19.3. Held For

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

- Title to and/or possesses a burial space intended for the individual's use (e.g., has title to a burial plot or owns a burial urn stored in the basement for his or her own use); or
- A contract with a funeral service company for specified burial spaces for the individual's burial (i.e., an agreement which represents the individual's current right to the use of the items at the amount shown)

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

19.4. Verification:

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

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

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

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

20. Burial Trusts

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

When evaluating burial trusts, it is necessary to determine whether a burial trust was established with the individual's funds or funds that have been irrevocably paid to the funeral provider.

20.1. Burial Trusts Established With Funds That Have Been Irrevocably Paid To The Funeral Provider

Funds are considered to have been irrevocably paid to a funeral provider when:

- An individual irrevocably contracts with a provider of funeral goods and services for a funeral; and
- The individual funds the contract by prepaying for the goods and services; and
- The funeral provider subsequently places the funds in a trust; or
- The individual establishes an irrevocable trust, naming the funeral provider as the beneficiary.

SSI has ruled that, in these situations, the funds become the funeral provider's funds at the point the trust is established making the trust one that was created with the funeral director's funds, not the funds of the individual, a third party trust.

20.1.1. Value

The trust is a third party trust that designates the individual as the beneficiary. As the beneficiary, the individual does not have the right to revoke or direct the use of the trust principal for his/her support or maintenance. Therefore, the trust is a not a countable resource to the individual. See Trust Type A, Chapter E -65.

Note: When an individual irrevocably contracts with a provider of burial services and the provider places the funds in a trust, the contract becomes part of the trust and has no separate resource value. See Burial Contracts, Chapter E – 16.

20.1.2. Assistant Attorney General Review

These trusts do not have to be submitted to the AAG for review.

20.1.3. Verification

Obtain a copy of the trust documents to verify that the trust was established with the funeral provider's funds and a copy of the contract that specifies the goods and services that were purchased.

20.1.4. Relationship to the Burial Fund Exclusion

The value of burial fund items included in the contract must be used to reduce the available Burial Fund Exclusion amount. See Burial Funds, Chapter E – 17.

20.2. Burial Trusts Established With the Individual's or Spouse's Funds

A burial trust is determined to have been established with the individual's funds when:

- An individual does not enter into a pre-need funeral contract with a funeral provider, but establishes a burial trust with his/her own assets; or
- An individual enters into an irrevocable funeral contract with a funeral provider, but establishes a revocable trust to fund the contract; or
- An individual enters into a revocable funeral contract with a funeral provider, even if the funeral provider places the money in a trust.

20.2.1. Value

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

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

20.2.2. Verification

Follow verification guidelines in Trust Type A, Chapter E – 65 or Trust Type B, Chapter E – 66 as appropriate.

20.2.3. Review

If there is a question regarding the trust, documents may be submitted to the AG consultant for review.

21. Cash

Cash on hand is a resource.

21.1. Verification

Accept the individual's statement regarding the amount owned.

22. Certain Cash to Purchase Medical or Social Services

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

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

22.1. Exclusion

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

22.1.1. Exception

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

22.1.2. Services That Are Not Income

22.1.2.1. Medical Services

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

22.1.2.2. Cash Provided By A Governmental Medical Or Social Services Program

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

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

22.1.2.3. Cash Provided By A Nongovernmental Medical Or Social Services Organization For Medical Or Social Services

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

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

23. Certificates of Deposit

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

24. Checking and Savings Accounts

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

24.1. Value

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

24.2. Deposits of Income

The total of all funds included in the verified account balance that are identified as income for the month of evaluation must be subtracted from the ending balance. This may occur when a payer advance dates a check or a direct deposit is made early because the regular payment date falls on a weekend or holiday.

24.2.1. Allegation of Checks That Have Not Cleared the Bank

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

24.3. Ownership Of Account

24.3.1. Fiduciaries

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

24.3.2. Individual Accounts

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

24.3.3. Joint Accounts

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

24.3.4. Ownership Rebuttal

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

- Who owns the funds;
- Why there is a joint account;
- Who has made deposits to and withdrawals from the account; and how withdrawals have been spent.

24.3.4.1. Rebuttal Verification

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

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

24.3.4.2. Rebuttal Results

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

24.4. Right to Use for Support and Maintenance

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

24.4.1. Examples of Evidence to the Contrary

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

  An account is titled, "In trust for John Jones and Mary Smith, subject to sole order of John Jones, balance at death of either to belong to survivor." Since John alone has unrestricted access, none of the funds in the account could be considered Mary's resources unless John was her fiduciary. The full value of the account would be a resource to John.

- **Withdrawals Require Authorization of Third Party**

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

24.4.2. Examples of Restricted Use

- **Use Restricted by Court Order**

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

- **Special Purpose Accounts**

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

24.5. Verification

Obtain verification that shows

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

Verification of account balances can be obtained from:

- Bank statements and passbooks;
- Internet printouts from the financial institution's web site; and
- ATM transaction receipts and/or deposit/withdrawal slips.

25. Child Tax Credits (CTC)

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

25.1. Exclusion

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

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

25.2. Interest

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

25.3. Verification

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

- Use the individual's Federal income tax return or other documents in the individual's possession to verify the source, date(s), and amount(s) of such refund(s) or payment(s); and

- Obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the CTC refunds or payments.

26. Commingled Funds

26.1. Non-Burial Related Excluded Funds

Otherwise excludable funds must be identifiable in order to be excluded. Identifiability does not require that excluded funds be kept physically apart from other funds (e.g., in a separate bank account) but enough information must be presented to clearly identify which portion of the funds are from an excludable source.

26.2. Excluded Burial Funds

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

26.3. Interest

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

Example:

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

26.4. Determining The Excluded Portion

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

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

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

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

Record:

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

Examples*:*

One-Time Receipt and Deposit of Excluded Funds

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

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

Periodic Receipt and Deposit of Excluded Funds

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

- The individual withdraws $400. The remaining $100 is excluded.

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

27. Conservatorship Accounts

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

27.1. Assumption of Availability for Support and Maintenance

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

27.1.1. Obtain the Individual's Allegation

Obtain over the individual's signature an allegation regarding:

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

27.1.2. Evidence to the Contrary

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

- Restrictive language in the court order that established the account or in a subsequent court order;
- If the court has, at the individual's or his/her agent's request, restricted use of funds in the account to things other than the individual's support and maintenance, obtain the individual's allegation as to whether the restriction(s) can be removed by request or petition.

- If the restriction(s) can be removed at the individual's or agent's request or petition, determine that the funds are a resource.
- If the restriction(s) cannot be removed, the funds are not available and are not a countable resource.

- The court has repeatedly denied requests for withdrawals for the individual's support and maintenance.
  - Denial by the court of a request for withdrawal of funds does not necessarily mean that funds in the account are unavailable for the individual's support and maintenance. Evaluate the reasons for denial. If the court only disapproves requests for non-essential items, the funds are considered available and a resource for AG purposes.

27.2. Examples Procedures For Conservatorship Accounts:

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

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

- **Petition for Withdrawal of Funds Denied**

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

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

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

27.3. Verification

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

- The court order establishing the conservatorship and the account;
- Any account records showing withdrawals, deposits, and balances;
- Prior applications or petitions for withdrawal of funds (if applicable), including any correspondence or notices from the court responding to the applications or petitions; and
- Any other documents or evidence in the individual's possession pertaining to the conservatorship account.

28. Corporation for National and Community Service (CNCS) (Formerly ACTION) Payments

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

ACTION consisted of a number of volunteer services programs including:

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

28.1. Exclusion

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

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

28.2. Verification

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

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

29. Death Benefits

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

Examples of death benefits include:

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

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

29.1. Value of Resource

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

29.2. Exclusion

The portion of death benefits an individual will use to pay the deceased's last illness and burial expenses are not a resource for **one calendar month** following

the month of receipt. If retained until the first moment of the second calendar month following receipt, death benefits are resources.

29.2.1. Exception — Bills Already Paid

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

29.2.2. Deductible Expenses

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

29.2.3. Verifying Expenses

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

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

29.3. Verification of Benefits

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

30. Disaster Assistance

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

30.1. Exclusion

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

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

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

30.2. Interest

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

30.3. Verification

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

31. Earned Income Tax Credits

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

31.1. Exclusion

Any unspent Federal tax refund or payment made by an employer related to an EITC is excluded from resources for the 9 calendar months following the month

the refund or payment is received. If the funds are retained beyond nine months, they are countable resources as of the first day of the tenth month.

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

31.2. Interest

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

31.3. Verification

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

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

32. Educational Funds - Grants, Scholarships, Fellowships, and Gifts

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

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

32.1. Title IV of HEA or BIA Involvement

Examples of HEA Title IV Programs:

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

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

32.1.1. Exclusion

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

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

32.1.2. Interest and Dividends

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

32.1.3. Verification

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

32.2. Other Grants, Scholarships, Fellowships, and Gifts

32.2.1. Exclusion

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

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

32.2.2. The Non-Excluded Portions

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

32.2.3. Excluded Funds Not Spent

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

32.2.4. Verification

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

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

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

33. Food Stamps

The Food Stamp Program is a nationwide food supplementation program.

33.1. Exclusion

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

33.2. Verification

Accept an individual's allegation of receipt.

34. Gifts Of Travel Tickets

34.1. Domestic Travel Tickets

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

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

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

34.1.1. Converted to Cash

If the tickets are converted to cash, the amount received is income in the month the ticket was converted to cash. See Gift of Domestic Travel Ticket Converted to Cash, Chapter I – 27.1.2

34.2. Verification

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

34.3. Non-Domestic Travel Tickets

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

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

34.3.1. Verification

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

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

35. Home Property

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

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

35.1. Exclusion

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

- The alleged home is the individual's principal place of residence;
- The individual continues to live there;
- The individual has left the home but states his/her intent to return to the home;
- A spouse or dependent relative of the individual continues to live there while the individual is living in an ALF or is in AFCH; or

- Its sale would cause undue hardship, due to loss of housing, to a co-owner of the property.

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

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

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

35.3. Indication of More than One Residence

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

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

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

35.4. Ownership

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

35.4.1. Verification

35.4.1.1. Real Property Ownership:

- Tax assessment notice;
- Recent tax bill;
- Current mortgage statement;
- Deed;

- Report of title search;
- Evidence of heirship in an unprobated estate (e.g., receipt of income from the property, a will, or evidence of relationship recognizable under State intestate distribution laws in cases where the home is unprobated property).

35.4.1.2. Personal Property Ownership (E.G., A Mobile Home):

- Title
- Current registration

35.4.1.3. Life Estate Or Similar Property Rights:

- Deed
- Will
- Other legal document

35.5. Evidence Indicates Non-adjoining Property

35.5.1. Individual Agrees With Evidence

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

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

35.5.2. Individual Disagrees With Evidence

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

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

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

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

35.5.2.1. Combined or Single Holding for Tax Assessment

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

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

35.5.2.2. More Than Single Holding for Tax Assessment

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

35.6. Absences From The Home

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

- Whether the individual intends to return to the home; and
- If not, whether the sale of the home would cause undue hardship due to loss of housing to a co-owner.

35.6.1. Dependent Relative

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

- Cousin; or
- In-law.

35.6.1.1. Dependency Verification

Obtain a signed statement from the individual as to:

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

Absent evidence to the contrary, accept the allegations.

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

35.6.2. Intent To Return Home Development

Obtain a signed statement from the individual as to:

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

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

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

35.6.2.1. Self - Contradictory Statement

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

Examples of self-contradictory statements:

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

"I intend to go home but I also want to stay here."

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

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

35.6.2.2. Factors Not to Consider

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

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

36. Home Replacement Funds

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

36.1. Exclusion

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

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

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

36.1.1. Interest

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

36.2. Explanation To Individual

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

36.3. Statement Of Intent

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

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

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

36.4. Proceeds

36.4.1. If Paid in a Lump Sum

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

36.4.2. If Paid in Installments

The proceeds consist of:

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

36.4.3. Verifying Proceeds of Sale

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

36.4.4. Allowable Uses Of Proceeds

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

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

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

36.4.5. Timely Use Of Proceeds

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

36.4.6. Proceeds Not Used Timely

- **Lump Sum**

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

- **Installment Payments**

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

36.5. Verification

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

36.6. Proceeds Not Used To Replace Home

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

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

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

37. Household Goods and Personal Effects

37.1. Household Goods Are:

- Items of personal property, found in or near the home, that are used on a regular basis; and
- Items needed by the householder for maintenance, use and occupancy of the premises as a home.

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

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

37.2. Personal Effects Are:

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

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

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

37.3. Exclusion

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

37.4. Verification

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

38. Indian Lands, Restricted Allotted

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

38.1. Exclusion

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

38.2. Verification

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

- Obtain a copy of any document or documents that might identify it as such; and/or

- Verify the allegation with the appropriate Indian agency.

39. Inheritances and Unprobated Estates

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

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

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

39.1. Date of Receipt

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

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

39.2. Unprobated Estate

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

- Is an heir or relative of the deceased; or
- Receives any income from the property; or

- Under State intestacy laws, has acquired rights in the property due to the death of the deceased.

39.3. Ownership Interest

There is an ownership interest in an unprobated estate if:

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

39.4. Status as a Resource

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

39.5. Value of Resource

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

39.6. Verification

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

- An inheritance or relationship document (or a signed statement alleging a relationship);
- Evidence of income from the property;

- Individual's signed statement concerning his/her use of the property and whether there is contest of any factor; or
- Other evidence showing the right of inheritance exists, and
- If countable, documents verifying the value the property.

40. Japanese-American and Aleutian Restitution Payments

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

40.1. Exclusion

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

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

40.2. Interest

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

40.3. Verification

40.3.1. U.S.

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

Office of Redress Administration
U.S. Department of Justice
P.O. Box 66260
Washington, D.C. 20035-6260

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

40.3.2. Canada

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

41. Life Estate And Remainder Interest

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

41.1. Life Estates (Without Powers)

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

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

41.1.1. Owner Can Do

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

41.1.2. Owner Cannot Do

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

41.1.3. Value of Life Estate

- A life estate in home property is an excluded resource and valuation is not necessary. See Home Property, Chapter E - 35.

- Evaluate all other life estates as Non-Home Real Property and develop ownership and CMV value per Chapter E - 49.

- Using the Life Estate column of the Unisex Life Estate or Remainder Table (Chapter E – 41.5), multiply the CMV of the property by the life estate interest decimal that corresponds to the life estate owner's age. The result is the resource value of the life estate.

41.2. Life Estates With Powers

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

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

41.3. Remainder Interests

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

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

41.3.1. Value of Remainder Interest

- The remainder interest is considered ownership of Non-Home Real Property. Develop ownership and CMV value per Chapter E - 49.

- Multiply the CMV of the property by the decimal figure shown in the "Remainder" column adjacent to the **life estate holder's** age in the **Unisex Life Estate or Remainder Table**. The result is the resource value of the remainder interest.

41.4. Verification

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

- Deed,
- Will,
- Other legal document

41.5. Unisex Life Estate Or Remainder Table

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
0	.97188	.02812	**55**	.80046	.19954
1	.98988	.01012	**56**	.79006	.20994
2	.99017	.00983	**57**	.77931	.22069
3	.99008	.00992	**58**	.76822	.23178
4	.98981	.01019	**59**	.75675	.24325
5	.98938	.01062	**60**	.74491	.25509
6	.98884	.01116	**61**	.73267	.26733
7	.98822	.01178	**62**	.72002	.27998
8	.98748	.01252	**63**	.70696	.29304
9	.98663	.01337	**64**	.69352	.30648
10	.98565	.01435	**65**	.67970	.32030
11	.98453	.01547	**66**	.66551	.33449

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
12	.98329	.01671	**67**	.65098	.34902
13	.98198	.01802	**68**	.63610	.36390
14	.98066	.01934	**69**	.62086	.37914
15	.97937	.02063	**70**	.60522	.39478
16	.97815	.02185	**71**	.58914	.41086
17	.97700	.02300	**72**	.57261	.42739
18	.97590	.02410	**73**	.55571	.44429
19	.97480	.02520	**74**	.53862	.46138
20	.97365	.02635	**75**	.52149	.47851
21	.97245	.02755	**76**	.50441	.49559
22	.97120	.02880	**77**	.48742	.51258
23	.96986	.03014	**78**	.47049	.52951
24	.96841	.03159	**79**	.45357	.54643
25	.96678	.03322	**80**	.43659	.56341
26	.96495	.03505	**81**	.41967	.58033
27	.96290	.03710	**82**	.40295	.59705
28	.96062	.03938	**83**	.38642	.61358

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
29	.95813	.04187	**84**	.36998	.63002
30	.95543	.04457	**85**	.35359	.64641
31	.95254	.04746	**86**	.33764	.66236
32	.94942	.05058	**87**	.32262	.67738
33	.94608	.05392	**88**	.30859	.69141
34	.94250	.05750	**89**	.29526	.70474
35	.93868	.06132	**90**	.28221	.71779
36	.93460	.06540	**91**	.26955	.73045
37	.93026	.06974	**92**	.25771	.74229
38	.92567	.07433	**93**	.24692	.75308
39	.92083	.07917	**94**	.23728	.76272
40	.91571	.08429	**95**	.22887	.77113
41	.91030	.08970	**96**	.22181	.77819
42	.90457	.09543	**97**	.21550	.78450
43	.89855	.10145	**98**	.21000	.79000
44	.89221	.10779	**99**	.20486	.79514
45	.88558	.11442	**100**	.19975	.80025

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
46	.87863	.12137	**101**	.19532	.80468
47	.87137	.12863	**102**	.19054	.80946
48	.86374	.13626	**103**	.18437	.81563
49	.85578	.14422	**104**	.17856	.82144
50	.84743	.15257	**105**	.16962	.83038
51	.83674	.16126	**106**	.15488	.84512
52	.82969	.17031	**107**	.13409	.86591
53	.82028	.17972	**108**	.10068	.89932
54	.81054	.18946	**109**	.04545	.95455

Citations:
26 CFR 20.2031-7, 49 Federal Register
Vol. 49 No. 93/5-11-84

42. Life Insurance Policies

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

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

42.1. Value

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

42.2. Exclusion

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

42.2.1. Relation to Burial Fund Exclusion

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

42.3. Face Value

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

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

42.4. Cash Surrender Value

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

42.5. Life Insurance Dividends

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

42.5.1. Additions

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

42.5.2. Accumulations

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

42.5.2.1. Resource Value

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

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

42.6. Accelerated Life Insurance Payments

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

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

42.6.1. Resource Value

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

42.7. Verification

Ask the individual to submit:

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

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

43. Loans

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

- An informal loan is a loan between individuals who are not in the business of lending money or providing credit. An informal loan can be oral or written. An informal loan is "written" when the parties to the loan commit to writing the terms of their agreement.
- A formal (e.g., commercial) loan is a loan between an individual and an entity that is in the business of lending money or providing credit.

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

43.1. Determining When A Loan Counts As A Resource

43.1.1. Eligible Individual Is The Borrower - All Loans

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

43.1.2. Eligible Individual Is The Lender

Assume that the bona fide loan agreement is negotiable and is a resource, unless the lender raises questions about the negotiability of the agreement and wants to rebut this assumption. The agreement is counted as a resource starting in the month after the month that the lender provides the proceeds to the borrower.

43.1.2.1. Value

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

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

43.1.2.1.1. Rebuttal Rights

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

- Evidence of a legal bar to the sale of the agreement; or
- An estimate from a knowledgeable source, showing that the CMV of the agreement is less than its outstanding principal balance.

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

43.2. Negotiable Agreement

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

43.3. Bona Fide Agreement

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

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

- **Enforceable Under State Law**

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

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

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

- **Acknowledgement of an Obligation to Repay**

  The obligation to repay must be acknowledged by both the lender and the borrower for a bona fide loan to exist. When money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan for AG purposes.

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

- **Plan for Repayment**

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

- **Repayment Plan Must be Feasible**

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

43.4. Verification

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

43.4.1. Forms

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

- The Statement of Funds You Provided to Another form is a questionnaire that the lender completes. Send the form and a cover letter that explains why the information is needed to the lender for completion.
- The Statement of Funds You Received form is a form that the borrower completes. Send a cover letter and the form to the borrower for completion.

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

44. Low Income Energy Assistance

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

44.1. Exclusion

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

44.2. Verification

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

45. Municipal, Corporate and Government Bonds

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

- **Municipal Bond**

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

- **Corporate Bond**

  A corporate bond is the obligation of a private corporation.

- **Government Bond**

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

45.1. Value

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

45.2. Verification

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

46. Mutual Funds

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

47. Nazi Persecution, Payments to Victims of

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

47.1. Exclusion

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

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

47.1.1. Interest

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

47.2. Verification

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

48. Netherlands WUV Payments to Victims of Persecution

The Netherlands' Act on Benefits for Victims of Persecution 1940–1945, WUV (Wet Uitkering 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.

48.1. Exclusion

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

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

48.1.1. Interest

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

48.2. Verification

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

Consulate General of the Netherlands
Attn: WUV Department
Suite 509
3460 Wilshire Blvd.
Los Angeles, CA 90010-2270
(213)480-1471 (9:00 - 12:30 Pacific Time)

49. Non-Home Real Property

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

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

- **Mineral Rights**

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

- **Timber Rights**

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

- **Easements**

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

- **Leaseholds**

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

- **Water Rights**

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

- **Life Estates**

  See Life Estates/Remainder Interests, Chapter E - 41.

49.1. Ownership

49.1.1. Sole Ownership

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

49.1.2. Shared Ownership

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

- A tax assessment notice or bill;
- A current mortgage statement;
- A deed;
- A report of title search;
- Wills, court records, or other documentation of inheritance.

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

49.1.3. Ownership of a Leasehold

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

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

Note: A leasehold does not create a life estate in Virginia.

49.1.4. 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.

49.1.5. Ownership of Mineral Rights Only

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

49.2. Current Market Value

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

49.2.1. Tax Assessment Notice

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

- The notice is more than a year old based on its date of issue (unless it specifies that it covers more than one year and it is no older than the number of years it covers);
- The notice pertains to a special purpose assessment (unless it also provides a fair market value assessment, which can be used);
- The assessment is under appeal;
- The assessment uses a fixed rate per acre method based on land usage, such as agricultural or industrial. (This does not refer to assessments where conditions dictate similar taxes for similar types of land, such as desert, swamp, landfills, etc.); or
- The notice provides either no assessment ratio or only a range, e.g., between 25 and 50 percent (unless the individual would be ineligible using even the top of the range).

49.2.1.1. How to Use

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

49.2.2. Knowledgeable Source Estimate

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

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

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

- The name of the person providing the estimate;
- The name, address and telephone number of the business or agency for whom the person providing the estimate works;
- The basis for the estimate, to include such things as a description of the property and its condition and, where appropriate, the value of similar property in the same area; and

- The period to which the estimate applies (which should correspond to the period for which it is being requested).

49.2.2.1. Knowledgeable Sources

Knowledgeable sources include but are not limited to:

- Real estate brokers;
- The local office of the Farmer's Home Administration (for rural land);
- The local office of the Agricultural Stabilization and Conservation Service (for rural land);
- Banks, savings and loan associations, mortgage companies, and similar lending institutions;
- An official of the local property tax jurisdiction (be sure to obtain the individual's estimate rather than the office's assessment); and
- The County Agricultural Extension Service.

49.2.3. CMV Rebuttals

If the individual disagrees with CMV, and the difference is material to eligibility, ask the individual to provide additional evidence such as

- Evidence that the individual's ownership interest in the property is worth less than the total value of the property divided by the number of owners; and
- Evidence from knowledgeable sources.

49.3. Equity Value

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

Have the individual provide a copy of the note or agreement establishing the encumbrance and the verification of the outstanding principal balance.

49.4. Foreign Property

Foreign property is subject to the same rules as domestic property.

49.4.1. Effect of Legal Restrictions

- If evidence of a legal bar to the sale of property, or to removing the proceeds of a sale from the country exists, the property is not a resource. CMV development is unnecessary.

- If a legal restriction limits the **amount** an individual can remove from the country, that limit is the maximum value the property can have as a resource.

- If a legal restriction affects when the proceeds of a sale can be removed from the country (e.g., once a year), such proceeds are income when they can be removed, and are not resources before then.

49.4.1.1. Obtaining Evidence of Legal Bars

Acceptable sources of information are a consulate, mission, or embassy of the country, or the U.S. Department of State. The number for the General Information Desk at State is (202) 647-4000.

49.4.2. Verification

If an individual does not have the documents necessary to support a determination of ownership and CMV or equity value, he/she may be able to write for them, directly or with the aid of a local nationality organization.

The request should include the following types of information:

- A detailed description of the property, its location, and any other background information the individual can provide;

- The specific information needed, e.g., CMV, the details of any restrictions on removing the proceeds of a sale from the country, etc.; and

- The source(s) of the necessary documents or information, to the extent known.

50. North Vietnam, Payments to Certain Persons Captured and Interned by

Section 606 of P.L. 105-78 provides that payments will be made to certain individuals who were captured and interned by North Vietnam. Such payments are made by DOD pursuant to section 657 of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104-201).

If the individual who was captured and interned by North Vietnam is deceased, payment may be made to a surviving spouse or, if none, to surviving children of any age (including biological and adoptive children) of the decedent, in equal shares.

The amount payable for each captured and interned individual is a one-time payment of $40,000 to $50,000.

50.1. Exclusion

Payments to such an individual, individual's surviving spouse or child of any age are excluded from resources.

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

50.2. Interest

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

50.3. Verification

Use documents in the individual's possession to verify the nature of these payments. The award letter will state that the payments are made under section 657 of the National Defense Authorization Act. The award letter will be signed by Carl Witfchonke, Chairman of the Vietnamese Compensation Commission.

If such documents are not available, suggest the individual contact the appropriate Military Finance Center.

51. Other Property Rights

See Non-Home Real Property, Chapter E – 49.

52. Promissory Notes and Property Agreements

Promissory Note

A promissory note is a written, unconditional agreement whereby one party promises to pay a specified sum of money at a specified time (or on demand) to another party. It may be given in return for goods, money loaned, or services rendered.

Property Agreement

A property agreement is a pledge or security of particular property for the payment of a debt or the performance of some other obligation within a specified period. Property agreements on real estate generally are referred to as mortgages but also may be called real estate or land contracts, contracts for deed, deeds of trust, and so on. Personal property agreements (e.g., pledges of crops, fixtures, inventory, etc.) are commonly known as chattel mortgages.

Negotiable Agreement

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

52.1. For the Buyer (Debtor)

For the buyer of the property (debtor), the promissory note is not a resource. However, the property purchased may be a countable resource in the month following the month of the transaction.

52.2. For the Seller (Creditor)

For the owner of the agreement (the seller), a promissory note or property agreement is a resource. The property itself is not a resource because the seller cannot legally convert it to cash while it is encumbered by the agreement.

52.2.1. Property Agreements Prior to Settlement

An individual who enters into a contract for the sale of real estate owns two items until the settlement of the sale is completed: the real estate and the contract. The real estate is not a resource because the seller cannot legally convert it to cash while it is encumbered by the contract. The real estate contract is a property agreement that is a resource to the seller.

52.2.2. Resource Value of the Agreement

Assume that the resource value of a promissory note or property agreement is its outstanding principal balance unless the individual furnishes evidence that it has a lower cash value.

52.2.2.1. Rebuttal

Inform the individual that the outstanding principal balance will be used in determining resources unless he or she submits:

- Evidence of a legal bar to the sale of the agreement; or
- An estimate from a knowledgeable source, showing that the CMV of the agreement is less than its outstanding principal balance.

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

52.2.3. Verification

- Obtain a copy of the agreement. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
- Obtain evidence of the outstanding principal balance. The outstanding principal balance is the balance in the month for which a determination is being made. An amortization schedule can be used to determine the outstanding principal balance and the interest income if the terms of the agreement are known (e.g., interest rate, payment period, original principal amount, etc.).

53. Radiation Exposure Compensation Trust Fund

Fallout emitted during the U.S. Government's atmospheric nuclear testing in Nevada during the 1950s and during a brief period in 1962 exposed some individuals to doses of radiation that put their health at risk. In addition, some individuals employed in uranium mines during the period January 1, 1947 to December 31, 1971 were exposed to large doses of radiation. P.L. 101-426 created the Radiation Exposure Compensation Trust

Fund (RECTF) and authorizes the Department of Justice (DOJ) to make compensation payments to individuals (or their survivors) that were found to have contracted certain diseases after exposure. The payments will be made as a one-time lump sum. Generally, the exposure occurred in parts of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming.

53.1. Exclusion

Unspent payments received from the RECTF are excluded from resources.

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

53.2. Interest

Interest earned on unspent RECTF payments is excluded income.

53.3. Verification

Use documents in the individual's possession to verify that the payment is from the RECTF. Accept the individuals signed allegation of the amount and date of receipt if it is not evident from the documents.

If the individual has no documents or there is reason to question the source of the payments, obtain verification from:

The Radiation Exposure Compensation Program
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

Use the individual's name and Social Security number (SSN) as identifying information when writing to the DOJ. When writing on behalf of a survivor, also include the survivor's name and SSN.

54. Relocation Assistance

Relocation assistance is provided to persons displaced by projects which acquire real property. The following types of reimbursement, allowances, and help are provided:

- Moving expenses;

- Reimbursement for losses of tangible property;
- Expenses of looking for a business or farm;
- Displacement allowances;
- Amounts required to replace a dwelling which exceed the agency's acquisition cost for the prior dwelling;
- Compensation for increased interest costs and other debt service costs of replacement dwelling (if it is encumbered by a mortgage);
- Expenses for closing costs (but not prepaid expenses) on replacement dwelling (if it is encumbered by a mortgage);
- Rental expenses for displaced tenants;
- Amounts for down payments on replacement housing for tenants who decide to buy;
- Mortgage insurance through federal programs with waiver of requirements of age, physical condition, personal characteristics, etc., which borrowers must usually meet; and
- Direct provision of replacement housing (as a last resort).

54.1. Federal Relocation Assistance Exclusion

Federal relocation assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (subchapter II, chapter 61, title 42 of the U.S. Code) is excluded from resources. **There is no time limit on the exclusion for federal relocation assistance.**

This exclusion applies to relocation assistance provided to persons displaced by any Federal or federally-assisted project.

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

54.1.1. Exception: Revenue Sharing

If the only Federal assistance is revenue sharing, this exclusion does not apply.

54.1.2. Interest

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision.

54.2. State Or Local Relocation Assistance Exclusion

Unspent relocation assistance payments from a State or local government are **excluded from resources for 9 months**.

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

54.2.1. Interest

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision.

54.3. Verification

Verify that the project which displaces the individual has governmental involvement. This can be done by using documents in the individual's possession, or contacting the provider or entity involved in the project. Once verified, accept the individual's signed statement of the assistance.

55. Repair/Replacement of Lost, Damaged or Stolen Resources Payments

Individuals may receive payments to repair or replace items damaged or lost as the result of a catastrophe. Funds received to repair or replace non-excluded resources or personal injury is income in the month received and, if retained, a resource the month following the month of receipt. Funds received to repair or replace excluded resources are excluded as income and excluded as a resource for 9 months.

55.1. Exclusion

Cash and in-kind receipts from any source for the replacement or repair of lost, damaged, or stolen **excluded** resources are themselves not treated as resources for 9 months from the date of their receipt. The exclusion period may be extended if good cause exists. Retained funds become countable resources the month following the end of the exclusion period.

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

55.1.1. Interest

Interest earned by these excluded funds is not counted as income and resources for the period during which the funds themselves are not considered resources.

55.1.2. 9-Month Extension for Good Cause

The initial 9-month period can be extended for a reasonable period up to an additional 9 months if the individual shows good cause why repair or replacement was not possible during the first 9 months.

55.1.3. Presidential-Declared Major Disasters

For presidential declared major disasters, the 18-month period (9-month initial period plus 9-month good cause extension) exclusion period can be extended for up to an additional 12 months for a maximum exclusion period of 30 months if:

- The excluded resource is geographically within the disaster area as defined in the presidential order;
- The individual intends to repair or replace the excluded resource; and
- The individual presents evidence of good cause, as defined above.

This extension should not be granted automatically, but only after a thorough examination of the evidence of good cause.

55.1.4. Good Cause

Good cause is present if circumstances beyond the individual's control:

- Prevent repair or replacement of the lost, damaged, or stolen property; or
- Keep the individual from contracting for such repair or replacement.

Example - Good Cause

An individual's home was destroyed by a severe hurricane. Due to the extent of the devastation to the area, there were not a sufficient number of contractors available to rebuild the house. There were so many homes to rebuild and repair that the contractors could not estimate when they could begin to rebuild the recipient's home and could not accept any new contracts at the time.

55.1.4.1. Good Cause Claimed

If payment(s) remain unspent, but the individual alleges:

- Good cause; and
- The intent to use the funds for their designated repairs or replacement.

Obtain and evaluate

- Evidence of the amount of payment(s) not treated as resources that are still unspent ,
- The individual’s signed statement regarding intent and
- Evidence to substantiate the allegation of good cause, (e.g., letters from contractors, etc).

55.1.4.2. Intent to Use

An individual cannot qualify for an extension of the initial 9-month period unless he/she intends to use the funds for their designated purpose, i.e., repair or replacement of excluded resources.

55.1.4.2.1. Change of Intent During Extension

The good cause extension will terminate as of the date of the change of intent. The funds previously not treated as resources will be taken into account in determining resources for the following month.

55.1.4.3. Good Cause Not Established

If the evidence does not establish good cause, document your determination and include the unspent payment(s) in determining countable resources.

55.1.4.4. Good Cause Established

If the evidence shows good cause, discuss with the individual how much additional time is needed and why. On the basis of that discussion, extend the initial 9-month period for a reasonable period up to an additional 9 months (or, after an initial 9-month good cause extension, up to an additional 12 months in the case of victims of presidential-declared disasters),

55.2. Verification

Obtain a copy of any evidence the individual has that shows the source, value, date(s), and intended purpose of the items received, including whether any cash received is for a purpose other than the replacement or repair of the lost, damaged, or stolen (and excluded) resource.

56. Retirement Funds

Retirement funds are annuities or work- related plans for providing income later in life or when employment ends (e.g., pension, disability, or retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans. Also, depending on the requirements established by the employer, some profit sharing plans may qualify as retirement funds.

This section applies to all items that meet the above definition of retirement funds. Retirement funds may be evaluated as a resource or as income.

56.1. Resource Or Income

The treatment of retirement funds is based on the availability of the funds and if available, the payout options. The funds may not be available, may be paid out in periodic payments or may be available in a lump sum payment.

Unavailable funds are neither income nor a resource. If the funds are distributed in periodic payments, the payments are income in the month received. If the funds can be distributed as a lumps sum, the value of the fund is a resource.

56.1.1. Periodic Payments

Periodic retirement benefits are payments made to an individual at some regular interval (e.g., monthly). If the individual receives periodic payments, the payments are evaluated as unearned income in the month received. The balance of the retirement funds is not a resource.

If the individual has a choice between periodic benefits and a lump sum, he/she must choose the periodic benefits.

56.1.1.1. Requirement To Apply

If an individual is eligible for periodic retirement benefits, he/she must apply for those benefits. If he/she fails to apply, he/she does not meet the non-financial requirement to apply for other benefits and will be ineligible for AG. (Application for Other Benefits, Chapter C - 10)

Note: The individual does not have to pursue withdrawal if the funds are only available in a lump sum payment.

56.1.2. Lump Sum Payments

A lump sum payment is a payment that is issued once and includes the full amount of money that an individual can withdraw from the fund.

A retirement fund owned by an eligible individual is a resource if periodic payments have been denied and he/she has the option of withdrawing a lump sum. Withdrawal of the lump sum is not income but is a conversion of a resource.

56.2. Termination of Employment

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

56.3. Fund Not Immediately Available

If the retirement funds are unavailable they are not a resource. They become a resource and are counted in the month following the month the funds become available for withdrawal.

A delay in payment for reasons beyond the individual's control (e.g., an organization's processing time) does not mean that the fund is not a resource since the individual is legally able to obtain the money. It is a non-liquid resource.

56.4. Value

The value of a retirement fund is the amount of money that an individual can currently withdraw from the fund. If there is a penalty for early withdrawal, the fund's value is the amount available to an individual after penalty deduction. Any taxes due are not deductible in determining the fund's value.

56.5. Verification

Verify the source of the benefits, the availability of funds, the payment options, the approval/denial of a request for periodic payments, the amount of available funds, and the amount of an early withdrawal penalty, if any.

56.6. Excess Resources/Conditional Benefits

An individual with excess non-liquid resources, such as retirement funds, may qualify for Conditional Benefits while awaiting payment. See Conditional Benefits, Chapter F.

57. Retroactive RSDI and SSI Payments (Title II and Title XVI)

Retroactive RSDI benefits are those issued in any month that is **more than a month** after the calendar month for which they are paid. Thus, RSDI benefits for January that are issued in February are not retroactive, but RSDI benefits for January that are issued in March are retroactive.

Retroactive SSI benefits are SSI benefits issued in any month after the calendar month for which they are paid. Thus, benefits for January that are issued in February are retroactive.

Note: General Relief Interim Assistance Reimbursement (IAR)

When SSA reimburses a local department of social services under an IAR agreement and the agency refunds a portion of this to the individual, what the individual receives is treated as a retroactive SSI payment.

57.1. Exclusion

The unspent portion of retroactive SSI and RSDI benefits is excluded from resources for the 9 calendar months following the month in which the individual receives the benefits. The exclusion begins with the month after the individual receives the payment.

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

57.1.1. Written Notice

The individual must be given a written notice of this exclusion and its limited duration.

57.2. Verification

Absent evidence to the contrary, accept the individual's allegation as to when he/she received a retroactive SSI or RSDI payment.

Obtain evidence of the amount of retroactive payment, such as a copy of a notice to the recipient, a systems record of the payment (e.g., payment history through SVES), etc.

58. Reverse Mortgage

A reverse mortgage is a loan against the equity in a home that provides tax-free cash advances, but requires no payments during the term of the loan. Since there are no monthly payments during the life of the loan, the balance grows larger and the equity value in the home gets smaller.

The mortgage contract itself is not a resource to the borrower. The payments the individual receives from the reverse mortgage are proceeds from a bona fide loan. The proceeds are neither income nor a resource in the month received. If the funds are retained beyond the month of receipt, they are a countable resource.

Example: Eleanor Jones, an AG eligible individual who owns her home, enters into a mortgage contract with a local bank. Under this contract, the bank provides her with monthly payments which do not have to be repaid as long as she lives in the home. These payments are actually a loan against her equity in the home and must be repaid when she dies, sells the home, or moves.

Analysis: Since Ms. Jones is the borrower, the mortgage contract itself is not a resource to her. Since she intends to return to the home, it continues to be excluded from resource counting. The payments she receives from the reverse mortgage are loan proceeds so they are not counted as income.

58.1. Verification

Obtain a copy of the mortgage contract.

59. Ricky Ray Hemophilia Relief Fund

The Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369 provided for a single payment of $100,000 from the Ricky Ray Hemophilia Relief Fund to:

- Certain individuals with a blood-clotting disorder who may have contracted an HIV infection from a blood transfusion, and
- Certain current and former spouses of these individuals who also contracted an HIV infection, and
- Certain children of these individuals who also contracted an HIV infection, and
- Certain surviving spouses, children, and parents of the above persons.

Payments from this program have ended but individuals may have retained some of the funds.

59.1. Exclusion

The Act provides for exclusion of payments from the Ricky Ray Hemophilia Relief Fund for AG eligibility/payment purposes. The Act also provides for exclusion of certain private payments.

The following payments, regardless of when received, are excluded from income and resources:

- Payments from the Ricky Ray Hemophilia Fund;
- Payments made from any fund established pursuant to a class settlement in the case of *Susan Walker v. Bayer Corporation, et al.*, 96-C-5024 (N.D. Ill); and
- Payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement mentioned above and that is signed by all parties in the case on or before the later of (1) December 31, 1997, or (2) the date that is 270 days after the date on which such release is first sent to persons (or the legal representative of such persons) to whom the payment is to be made.

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

59.2. Interest

Interest earned on retained funds is excluded from resources and income.

59.3. Verification

Obtain evidence of the payment.

If evidence is not available:

- For private payments, have the individual contact Metropolitan Life at 1-800-638-8787 for verification of the type and amount of the private payment.
- For payments from the Ricky Ray Hemophilia Relief Fund, have the individual contact the Ricky Ray Program Office at 1-888-496-0338 for verification of the type and amount of the Ricky Ray Hemophilia Relief Fund payment.

60. Stocks

Shares of stock represent ownership in a business corporation. Their value shifts with demand and may fluctuate widely. The following guidelines apply to all stocks, including preferred stocks, warrants and rights, and options to purchase stocks.

60.1. Ownership

Ask the individual to submit the stock certificate or most recent statement of account (including dividend account) from the firm that issued or is holding the stock. Document the file with a photocopy. If the individual does not have this documentation, have him/her obtain a statement from the firm.

Absent evidence to the contrary, assume that each owner owns an equal share of the value of the stock.

Absent evidence to the contrary, assume that the owner of shares of stock can sell them at will at current value.

60.2. Value — Publicly Traded Stocks

The CMV of a stock as of the first moment of a given month is its closing price on the last business day of the preceding month.

The values of over-the-counter stocks are shown on a “bid” and “asked” basis. For example, “18 bid, 19 asked.” Use the bid price as the CMV. The “par value” or “stated value” shown on some stock certificates is not the market value of the stock.

Note: Broker fees do not reduce the value that stocks have as resources**.**

60.2.1. Verification

The closing price of a stock on a given day can usually be found in the next day's regular or financial newspaper. If the value of a stock does not appear in the newspaper, the individual may use the internet or contact a local securities firm. Record the appropriate closing price and the source of the information.

60.3. Value — Stock That Is Not Publicly Traded

The stock of some corporations is held within close groups and traded very infrequently. The sale of such stock is often handled privately and subject to restrictions. As a rule, it cannot be converted to cash within 20 working days.

Note: Broker fees do not reduce the value that stocks have as resources.

60.3.1. Verification

The burden of proof for establishing the value of this kind of stock is on the individual. The preferred evidence is a letter or other written statement from the firm's accountants giving their best estimate of the stock's value and the basis for the estimate, e.g.:

- Most recent sale,
- Most recent offer from outsiders,
- CMV of assets less debts on them,
- Cessation of activity and sale of assets,
- Bankruptcy, etc.

61. Term Insurance

Term insurance is a death benefit plan and offers no cash values. It is not a resource and does not impact the Burial Fund Exclusion unless the policy is assigned to fund a pre-need funeral.

61.1. Verification

If the policy is assigned to fund a preneed funeral, obtain a copy of the policy. If not, accept the individual's statement.

62. Time Deposits (Certificates of Deposit and Savings Certificates)

A time deposit is a contract between an individual and a financial institution whereby the individual agrees to leave funds on deposit for a specified period (six months, two years, five years, etc.) and the financial institution agrees to pay interest at a specified rate for that period. Certificates of deposit (CDs) and savings certificates are common forms of time deposits.

62.1. Ownership

Assume that the person designated as owner in the account title owns all the funds in the account.

62.2. Value

The resource value of a time deposit at any given time is the amount the owner would receive upon withdrawing it at that time, excluding interest paid that month. Generally, this is:

- The amount originally deposited;
- Plus accrued interest for all but the current month;
- Minus any penalty specified on the certificate for early withdrawal.

62.2.1. Early Withdrawal

Withdrawal of a time deposit before the specified period expires incurs a penalty, which usually is imposed against the principal. This reduces its value as a resource. On rare occasions, the terms of a time deposit will prohibit early withdrawal altogether. If the owner cannot under any circumstances withdraw it before it matures, it is not a resource.

62.2.2. Interest

If the owner cannot withdraw any portion of the interest prior to the maturity date, the interest is not a resource.

62.3. Verification:

Verify the original amount deposited, interest accrued, and what penalty applies for early withdrawal. If the individual alleges that the deposit cannot be withdrawn prior to maturity under any circumstances, verify that. Obtain this information from the individual's copies of account records to the extent possible. Ask the individual to contact the financial institution to obtain information the individual's records do not provide.

63. Trusts

A trust is a legal arrangement whereby a property interest is held by one person for the benefit of another. A trust may or may not be a resource. The availability of the trust funds; whose funds were used to establish the trust; and when the trust was established are all factors in determining the trust's value as a resource.

Information concerning trusts is contained in four sections, Chapter E – 63, 64, 65, and 66. This section provides a chart to direct the worker to the guidelines that apply to the type of trust that is being evaluated. Section 64 provides definitions of terms commonly used in trusts. Section 65 contains Trust Type A and Section 66 contains Trust Type B. Each of those sections identify the types of trust to which they apply.

Use this chart to determine the appropriate guidelines to use to evaluate a specific trust.

If the trust was established…	**And contains…**	**Then follow instructions in:**
Before 1/1/00	1. Only the assets of the individual (or spouse) and all or a portion the of the assets were transferred into the trust **before** 1/1/00 This includes Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act and Pooled Trusts Established under Section 1917(d)(4)(C) of the Act	Trust Type A

If the trust was established…	**And contains…**	**Then follow instructions in:**
	2. Assets of a third party and assets of the individual when a portion of the individual's assets that were transferred into the trust were transferred before 1/1/00	Trust Type A
	3. Assets of a third party and assets of the individual when a portion of the individual's assets that were transferred into the trust were transferred on or after 1/1/00	Trust Type A for the third party's portion Trust Type B for the individual's portion
	4. Only the assets of third parties	Trust Type A
On or after 1/1/00	1. Only the assets of the individual (or spouse) and all assets were transferred into the trust on or after 1/1/00 This includes Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act and Pooled Trusts Established under Section 1917(d)(4)(C) of the Act	Trust Type B

If the trust was established…	And contains…	Then follow instructions in:
	2. Assets of a third party and the individual when all of the individual's assets that were transferred into the trust were transferred on or after 1/1/00	Trust Type B for the individual's portion Trust Type A for the third party's portion
	3. Only assets of third parties	Trust Type A

64. Trusts – General Information

This section provides definitions of terms commonly used in trusts.

64.1. Definitions

64.1.1. Asset

For purposes of this section, an **asset** is **any income or resource** of the individual or the individual's spouse including:

- Excluded income.
- Excluded resources.
- Any other payment or property to which the individual or individual's spouse is entitled, but does not receive or have access to because of action by:
    - The individual or individual's spouse;

- A person or entity (including a court)) with legal authority to act in place of, or on behalf of, the individual or spouse; or
- A person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse.

64.1.2. Exculpatory Clause

An exculpatory clause is one that attempts to exempt the trust from the applicability of these rules. For example, an exculpatory clause would be one that states, "Section 1613(e) of the Social Security Act does not apply to this trust." Such a statement has no effect as to whether these rules apply to the trust.

64.1.3. Grantor

A grantor (also called a settlor or trustor) is the individual who **provides the trust principal** (or corpus). Therefore, an individual may be a grantor if an agent, or other individual legally empowered to act on his/her behalf (e.g., a legal guardian, person acting under a power of attorney, or conservator), establishes the trust with funds or property that belong to the individual. Where more than one person provides property to the trust, there may be multiple grantors.

64.1.4. Spendthrift Clause or Spendthrift Trust

A **spendthrift clause or trust** prohibits anticipatory transfer of the beneficiary's interest in the trust income or principal. It means that, for example, if the beneficiary is entitled to $100 a month from the trust, the beneficiary cannot sell his/her right to receive the monthly payments to a third party for a lump sum. Because he does not have the right to sell his future benefits they are not countable as a resource.

64.1.5. Trust Beneficiary

A trust beneficiary is a person **for whose benefit** a trust exists. A beneficiary does not hold legal title to trust property but does have an equitable ownership interest in it. The beneficiary owns the benefits of the trust while the trustee holds the title and duties.

A beneficiary generally does not have the power to revoke a trust. However, the trust may be a resource to the beneficiary if he/she has the authority under the trust to direct the use of the trust principal. In such a case, the beneficiary's equitable ownership in the trust principal

and his/her ability to use it for support and maintenance means it **is** a resource.

The beneficiary's right to mandatory periodic payments **may be** a resource equal to the value of the anticipated string of payments unless a spendthrift clause or other language prohibits anticipation of payments.

64.1.6. Trustee

A trustee is a person or entity who holds legal title to property. Actions of a trustee are to be considered actions of a third party. The trustee is not an agent for the individual.

In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit. If the trustee has the legal authority to withdraw and use the trust principal for his/her **own** support and maintenance, the principal **is** the trustee's resource for AG purposes in the amount that can be used.

64.1.7. Trust Principal

The **principal** (corpus) of the trust is all property and other interests held by the trust, including accumulated earnings and any other additions, such as new deposits, to the trust after its establishment. Earnings or additions are not included in the principal in the month that they are credited or transferred into the trust because they are considered under income counting rules in that month.

64.2. Trust Evaluation

Trusts are complex legal arrangements involving State law and legal principles. A worker who has questions about a trust may seek guidance from the AG consultant.

64.2.1. Procedures

Forward a copy of the trust along with appropriate documents to the area AG consultant. Allow at least two weeks for a response.

The AG consultant can assist with determining if the

- Individual (applicant or recipient) is grantor, trustee, or beneficiary;

- Trust is revocable or irrevocable and, if so, whether the individual has authority to revoke the trust and to use the principal for his/her own support and maintenance;
- Individual can direct the use of the trust principal for his/her support and maintenance;
- Trust provides for payments to the individual or on his/her behalf;
- Trust contains a spendthrift clause that prohibits anticipation of any trust payments ; and
- Irrevocable trust established after 1/1/00 permits any payment under any circumstances to or for the benefit of the individual.

65. Trust Type A

Trusts may or may not be a resource. If an individual (applicant/recipient) **has legal authority to revoke** the trust and use the funds to meet his food, clothing or shelter needs, **or** if the individual **can direct the use of the trust principal** for his/her support and maintenance under the terms of the trust, the trust **principal is** a resource. If an individual **does not** have the legal authority to revoke the trust or direct the use of the trust assets, the trust principal **is not** the individual's resource for AG purposes.

This section applies to the following types of trusts.

65.1. Trusts Established With The Assets Of An Individual (Or Spouse) Prior to 1/1/00

Trusts established with the assets of an individual (or spouse), before 1/1/00 are evaluated using the guideline in this section, Trust Type A.

- A trust established by an individual prior to 1/1/00 but added to on or after 1/1/00 is still considered to be established prior to 1/1/00 and are evaluated using Trust Type A. (Additions to such a trust may be considered a transfer of resources. See Transfer To Trust Established With Individual's Resources, Chapter G – 10.)

- If the trust being evaluated is a burial trust, see Burial Trusts, Chapter E – 20.

65.1.1. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Social Security Act

A Special Needs Trust Established under Section 1917(d)(4)(A) of the Act is a type of trust established with an individual's assets. A special needs trust is one that:

- Contains the assets of an individual under age 65 and who is disabled; and

- Is established for the benefit of such individual by a parent, grandparent, legal guardian or a court; and

- Provides that the State will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State Medicaid plan.

65.1.2. Pooled Trusts Established under Section 1917(d)(4)(C) of the Social Security Act

A Pooled Trust Established under Section 1917(d)(4)(C) of the Act is a type of trust established with an individual's assets. A pooled trust is a trust containing the **assets of a disabled individual** which meets the following conditions:

- The pooled trust is established and maintained by a nonprofit association;

- Separate accounts are maintained for each beneficiary, but assets are pooled for investing and management purposes;

- Accounts are established solely for the benefit of the disabled individual;
- The account in the trust is established by the individual, a parent, grandparent, legal guardian, or a court; and
- The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the State the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a State Medicaid plan.

65.2. Trusts Established by Third Parties (Either Prior To or After 1/1/00)

A third-party trust is a trust established for the benefit of the individual with the assets of anyone other than the individual (or spouse). For example, a third-party trust may be established by a grandparent for a grandchild. Trusts established by someone other than the individual (or spouse) with the individual's (or spouse's) assets are not third party trusts. All third party trusts are evaluated using this section.

- If at any point, an individual's assets are added to a third party trust, the individual's portion of the trust must be evaluated under Chapter E – 65.1 if the funds were added prior to 1-1-00 or under Trust Type B, Chapter E – 66 if the individual's funds were added after 1-1-00.
- Burial trusts established with funds that have been irrevocably paid to a funeral provider are third party trusts. Evaluate this type of third party trust based on information in Burial Trusts, Chapter E – 20.

65.3. Trust Type A Procedures

Use the following procedures to evaluate trusts established prior to 1-1-2000 and third party trusts. Detailed information follows.

STEPS	Trust Type A Procedures ACTIONS
Step 1	**Obtain and review a copy of the trust and all related documents.**
Step 2	**Determine the date the trust was established.** • **Was the trust established prior to 1/1/00?** o **Yes – Continue.** o **No** – Was the trust established with third party funds? ▪ **Yes – Continue** ▪ **No – Stop.** Use Trust Type B to evaluate the trust**.**
Step 3	**Does the individual have the right to revoke the trust and use it for his/her support or maintenance?** • **Yes** – The trust principal is a countable resource. Go to **Step 8** to determine the countable resource value. • **No – Continue.**
Step 4	**Can the individual direct the use of the trust for his/her support or maintenance?** • **Yes –** The trust principal is a countable resource. Go to **Step 8** to determine the countable resource value. • **No –** The trust principal is not a resource. **Continue.**

STEPS	Trust Type A Procedures ACTIONS
Step 5	**Does the trust provide for mandatory payments to the individual?** • **Yes – Continue.** • **No –** The trust is not a countable resource. **Stop.**
Step 6	**Does the trust contain a clause that prohibits the individual from anticipating, assigning, or selling the right to future payments?** • **Yes –** The trust is not a countable resource. **Stop.** • **No –** Go to **Step 7** to determine the countable resource value of the mandatory payments.
Step 7	**Determine the countable resource value of the mandatory payments.** • The total value of all payments to be received in the future is the countable resource value. **Stop.**
Step 8	**Determine the countable resource value of the trust principal.** • Use resource guidelines to determine the countable value of each asset in the trust. All resource exclusions that according to the manual, are permitted, are applicable to the resources in the trust. • The total countable value of all trust assets is the countable resource value of the trust principal. **Stop.**

65.4. Trusts Whose Principals Are Resources

If an individual (applicant/recipient) **has legal authority to revoke** the trust and use the funds to meet his food, clothing or shelter needs, **or** if the individual **can direct the use of the trust principal** for his/her support and maintenance under the terms of the trust, the trust **principal is** a resource.

65.4.1. Trust Principal

When the trust principal is a resource, its value is determined by evaluating each asset in the trust. Each asset's countable value is determined by applying the resource guidelines **and exclusions** that are specific to the type of asset being evaluated. The total countable value of all trust assets is the countable resource value of the trust.

Note: Earnings or additions are not included in the principal in the month that they are credited or transferred into the trust because they are considered under income counting rules in that month. See Unearned Income, Chapter I.

65.4.1.1. Excluded Resources in a Trust

If an individual places an excluded resource in a trust and the trust is a countable resource, the resource exclusion can still be applied to that resource. For example, if an individual transfers ownership of his/her excluded home to a trust and the trust is a countable resource, the home is still subject to exclusion as home property. See Home Property, Chapter E – 35.

Example

An applicant's revocable trust contains $1,500 cash, a $100,000 home to which the individual intends to return and a $15,000 automobile that the individual's household uses for transportation. The total value of the trust is $116,500. **The countable value is determined by applying resource guidelines to each of the trust assets.** The home is excluded as home property as the applicant has an equitable ownership in the property, it was his home and he intends to return to it. The automobile is exempted under the vehicle guidelines which permit one vehicle to be

excluded for household transportation. Only the cash in the trust has a countable value, $1500. The total countable resource value of the trust is $1,500. (See Home Property, Chapter E – 35 and Automobiles, Chapter E - 15)

65.4.2. Trust Payments

If the trust principal is a resource, disbursements from the trust to or for the benefit of the individual are not income but conversion of a resource. Disbursements, not to or for the benefit of the individual (or spouse), need to be evaluated as resource transfers. See Resource Transfers, Chapter G.

65.5. Trusts Whose Principals Are Not Resources

If an individual **does not** have the legal authority to revoke the trust or direct the use of the trust assets for his/her own support and maintenance, the trust principal **is not** the individual's resource for AG purposes. However, mandatory payments from the trust may be a resource.

If the neither the trust principal nor mandatory payments to the individual is a resource, disbursements from the trust may be income to the AG recipient beneficiary. Cash paid directly to the individual is unearned income. See Trust Disbursements, Chapter I - 64.

65.5.1. Mandatory Trust Payments

If the trust principal is not a resource but provides for mandatory payments to the beneficiary and the beneficiary is not prohibited from anticipating, assigning or selling the right to future payments, **the current value of these payments may be a resource** to the beneficiary.

65.5.1.1. Value

Current resource value is assumed to be the total of all payments to be received in the future. If the trust identifies the period over which the payments are to be made, the resource value will be the total amount that will be received within that period. If the payments are to continue for life, determine the countable resource value by multiplying the total amount to be received within a 12 month period times the individual’s life expectancy.

The individual **may rebut** the value by providing a written statement from a knowledgeable source such as a bank or other entity whose professional duties include the sale and purchase of future benefits.

Use the Life Expectancy Table below to determine the individual's life expectancy. If the individual's age falls between the ages listed in the table, use the next higher age.

Example - A trust provides for payment of $100 (spending money) per month for life to the 42 year old male beneficiary. Because the trust does not prohibit the sale of future benefits, the beneficiary may be able to sell the right to future payments for a lump-sum settlement. The value of the payments to be received over the lifetime of the individual is a resource.

$1200 a year X 37 years (life expectancy at 45) = $44,400 countable resource value.

Life Expectancy Table

by Age and Sex:

United States, 2002

National Vital Statistics Reports, Vol. 53, No. 6,

November 10, 2004

All Races

Age	Male	Female		Age	Male	Female
0	74.5	79.9		**55**	28.3	32.2
5	74.1	79.4		**60**	24.1	27.7
10	70.2	75.4		**65**	20.2	23.5
15	65.3	70.5		**70**	16.6	19.5
20	60.3	65.5		**75**	13.2	15.8
25	55.6	60.7		**80**	10.3	12.4
30	51.0	55.8		**85**	**7.8**	**9.4**
35	46.3	51.0		**90**	**5.7**	**6.9**
40	41.6	46.1		**95**	**4.2**	**5.0**
45	37.0	41.4		**100**	**3.2**	**3.7**
50	32.6	36.7		**105**	**2.5**	**2.8**

65.6. Verification

65.6.1. Written Trust

Obtain a copy of the trust document and related documents.

65.6.2. Oral Trusts

Obtain from all parties signed statements describing the arrangement.

Note: Virginia does recognize oral trusts as binding.

65.6.3. Written and Oral

Obtain from the trustee:

- **A statement to include**
  - The name of the grantor(s) – the individual(s) whose funds/property were used to establish the trust.
  - The amount of cash or the value of property each grantor placed in the trust.
  - The date the trust was established.
  - The date the individual first transferred his/her assets into the trust.
- **Verification of**
  - The current value of the trust if it is a cash trust.
  - A list of personal and/or real property that is owned by the trust.
  - Dates, amounts, to whom and for what purposes all distributions were made during the past 12 months.
  - Dates, amounts and the source of all additions to the trust during the past 12 months.

66. Trust Type B

Trusts may or may not be a resource. If a trust that was established by the individual is revocable, the individual's portion of the trust principal is a resource to the individual. If the trust is irrevocable, the trust principal is not a resource but disbursements from the individual's portion of the trust principal may be.

This section applies to **trusts established with the assets of an individual (or spouse) on or after 1/1/00.**

- **Trust Established by an Individual**

  An individual is considered to have established a trust if any assets of the individual (or spouse), regardless of how little, were transferred to a trust other than by a will.

  - **The transfer of an individual's property to an existing third party trust is considered to be the establishment of a trust** subject to the provisions of this section if:

    - The transfer occurs on or after 1/1/00; and

    - The principal of the trust does not contain property transferred from the individual prior to 1/1/00.

66.1. Trust Development Procedures Summary

Use the following procedures to evaluate trusts established prior to 1-1-2000 and third party trusts. Detailed information follows.

STEPS	Trust Type B Procedures ACTIONS
Step 1	**Obtain and review a copy of the trust and all related documents.**

STEPS	Trust Type B Procedures ACTIONS
Step 2	**Does the trust contain any assets of the individual?** • **Yes -** Go to **Step 3**. • **No -** Follow instructions in Trust Type A, Chapter E - 65. **STOP.**
Step 3	**Determine the date the individual's assets were transferred to the trust.** • If any of the individual's assets were transferred **prior to 1/1/00**, follow instructions in Trust Type A, Chapter E - 65. **STOP.** • If all of the individual's assets in the trust were transferred **on or after 1/1/00**, go to **Step 4**.
Step 4	**Determine if the trust is revocable or irrevocable.** • If the trust is revocable, go to **Step 5**. • If the trust is irrevocable, go to **Step 6**
Step 5	**Revocable Trusts** The trust is a resource. **STOP**
Step 6	**Irrevocable Trusts**

STEPS	Trust Type B Procedures ACTIONS
	Does the trust also contain assets of a third party? (See statement from Trustee) • **Yes -** Determine the amounts in the trust attributable to the individual and the third party. Develop resource treatment of the portion attributable to the third party under Trust Type A, Chapter E - 65. Go to **Step 7** for the portion of the trust attributable to the assets of the individual. • **No -** Go to **Step 7**.
Step 7	**Are there any circumstances under which payment from the trust could be made to or for the benefit of the individual?** • **Yes -** The trust is a resource in the amount that could be paid from the portion attributable to the individual **unless an exception applies**. Go to Chapter E – 66.7.4 to see if an exception applies. • **No -** The trust is not a resource. Refer to Chapter G to see if a transfer penalty may be applicable.

66.2. Trust Rules Versus Transfer Rules for Assets in a Trust

When an individual transfers assets to a trust, he/she generally transfers ownership of the asset to the trustee. In some cases, this could be considered a transfer of resources. In order to avoid both counting a trust as a resource and imposing a transfer of resources penalty for the same transaction**, the trust provisions take precedence over the transfer provisions**. If there are portions of the trust that cannot be counted as a resource, then the transfer rules may apply to that portion of the trust. See Resource Transfers, Chapter G.

66.3. Trust Evaluation

These provisions apply to trusts **without regard** to:

- The purpose for which the trust was established;
- Whether the trustees have or exercise any discretion under the trust;
- Any restrictions on when or whether distributions may be made from the trust; or
- Any restrictions on the use of distributions from the trust.

66.3.1. Exculpatory Clause

No clause or requirement in the trust, no matter how specifically it applies to AG or other Federal or State program (i.e., exculpatory clause), **precludes a trust from being evaluated** under the rules in this section.

Note: While exculpatory clauses, use clauses, trustee discretion and restrictions on distributions, etc. do not affect a trust's countability, they do have an impact on how the various components are treated. For example, a prohibition in a discretionary irrevocable trust that limits the trustee to distributing no more than $10,000 to an individual has no effect on whether or not the trust is countable, but limits the amount that is countable to $10,000.

66.4. Verification

66.4.1. Written Trust

Obtain a copy of the trust document and related documents.

66.4.2. Oral Trusts

Obtain from all parties signed statements describing the arrangement.

Note: Virginia does recognize oral trusts as binding.

66.4.3. Written and Oral

Obtain from the trustee:

- **A statement to include**
  - The name of the grantor(s) – the individual(s) whose funds/property were used to establish the trust.

- The amount of cash or the value of property each grantor placed in the trust, initially and subsequently.
- The date the trust was established.
- The date the individual first transferred his/her assets into the trust.

- **Verification of**
  - The current value of the trust if it is a cash trust.
  - A list of personal and/or real property that is owned by the trust.
  - Dates, amounts, to whom and for what purposes all distributions were made during the past 12 months.
  - Dates, amounts and the source of all additions to the trust during the past 12 months.
  - Signed documents between organizations making payments to the individual when the individual is legally entitled to the payments and the payments have been assigned, either revocably or irrevocably, to the trust.

66.5. Revocable Trusts

A revocable trust is one that can be dissolved and the assets of the trust returned to the grantor. If a trust that was established by the individual is revocable, **the individual's portion of the trust principal** is a resource to the individual.

66.5.1. Disbursements To or for the Benefit of the Individual

Disbursements from the trust principal (or the individual's portion of the principal) to or for the benefit of the individual are not income, but conversion of a resource. However, disbursement of trust earnings, e.g., interest, is income. See Trust Disbursements, Chapter I - 64.

66.5.2. Disbursements Not to or for the Benefit of the Individual

Distributions to or for the benefit of someone other than the individual is a transfer of resources as of the date of the payment. See Resource Transfers, Chapter G.

66.5.3. Value

When the trust principal is a resource, its value is determined by evaluating each asset in the trust. Each asset's countable value is determined by applying the resource guidelines **and exclusions** that are specific to the type of asset being evaluated. The total countable value of all trust assets is the countable resource value of the trust.

66.5.3.1. Excluded Resources in a Trust

If an individual places an excluded resource in a trust and the trust is a countable resource, the resource exclusion can still be applied to that resource. For example, if an individual transfers ownership of his/her excluded home to a trust and the trust is a countable resource, the home is still subject to exclusion as home property. See Home Property, Chapter E – 35.

Example

An applicant's revocable trust contains $1,500 cash, a $100,000 home to which the individual intends to return and a $15,000 automobile that the individual's household uses for transportation. The total value of the trust is $116,500. The countable value is determined by applying resource guidelines for each of the trust assets. The home is excluded as home property as the applicant has an equitable ownership in the property, it was his home and he intends to return to it. The automobile is exempted under vehicle guidelines which permit one vehicle to be excluded for household transportation. Only the cash in the trust has a countable value, $1,500. The total countable resource value of the trust is $1,500. (See Home Property Chapter E – 35 and Automobiles Chapter E - 15)

66.5.4. Relationship to Transfer Penalty

Any disbursements from a revocable trust that are not made to, or for the benefit of, the individual are considered a transfer of resources. See Resource Transfers Chapter G.

66.6. Irrevocable Trusts

Irrevocable trusts cannot be dissolved but may permit distributions under certain circumstances. The principal itself is not a resource but disbursements from the individual's portion of the trust principal may be. Disbursements, payments that can be made **to or for the benefit of the individual or individual's spouse**,

under **any** circumstance, no matter how unlikely or distant in the future, **are** a resource. Determine if the Special Needs (Chapter E - 66.7.4.1), Pooled Trust (Chapter E - 66.7.4.2), or Undue Hardship (Chapter E - 66.7.4.3) exclusions apply.

If there are no circumstances under which payment from the trust could be made to or for the benefit of the individual or the individual's spouse, it is not a resource. Develop the establishment of the trust as a transfer of resources. See Resource Transfers Chapter G.

66.6.1. Payments to an Individual

Payments are considered to be made **to the individual** when any amount from the trust, including amounts from the principal or income produced by the trust, is paid directly to the individual or someone acting on his/her behalf, e.g., guardian or legal representative.

66.6.2. Payments on Behalf of/for the Benefit of an Individual

Payments are considered to be made **on behalf of** or **to or for the benefit of** an individual if payments from the principal or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment.

Such payments could include purchase of food, clothing, shelter, household goods, personal items, medical services or personal attendant care.

66.6.3. Value

The resource value of an irrevocable trust is the total amount of payments that can be made from the individual’s portion of the trust to or for the benefit of the individual or spouse. Restrictions within the trust may limit the amount and purpose of distributions.

Examples

- An irrevocable trust provides that the trustee can disburse $2,000 to, or for the benefit of, the individual out of a $20,000 trust. Only $2,000 is considered to be a resource. The other $18,000 is considered to be an amount which cannot, under any circumstances, be paid to the individual. It is not a resource and may be subject to the transfer of resources rule.

- If a trust contains $50,000 that the trustee can pay to the beneficiary only in the event that he/she needs a heart transplant or on his/her 100th birthday, the entire $50,000 is considered to be a payment which could be made to the individual under some circumstance and is a resource.

66.6.3.1. Individual's Assets Form Only a Part of the Trust

In the case of an irrevocable trust where the assets of the individual (or spouse) were transferred along with the assets of another individual(s), **these provisions apply to the distributions made from an individual's (or spouse's) assets in the trust.** Distributions made from the third party's trust assets must be evaluated under Trust Type A. See Chapter E – 64.

Example: Jimmy Smith is an adult with cerebral palsy. His grandparents left $75,000 in trust for him in their wills. Recently (after 1/1/00), Mr. Smith won an employment discrimination lawsuit and was awarded a $1,500 judgment which was deposited into the trust established by his grandparents. The $1,500 of Mr. Smith's funds is subject to these provisions, Trust Type B, and could be a resource if payment could be made to or for Mr. Smith's benefit. The $75,000 deposited by his grandparents is not subject to these provisions but must be evaluated under Trust Type A.

66.6.3.1.1. Disbursement

Consult the trust document to determine from which portion of the trust disbursements were made. If the trust document does not specify, a statement from the trustee regarding the source of the disbursements will be determinative. If the trustee is unable to provide a statement, presume that disbursements were made first from the portion of the trust established with the funds of other individuals. When that portion is depleted, presume that disbursements were made from the portion of the trust established with funds of the individual.

66.6.4. Exceptions to Counting Irrevocable Trusts Established on or after 1/1/00

Three types of written irrevocable trusts are excluded as resources:

- Special Needs Trusts Established under Section 1917(d)(4)(A) of the Social Security Act,
- Pooled Trusts Established under Section 1917(d)(4)(C) of the Social Security Act, and
- Trusts that if counted would result in undue hardship to the individual. Each irrevocable trust must be evaluated to determine if one of the exclusions applies.

66.6.4.1. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act

Although this exception is commonly referred to as the **special needs** trust exception, the exception applies to any trust meeting the following requirements. The trust must

- Contain the assets of an individual under age 65 and who is disabled by SSI standards.
  - This exception does not apply to a trust established for the benefit of an individual age 65 or older.
  - If the trust was established for the benefit of a disabled individual prior to the date the individual attained age 65, the exception continues to apply after the individual reaches age 65.
- Be established for the benefit of such individual by a parent, grandparent, legal guardian or a court; and
  - This requirement refers to the individual who physically took action to establish the trust even though the trust was established with the assets of the AG claimant/recipient.
  - The special-needs trust exception does not apply to a trust established by the individual himself/herself.

- Contain specific language that provides that upon the death of the individual, the State will receive all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan.

Use the following procedures to determine if the exclusion applies.

STEPS	Special Needs Trust Exception Procedures ACTIONS
Step 1	**Was the trust established with the assets of an individual under age 65?** • **Yes** - Go to **Step 2**. • **No** - Go to **Step 8**.
Step 2	**Was the trust established with the assets of a disabled individual?** • **Yes** - Go to **Step 3**. • **No** - Go to **Step 8**.
Step 3	**Is the disabled individual beneficiary of the trust?** • **Yes** - Go to **Step 4.** • **No** - Go to **Step 8.**

STEPS	Special Needs Trust Exception Procedures ACTIONS
Step 4	**Did a parent, grandparent, legal guardian or a court establish the trust?** • **Yes** - Go to **Step 5**. • **No** - Go to **Step 8.**
Step 5	**Does the trust provide specific language to reimburse the State for medical assistance paid upon the individual's death?** • **Yes** - Go to **Step 6**. • **No** - Go to **Step 8**.
Step 6	**The trust meets the special needs trust exception to the extent that the assets of the individual were put in trust prior to the individual attaining age 65.** Any assets placed in the trust after the individual attained age 65 are not subject to this exception. • Go to **Step 7** for treatment of assets placed in trust prior to age 65. • Go to **Step 8** for treatment of assets placed in trust after attaining age 65.

STEPS	Special Needs Trust Exception Procedures ACTIONS
Step 7	**Is the trust irrevocable?** • **Yes -** Assets placed in the trust prior to age 65 are not a countable resource. **STOP**. • **No -** Evaluate the trust to determine if it is a countable resource.
Step 8	**The trust (or portion thereof) does not meet the requirements for the special-needs trust exception.** Determine whether the pooled trust exception in Chapter E - 66.7.4.2 applies.

66.6.4.2. Pooled Trusts Established under Section 1917(d)(4)(C) of the Act

A pooled trust is a trust established and administered by a non-profit organization. It is sometimes called a "master trust" because it contains the assets of many different individuals, each in separate accounts established by individuals, and each with a beneficiary.

The master trust is established by the nonprofit association, and the individual trust accounts within the master trust, are established by the individual or another person for the individual.

This exclusion applies to a trust containing the **assets of a disabled individual** which meets the following conditions:

- The pooled trust is established and maintained by a nonprofit association;

- A nonprofit association is an organization that has tax-exempt status under section 501(a) of the IRC.
  - Contact the organization and request a copy of its IRS section 501(c) tax-exempt certification

- Separate accounts are maintained for each beneficiary, but assets are pooled for investing and management purposes;
  - The trust must be able to provide an individual accounting for the individual.

- Accounts are established solely for the benefit of the disabled individual;

- The account in the trust is established by the individual, a parent, grandparent, legal guardian, or a court;
  - This requirement refers to the individual who physically took action to establish the trust even though the trust was established with the assets of the AG claimant/recipient.

- The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the State the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a State Medicaid plan.

  Note: There is **no age restriction** under this exception.

Use the following procedures to determine if the exclusion applies.

STEPS	**Pooled Trust Exception Procedures** **ACTIONS**
Step 1	**Was the trust account established with**

STEPS	Pooled Trust Exception Procedures ACTIONS
	assets of a disabled individual? • **Yes -** Go to **Step 2**. • **No -** Go to **Step 8**.
Step 2	**Was the pooled trust established and maintained by a nonprofit association?** • **Yes -** Go to **Step 3**. • **No -** Go to **Step 8**.
Step 3	**Does the trust pool the funds, yet maintain an individual account for each beneficiary, and can it provide an individual accounting?** • **Yes -** Go to **Step 4**. • **No -** Go to **Step 8**.
Step 4	**Is the disabled individual the sole beneficiary of the trust account?** • **Yes -** Go to **Step 5**. • **No -** Go to **Step 8**.
Step 5	**Did the individual, parent(s), grandparent(s), legal guardian(s) or a court**

STEPS	**Pooled Trust Exception Procedures** **ACTIONS**
	establish the trust account? • **Yes -** Go to **Step 6**. • **No -** Go to **Step 8**.
Step 6	**Does the trust provide specific language to reimburse the State for medical assistance paid upon the individual's death from funds not retained by the trust**? • **Yes -** Go to **Step 7**. • **No -** Go to **Step 8**.
Step 7	**Is the trust irrevocable?** • **Yes - The trust meets the Medicaid pooled trust exception.** The trust is not a countable resource. **STOP.** • **No -** Evaluate the trust under Trust Type A, Chapter E - 65 to determine if it is a countable resource.
Step 8	**The trust does not meet the requirements for the Medicaid pooled trust exception.** Determine if the undue hardship waiver applies. See Chapter E – 66.7.4.3 below.

66.6.4.3. Undue Hardship

The counting of an irrevocable trust as a resource is not applicable in any month for which counting the trust would cause undue hardship to the individual. Counting the trust as a resource resumes for any month(s) in which undue hardship does not exist.

Note: Since an individual may revoke a revocable trust and access the funds for his/her support and maintenance, the requirements for undue hardship cannot be met if the individual established a revocable trust.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 1	**Is the trust irrevocable?** • **Yes** - Go to **Step 2**. • **No** - Go to **Step 8**.
Step 2	**Does counting the trust result in excess resources?** • **Yes** - Go to **Step 3**. • **No** - Go to **Step 8**.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 3	**Does the individual allege (or information in the file indicates) that not receiving AG would deprive him/her of food or shelter?** • **Yes** - Go to **Step 4**. • **No** - Go to **Step 8**.
Step 4	**Obtain the individual's signed statement as to whether:** • Failure to receive AG payments would deprive the individual of food or shelter; • The individual's total available funds are less than the FBR plus federally administered State supplement; • The individual agrees to report promptly any changes in income and resources; and • The individual understands that he/she may be overpaid if available funds exceed the FBR plus State supplement for any month, or other situations change. • Go to **Step 5**.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 5	**Does the trust contain language that specifically prohibits the trustee from making disbursements for support and maintenance or that prohibits the trustee from exercising discretion to disburse funds for support and maintenance?** • **Yes** - Go to **Step 6**. • **No** - Go to **Step 8**.
Step 6	**Add up all of the individual's income, both countable and excludable.** (Do not include any AG payments received or items that are not income.) Add up all of the individual's **liquid** resources, both countable and excludable. Does the total of the income and the liquid resources equal or exceed the FBR? • **Yes** - Go to **Step 8.** • **No** - Go to **Step7**.
Step 7	**Suspend counting of the trust as a resource for any month in which all requirements above are met.** • Document the findings of undue hardship and the applicable months. **STOP**.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 8	**Undue hardship does not apply.**

66.6.4.3.1. Applicability

Consider the possibility of undue hardship under this provision only when:

- Counting an **irrevocable** trust as a resource results in the individual's ineligibility for AG due to excess resources;
- The individual alleges in a written statement or information in the file indicates that not receiving AG would deprive him/her of food or shelter; and
- The trust specifically prohibits disbursements or prohibits the trustee from exercising his/her discretion to disburse funds from the trust for the individual's support and maintenance

66.6.4.3.2. Undue hardship exists in a month if:

- Failure to receive AG payments would deprive the individual of food or shelter; and
- The individual's available funds do not equal or exceed the AG rate for the area

Note: Inability to obtain medical care does not constitute undue hardship for AG purposes.

66.6.4.3.3. Loss of Shelter

For purposes of this provision, an individual would be deprived of shelter if:

- He/she would be subject to eviction from the ALF if AG benefits were not received; and
- There is no other affordable housing available, or there is no other housing available with necessary modifications for a disabled individual

66.6.4.3.4. Available Funds

In determining the individual's available funds total the individual's income and resources.

- **Income**
  - All **countable income** received in the month(s) for which undue hardship is determined.
  - All excluded income received in the month(s) for which undue hardship is an issue.

    Do not include AG payments received or items that are not income per Chapter I – 3.
- **Resources**
  - All countable liquid resources as of the first moment of the month(s) for which undue hardship is at issue.

    Liquid resources are any resources in the form of cash or in any other form which can be converted to cash within 20 workdays. See Conditional Benefits Chapter F – 4.2 for further information on liquid resources.

- All liquid resources excluded as of the first moment of the month(s) for which undue hardship is at issue.

AG benefits retained into the month following the month of receipt are counted as a resource for purposes of determining available funds.

Do not include non-liquid resources or assets determined not to be a resource.

Example

Frank Williams filed for AG in 1/06 as an aged individual. In 2/06, he received an insurance settlement from an accident that was placed in an irrevocable trust. After determining that he met the other requirements for undue hardship, the worker determined Mr. Williams' available funds.

He receives $750 Title II benefits and $10 per month interest on a bank account. His only liquid resource is the bank account that has $600 in it. The total of $1360 in available funds ($750 Title II, $10 interest and $600 bank account balance) means that undue hardship does not apply in 3/06 because that amount exceeds the AG rate.

Mr. Williams reapplies in 6/06. He presents evidence that he has spent down the $600 in his bank account on living expenses in the past 3 months. As of 6/06, he has no liquid resources and his income total of $760 is below the AG rate for his area. Mr. Williams meets the undue hardship test for 6/06. The trust does not count as his resource in that month. If his situation does not change, he will qualify for an ongoing AG payment.

66.6.4.3.5. Follow-Up To A Finding Of Undue Hardship

If the individual's income and resources are not expected to change significantly, recontact the individual **no less than every 6 months**. If the individual's income and resources are expected to fluctuate, the recontact period should be shorter, even monthly in some cases.

At each recontact:

- Obtain the individual's signed allegation that failure to receive AG will deprive the individual of food or shelter.
- Determine whether total income and liquid resources exceeds the AG rate.
- If undue hardship is expected to continue in the future period, continue payment.
- If it is not expected to continue, redetermine resource eligibility counting the trust as a resource.

67. U.S. Savings Bonds

U.S. Savings Bonds are obligations of the Federal Government. Unlike other government bonds, they are not transferable; they can only be sold back to the Federal Government. U.S. Savings Bonds become countable resources after a mandatory retention period.

Savings bonds are issued as traditional paper bonds or as book-entry securities. Book-entry securities (also called “savings security instruments”) are electronic savings bonds sold online by the U.S. Treasury Department. No paper bond is issued when an individual purchases an electronic savings bond. Currently, only Series EE and Series I savings bonds are issued as electronic bonds. Record of ownership of electronic savings bonds is maintained electronically by the Treasury Department.

67.1. Mandatory Retention Period

The mandatory retention period is the same for paper Series EE and I bonds and electronic Series EE and I bonds. Series E bonds have not been issued since June 1980.

- U.S. Savings Bonds (including Series E, EE, and I) issued prior to 2/1/03 are resources. Their retention period has passed.

Series EE and Series I U.S. Savings Bonds issued on or after 2/1/03 have a 12 month mandatory retention period. They are not resources during that period. They are resources (not income) as of the first moment of the thirteenth month.

- Series H and HH bonds have a 6-month mandatory retention period regardless of the issue date. They are resources (not income) as of the first moment of the seventh month.

67.2. Paper Savings Bonds

67.2.1. Ownership

67.2.1.1. Sole Ownership

The individual in whose name a U.S. Savings Bond is registered owns it. The Social Security Number shown on a bond is not proof of ownership.

67.2.1.2. Co-Ownership

The co-owners of a U.S. Savings Bond own equal shares of the redemption value of the bond.

67.2.1.3. Beneficiary Registration

Beneficiary registration means that there are two persons named on the paper savings bond—the owner and a beneficiary. Their names are connected by the initials “POD” (“Payable on Death”) on the face of the savings bond. The owner has sole ownership rights during his or her lifetime including redeeming the savings bond. Upon death of the owner, the beneficiary becomes the owner of the savings bond.

67.2.1.4. Verification of Ownership

Have the individual submit any paper bonds in which he/she has an ownership interest. Use the name(s) shown on the bond to determine ownership.

67.2.2. Access

Physical possession of a paper U.S. Savings Bond is a requirement for redeeming it. If a person other than the AG recipient will not relinquish possession of the bond, it is not a resource for AG purposes.

If the individual alleges that he/she cannot submit a bond because a co-owner or other individual has, and will not relinquish, physical possession of the bond, obtain from the co-owner or the other individual a signed statement verifying that he/she:

- Has physical possession of the bond;
- Will not allow the individual to cash the bond; and
- In the case of a co-owner, will not cash the bond and give the individual his/her share of its value.

67.2.3. Value of Paper Bonds

67.2.3.1. Series E, EE, And I Bonds (Paper)

Series E and EE bonds are sold at one half of their face value and they increase in value as interest accrues. Series I bonds are sold at their full face value and they increase in value as interest accrues. To determine the value of a paper bond:

- Use the Savings Bond Calculator or the Comprehensive Savings Bond Value Table on the U.S. Bureau of Public Debt's Internet web site at http://www.treasurydirect.gov/BC/SBCPrice
- Use a current copy of the Table of Redemption Values for U.S. Savings Bonds; or
- Obtain the value by telephone from a local bank. The bank will need the series, denomination, date of purchase and/or issue date.

67.2.3.2. Series H And HH Bonds

Series H and HH bonds are issued only as paper bonds, not as electronic bonds. They are issued at their face value and do not increase in value. Instead, they pay interest to the owner each six months which is unearned income. After

the 6-month retention period, the redemption value of a series H or HH bond is its face value. Do not verify the value of an H or HH bond using the procedures above.

67.3. Electronic Savings Bonds

67.3.1. Ownership

67.3.1.1. Single Owner Bond

The individual named on the Treasury Department's record for that electronic savings bond is the owner. A record of bond ownership is maintained under an account number issued by the Treasury to that individual.

67.3.1.2. "With" Bonds

A "with" bond is a bond whose titling lists one person in addition to the owner. The bond owner may grant transaction authority that will allow the "with" person to cash the bond. However, even with transaction authority the "with" person is not considered an owner of the bond. The owner can grant transaction authority at the time the bond is purchased, or later. The owner can also remove the "with" person from the bond at any time without that person's permission.

EXAMPLE: Ownership record is titled "John Smith with Mary Smith." Mary is not an owner but could redeem the bond for him if given transaction authority by John Smith.

67.3.1.3. Verification of Ownership

When an individual alleges ownership of electronic savings bonds, it will be necessary to document the bond ownership by asking the individual to download a record of the individual's bond holdings from the Treasury Department.

67.3.2. Beneficiary Registration

The bond owner can name a beneficiary of the electronic savings bond. The owner has sole ownership rights during his or her lifetime and is the only person who can redeem the bond. When the owner dies, the beneficiary becomes the owner of the bond and can cash the bond.

67.3.3. Access

With electronic savings bonds, a paper bond is not issued. Thus, physical possession of the bond is not a requirement for redeeming it. The owner of an electronic savings bond can redeem it at any time after the mandatory retention period.

67.3.4. Value

Electronic Series EE and I bonds are always issued at their full face value. As interest accrues, the bond's value is the face value plus the accrued interest. Unlike paper bonds, there are no set denominations for electronic Series EE and I bonds. Determine the value of electronic savings bonds as follows.

- Ask the individual to obtain his or her "Current Holdings" list from the Treasury Direct web site. http://www.savingsbonds.gov/
- Verify the total current value of all of the individual's electronic Series EE and I bonds using the Current Holdings list.
- Use the "Current Holdings—Summary" page to verify the number of bonds, face value of the bonds, issue dates, confirmation numbers, and the value of individual bonds.
- If the individual alleges that the Current Holdings list cannot be obtained because the password or account number has been lost, the individual must contact the Treasury Department to retrieve them.

Note: The Current Holdings list is protected by password, so only the bond owner can access this information. The individual will also need to know his or her account number (issued by Treasury) to access the Current Holdings list.

68. Veterans' Children With Certain Birth Defects Payments

The Department of Veterans Affairs (VA) provides three types of benefits to natural children of veterans:

- Benefits for Vietnam veterans' children born with spina bifida,
- Benefits for Korea service veterans' children born with spina bifida, and

- Benefits for women Vietnam veterans' children born with certain birth defects.

The child status is not changed by age and marital status. Children do not receive benefits under more than one of these programs. VA determines eligibility for VA benefits.

68.1. Exclusion

Unspent payments paid to Veterans' Children with Certain Birth Defects Payments are excluded from resources.

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

68.2. Verification

Use documents such as letters or notices from VA to verify the type of payment. If documents from VA do not show the type of the payment or if no documents are available to verify the type of payment, contact VA.

69. Victims' Compensation Payments

Victims' Compensation Payments are payments received from a fund established by a State to aid victims of crime.

69.1. Exclusion

Unspent payments received from a fund established by a State to aid victims of crime are excluded from resources for 9 months. To be excluded from resources under this provision, the individual must demonstrate that the payment was compensation for expenses incurred or losses suffered as the result of crime.

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

69.2. Interest

Interest earned on unspent victims' compensation payments is not excluded from income or resources by this provision.

69.3. Verification

If an individual alleges that his or her resources include unspent victims' compensation payments, ask the individual to submit evidence that:

- Verifies the source, date(s), and amount(s) of such payment(s); and
- Establishes that the payment was paid as compensation for expenses incurred or losses suffered as the result of a crime.

Accept the following as evidence establishing that the payment was paid for expenses incurred or losses suffered as the result of a crime:

- A letter or check stub accompanying the payment indicating the reason for the payment;
- A subsequent letter requested by the claimant/recipient to clarify the reason for the payment; or any other document indicating the reason for the payment.

TABLE OF CONTENTS

NON-SSI INDIVIDUAL'S RESOURCE ELIGIBILITY - INTRODUCTION 1

1. RESOURCES DEFINED 1

1.1. PERSONAL PROPERTY 1
1.2. REAL PROPERTY 2
1.3. LIQUIDITY OF RESOURCES 2

2. RELATIONSHIP OF INCOME TO RESOURCES 2

2.1. CONVERSION OR SALE OF A RESOURCE 2
2.1.1. Verification 3

3. VALUES TO APPLY TO RESOURCES 3

3.1. CURRENT MARKET VALUE 3
3.2. EQUITY VALUE 3
3.3. ENCUMBRANCE 3

4. MONTHLY DETERMINATIONS 3

5. RESOURCE LIMITS 3

6. OWNERSHIP 4

6.1. SOLE OWNERSHIP 4
6.2. SHARED OWNERSHIP 4
6.2.1. Types of Shared Ownership 4
6.3. PROPERTY RIGHTS WITHOUT OWNERSHIP OF THE PROPERTY 6
6.3.1. Leasehold 7
6.3.2. Incorporeal Interests – Mineral and Timber Rights and Easements 7

7. PROPERTY ESSENTIAL TO SELF-SUPPORT EXCLUSION 1 – EXCLUDED REGARDLESS OF VALUE OR RATE OF RETURN 7

7.1. EXCLUSION 7
7.1.1. Trade Or Business Property 8
7.1.2. Government Permits 8
7.1.3. Personal Property Used By An Employee 8
7.2. CURRENT USE CRITERION 8
7.2.1. 12-Month Rule 8
7.2.2. 12-Month Extension 9
7.2.3. No Intent To Resume Activity 9
7.2.4. Change of Intent 9
7.3. TRADE OR BUSINESS 9
7.3.1. Redetermination 10
7.3.2. Verification 10
7.3.3. Questionable Trade Or Business 10
7.3.4. Liquid Resources Used In A Trade Or Business 11
7.4. GOVERNMENT PERMITS 11
7.4.1. Verification 11
7.5. PERSONAL PROPERTY USED BY AN EMPLOYEE 12
7.5.1. Verification 12

8. PROPERTY ESSENTIAL TO SELF-SUPPORT EXCLUSION 2 - EXCLUDED UP TO $6,000 EQUITY REGARDLESS OF RATE OF RETURN 12

8.1. EXCLUSION 12
8.1.1. Exception to the Exclusion 13

TABLE OF CONTENTS

8.2. CURRENT USE CRITERION 13
8.2.1. 12-Month Rule 14
8.2.2. 12-Month Extension 14
8.2.3. No Intent To Resume Activity 14
8.2.4. Change of Intent 14
8.3. VALUE 14
8.3.1. Real Property 14
8.3.2. Personal Property 15
8.4. VERIFICATION 15

9. PROPERTY ESSENTIAL TO SELF-SUPPORT EXCLUSION 3 - EXCLUDED UP TO $6,000 EQUITY IF IT PRODUCES A 6 PERCENT RATE OF RETURN 15

9.1. EXCLUSION 15
9.1.1. Exception to the Exclusion 16
9.2. CURRENT USE CRITERION 16
9.2.1. 12-Month Rule 17
9.2.2. Change Of Intent 17
9.3. COMPUTING THE RATE OF RETURN 18
9.4. RATE OF RETURN LESS THAN 6% 18
9.4.1. Earnings Rate Of Less Than 6%: 18
9.4.2. Time Limit For Resumption Of 6% Return 19
9.4.3. Operating At A Loss 19
9.5. MORE THAN ONE INCOME PRODUCING PROPERTY 19
9.6. EQUITY VALUE EXCEEDS $6000 19
9.7. VERIFICATION 20
9.7.1. Supporting Evidence 20

10. REASONABLE EFFORTS TO SELL REAL PROPERTY AFTER END OF 9 MONTHS OF CONDITIONAL BENEFITS EXCLUSION 20

10.1. EXCLUSION 21
10.2. CONDITIONAL BENEFITS OVERPAYMENT 21
10.3. NO RESUMPTION OF THE EXCLUSION AFTER TERMINATION OF ELIGIBILITY 21
10.4. EXPLANATION OF EXCLUSION 21
10.5. REASONABLE EFFORTS TO SELL 22
10.6. CONTINUING EFFORTS TO SELL 22
10.7. INDIVIDUAL MUST ACCEPT ANY REASONABLE OFFER 22
10.8. VERIFICATION OF EFFORTS TO SELL 23
10.9. SUPPORTING EVIDENCE 23
10.9.1. Real Property 23
10.9.2. Personal Property 23
10.10. GOOD CAUSE 24
10.10.1. Significance of Good Cause 24
10.10.2. Examples of Good Cause 24
10.10.3. Verification 25
10.11. FOLLOW-UP CONTACTS 25
10.11.1. Frequency of Contacts 26
10.12. INDIVIDUAL MAKING REASONABLE EFFORTS 26
10.13. INDIVIDUAL NOT MAKING REASONABLE EFFORTS 26

11. UNDUE HARDSHIP EXCLUSION - REAL PROPERTY 27

11.1. UNDUE HARDSHIP 27
11.2. ALLEGATION OF LOSS OF HOUSING FOR CO-OWNER 27
11.2.1. Required Statement From Resident Co-Owner 27

TABLE OF CONTENTS

11.3. HARDSHIP DETERMINATION 27

12. AGENT ORANGE PAYMENTS 28

12.1. EXCLUSION: 28
12.2. VERIFICATION 28

13. ANNUITIES 28

14. AUSTRIAN SOCIAL INSURANCE PAYMENTS 28

14.1. EXCLUSION: 29
14.2. VERIFICATION 29

15. AUTOMOBILES AND OTHER VEHICLES 29

15.1. EXCLUSION: 29
15.1.1. Month of Application 30
15.1.2. Ongoing Months 30
15.1.3. More Than One Vehicle Is Used For Transportation 30
15.1.4. Vehicle Is Temporarily Inoperable 30
15.2. VALUE 30
15.2.1. Rebuttal 31
15.3. VERIFICATION 31

16. BURIAL CONTRACTS 31

16.1. CONTRACT REVOCABILITY 31
16.1.1. Virginia 32
16.1.2. Kentucky 32
16.1.3. North Carolina 32
16.1.4. Tennessee 32
16.2. PROVIDER PLACES FUNDS IN TRUST 32
16.3. CONDITIONS FOR LIQUIDATION 33
16.4. VALUE 33
16.4.1. Rebuttal 33
16.5. RELATIONSHIP TO THE BURIAL SPACE AND BURIAL FUND EXCLUSIONS 33
16.5.1. Revocable Or Salable 33
16.5.2. Irrevocable And Not Salable 34
16.6. VERIFICATION 34

17. BURIAL FUNDS 34

17.1. EXCLUSION 34
17.1.1. Mandatory Reduction of Maximum Exclusion 34
17.1.2. Burial Funds To Which The Burial Fund Exclusion May Be Applied 35
17.1.3. Appreciation 35
17.1.4. Recalculation of Burial Fund Exclusion 35
17.1.5. Burial Funds Must Be Kept Separate 36
17.1.6. Effective Date of Exclusion 36
17.2. DESIGNATION OF BURIAL FUNDS 36
17.2.1. Length of Designation 37
17.2.2. Redesignation of Funds After Misuse 37
17.3. FUNDS USED FOR ANOTHER PURPOSE 37
17.3.1. Penalty — Funds Used For Another Purpose 38
17.4. LIFE INSURANCE DESIGNATED AS A BURIAL FUND 40
17.5. LIFE INSURANCE DIVIDENDS 40
17.6. VERIFICATION 41

TABLE OF CONTENTS

18. BURIAL INSURANCE 41

18.1. VERIFICATION 41

19. BURIAL SPACES 41

19.1. EXCLUSION 42
19.2. INDIVIDUAL'S IMMEDIATE FAMILY 42
19.3. HELD FOR 43
19.4. VERIFICATION: 43

20. BURIAL TRUSTS 43

20.1. BURIAL TRUSTS ESTABLISHED WITH FUNDS THAT HAVE BEEN IRREVOCABLY PAID TO THE FUNERAL PROVIDER 44
20.1.1. Value 44
20.1.2. Assistant Attorney General Review 44
20.1.3. Verification 44
20.1.4. Relationship to the Burial Fund Exclusion 45
20.2. BURIAL TRUSTS ESTABLISHED WITH THE INDIVIDUAL'S OR SPOUSE'S FUNDS 45
20.2.1. Value 45
20.2.2. Verification 45
20.2.3. Review 45

21. CASH 45

21.1. VERIFICATION 45

22. CERTAIN CASH TO PURCHASE MEDICAL OR SOCIAL SERVICES 46

22.1. EXCLUSION 46
22.1.1. Exception 46
22.1.2. Services That Are Not Income 46

23. CERTIFICATES OF DEPOSIT 47

24. CHECKING AND SAVINGS ACCOUNTS 47

24.1. VALUE 47
24.2. DEPOSITS OF INCOME 47
24.2.1. Allegation of Checks That Have Not Cleared the Bank 48
24.3. OWNERSHIP OF ACCOUNT 48
24.3.1. Fiduciaries 48
24.3.2. Individual Accounts 48
24.3.3. Joint Accounts 48
24.3.4. Ownership Rebuttal 48
24.4. RIGHT TO USE FOR SUPPORT AND MAINTENANCE 49
24.4.1. Examples of Evidence to the Contrary 50
24.4.2. Examples of Restricted Use 50
24.5. VERIFICATION 50

25. CHILD TAX CREDITS (CTC) 51

25.1. EXCLUSION 51
25.2. INTEREST 51
25.3. VERIFICATION 51

26. COMMINGLED FUNDS 52

26.1. NON-BURIAL RELATED EXCLUDED FUNDS 52

TABLE OF CONTENTS

26.2. EXCLUDED BURIAL FUNDS....52
26.3. INTEREST....52
26.4. DETERMINING THE EXCLUDED PORTION....52

27. CONSERVATORSHIP ACCOUNTS....54

27.1. ASSUMPTION OF AVAILABILITY FOR SUPPORT AND MAINTENANCE....54
27.1.1. Obtain the Individual's Allegation....54
27.1.2. Evidence to the Contrary....54
27.2. EXAMPLES PROCEDURES FOR CONSERVATORSHIP ACCOUNTS:....55
27.3. VERIFICATION....55

28. CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS) (FORMERLY ACTION) PAYMENTS....56

28.1. EXCLUSION....56
28.2. VERIFICATION....57

29. DEATH BENEFITS....57

29.1. VALUE OF RESOURCE....57
29.2. EXCLUSION....57
29.2.1. Exception — Bills Already Paid....58
29.2.2. Deductible Expenses....58
29.2.3. Verifying Expenses....58
29.3. VERIFICATION OF BENEFITS....58

30. DISASTER ASSISTANCE....58

30.1. EXCLUSION....59
30.2. INTEREST....59
30.3. VERIFICATION....59

31. EARNED INCOME TAX CREDITS....59

31.1. EXCLUSION....59
31.2. INTEREST....60
31.3. VERIFICATION....60

32. EDUCATIONAL FUNDS - GRANTS, SCHOLARSHIPS, FELLOWSHIPS, AND GIFTS....60

32.1. TITLE IV OF HEA OR BIA INVOLVEMENT....60
32.1.1. Exclusion....61
32.1.2. Interest and Dividends....61
32.1.3. Verification....62
32.2. OTHER GRANTS, SCHOLARSHIPS, FELLOWSHIPS, AND GIFTS....62
32.2.1. Exclusion....62
32.2.2. The Non-Excluded Portions....62
32.2.3. Excluded Funds Not Spent....62
32.2.4. Verification....62

33. FOOD STAMPS....63

33.1. EXCLUSION....63
33.2. VERIFICATION....63

34. GIFTS OF TRAVEL TICKETS....63

34.1. DOMESTIC TRAVEL TICKETS....64
34.1.1. Converted to Cash....64

TABLE OF CONTENTS

34.2. VERIFICATION 64
34.3. NON-DOMESTIC TRAVEL TICKETS 64
34.3.1. Verification 64

35. HOME PROPERTY 65

35.1. EXCLUSION 65
35.2. PROPERTY THAT NO LONGER SERVES AS THE PRINCIPAL PLACE OF RESIDENCE 66
35.3. INDICATION OF MORE THAN ONE RESIDENCE 66
35.4. OWNERSHIP 66
35.4.1. Verification 66
35.5. EVIDENCE INDICATES NON-ADJOINING PROPERTY 67
35.5.1. Individual Agrees With Evidence 67
35.5.2. Individual Disagrees With Evidence 67
35.6. ABSENCES FROM THE HOME 68
35.6.1. Dependent Relative 68
35.6.2. Intent To Return Home Development 69

36. HOME REPLACEMENT FUNDS 70

36.1. EXCLUSION 70
36.1.1. Interest 71
36.2. EXPLANATION TO INDIVIDUAL 71
36.3. STATEMENT OF INTENT 71
36.4. PROCEEDS 71
36.4.1. If Paid in a Lump Sum 71
36.4.2. If Paid in Installments 71
36.4.3. Verifying Proceeds of Sale 71
36.4.4. Allowable Uses Of Proceeds 72
36.4.5. Timely Use Of Proceeds 72
36.4.6. Proceeds Not Used Timely 72
36.5. VERIFICATION 73
36.6. PROCEEDS NOT USED TO REPLACE HOME 73

37. HOUSEHOLD GOODS AND PERSONAL EFFECTS 73

37.1. HOUSEHOLD GOODS ARE: 73
37.2. PERSONAL EFFECTS ARE: 73
37.3. EXCLUSION 74
37.4. VERIFICATION 74

38. INDIAN LANDS, RESTRICTED ALLOTTED 74

38.1. EXCLUSION 74
38.2. VERIFICATION 74

39. INHERITANCES AND UNPROBATED ESTATES 75

39.1. DATE OF RECEIPT 75
39.2. UNPROBATED ESTATE 75
39.3. OWNERSHIP INTEREST 76
39.4. STATUS AS A RESOURCE 76
39.5. VALUE OF RESOURCE 76
39.6. VERIFICATION 76

40. JAPANESE-AMERICAN AND ALEUTIAN RESTITUTION PAYMENTS 77

40.1. EXCLUSION 77

TABLE OF CONTENTS

40.2. INTEREST 77
40.3. VERIFICATION 77
40.3.1. U.S. 77
40.3.2. Canada 78

41. LIFE ESTATE AND REMAINDER INTEREST 78

41.1. LIFE ESTATES (WITHOUT POWERS) 78
41.1.1. Owner Can Do 78
41.1.2. Owner Cannot Do 78
41.1.3. Value of Life Estate 78
41.2. LIFE ESTATES WITH POWERS 79
41.3. REMAINDER INTERESTS 79
41.3.1. Value of Remainder Interest 79
41.4. VERIFICATION 79
41.5. UNISEX LIFE ESTATE OR REMAINDER TABLE 80

42. LIFE INSURANCE POLICIES 83

42.1. VALUE 83
42.2. EXCLUSION 83
42.2.1. Relation to Burial Fund Exclusion 84
42.3. FACE VALUE 84
42.4. CASH SURRENDER VALUE 84
42.5. LIFE INSURANCE DIVIDENDS 84
42.5.1. Additions 84
42.5.2. Accumulations 84
42.6. ACCELERATED LIFE INSURANCE PAYMENTS 85
42.6.1. Resource Value 85
42.7. VERIFICATION 85

43. LOANS 86

43.1. DETERMINING WHEN A LOAN COUNTS AS A RESOURCE 86
43.1.1. Eligible Individual Is The Borrower - All Loans 86
43.1.2. Eligible Individual Is The Lender 86
43.2. NEGOTIABLE AGREEMENT 87
43.3. BONA FIDE AGREEMENT 88
43.4. VERIFICATION 89
43.4.1. Forms 89

44. LOW INCOME ENERGY ASSISTANCE 89

44.1. EXCLUSION 89
44.2. VERIFICATION 89

45. MUNICIPAL, CORPORATE AND GOVERNMENT BONDS 90

45.1. VALUE 90
45.2. VERIFICATION 90

46. MUTUAL FUNDS 90

47. NAZI PERSECUTION, PAYMENTS TO VICTIMS OF 90

47.1. EXCLUSION 91
47.1.1. Interest 91
47.2. VERIFICATION 91

TABLE OF CONTENTS

48. NETHERLANDS WUV PAYMENTS TO VICTIMS OF PERSECUTION 91

48.1. EXCLUSION 91
48.1.1. Interest 92
48.2. VERIFICATION 92

49. NON-HOME REAL PROPERTY 92

49.1. OWNERSHIP 93
49.1.1. Sole Ownership 93
49.1.2. Shared Ownership 93
49.1.3. Ownership of a Leasehold 94
49.1.4. Ownership of Land and Mineral Rights 94
49.1.5. Ownership of Mineral Rights Only 94
49.2. CURRENT MARKET VALUE 94
49.2.1. Tax Assessment Notice 94
49.2.2. Knowledgeable Source Estimate 95
49.2.3. CMV Rebuttals 96
49.3. EQUITY VALUE 96
49.4. FOREIGN PROPERTY 96
49.4.1. Effect of Legal Restrictions 97
49.4.2. Verification 97

50. NORTH VIETNAM, PAYMENTS TO CERTAIN PERSONS CAPTURED AND INTERNED BY 98

50.1. EXCLUSION 98
50.2. INTEREST 98
50.3. VERIFICATION 98

51. OTHER PROPERTY RIGHTS 98

52. PROMISSORY NOTES AND PROPERTY AGREEMENTS 99

52.1. FOR THE BUYER (DEBTOR) 99
52.2. FOR THE SELLER (CREDITOR) 99
52.2.1. Property Agreements Prior to Settlement 99
52.2.2. Resource Value of the Agreement 100
52.2.3. Verification 100

53. RADIATION EXPOSURE COMPENSATION TRUST FUND 100

53.1. EXCLUSION 101
53.2. INTEREST 101
53.3. VERIFICATION 101

54. RELOCATION ASSISTANCE 101

54.1. FEDERAL RELOCATION ASSISTANCE EXCLUSION 102
54.1.1. Exception: Revenue Sharing 102
54.1.2. Interest 103
54.2. STATE OR LOCAL RELOCATION ASSISTANCE EXCLUSION 103
54.2.1. Interest 103
54.3. VERIFICATION 103

55. REPAIR/REPLACEMENT OF LOST, DAMAGED OR STOLEN RESOURCES PAYMENTS 103

55.1. EXCLUSION 103
55.1.1. Interest 104
55.1.2. 9-Month Extension for Good Cause 104

TABLE OF CONTENTS

55.1.3. Presidential-Declared Major Disasters *104*
55.1.4. Good Cause *104*
55.2. VERIFICATION 106

56. RETIREMENT FUNDS 106

56.1. RESOURCE OR INCOME 106
56.1.1. Periodic Payments *107*
56.1.2. Lump Sum Payments *107*
56.2. TERMINATION OF EMPLOYMENT 107
56.3. FUND NOT IMMEDIATELY AVAILABLE 107
56.4. VALUE 108
56.5. VERIFICATION 108
56.6. EXCESS RESOURCES/CONDITIONAL BENEFITS 108

57. RETROACTIVE RSDI AND SSI PAYMENTS (TITLE II AND TITLE XVI) 108

57.1. EXCLUSION 109
57.1.1. Written Notice *109*
57.2. VERIFICATION 109

58. REVERSE MORTGAGE 109

58.1. VERIFICATION 110

59. RICKY RAY HEMOPHILIA RELIEF FUND 110

59.1. EXCLUSION 110
59.2. INTEREST 111
59.3. VERIFICATION 111

60. STOCKS 111

60.1. OWNERSHIP 111
60.2. VALUE — PUBLICLY TRADED STOCKS 112
60.2.1. Verification *112*
60.3. VALUE — STOCK THAT IS NOT PUBLICLY TRADED 112
60.3.1. Verification *112*

61. TERM INSURANCE 113

61.1. VERIFICATION 113

62. TIME DEPOSITS (CERTIFICATES OF DEPOSIT AND SAVINGS CERTIFICATES) 113

62.1. OWNERSHIP 113
62.2. VALUE 113
62.2.1. Early Withdrawal *113*
62.2.2. Interest *114*
62.3. VERIFICATION: 114

63. TRUSTS 114

64. TRUSTS – GENERAL INFORMATION 116

64.1. DEFINITIONS 116
64.1.1. Asset *116*
64.1.2. Exculpatory Clause *117*
64.1.3. Grantor *117*
64.1.4. Spendthrift Clause or Spendthrift Trust *117*
64.1.5. Trust Beneficiary *117*

TABLE OF CONTENTS

64.1.6. Trustee 118
64.1.7. Trust Principal 118
64.2. TRUST EVALUATION 118
64.2.1. Procedures 118

65. TRUST TYPE A 119

65.1. TRUSTS ESTABLISHED WITH THE ASSETS OF AN INDIVIDUAL (OR SPOUSE) PRIOR TO 1/1/00....120
65.1.1. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Social Security Act 120
65.1.2. Pooled Trusts Established under Section 1917(d)(4)(C) of the Social Security Act 120
65.2. TRUSTS ESTABLISHED BY THIRD PARTIES (EITHER PRIOR TO OR AFTER 1/1/00)....121
65.3. TRUST TYPE A PROCEDURES....121
65.4. TRUSTS WHOSE PRINCIPALS ARE RESOURCES 124
65.4.1. Trust Principal 124
65.4.2. Trust Payments....125
65.5. TRUSTS WHOSE PRINCIPALS ARE NOT RESOURCES 125
65.5.1. Mandatory Trust Payments 125
65.6. VERIFICATION 128
65.6.1. Written Trust 128
65.6.2. Oral Trusts 128
65.6.3. Written and Oral 128

66. TRUST TYPE B 129

66.1. TRUST DEVELOPMENT PROCEDURES SUMMARY 129
66.2. TRUST RULES VERSUS TRANSFER RULES FOR ASSETS IN A TRUST 131
66.3. TRUST EVALUATION 131
66.3.1. Exculpatory Clause 132
66.4. VERIFICATION 132
66.4.1. Written Trust 132
66.4.2. Oral Trusts 132
66.4.3. Written and Oral 132
66.5. REVOCABLE TRUSTS 133
66.5.1. Disbursements To or for the Benefit of the Individual 133
66.5.2. Disbursements Not to or for the Benefit of the Individual....133
66.5.3. Value 133
66.5.4. Relationship to Transfer Penalty 134
66.6. IRREVOCABLE TRUSTS 134
66.6.1. Payments to an Individual....135
66.6.2. Payments on Behalf of/for the Benefit of an Individual 135
66.6.3. Value 135
66.6.4. Exceptions to Counting Irrevocable Trusts Established on or after 1/1/00 137

67. U.S. SAVINGS BONDS 150

67.1. MANDATORY RETENTION PERIOD....150
67.2. PAPER SAVINGS BONDS 151
67.2.1. Ownership....151
67.2.2. Access....152
67.2.3. Value of Paper Bonds 152
67.3. ELECTRONIC SAVINGS BONDS....153
67.3.1. Ownership....153
67.3.2. Beneficiary Registration 153
67.3.3. Access....154
67.3.4. Value 154

TABLE OF CONTENTS

68. VETERANS' CHILDREN WITH CERTAIN BIRTH DEFECTS PAYMENTS 154

68.1. EXCLUSION 155
68.2. VERIFICATION 155

69. VICTIMS' COMPENSATION PAYMENTS 155

69.1. EXCLUSION 155
69.2. INTEREST 155
69.3. VERIFICATION 155

Non-SSI Individual's Resource Eligibility - Introduction

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

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

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

Sections 1 through 6 of this chapter address general information regarding resources. Sections 7 through 11 address exclusions that may apply to more than one type of resource. Sections 12 through 69 address specific resources. Sections 12 through 69 are listed in alphabetical order. Other resource exclusions are addressed under the specific resource to which they apply.

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

1. Resources Defined

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

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

1.1. Personal Property

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

1.2. Real Property

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

1.3. Liquidity Of Resources

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

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

2. Relationship of Income to Resources

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

Example

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

2.1. Conversion Or Sale Of A Resource

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

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

Example

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

2.1.1. Verification

Verification of the conversion and the new resource is required for resource evaluation. See guidelines addressing the new resource type.

3. Values to Apply to Resources

A resource's value is its value as it existed on the first moment of the first day of the month in which it is being evaluated. For AG purposes, the value of a resource is the amount of an individual's/ couple's equity in it.

3.1. Current Market Value

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

3.2. Equity Value

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

3.3. Encumbrance

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

4. Monthly Determinations

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

5. Resource Limits

An individual (or couple) with countable resources in excess of the applicable limit (which is set by statute) is not eligible for AG. If countable resources do not exceed the applicable limit, they have no effect on the amount of the AG payment.

Individual $2000

Couple $3000

6. Ownership

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

6.1. Sole Ownership

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

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

6.2. Shared Ownership

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

6.2.1. Types of Shared Ownership

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

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

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

6.2.1.1.1. No Survivorship Rights

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

Example -

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

6.2.1.2. Joint Tenancy - Each Owner Has Same Interest

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

6.2.1.2.1. Survivorship Rights

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

6.2.1.2.2. Conversion to Tenancy-in-Common

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

6.2.1.3. Tenancy By The Entirety - Married Couples Only

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

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

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

6.2.1.3.1. Survivorship Rights

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

6.3. Property Rights Without Ownership of the Property

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

6.3.1. Leasehold

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

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

Note: A leasehold does not create a life estate in Virginia.

6.3.2. Incorporeal Interests – Mineral and Timber Rights and Easements

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

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

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

7.1. Exclusion

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

7.1.1. Trade Or Business Property

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

7.1.2. Government Permits

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

7.1.3. Personal Property Used By An Employee

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

7.2. Current Use Criterion

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

- It has been in use; and
- There is a reasonable expectation that the use will resume

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

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

7.2.1. 12-Month Rule

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

7.2.2. 12-Month Extension

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

7.2.2.1. Disabling Condition

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

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

7.2.3. No Intent To Resume Activity

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

7.2.4. Change of Intent

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

7.3. Trade Or Business

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

- A description of the trade or business;
- A description of the assets of the trade or business;
- The number of years it has been operating;

- The identity of any co-owners;
- The estimated gross and net earnings of the trade or business for the current tax year.

7.3.1. Redetermination

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

7.3.2. Verification

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

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

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

7.3.3. Questionable Trade Or Business

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

- The good faith intention of making a profit or producing income,
- Continuity of operations, repetition of transactions, or regularity of activities,
- Regular occupation,

- Holding out to others as being engaged in the selling of goods or services.

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

7.3.4. Liquid Resources Used In A Trade Or Business

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

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

7.4. Government Permits

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

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

7.4.1. Verification

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

7.5. Personal Property Used By An Employee

7.5.1. Verification

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

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

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

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

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

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

While this category of property may encompass a vehicle used solely in a non-business self-support activity (e.g. a garden tractor, or a boat used for subsistence fishing), it does not include any vehicle that is used for the individual’s transportation. See Automobile, Chapter E – 15.

8.1. Exclusion

Up to $6,000 of the **equity value** of non-business property used to produce goods or services essential to daily activities is excluded from resources. There is no requirement that the property produce a certain rate of return. The property must be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

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

8.1.1. Exception to the Exclusion

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

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

Resources Assumed to be Liquid

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

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

8.2. Current Use Criterion

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

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

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

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

8.2.1. 12-Month Rule

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

8.2.2. 12-Month Extension

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

8.2.2.1. Disabling Condition

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

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

8.2.3. No Intent To Resume Activity

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

8.2.4. Change of Intent

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

8.3. Value

8.3.1. Real Property

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

8.3.2. Personal Property

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

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

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

8.4. Verification

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

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

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

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

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

9.1. Exclusion

Up to $6,000 of the equity value of non-business income producing property can be excluded from resources if the property produces a net annual return equal to at least 6% of the **excludable equity**. The property must be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

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

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

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

9.1.1. Exception to the Exclusion

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

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

9.1.1.1. Resources Assumed to be Liquid

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

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

9.2. Current Use Criterion

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

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

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

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

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

9.2.1. 12-Month Rule

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

9.2.1.1. 12-Month Extension

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

9.2.1.1.1. Disabling Condition

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

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

9.2.2. Change Of Intent

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

9.3. Computing The Rate Of Return

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

Example

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

9.4. Rate Of Return Less Than 6%

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

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

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

Example

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

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

9.4.1. Earnings Rate Of Less Than 6%:

- Record the individual's explanation of the earnings decline in the file.
- Obtain evidence of prior years' earnings (e.g., tax returns for at least 2 years prior to the current tax year) to determine whether the activity has produced a 6% rate of return before.

- When no tax returns are available, use other evidence such as receipts, check registers, invoices, sales slips, bank statements, etc.

9.4.2. Time Limit For Resumption Of 6% Return

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

- **24-Month Period Ends**

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

9.4.3. Operating At A Loss

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

9.5. More Than One Income Producing Property

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

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

9.6. Equity Value Exceeds $6000

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

Example

Mr. Cameron states that he now lives in an ALF and is renting out his formerly excluded home, which has an EV of $7,000. If the property produces a 6% return, $6000 of its equity will be excluded and $1,000 will be a countable resource. The rent will be evaluated as unearned income.

9.7. Verification

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

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

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

9.7.1. Supporting Evidence

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

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

When an individual has received nine months of Conditional Benefits due to his ownership of excess real property during which he/she made continuing but unsuccessful reasonable efforts to sell, the reasonable effort to sell exclusion may be applied in determining his/her eligibility for regular AG benefits. The exclusion will apply if the individual continues to make reasonable efforts to sell or establishes good cause for failure to do so.

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

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

10.1. Exclusion

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

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

10.2. Conditional Benefits Overpayment

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

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

10.3. No Resumption of the Exclusion after Termination of Eligibility

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

10.4. Explanation of Exclusion

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

- The property will continue to be excluded for as long as reasonable efforts to sell it continue and counting it would cause resources to exceed the AG resource limit;
- The worker will continue to make periodic follow-up contacts and to request evidence of ongoing reasonable efforts to sell; and

- The individual is still responsible for informing the worker promptly of any offers to buy and for showing that any offer refused was not reasonable.

10.5. Reasonable Efforts to Sell

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

10.6. Continuing Efforts to Sell

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

- List the property with an agent; or

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

10.7. Individual Must Accept Any Reasonable Offer

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

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

Example

When the worker contacted Mrs. Darwin on September 19 to verify her continuing effort to sell, Mrs. Darwin stated that she had just refused an offer of $6,000 as being too low. Mrs. Darwin said she has no proof that $6,000 was unreasonable; it was her opinion that it was too low. The current market value of the property is $8000. The worker determines that the offer was reasonable ($6,000 is more than two-thirds of $8,000) and that Mrs. Darwin is no longer making reasonable efforts to sell. As of October 1, the property is a countable resource

10.8. Verification of Efforts to Sell

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

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

Evaluate those efforts against criteria in Reasonable Effort to Sell Chapter F–8.1.

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

10.9. Supporting Evidence

Ask the individual to submit all appropriate proof such as:

10.9.1. Real Property

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

10.9.2. Personal Property

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

- Any other evidence of reasonable efforts to sell property.

10.10. Good Cause

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

10.10.1. Significance of Good Cause

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

- With good cause, failure to meet the criteria above means that the exclusion continues.

10.10.2. Examples of Good Cause

- **No Offer to Buy**

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

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

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

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

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

- **Incapacitating Illness or Injury**

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

- **Part-Owner Dies**

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

10.10.3. Verification

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

10.11. Follow-up Contacts

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

Contact the individual in order to:

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

Document:

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

10.11.1. Frequency of Contacts

Contact the owner at 3-month intervals.

Exception:

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

10.12. Individual Making Reasonable Efforts

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

10.13. Individual Not Making Reasonable Efforts

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

11. Undue Hardship Exclusion - Real Property

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

11.1. Undue Hardship

Undue hardship would result if such co-owner:

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

11.2. Allegation Of Loss Of Housing For Co-Owner

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

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

11.2.1. Required Statement From Resident Co-Owner

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

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

11.3. Hardship Determination

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

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

12. Agent Orange Payments

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

12.1. Exclusion:

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

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

12.2. Verification

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

13. Annuities

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

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

14. Austrian Social Insurance Payments

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

14.1. Exclusion:

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

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

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

14.2. Verification

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

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

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

15. Automobiles and Other Vehicles

Vehicles include but are not limited to cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and even animals. Vehicles are resources.

15.1. Exclusion:

One vehicle per applicant/recipient is excluded regardless of the value if it is used for transportation. Absent evidence to the contrary, assume a vehicle is used for transportation.

A vehicle that has been junked or that is used only as a recreational vehicle (e.g., a boat or plane used for pleasure) doesn't qualify for this exclusion. Its equity value is a countable resource.

15.1.1. Month of Application

One vehicle per applicant/recipient is excluded if it is used for transportation of the eligible individual/couple or a member of the eligible individual's/couple's household.

Note: A vehicle may be excluded for each member of an AU.

15.1.2. Ongoing Months

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

15.1.3. More Than One Vehicle Is Used For Transportation

If the eligible individual owns more than one vehicle (two for an AU of two) that is used for transportation, the total exclusion applies to the vehicle with the greater equity value.

15.1.4. Vehicle Is Temporarily Inoperable

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

15.2. Value

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

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

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

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

15.2.1. Rebuttal

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

15.3. Verification

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

16. Burial Contracts

A prepaid (or preneed) burial contract is an agreement whereby the buyer pays in advance for a burial that the seller agrees to furnish upon the death of the buyer or other designated individual. Prepaid burial contracts do not include burial insurance or burial trusts. See Burial Insurance Chapter E -18 and Burial Trusts Chapter E -20.

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

16.1. Contract Revocability

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

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

16.1.1. Virginia

Code of Virginia Section 54.1-2328 specifies that all burial contracts may be terminated within the first 3 days of execution. After 3 days, only the designated provider of services can be changed. The contracts are not salable.

16.1.1.1. First 3 Days

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

16.1.1.2. After 3 Days

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

16.1.2. Kentucky

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

16.1.3. North Carolina

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

16.1.4. Tennessee

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

16.2. Provider Places Funds in Trust

When an individual irrevocably contracts with a provider of burial services and the provider places the funds in trust, the contract becomes part of the trust and has no separate resource value. Use the information found in Burial Trusts, Chapter E -20 to evaluate the trust.

16.3. Conditions for Liquidation

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

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

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

16.4. Value

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

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

16.4.1. Rebuttal

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

16.5. Relationship To The Burial Space And Burial Fund Exclusions

16.5.1. Revocable Or Salable

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

16.5.2. Irrevocable And Not Salable

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

16.6. Verification

Obtain a copy of the contract.

17. Burial Funds

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

17.1. Exclusion

A maximum of $1,500 **each** may be excluded for:

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

17.1.1. Mandatory Reduction of Maximum Exclusion

The individual (or spouse) may not be entitled to the maximum exclusion. If the individual’s assets include any of the following, the values of those assets must be subtracted from the $1500 maximum. The remaining value of the exclusion, if any, may be used to exclude designated burial funds.

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

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

17.1.2. Burial Funds To Which The Burial Fund Exclusion May Be Applied

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

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

17.1.3. Appreciation

Any appreciation in the value of excluded burial funds is also excluded from resources (and from income), even if the total of the burial funds plus the appreciation exceeds $1,500. This includes interest earned by burial funds, if the interest is left to accumulate as part of the funds.

17.1.4. Recalculation of Burial Fund Exclusion

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

17.1.5. Burial Funds Must Be Kept Separate

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

17.1.6. Effective Date of Exclusion

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

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

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

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

17.2. Designation of Burial Funds

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

Burial funds may be designated as such by:

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

- A signed statement. The "Burial Resource Statement" form may be used. The signed statement must show:
  - The value and owner of the resources;
  - For whose burial the resources are set aside;
  - The form(s) in which the resources are held (burial contract, bank account, etc);
  - The date the individual first considered the funds set aside for the burial of the person specified;
  - Acknowledgement of the penalty clause; and
  - Acknowledgement of the reporting requirements.

17.2.1. Length of Designation

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

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

17.2.2. Redesignation of Funds After Misuse

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

17.3. Funds Used For Another Purpose

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

- Transferring excluded burial funds from one form to another (e.g., from a certificate of deposit to a burial contract) is **not** use for another purpose.
- Use of a burial fund as collateral for a loan is use for another purpose because the loan creates an encumbrance on the funds. Since the funds are not available for the individual's burial as long as they are encumbered, the funds cannot be considered set aside for the individual's burial. This is true even if the loan is used for burial purposes.

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

17.3.1. Penalty — Funds Used For Another Purpose

With the exception noted below, if an individual uses excluded burial funds for a purpose other than the burial arrangements of the individual or the individual's spouse for whom the funds were set aside, the amount of **excluded funds used** will be withheld from future AG benefits. Excluded funds include the excluded accumulated interest earned on the excluded funds.

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

Exception:

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

17.3.1.1. Computing the Penalty

Use the following procedure to compute and apply the penalty.

	Funds Used for Another Purpose **Computing the Penalty**
Steps	**Actions**
Step 1	**Determine the individual's countable resources as of the first moment of the first day of the month in which the funds were used for another purpose.** Do not apply the Burial Fund Exclusion to the burial fund from which the funds were taken.

Steps	**Funds Used for Another Purpose** **Computing the Penalty** **Actions**
Step 2	**Compare the total resources to the resource limit.** If the countable resources are equal to or less than the limit, there is no penalty. If the countable resources exceed the limit, there will be a penalty. Go to Step 3.
Step 3	**Determine the amount of excluded funds that were used. The penalty only applies to the use of excluded funds (including excluded interest).** If the fund included excluded and non-excluded funds, assume the funds were used in the following order: non-excluded interest, non-excluded originally designated amounts, excluded interest, excluded originally designated amounts. EXAMPLE – At initial application an individual designated $2,000 as a burial fund. The worker excluded $1,500 and counted $500. Over time interest was added to the account. The account grew to $2,200 as of April. The worker determined the amount of interest earned on the excluded funds was $150, and $50 on the non-excluded funds. The totals for April were $1,650 excluded and $550 non-excluded. The individual used $750 for a non-burial purpose in April. The worker determined that the $750 used consisted of $50 in non-excluded interest, $500 in non-excluded funds, $150 in excluded interest and $50 in originally designated excluded burial funds.
Step 4	**The penalty will equal the total of the excluded funds and excluded interest that were used.** EXAMPLE - Penalty for above example - A penalty of $200 applies ($150 excluded interest and $50 originally designated excluded funds.)

Steps	Funds Used for Another Purpose Computing the Penalty Actions
Step 5	**Apply the penalty as soon as administratively possible. An advance notice of action must be sent.** Compute the grant as normal and subtract the penalty amount from the final grant amount. If the penalty exceeds the amount of one month's grant apply the remainder of the penalty to the following month's grant. Continue this process until the full penalty is recovered. Reduction of the grant to zero due to the application of the penalty will not be a reason to close the case. If all other eligibility factors are met, the individual will continue to be enrolled as eligible for AG and Medicaid. No grant will be issued.

17.4. Life Insurance Designated as a Burial Fund

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

Increases in cash value that occur after the first date the policy is excluded are considered appreciation in the value of excluded burial funds. As appreciation the full cash value is excluded, even if the total exceeds $1,500.

17.5. Life Insurance Dividends

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

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

17.6. Verification

Obtain

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

18. Burial Insurance

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

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

18.1. Verification

Obtain a copy of the policy.

19. Burial Spaces

A burial space is a:

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

The term burial space 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);
- Arrangements for the opening and closing of the gravesite; and
- A contract for care and maintenance of the gravesite sometimes referred to as endowment or perpetual care.

Non-excluded burial space items are countable resources.

19.1. Exclusion

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

The burial space exclusion is in addition to the burial funds exclusion.

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

19.2. Individual's Immediate Family

The individual's immediate family includes his or her:

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

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

19.3. Held For

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

- Title to and/or possesses a burial space intended for the individual's use (e.g., has title to a burial plot or owns a burial urn stored in the basement for his or her own use); or
- A contract with a funeral service company for specified burial spaces for the individual's burial (i.e., an agreement which represents the individual's current right to the use of the items at the amount shown)

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

19.4. Verification:

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

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

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

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

20. Burial Trusts

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

When evaluating burial trusts, it is necessary to determine whether a burial trust was established with the individual's funds or funds that have been irrevocably paid to the funeral provider.

20.1. Burial Trusts Established With Funds That Have Been Irrevocably Paid To The Funeral Provider

Funds are considered to have been irrevocably paid to a funeral provider when:

- An individual irrevocably contracts with a provider of funeral goods and services for a funeral; and
- The individual funds the contract by prepaying for the goods and services; and
- The funeral provider subsequently places the funds in a trust; or
- The individual establishes an irrevocable trust, naming the funeral provider as the beneficiary.

SSI has ruled that, in these situations, the funds become the funeral provider's funds at the point the trust is established making the trust one that was created with the funeral director's funds, not the funds of the individual, a third party trust.

20.1.1. Value

The trust is a third party trust that designates the individual as the beneficiary. As the beneficiary, the individual does not have the right to revoke or direct the use of the trust principal for his/her support or maintenance. Therefore, the trust is a not a countable resource to the individual. See Trust Type A, Chapter E -65.

Note: When an individual irrevocably contracts with a provider of burial services and the provider places the funds in a trust, the contract becomes part of the trust and has no separate resource value. See Burial Contracts, Chapter E – 16.

20.1.2. Assistant Attorney General Review

These trusts do not have to be submitted to the AAG for review.

20.1.3. Verification

Obtain a copy of the trust documents to verify that the trust was established with the funeral provider's funds and a copy of the contract that specifies the goods and services that were purchased.

20.1.4. Relationship to the Burial Fund Exclusion

The value of burial fund items included in the contract must be used to reduce the available Burial Fund Exclusion amount. See Burial Funds, Chapter E – 17.

20.2. Burial Trusts Established With the Individual's or Spouse's Funds

A burial trust is determined to have been established with the individual's funds when:

- An individual does not enter into a pre-need funeral contract with a funeral provider, but establishes a burial trust with his/her own assets; or
- An individual enters into an irrevocable funeral contract with a funeral provider, but establishes a revocable trust to fund the contract; or
- An individual enters into a revocable funeral contract with a funeral provider, even if the funeral provider places the money in a trust.

20.2.1. Value

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

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

20.2.2. Verification

Follow verification guidelines in Trust Type A, Chapter E – 65 or Trust Type B, Chapter E – 66 as appropriate.

20.2.3. Review

If there is a question regarding the trust, documents may be submitted to the AG consultant for review.

21. Cash

Cash on hand is a resource.

21.1. Verification

Accept the individual's statement regarding the amount owned.

22. Certain Cash to Purchase Medical or Social Services

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

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

22.1. Exclusion

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

22.1.1. Exception

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

22.1.2. Services That Are Not Income

22.1.2.1. Medical Services

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

22.1.2.2. Cash Provided By A Governmental Medical Or Social Services Program

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

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

22.1.2.3. Cash Provided By A Nongovernmental Medical Or Social Services Organization For Medical Or Social Services

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

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

23. Certificates of Deposit

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

24. Checking and Savings Accounts

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

24.1. Value

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

24.2. Deposits of Income

The total of all funds included in the verified account balance that are identified as income for the month of evaluation must be subtracted from the ending balance. This may occur when a payer advance dates a check or a direct deposit is made early because the regular payment date falls on a weekend or holiday.

24.2.1. Allegation of Checks That Have Not Cleared the Bank

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

24.3. Ownership Of Account

24.3.1. Fiduciaries

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

24.3.2. Individual Accounts

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

24.3.3. Joint Accounts

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

24.3.4. Ownership Rebuttal

If an individual wishes to rebut the applicable ownership assumption, obtain his/her statement regarding:

- Who owns the funds;
- Why there is a joint account;
- Who has made deposits to and withdrawals from the account; and how withdrawals have been spent.

24.3.4.1. Rebuttal Verification

In addition, inform the individual that he/she must submit the following evidence within 10 days:

- A corroborating statement from each other account holder (If the only other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account.);
- Account records showing deposits, withdrawals and interest in the months for which ownership is at issue;
- If the individual owns none of the funds, evidence showing that he/ she can no longer withdraw funds from the account;
- If the individual owns only a portion of the funds, evidence showing removal from the account of such funds, or removal of the funds owned by the other account holder(s), and redesignation of the account.

24.3.4.2. Rebuttal Results

Any funds that the evidence establishes were owned by the other account holder(s), and that the individual can no longer withdraw from the account, were not and are not the individual's resources. That is, rebuttal is both retrospective and prospective.

24.4. Right to Use for Support and Maintenance

If the individual cannot withdraw and use the funds in an account for his/her own support and maintenance, the account is not a resource.

24.4.1. Examples of Evidence to the Contrary

- **Right to Withdraw Funds Restricted to a Specified Account Holder**

  An account is titled, "In trust for John Jones and Mary Smith, subject to sole order of John Jones, balance at death of either to belong to survivor." Since John alone has unrestricted access, none of the funds in the account could be considered Mary's resources unless John was her fiduciary. The full value of the account would be a resource to John.

- **Withdrawals Require Authorization of Third Party**

  An account is titled, "George Dailey, restricted Individual Indian Money Account." Mr. Dailey cannot withdraw funds from the account without Bureau of Indian Affairs (BIA) authorization. Therefore, the account is not his resource.

24.4.2. Examples of Restricted Use

- **Use Restricted by Court Order**

  Even with ownership interest and the legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance means the property is not the owner's resource.

- **Special Purpose Accounts**

  An account is titled, "Thomas Green, Kiwanis Club Fund for Heart Surgery." While Mr. Green has unrestricted access to the funds, development shows that their use is restricted to the expenses of his surgery. Therefore, they are not a resource.

24.5. Verification

Obtain verification that shows

- The balance in the account as of the first moment of the month being evaluated
- The name and address of the financial institution;
- The account number(s); and
- The exact account designation.

Verification of account balances can be obtained from:

- Bank statements and passbooks;
- Internet printouts from the financial institution's web site; and
- ATM transaction receipts and/or deposit/withdrawal slips.

25. Child Tax Credits (CTC)

The child tax credit is a special refundable Federal tax credit that is available to certain low income taxpayers with earned income. They must be parents, step-parents, grandparents or foster parents with a dependent child. This child tax credit may provide a refund to individuals even if they do not owe any tax.

25.1. Exclusion

Any unspent Federal tax refund from a CTC is excluded from resources for the 9 calendar months following the month the refund or payment is received.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

25.2. Interest

Interest earned on unspent CTC funds is not excluded from income and resources.

25.3. Verification

If an individual alleges that his or her resources include unspent CTC refunds or payments:

- Use the individual's Federal income tax return or other documents in the individual's possession to verify the source, date(s), and amount(s) of such refund(s) or payment(s); and

- Obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the CTC refunds or payments.

26. Commingled Funds

26.1. Non-Burial Related Excluded Funds

Otherwise excludable funds must be identifiable in order to be excluded. Identifiability does not require that excluded funds be kept physically apart from other funds (e.g., in a separate bank account) but enough information must be presented to clearly identify which portion of the funds are from an excludable source.

26.2. Excluded Burial Funds

Excluded burial funds may be commingled with burial-related assets, but must be kept physically apart from other funds (e.g., in a separate bank account). See Burial Funds, Chapter E - 17.

26.3. Interest

If interest on the excluded funds is excluded (as with disaster assistance), the percent of an interest payment to be excluded is the same as the percent of funds in the account that is excluded **at the time the interest is posted.** The excluded interest is then added to the excluded funds in the account.

Example:

A $1,000 savings account includes $800 in excluded disaster assistance when a $10 interest payment is posted. Since 80 percent of the account balance is excluded at the time the interest is posted, 80 percent of the interest ($8) is excluded. The amount of excluded funds now in the account is $808.

26.4. Determining The Excluded Portion

Always assume, when withdrawals are made from an account with commingled funds in it, that non-excluded funds are withdrawn first, leaving as much of the excluded funds in the account as possible.

If excluded funds are withdrawn, the excluded funds left in the account can be added to only by:

- Deposits of subsequently received funds that are excluded under the same provision; and
- Excluded interest.

Obtain a complete history of account transactions back to the initial deposit of excluded funds. Use the individual's own records if possible. Accept the individual's allegation as to the date and amount of a deposit of excluded funds if it agrees with the evidence in file on the receipt of the funds.

Record:

- Each deposit of excluded funds;
- Each withdrawal that reduces the amount of excluded funds;
- Each computation of excluded interest and its addition to the excluded funds.

Examples*:*

One-Time Receipt and Deposit of Excluded Funds

An individual deposits a $1,000 SSA check ($800 for the preceding 4 months and $200 for the current month) in a checking account. The account already contains $300 in non-excluded funds.

- Of the new $1,300 balance, $800 is excluded as retroactive SSA benefits.
- The individual withdraws $300. The remaining $1,000 balance still contains the excluded $800.
- The individual withdraws another $300, leaving a balance of $700. All $700 is excluded.
- The individual deposits $500, creating a new balance of $1,200. Only $700 of the new balance is excluded.

Periodic Receipt and Deposit of Excluded Funds

An individual deposits $200 in excluded funds in a non-interest bearing checking account that already contains $300 in non-excluded funds.

- The individual withdraws $400. The remaining $100 is excluded.

- The individual then deposits $100 in non-excluded funds. Of the resulting $200 balance, $100 is excluded. The individual next deposits $100 in excludable funds. Of the new $300 balance, $200 is excluded.

27. Conservatorship Accounts

The term "conservatorship account" refers to a financial account in which a person or institution has been appointed by a court to manage and preserve the assets of an individual which are held in the account. The "individual" is the person for whom a conservatorship account is held.

27.1. Assumption of Availability for Support and Maintenance

Assume, absent evidence to the contrary, that funds in such an account are available for the individual's support and maintenance and are, therefore, that individual's resource. This includes accounts in which an individual or his/her agent must petition the court for withdrawal of funds.

27.1.1. Obtain the Individual's Allegation

Obtain over the individual's signature an allegation regarding:

- Who can withdraw the funds;
- The method for withdrawing funds (e.g., petition the court or unlimited ability to withdraw by the individual or his/her agent);
- Uses to which funds may or must be put; and
- Any restrictions on availability or use of funds

27.1.2. Evidence to the Contrary

Evidence to the contrary include (but are not limited to):

- Restrictive language in the court order that established the account or in a subsequent court order;
- If the court has, at the individual's or his/her agent's request, restricted use of funds in the account to things other than the individual's support and maintenance, obtain the individual's allegation as to whether the restriction(s) can be removed by request or petition.

- If the restriction(s) can be removed at the individual's or agent's request or petition, determine that the funds are a resource.
- If the restriction(s) cannot be removed, the funds are not available and are not a countable resource.

- The court has repeatedly denied requests for withdrawals for the individual's support and maintenance.
  - Denial by the court of a request for withdrawal of funds does not necessarily mean that funds in the account are unavailable for the individual's support and maintenance. Evaluate the reasons for denial. If the court only disapproves requests for non-essential items, the funds are considered available and a resource for AG purposes.

27.2. Examples Procedures For Conservatorship Accounts:

- **Funds Assumed to Be Available for Support and Maintenance**

  The claimant, a disabled 28-year-old individual, received a $20,000 court-ordered personal injury award as a result of an accident on a city bus. The court order stipulates that the claimant's legal guardian must petition the court for withdrawal of funds as needed. The order does not place any restrictions on how the funds may be used on behalf of the claimant. Therefore, the funds in the account are a resource.

- **Petition for Withdrawal of Funds Denied**

  The AG recipient has received a $100,000 medical malpractice award. The court order requires that the recipient petition the court for withdrawal of funds. The recipient alleges that a recent petition for withdrawal of funds was denied.

  The worker asks the payee to submit evidence of the petition in question and all prior petitions. All but one petition for withdrawal of funds were approved for the general support and maintenance of the individual. The court denied one petition, citing the intended use of the funds. The court characterized the intended use as “nonessential for the individual’s care.”

  Since the one denied petition does not negate the presumption that the funds are available for the individual’s support and maintenance, the funds are a resource.

27.3. Verification

To verify the value of the funds ask the individual to submit evidence regarding the account. This evidence may include:

- The court order establishing the conservatorship and the account;
- Any account records showing withdrawals, deposits, and balances;
- Prior applications or petitions for withdrawal of funds (if applicable), including any correspondence or notices from the court responding to the applications or petitions; and
- Any other documents or evidence in the individual's possession pertaining to the conservatorship account.

28. Corporation for National and Community Service (CNCS) (Formerly ACTION) Payments

In 1993, the National and Community Service Trust Act (NCSTA) established the Corporation for National and Community Service (CNCS) by combining two formerly independent agencies: the Commission on National Service and ACTION.

ACTION consisted of a number of volunteer services programs including:

- Volunteers in Service to America (VISTA) (now AmeriCorps*VISTA)
- University Year for ACTION (UYA)
- Special and Demonstration Volunteer Programs
- Retired Senior Volunteer Program (RSVP)
- Foster Grandparent Program
- Senior Companion Program.

28.1. Exclusion

Payments to volunteers under chapter 66 of title 42 of the U.S. Code (the former ACTION programs) are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

28.2. Verification

Use documents in the individual's possession, contact with the program or agency involved or a precedent to verify that a program is one of those listed.

Accept an individual's allegation of participation in a former ACTION program and exclude any payments from resources without further verification.

29. Death Benefits

A death benefit is something received as the result of another's death. Death benefits include gifts and inheritances and may be countable resources.

Examples of death benefits include:

- Proceeds of life insurance policies received due to the death of the insured;
- Lump sum death benefits from SSA;
- RR burial benefits;
- VA burial benefits;
- Inheritances in cash or in real or personal property;
- Cash or gifts of real or personal property given by relatives, friends, or a community group to “help out” with expenses related to the death.

Note: Recurring survivor benefits such as those received under Title II, private pension programs, etc., are not death benefits.

29.1. Value of Resource

Death benefits in excess of the cost of the deceased person's last illness and burial expenses that are **to be paid by the individual** are income in the month received and a countable resource the month following the month of receipt.

29.2. Exclusion

The portion of death benefits an individual will use to pay the deceased's last illness and burial expenses are not a resource for **one calendar month** following

the month of receipt. If retained until the first moment of the second calendar month following receipt, death benefits are resources.

29.2.1. Exception — Bills Already Paid

Death benefits that are repayment of bills for last illness and burial expenses the individual has already paid are subject to resources rules beginning with the first moment of the month following the month of receipt.

29.2.2. Deductible Expenses

Last illness and burial expenses include related hospital and medical expenses; funeral, burial plot, and interment expenses; and other related expenses.

29.2.3. Verifying Expenses

Verify all last illness and burial expenses. If verification (e.g., bills, receipts, contact with provider, etc.) cannot be obtained, accept the individual's signed allegation. If an expense has been incurred but not paid, assume the individual will pay the expense unless you have reason to question the situation. No follow-up is required if the assumption is applied.

Use your judgment to determine whether an expense is reasonably related to the last illness and burial. It is expected that related expenses may include such items as: new clothing to wear to the funeral; food for visiting relatives; taxi fare to and from the hospital and funeral home; etc.

29.3. Verification of Benefits

Obtain written verification from the source of the benefits. If written verification is unavailable, accept the individual's signed allegation of the amount of death benefits and when received unless you have reason to doubt the allegation.

30. Disaster Assistance

Disaster assistance payments are funds paid to individuals to aid them in recovering from a major disaster. Major disasters include such things as hurricanes, tornadoes, floods, earthquakes, volcano eruptions, landslides, snowstorms, drought, etc.

30.1. Exclusion

Unspent assistance received from the following sources is **permanently** excluded from resources:

- The Disaster Relief and Emergency Assistance Act(P.L. 100-707);
- Another Federal statute because of a presidential-declared major disaster;
- Comparable assistance received from a State or local government; or
- From a disaster assistance organization.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

30.2. Interest

Interest earned on funds excluded under this provision is excluded from income and from resources.

30.3. Verification

A declaration by the President or the Governor of a major disaster will be public information, i.e., newspaper, television, and radio. Accept the individual's allegation as to the amount received.

31. Earned Income Tax Credits

The earned income tax credit is a special tax credit that reduces the Federal tax liability of certain low income working taxpayers. This tax credit sometimes results in a payment to the taxpayer, either as an advance from an employer or as a refund from IRS.

31.1. Exclusion

Any unspent Federal tax refund or payment made by an employer related to an EITC is excluded from resources for the 9 calendar months following the month

the refund or payment is received. If the funds are retained beyond nine months, they are countable resources as of the first day of the tenth month.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

31.2. Interest

Interest earned on unspent EITC funds is not excluded from income and resources.

31.3. Verification

If an individual alleges that his or her resources include unspent EITC refunds or payments:

- Use the individual's Federal income tax return or other documents in the individual's possession to verify the source, date(s), and amount(s) of such refund(s) or payment(s); and
- Obtain a statement as to the date(s) and amount(s) of any account deposits corresponding to the EITC refunds or payments.

32. Educational Funds - Grants, Scholarships, Fellowships, and Gifts

Grants, scholarships, and fellowships are amounts paid by private nonprofit agencies, the U.S. Government, instrumentalities, or agencies of the U.S., State and local governments, foreign governments, and private concerns to enable qualified individuals to further their education and training by scholastic or research work, etc.

The source of the grants, scholarships, and fellowships determine how the funds are evaluated. Title IV of Higher Education Act of 1965 (HEA) and Bureau of Indian Affairs (BIA) grants are fully excluded regardless of use. The portion of Other Grants, Scholarships, Fellowships, and Gifts used or intended to be used to pay the cost of necessary educational expenses are excluded for nine months after receipt.

32.1. Title IV of HEA or BIA Involvement

Examples of HEA Title IV Programs:

- PELL grants
- State Student Incentives
- Academic Achievement Incentive Scholarships
- Byrd Scholars
- Federal Supplemental Educational Opportunities Grants (FSEOG)
- Federal Educational Loans (Federal PLUS Loans, Perkins Loans, Stafford Loans, Ford Loans, etc.)
- Upward Bound
- Gear Up (Gaining Early Awareness and Readiness for Undergraduate Programs)
- LEAP (Leveraging Educational Assistance Partnership)
- SLEAP (Special Leveraging Educational Assistance Partnership)
- Work-Study Programs.

Note: State educational assistance programs, including work-study, funded by LEAP or SLEAP are programs under Title IV of HEA.

32.1.1. Exclusion

All student financial assistance received under HEA, or under BIA student assistance programs, is excluded from income and resources, regardless of use. The resource exclusion for this educational assistance does not have a time limit, i.e. regardless of how long the assistance is held, it is excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

32.1.2. Interest and Dividends

Interest and dividends earned on unspent educational assistance under Title IV of HEA or under BIA are countable resources but are excluded as income.

32.1.3. Verification

Verify that the assistance is a grant, scholarship, fellowship, or gift using documents in the individual's possession or by contacting the institution or provider.

32.2. Other Grants, Scholarships, Fellowships, and Gifts

32.2.1. Exclusion

Any portion of a grant, scholarship, fellowship, or gift used or intended to be used to pay the cost of tuition, fees, or other necessary educational expenses at any educational institution, including vocational and technical education, is excluded from resources for 9 months beginning the month after the month it was received. This exclusion does not apply to any portion set aside or actually used for food or shelter.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

32.2.2. The Non-Excluded Portions

The non-excluded portions of Other Grants, Scholarships, Fellowships, and Gifts must be evaluated as income. See Non-SSI Income - Other Grants, Scholarships, Fellowships, and Gifts, Chapter I – 29.3.

32.2.3. Excluded Funds Not Spent

Grants, scholarships, fellowships, and gifts that are retained after the 9-month exclusion period are countable resources beginning the month following the end of the 9th month.

32.2.4. Verification

Verify that the assistance is a grant, scholarship, fellowship, or gift using documents in the individual's possession, contact with the institution or provider, or a precedent to verify the nature of the assistance (e.g., scholarship, grant, etc.). If not totally excluded under another provision, verify the amount, date(s) of payment, payee, source of payment/payer, etc.

Determine the amount of tuition, fees, and other necessary educational expenses.

- Use receipts, bills with cancelled checks, contact with the provider, etc., to verify expenses paid. If an expense is verified as incurred but not paid, assume the individual will pay the expense unless you have reason to question the situation. No follow-up is required if the assumption is applied.
- Use your judgment to determine whether payment of an expense was a necessary part of obtaining an education.
- A signed allegation is acceptable evidence of expenses when it is unreasonable to obtain other evidence (e.g., daily bus-fare, small expendable items, etc.). Do not accept an allegation for major expenses such as tuition, fees, and books.

33. Food Stamps

The Food Stamp Program is a nationwide food supplementation program.

33.1. Exclusion

The value of the food under the food stamp program to any household is excluded from resources.

33.2. Verification

Accept an individual's allegation of receipt.

34. Gifts Of Travel Tickets

34.1. Domestic Travel Tickets

The value of a ticket for domestic travel received by an individual (or spouse) is not a resource if the ticket is:

- Received as a gift;
- Not converted to cash; and
- The ticket was used or is still retained

Domestic travel is travel in or between the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

34.1.1. Converted to Cash

If the tickets are converted to cash, the amount received is income in the month the ticket was converted to cash. See Gift of Domestic Travel Ticket Converted to Cash, Chapter I – 27.1.2

34.2. Verification

Obtain the individual's signed statement as to whether the ticket has been retained, used, or converted to cash. If the ticket has been converted to cash, specify in the statement the amount of cash received. In the absence of evidence to the contrary, accept the statement as fact.

34.3. Non-Domestic Travel Tickets

The value of tickets for non-domestic travel received by an individual are a resource if held beyond the month of receipt. See Gift of Non-Domestic Travel Ticket, Chapter I – 28 for treatment as income.

Exception: If the ticket cannot be sold or converted to cash due to restrictions placed on the ticket, it is not a resource.

34.3.1. Verification

Obtain the individual's signed statement as to whether the ticket could be converted to cash:

- If the answer is yes, count the CMV of the ticket as a resource in the month following the month of receipt.
- If the answer is no, verify the allegation by examining the ticket or by contact with the travel carrier or travel agent. If the allegation is verified, the ticket is not a resource.

35. Home Property

An individual's home is property in which he or she has an ownership interest and that serves as his or her principal place of residence. **It includes**:

- **The shelter in which he or she lives;**
  - An individual's principal place of residence is the dwelling the individual considers his or her established or principal home and to which, if absent, he or she intends to return. It can be real or personal property, fixed or mobile, and located on land or water.
  - Absent ownership in more than one residence or evidence that raises a question about the matter, assume that the alleged home is the individual's principal place of residence.
- **The land on which the shelter is located;**
  - The home includes any land that adjoins it. Land adjoins the home plot if not completely separated from it by land in which neither the individual nor his or her spouse has an ownership interest. Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot.
  - It is not necessary that the individual own the shelter itself.
- **Related buildings on such land**
  - The home includes all buildings on the land on which the shelter is located and those on adjoining land.

35.1. Exclusion

An individual's home, regardless of value, is an excluded resource as long as:

- The alleged home is the individual's principal place of residence;
- The individual continues to live there;
- The individual has left the home but states his/her intent to return to the home;
- A spouse or dependent relative of the individual continues to live there while the individual is living in an ALF or is in AFCH; or

- Its sale would cause undue hardship, due to loss of housing, to a co-owner of the property.

Note: A life estate in property is an "ownership interest". If an individual lives on the property to which he has a life estate, the life estate interest may be excluded as home property.

35.2. Property That No Longer Serves As The Principal Place Of Residence

Property ceases to be the principal place of residence, and, therefore, to be excludable as the home as of the date that the individual, having left it, does not intend to return to it. (See Intent to Return, Chapter E – 35.6.2) Such property, if not excluded under another provision, will be included in determining countable resources as of the first moment of the first day of the following month.

35.3. Indication of More than One Residence

If an individual alleges or other evidence indicates ownership of more than one residence, obtain his or her signed statement concerning such points as:

- How much time is spent at each residence;
- Where he or she is registered to vote;
- The address he or she uses as a mailing address or for tax purposes.

Determine the principal place of residence accordingly and document the determination in the file.

35.4. Ownership

Accept an individual's allegation of home ownership unless the file raises a question about it (e.g., a life estate is involved). If there is a question, have the individual submit one of the items of evidence listed below.

35.4.1. Verification

35.4.1.1. Real Property Ownership:

- Tax assessment notice;
- Recent tax bill;
- Current mortgage statement;
- Deed;

- Report of title search;
- Evidence of heirship in an unprobated estate (e.g., receipt of income from the property, a will, or evidence of relationship recognizable under State intestate distribution laws in cases where the home is unprobated property).

35.4.1.2. Personal Property Ownership (E.G., A Mobile Home):

- Title
- Current registration

35.4.1.3. Life Estate Or Similar Property Rights:

- Deed
- Will
- Other legal document

35.5. Evidence Indicates Non-adjoining Property

35.5.1. Individual Agrees With Evidence

If evidence indicates that land the individual owns does not adjoin the home plot, and the individual agrees that it does not:

- Obtain his or her statement to that effect; and
- Evaluate the non-adjoining portion as Property Essential to Self-Support or Non-home Real Property, as applicable. See Chapter E - Sections 7, 8, 9, and 49.

35.5.2. Individual Disagrees With Evidence

If the individual maintains that all the land adjoins the home plot, document the file with:

- A sketch of the land showing the boundaries of the various plots and the location of the shelter used as the home; and
- Evidence of how the land is treated for tax assessment purposes.

The sketch may be by the individual or from public records.

The tax assessment information may be in the form of a tax assessment notice or obtained from the appropriate tax jurisdiction.

35.5.2.1. Combined or Single Holding for Tax Assessment

Assume that the land is a single piece of property in which all the land adjoins the home plot if:

- It is recorded and treated as a single holding for tax assessment purposes; or
- The original holding has been subdivided, but still is treated as a single holding for tax assessment purposes.

35.5.2.2. More Than Single Holding for Tax Assessment

If the land is recorded and treated as two or more holdings for tax assessment purposes, use the sketch to determine whether other holdings adjoin the home plot.

35.6. Absences From The Home

When the individual is in an ALF or in an AFCH, determine if the home can be excluded because a spouse or dependent relative is living there. If no spouse or dependent relative is living in the home, determine:

- Whether the individual intends to return to the home; and
- If not, whether the sale of the home would cause undue hardship due to loss of housing to a co-owner.

35.6.1. Dependent Relative

- Dependency may be of any kind (financial, medical, etc.).
- Relative means:
  - Child, stepchild, or grandchild;
  - Parent, stepparent, or grandparent;
  - Aunt, uncle, niece, or nephew;
  - Brother or sister, stepbrother or stepsister, half brother or half sister;

- Cousin; or
- In-law.

35.6.1.1. Dependency Verification

Obtain a signed statement from the individual as to:

- Whether anyone is living in the home while the individual is in the ALF/AFCH;
- If so, how that person is related to the individual, if at all; and
- If related (except for the individual's spouse), how that person is dependent on the individual, if at all.

Absent evidence to the contrary, accept the allegations.

Note: If the individual living in the home is the spouse, verification of dependency is not required.

35.6.2. Intent To Return Home Development

Obtain a signed statement from the individual as to:

- When and why he or she left the home;
- Whether he or she intends to return; and
- If he or she does not intend to return, when that decision was made.

Note: If the individual has a guardian or power of attorney, obtain the "intent" statement from the guardian or POA.

This statement governs the "intent to return" determination unless the statement is self- contradictory.

35.6.2.1. Self - Contradictory Statement

Consider a statement to be self-contradictory if it contains conflicting or unclear expressions of intent.

Examples of self-contradictory statements:

"Sometimes I want to go home and sometimes I don't."

"I intend to go home but I also want to stay here."

"Yes, I want to go home, but I really don't know if I should."

If the individual's statement of intent is self-contradictory, contact someone who knows the situation, such as a physician, family member, or close friend or relative, to clarify the situation.

35.6.2.2. Factors Not to Consider

Do **not** consider other factors, such as the individual's age, physical condition, or other circumstances when determining intent to return home. Assuming the individual is mentally competent, age, mental capacity, and physical condition are **not** factors in evaluating the individual's statement of intent.

Example: The recipient is 93 years old and resides in an ALF. She tells the worker that her doctor believes she may not be able to leave the ALF and return home. However, she states that she intends to return to her former residence as soon as she is well enough to leave the ALF. Based on her statement, "intent to return home" is established.

36. Home Replacement Funds

When an individual sells an excluded home, the proceeds of the sale become an available resource.

36.1. Exclusion

The proceeds of the sale are excluded resources if the individual:

- Plans to use them to buy another excluded home, and
- Does so within 3 full calendar months of receiving them.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

36.1.1. Interest

Interest earned on funds excluded under this provision is not excluded from income or resources.

36.2. Explanation To Individual

Explain the home replacement exclusion to any individual who has sold an excluded home (if it is not too late to exclude any of the proceeds) or who plans to do so. Include the date, if known, by which the proceeds must be used in order to qualify for exclusion.

36.3. Statement Of Intent

Obtain a signed statement from the individual as to whether he or she intends to use the proceeds to buy another home by the date specified. If so, the statement also must reflect his or her understanding that the exclusion of any funds not used by the date specified will be revoked **retroactively**. See Proceeds Not Used Timely, Chapter E - 36.4.6.

When the proceeds are being paid in installments, the individual's statement of intent must reflect his or her understanding that, if the non-interest portion of any payment is not used within 3 months of its receipt, the exclusion of

- The unused portion of such payment and
- The contract itself will be revoked retroactively to the date of receipt of such payment.

36.4. Proceeds

36.4.1. If Paid in a Lump Sum

The proceeds are the net amount the seller receives at settlement.

36.4.2. If Paid in Installments

The proceeds consist of:

- Any down payment; and
- That portion of any subsequent payment that is not interest.

36.4.3. Verifying Proceeds of Sale

The individual must provide a copy of the settlement sheet, contract for sale and/ or other evidence that shows the net proceeds of the sale and how paid or payable, i.e.: paid in full at settlement, dates and amounts of down payment and installment payments, interest, etc.

36.4.4. Allowable Uses Of Proceeds

Use of proceeds to buy another excluded home includes payment of any costs that stem from the purchase. These include, but are not necessarily limited to:

- Down payment;
- Settlement costs;
- Loan processing fees and points;
- Moving expenses;
- Necessary repairs to or replacements of the new home's structure or fixtures (e.g., roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy;
- Mortgage payments; and
- Other costs identified and documented prior to occupancy that stem directly from the purchase or occupancy of the new home.

"Using" the proceeds includes obligating them by contract as well as actually paying them out.

36.4.5. Timely Use Of Proceeds

"Within 3 full calendar months" means by the end of the last day of the third month after the month in which the proceeds are received.

36.4.6. Proceeds Not Used Timely

- **Lump Sum**

  The exclusion of the unused funds will be revoked retroactively to the date of their receipt.

- **Installment Payments**

The exclusion of the installment contract itself, and of the unused portion of any installment payments, will be revoked retroactively to the date the unused proceeds were received.

36.5. Verification

Document the file with the same types of evidence used to document the proceeds of the sale of the prior home and, if necessary, with bills, receipts, or other evidence of related allowable expenses.

36.6. Proceeds Not Used To Replace Home

If not all of the proceeds will be used timely or the exclusion of the funds was revoked, **redetermine resources for the months after the proceeds were received**. Do not exclude:

- The unused portion of the lump- sum proceeds or down payment; or
- The value of an installment contract.

If the redetermination shows the individual was ineligible, an overpayment occurred and **repayment must be pursued**. The overpayment occurred due to the individual's error. See overpayment policy in Vol. II, Part I, Chapter G 3.

37. Household Goods and Personal Effects

37.1. Household Goods Are:

- Items of personal property, found in or near the home, that are used on a regular basis; and
- Items needed by the householder for maintenance, use and occupancy of the premises as a home.

  Household goods include, but are not limited to, furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.

  Items that are acquired or held because of their value or as an investment are not considered household goods.

37.2. Personal Effects Are:

- Items of personal property ordinarily worn or carried by the individual; and
- Articles otherwise having an intimate relation to the individual.

Personal effects include, but are not limited to, personal jewelry including wedding and engagement rings, personal care items, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual, such as ceremonial attire, and items required because of an individual's physical or mental impairment, such as prosthetic devices or wheelchairs.

Items that are acquired or held because of their value or as an investment are not considered personal effects.

37.3. Exclusion

Household goods and personal effects are excluded from resources, regardless of their dollar value.

37.4. Verification

If reported, accept the individual’s allegation regarding household goods and personal affects.

38. Indian Lands, Restricted Allotted

Interests in certain lands were allotted to individual Indians many years ago. The ownership interests may be quite small since many of the original interests in allotted lands have fractionated over time; e.g., due to inheritance by multiple heirs over several generations.

38.1. Exclusion

In determining the resources of an individual (spouse) who is of Indian descent from a federally recognized Indian tribe, any interests of the individual (spouse) in trust or restricted lands are excluded from resources.

38.2. Verification

If an individual Indian alleges an interest in trust or restricted land:

- Obtain a copy of any document or documents that might identify it as such; and/or

- Verify the allegation with the appropriate Indian agency.

39. Inheritances and Unprobated Estates

An **inheritance** is cash, a right, or non-cash items received as the result of someone's death. An inheritance is a **death benefit**.

Until an item or right has a value (i.e., can be used to meet the heir's need for food, clothing, or shelter), it is neither income nor a resource. The inheritance is income in the first month it has a value and can be used to meet the individual's needs. If retained, it becomes a resource the following month.

Use the information in this section to determine the availability and the equity value of the inheritance and the guidelines in Death Benefits, Chapter E – 29 to determine the resource's net countable value.

39.1. Date of Receipt

In Virginia, it takes a minimum of one year for an estate to be probated. This period is allowed for the filing of a will, claims by creditors, and claims to contest a will. If there is no will to be probated, there are estate administration requirements that have to be followed. These, too, may take a long period to complete. Because these timeframes prohibit the individual from using the inheritance to meet his/her needs, the inheritance is not income until the **earliest** of:

- The date the individual alleges receiving the inheritance (using a signed statement from the individual or documents in the individual's possession); or
- The date the estate is closed (which may be determined by contacting the court or an attorney involved in the closing of the estate); or
- 12 months after the death.

39.2. Unprobated Estate

If an estate remains unprobated beyond 12 months, the inheritance must be evaluated to determine if it is a resource. An ownership interest in an unprobated estate may be a resource if an individual:

- Is an heir or relative of the deceased; or
- Receives any income from the property; or

- Under State intestacy laws, has acquired rights in the property due to the death of the deceased.

39.3. Ownership Interest

There is an ownership interest in an unprobated estate if:

- Documents (e.g., a will or court records) indicate an individual is an heir to property of a deceased; or
- An individual has use of a deceased's property or receives income from it; or
- Documents establish, or the individual alleges, a relationship between himself and the deceased which, under state intestacy laws, awards the individual a share in the distribution of the deceased's property; and
- The inheritance, use of income, and distributions are uncontested.

39.4. Status as a Resource

- If the individual is the sole owner or if other owners give needed consent to sell, the property is the individual's resource. Evaluate the type of ownership to determine if a co-owner's consent is required to sell. See Ownership, Chapter E - 6.
    - An inheritance is evaluated as a resource in the month following the month in which it meets the definition of income. See Inheritances, Chapter I – 36
- If other owners withhold consent and that consent is necessary to sell, the property is not a resource until the estate has been through probate.

39.5. Value of Resource

The countable value of the property is the individual's equity value in it. Determine the property's CMV (and EV, if appropriate) following guidelines for the particular type of property involved.

39.6. Verification

Document the file, as applicable, with a copy of:

- An inheritance or relationship document (or a signed statement alleging a relationship);
- Evidence of income from the property;

- Individual's signed statement concerning his/her use of the property and whether there is contest of any factor; or
- Other evidence showing the right of inheritance exists, and
- If countable, documents verifying the value the property.

40. Japanese-American and Aleutian Restitution Payments

Restitution payments are made by the U.S. and Canadian governments to individual Japanese-Americans or the spouse or parent of an individual of Japanese ancestry (or, if deceased, to their survivors) and Aleuts who were interned or relocated during World War II.

40.1. Exclusion

Japanese-American and Aleutian Restitution Payments made by the U.S. and Canadian governments are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

40.2. Interest

Interest earned on unspent Japanese- American, Aleutian, and Japanese-Canadian restitution payment is excluded from income in the month of receipt. If retained, the unspent interest is a countable resource.

40.3. Verification

40.3.1. U.S.

If the individual alleges receiving restitution payments from the U.S. Government, use documents in the individual's possession to verify the payments. If the individual has no documents which verify this, obtain verification from the Office of Redress Administration at the following address:

Office of Redress Administration
U.S. Department of Justice
P.O. Box 66260
Washington, D.C. 20035-6260

Provide the individual's name, address, date of birth, and SSN in the request.

40.3.2. Canada

If the individual alleges receiving restitution payments from the Canadian government but has no documents which verify this, ask if the individual was imprisoned, relocated, deported, or deprived of other rights in Canada during the period December 1941 to March 1949 because of their Japanese ancestry. If the answer is "yes," exclude the payment from resources.

41. Life Estate And Remainder Interest

A life estate instrument often conveys property to one person for life (life estate owner) and to one or more others (remaindermen) upon the expiration of the life estate. Each is a form of ownership and must be evaluated as a resource.

41.1. Life Estates (Without Powers)

A life estate conveys to the individual to whom it is given certain property rights for the duration of his or her life, or someone else's life. In some cases, it may be conditional: e.g., for life or until remarriage.

The owner of a life estate can sell the life estate but does not have title to the property and thus normally cannot sell it or pass it on as an inheritance.

41.1.1. Owner Can Do

Unless the instrument (will or deed) establishing the life estate places restrictions on the rights of the life estate owner, the owner has the right to possess, use, and obtain profits from the property and to sell his or her life estate interest.

41.1.2. Owner Cannot Do

A life estate owner owns the physical property only for the duration of the life estate. The owner generally can sell only his or her interest; i.e., the life estate. The owner cannot take any action concerning the interest of the remainderman.

41.1.3. Value of Life Estate

- A life estate in home property is an excluded resource and valuation is not necessary. See Home Property, Chapter E - 35.

- Evaluate all other life estates as Non-Home Real Property and develop ownership and CMV value per Chapter E - 49.

- Using the Life Estate column of the Unisex Life Estate or Remainder Table (Chapter E – 41.5), multiply the CMV of the property by the life estate interest decimal that corresponds to the life estate owner's age. The result is the resource value of the life estate.

41.2. Life Estates With Powers

Life estates "with powers," are ones wherein the owner of the property creates a life estate for himself or herself, retaining the power to sell the property, with a remainder interest to someone else, e.g., a child.

Since the life estate holder retains the power to sell the property, its value as a resource is its full equity value.

41.3. Remainder Interests

When the owner of property gives it to one party in the form of a life estate, and designates a second party to inherit it upon the death of the life estate holder, the second party has a remainder interest in the property. A remainderman has an ownership interest in the physical property but without the right to possess and use the property until termination of the life estate.

Unless restricted by the instrument establishing the remainder interest, the remainderman is generally free to sell his/her interest in the physical property even before the life estate interest expires.

41.3.1. Value of Remainder Interest

- The remainder interest is considered ownership of Non-Home Real Property. Develop ownership and CMV value per Chapter E - 49.

- Multiply the CMV of the property by the decimal figure shown in the "Remainder" column adjacent to the **life estate holder's** age in the **Unisex Life Estate or Remainder Table**. The result is the resource value of the remainder interest.

41.4. Verification

Verify the life estate/remainder interest by obtaining a copy of the document that established the ownership interest.

- Deed,
- Will,
- Other legal document

41.5. Unisex Life Estate Or Remainder Table

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
0	.97188	.02812	**55**	.80046	.19954
1	.98988	.01012	**56**	.79006	.20994
2	.99017	.00983	**57**	.77931	.22069
3	.99008	.00992	**58**	.76822	.23178
4	.98981	.01019	**59**	.75675	.24325
5	.98938	.01062	**60**	.74491	.25509
6	.98884	.01116	**61**	.73267	.26733
7	.98822	.01178	**62**	.72002	.27998
8	.98748	.01252	**63**	.70696	.29304
9	.98663	.01337	**64**	.69352	.30648
10	.98565	.01435	**65**	.67970	.32030
11	.98453	.01547	**66**	.66551	.33449

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
12	.98329	.01671	**67**	.65098	.34902
13	.98198	.01802	**68**	.63610	.36390
14	.98066	.01934	**69**	.62086	.37914
15	.97937	.02063	**70**	.60522	.39478
16	.97815	.02185	**71**	.58914	.41086
17	.97700	.02300	**72**	.57261	.42739
18	.97590	.02410	**73**	.55571	.44429
19	.97480	.02520	**74**	.53862	.46138
20	.97365	.02635	**75**	.52149	.47851
21	.97245	.02755	**76**	.50441	.49559
22	.97120	.02880	**77**	.48742	.51258
23	.96986	.03014	**78**	.47049	.52951
24	.96841	.03159	**79**	.45357	.54643
25	.96678	.03322	**80**	.43659	.56341
26	.96495	.03505	**81**	.41967	.58033
27	.96290	.03710	**82**	.40295	.59705
28	.96062	.03938	**83**	.38642	.61358

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
29	.95813	.04187	**84**	.36998	.63002
30	.95543	.04457	**85**	.35359	.64641
31	.95254	.04746	**86**	.33764	.66236
32	.94942	.05058	**87**	.32262	.67738
33	.94608	.05392	**88**	.30859	.69141
34	.94250	.05750	**89**	.29526	.70474
35	.93868	.06132	**90**	.28221	.71779
36	.93460	.06540	**91**	.26955	.73045
37	.93026	.06974	**92**	.25771	.74229
38	.92567	.07433	**93**	.24692	.75308
39	.92083	.07917	**94**	.23728	.76272
40	.91571	.08429	**95**	.22887	.77113
41	.91030	.08970	**96**	.22181	.77819
42	.90457	.09543	**97**	.21550	.78450
43	.89855	.10145	**98**	.21000	.79000
44	.89221	.10779	**99**	.20486	.79514
45	.88558	.11442	**100**	.19975	.80025

AGE	LIFE ESTATE	REMAINDER	AGE	LIFE ESTATE	REMAINDER
46	.87863	.12137	**101**	.19532	.80468
47	.87137	.12863	**102**	.19054	.80946
48	.86374	.13626	**103**	.18437	.81563
49	.85578	.14422	**104**	.17856	.82144
50	.84743	.15257	**105**	.16962	.83038
51	.83674	.16126	**106**	.15488	.84512
52	.82969	.17031	**107**	.13409	.86591
53	.82028	.17972	**108**	.10068	.89932
54	.81054	.18946	**109**	.04545	.95455

Citations:
26 CFR 20.2031-7, 49 Federal Register
Vol. 49 No. 93/5-11-84

42. Life Insurance Policies

A life insurance policy is a contract. Its purchaser (the owner) pays premiums to the company that provides the insurance (the insurer). In return, the insurer agrees to pay a specified sum to a designated beneficiary upon the death of the insured (the person on whom, or on whose life, the policy exists). A life insurance policy is a resource if it generates a cash surrender value (CSV).

Note: Term insurance and burial insurance do not generate a CSV, are not considered life insurance, and are not resources.

42.1. Value

A life insurance policy's value as a resource is the amount of the CSV.

42.2. Exclusion

A life insurance policy is an excluded resource if the policy's face value (FV) and the FV of any other life insurance policies the individual owns **on the same insured** total $1,500 or less. The FV of burial insurance policies; and term insurance policies do not count toward this $1,500 total.

42.2.1. Relation to Burial Fund Exclusion

The Burial Fund Exclusion maximum of $1,500 must be decreased by the FV of any insurance policy on the life of the individual that is excluded under this provision.

42.3. Face Value

Face value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. A policy's FV does **not** include:

- The FV of any dividend addition, which is added after the policy is issued;
- Additional sums payable in the event of accidental death or because of other special provisions; or
- The amount(s) of term insurance, when a policy provides whole life coverage for one family member and term coverage for the other(s).

42.4. Cash Surrender Value

A policy's cash surrender value (CSV) is a form of equity value that it acquires over time. The owner of a policy can obtain its CSV only by turning the policy in for cancellation before it matures. A loan against a policy reduces its CSV.

42.5. Life Insurance Dividends

Periodically (annually, as a rule), the life insurance company may pay a share of any surplus company earnings to the policy owner as a dividend. Depending on the life insurance company and type of policy involved, dividends can be applied to premiums due or paid by check to the individual or by an addition or accumulation to an existing policy.

42.5.1. Additions

Dividend additions are amounts of insurance purchased with dividends and added to the policy, increasing its death benefit and CSV. The table of CSV's that comes with a policy does not reflect the added CSV of any dividend additions.

42.5.2. Accumulations

Dividend accumulations are dividends that the policy owner has constructively received but left in the custody of the insurer to accumulate at interest, like money in a bank account. They are not a value of the policy per se; the owner can obtain them at any time without affecting the policy's FV or CSV.

42.5.2.1. Resource Value

Dividend accumulations are evaluated as a separate resource. The total value of the accumulated dividends is the resource value.

Dividend accumulations cannot be excluded from resources under the life insurance exclusion, even if the policy that pays the accumulations is excluded from resources. Unless they can be excluded under another provision (e.g., as set aside for burial), they are a countable resource.

42.6. Accelerated Life Insurance Payments

Accelerated life insurance payments are proceeds paid to a policyholder prior to death. Although accelerated payment plans vary from company to company, all of the plans involve early payout of some or all of the proceeds of the policy.

Some companies refer to these types of payments as “living needs” or “accelerated death” payments.

42.6.1. Resource Value

Since accelerated payments can be used to meet food, or shelter needs, the payments are income in the month received and a resource if retained into the following month and not otherwise excludable

42.7. Verification

Ask the individual to submit:

- All the life insurance policies he or she owns;
- The most recent annual dividend statement issued for each policy;
- Documents that verify the amount of additional insurance purchased with dividends; and
- Documents verifying any loans against a policy.

If examination of a policy does not reveal an item of needed information, obtain that information from the individual's agent or the insurance company.

43. Loans

A loan is a transaction whereby one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest. The loan agreement may be written or oral, and must be enforceable under Virginia law. Loans may be formal or informal.

- An informal loan is a loan between individuals who are not in the business of lending money or providing credit. An informal loan can be oral or written. An informal loan is "written" when the parties to the loan commit to writing the terms of their agreement.
- A formal (e.g., commercial) loan is a loan between an individual and an entity that is in the business of lending money or providing credit.

Note: Federal Educational Loans (Federal PLUS Loans, Perkins Loans, Stafford Loans, William D. Ford Loans, etc.) under Title IV of the Higher Education Act (HEA) are excluded from resources and income. See Chapter E – 32.1 and Chapter I – 29.2.

43.1. Determining When A Loan Counts As A Resource

43.1.1. Eligible Individual Is The Borrower - All Loans

Loans are not resources in the month of receipt but become resources if retained to the month following the month of receipt. "Bona Fide" or "Not Bona Fide" determines whether or not the cash provided to the borrower is counted as income in the month of receipt. See Loan Proceeds, Chapter I – 42.

43.1.2. Eligible Individual Is The Lender

Assume that the bona fide loan agreement is negotiable and is a resource, unless the lender raises questions about the negotiability of the agreement and wants to rebut this assumption. The agreement is counted as a resource starting in the month after the month that the lender provides the proceeds to the borrower.

43.1.2.1. Value

Assume that the agreement's resource value is its outstanding principal balance unless the lender disagrees and wants to rebut this assumption.

Example: Prior to filing for AG, Mr. Jones made a $1,500 cash loan to his brother. Subsequently, Mr. Jones received $300 in repayment. At the time of filing for AG, the outstanding principal balance for the loan was $1,200. The worker counted $1,200 as a resource.

43.1.2.1.1. Rebuttal Rights

If the outstanding principal balance combined with the individual's other resources cause ineligibility, inform the individual that the outstanding principal balance will be used in determining resources unless he or she submits:

- Evidence of a legal bar to the sale of the agreement; or
- An estimate from a knowledgeable source, showing that the CMV of the agreement is less than its outstanding principal balance.

  Knowledgeable sources include anyone in the business of making such estimates (e.g., banks or other financial institutions, private investors, real estate brokers, etc.). The estimate must show the name, title, and address of the source.

43.2. Negotiable Agreement

A negotiable agreement is an agreement (e.g., a loan) whereby the ownership of the instrument itself and the whole amount of money expressed on its face can be transferred (given or sold) from one person to another. Absent evidence to the contrary, assume the agreement is negotiable.

43.3. Bona Fide Agreement

A bona fide agreement is an agreement that is legally valid and made in good faith.

A loan (oral or written) is bona fide if it meets all of the following requirements.

- **Enforceable Under State Law**

  A bona fide loan is a contract that is enforceable under Virginia law.

- **Loan Agreement in Effect at Time of Transaction**

  The loan agreement must be established and in effect at the time that the cash proceeds are provided to the borrower. Money given to an individual with no obligation to repay cannot become a loan at a later date.

- **Acknowledgement of an Obligation to Repay**

  The obligation to repay must be acknowledged by both the lender and the borrower for a bona fide loan to exist. When money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan for AG purposes.

  A statement by the individual that he or she feels personally responsible to pay back the friend or relative does not create a legal obligation to repay the individual who provided the cash. Similarly, a statement by the lender that the eligible individual is only required to repay the cash if he or she becomes financially able to do so does not create a legal obligation to repay.

- **Plan for Repayment**

  The loan must include a plan or schedule for repayment, and the borrower's express intent to repay by pledging real or personal property or anticipated future income (such as AG benefits).

- **Repayment Plan Must be Feasible**

  The plan or schedule must be feasible. In determining the plan's feasibility, consider the amount of the loan, the individual's resources and income (including anticipated AG benefits), and the individual's living expenses.

43.4. Verification

If there is a written agreement between the parties, obtain a copy of the agreement. If there is no written agreement, obtain signed statements from the borrower and the lender.

43.4.1. Forms

To document informal loans, you may use two locally reproducible forms.

- The Statement of Funds You Provided to Another form is a questionnaire that the lender completes. Send the form and a cover letter that explains why the information is needed to the lender for completion.
- The Statement of Funds You Received form is a form that the borrower completes. Send a cover letter and the form to the borrower for completion.

Use the backs of the forms if you need more room to record information.

44. Low Income Energy Assistance

Through a block grant, the Federal Government provides funds to States for energy assistance (including weatherization) to low income households. It is most often provided in a medium other than cash (e.g., voucher, two-party check, direct payment to the vendor, etc.) but may be in cash.

44.1. Exclusion

Home energy assistance payments or allowances provided under subchapter II of chapter 94, title 42 of the U.S. Code (Low-Income Energy Assistance) are excluded from resources.

44.2. Verification

Use documents in the individual's possession, contact with the provider or agency involved, or a precedent to verify that assistance from a particular program is provided under the Federal Low-Income Home Energy Assistance Program or "LIHEAP." Once this is verified, no further verification is necessary.

45. Municipal, Corporate and Government Bonds

A bond is a written obligation to pay a sum of money at a specified future date. Bonds are negotiable and transferable and are a resource.

- **Municipal Bond**

  A municipal bond is the obligation of a State or a locality (county, city, town, village or special purpose authority such as a school district).

- **Corporate Bond**

  A corporate bond is the obligation of a private corporation.

- **Government Bond**

  A government bond, as distinct from a U.S. Savings Bond, is a transferable obligation issued or backed by the Federal Government.

45.1. Value

Municipal, corporate, and government bonds are negotiable and transferable. Therefore, their value as a resource is their CMV. Their redemption value, available only at maturity, is immaterial.

45.2. Verification

The closing price of a bond on a given day may be found on the internet or by contacting a local securities firm for the information. Record the appropriate closing price and the source of the information.

46. Mutual Funds

A mutual fund is a company whose primary business is buying and selling securities and other investments. Shares in a mutual fund represent ownership in the investments held by the fund. Mutual fund shares are a form of “stock” and are evaluated as such. They are resources. See Stocks, Chapter E – 60.

47. Nazi Persecution, Payments to Victims of

The governments of Germany, Austria, and the Netherlands make payments to victims of Nazi persecution.

47.1. Exclusion

Payments received from any source by individuals because of their status as victims of Nazi persecution are excluded from income and resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

47.1.1. Interest

Interest earned on unspent payment to victims of Nazi persecution is excluded from income. If retained, the interest is a countable resource the month following the month of receipt.

47.2. Verification

If an individual reports receiving payments as a result of being a victim of Nazi persecution, accept a signed allegation of the amount(s) involved and the date(s) these payments were received. No further development or documentation is required.

48. Netherlands WUV Payments to Victims of Persecution

The Netherlands' Act on Benefits for Victims of Persecution 1940–1945, WUV (Wet Uitkering 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.

48.1. Exclusion

Unspent WUV payments made by the Dutch government are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

48.1.1. Interest

Interest earned on unspent WUV payments is excluded from income. If retained, the interest is a countable resource the month following the month of receipt.

48.2. Verification

Use the documents in the individual's possession to document the date(s), and amount(s) of such payment(s). If the individual has no documentation or it is incomplete, contact the Consulate General of the Netherlands to verify payment date(s) and amount(s). If the individual has no documentation and the Consulate General of the Netherlands is unable to provide the information, accept the individual's signed allegation of the amount(s) and date(s) of receipt.

Consulate General of the Netherlands
Attn: WUV Department
Suite 509
3460 Wilshire Blvd.
Los Angeles, CA 90010-2270
(213)480-1471 (9:00 - 12:30 Pacific Time)

49. Non-Home Real Property

Non-home real property consists of land and buildings or immovable objects (including some mobile homes) that are attached permanently to the land and that do not meet the definition of excludable home property. If not otherwise excluded, non-home real property is a countable resource.

Non-home real property also includes the following property rights.

- **Mineral Rights**

  Mineral rights represent ownership interest in natural resources such as coal, oil, or natural gas, which normally are extracted from the ground.

- **Timber Rights**

  Timber rights permit one party to cut and remove free standing trees from the property of another party.

- **Easements**

  An easement gives one party the right to use the land of another party for a special purpose.

- **Leaseholds**

  A leasehold gives one party control over certain property of another party for a specified period.

- **Water Rights**

  Water rights usually confer upon the owner of riverfront or shorefront property the right to access and use the adjacent water.

- **Life Estates**

  See Life Estates/Remainder Interests, Chapter E - 41.

49.1. Ownership

49.1.1. Sole Ownership

Absent evidence to the contrary, accept an individual's allegation of sole ownership of property.

49.1.2. Shared Ownership

Document an allegation of shared ownership with any of the following evidence:

- A tax assessment notice or bill;
- A current mortgage statement;
- A deed;
- A report of title search;
- Wills, court records, or other documentation of inheritance.

If the individual alleges owning other than an equal share of the property (e.g., alleges having a 25 percent ownership interest where there are only two owners), the evidence must support that allegation as well.

49.1.3. Ownership of a Leasehold

Leasehold does not designate rights of ownership. Rather, it conveys to an individual use and possession of property for a definite term and usually for an agreed rent. However, under common law, a lease could create a life estate. Due to the complexity of these arrangements, leasehold documents should be forwarded to the area AG Consultant who will determine if there is a need for legal review. If a legal review is needed, the papers will be forwarded to the AAG.

- If the leasehold does not create a life estate, the leasehold is not a resource.
- If the leasehold does create a life estate, evaluate the life estate as a resource. See Chapter E – 41.

Note: A leasehold does not create a life estate in Virginia.

49.1.4. 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.

49.1.5. Ownership of Mineral Rights Only

If the individual does not own the land to which the mineral rights pertain, obtain a CMV estimate from a knowledgeable source. Such sources include, in addition to those listed below, the Bureau of Land Management, the U.S. Geological Survey, or any mining company that holds leases.

49.2. Current Market Value

Absent evidence to the contrary, assume that an individual can sell the property at its estimated CMV.

49.2.1. Tax Assessment Notice

Obtain from the individual a copy of the most recently issued tax assessment notice for the property. Base the CMV on this assessment notice unless:

- The notice is more than a year old based on its date of issue (unless it specifies that it covers more than one year and it is no older than the number of years it covers);
- The notice pertains to a special purpose assessment (unless it also provides a fair market value assessment, which can be used);
- The assessment is under appeal;
- The assessment uses a fixed rate per acre method based on land usage, such as agricultural or industrial. (This does not refer to assessments where conditions dictate similar taxes for similar types of land, such as desert, swamp, landfills, etc.); or
- The notice provides either no assessment ratio or only a range, e.g., between 25 and 50 percent (unless the individual would be ineligible using even the top of the range).

49.2.1.1. How to Use

To determine CMV based on a tax assessment notice, divide the assessed value by the assessment ratio. For example, an assessed value of $2,000 divided by an assessment ratio of 50 percent equals a CMV of $4,000 ($2,000 ÷.50 = $4,000).

49.2.2. Knowledgeable Source Estimate

If you cannot use the tax assessment notice to establish CMV or if a tax assessment notice is not readily available, have the individual obtain an estimate of the property's CMV from a knowledgeable source.

If you doubt the validity of an estimate furnished by the individual, obtain an estimate from an additional knowledgeable source.

The estimate must show, in addition to the estimate itself:

- The name of the person providing the estimate;
- The name, address and telephone number of the business or agency for whom the person providing the estimate works;
- The basis for the estimate, to include such things as a description of the property and its condition and, where appropriate, the value of similar property in the same area; and

- The period to which the estimate applies (which should correspond to the period for which it is being requested).

49.2.2.1. Knowledgeable Sources

Knowledgeable sources include but are not limited to:

- Real estate brokers;
- The local office of the Farmer's Home Administration (for rural land);
- The local office of the Agricultural Stabilization and Conservation Service (for rural land);
- Banks, savings and loan associations, mortgage companies, and similar lending institutions;
- An official of the local property tax jurisdiction (be sure to obtain the individual's estimate rather than the office's assessment); and
- The County Agricultural Extension Service.

49.2.3. CMV Rebuttals

If the individual disagrees with CMV, and the difference is material to eligibility, ask the individual to provide additional evidence such as

- Evidence that the individual's ownership interest in the property is worth less than the total value of the property divided by the number of owners; and
- Evidence from knowledgeable sources.

49.3. Equity Value

Equity value (EV) is the CMV of a resource minus any encumbrance on it.

Have the individual provide a copy of the note or agreement establishing the encumbrance and the verification of the outstanding principal balance.

49.4. Foreign Property

Foreign property is subject to the same rules as domestic property.

49.4.1. Effect of Legal Restrictions

- If evidence of a legal bar to the sale of property, or to removing the proceeds of a sale from the country exists, the property is not a resource. CMV development is unnecessary.

- If a legal restriction limits the **amount** an individual can remove from the country, that limit is the maximum value the property can have as a resource.

- If a legal restriction affects when the proceeds of a sale can be removed from the country (e.g., once a year), such proceeds are income when they can be removed, and are not resources before then.

49.4.1.1. Obtaining Evidence of Legal Bars

Acceptable sources of information are a consulate, mission, or embassy of the country, or the U.S. Department of State. The number for the General Information Desk at State is (202) 647-4000.

49.4.2. Verification

If an individual does not have the documents necessary to support a determination of ownership and CMV or equity value, he/she may be able to write for them, directly or with the aid of a local nationality organization.

The request should include the following types of information:

- A detailed description of the property, its location, and any other background information the individual can provide;

- The specific information needed, e.g., CMV, the details of any restrictions on removing the proceeds of a sale from the country, etc.; and

- The source(s) of the necessary documents or information, to the extent known.

50. North Vietnam, Payments to Certain Persons Captured and Interned by

Section 606 of P.L. 105-78 provides that payments will be made to certain individuals who were captured and interned by North Vietnam. Such payments are made by DOD pursuant to section 657 of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104-201).

If the individual who was captured and interned by North Vietnam is deceased, payment may be made to a surviving spouse or, if none, to surviving children of any age (including biological and adoptive children) of the decedent, in equal shares.

The amount payable for each captured and interned individual is a one-time payment of $40,000 to $50,000.

50.1. Exclusion

Payments to such an individual, individual's surviving spouse or child of any age are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

50.2. Interest

Interest earned on unspent payments is excluded income. If retained, the interest is a countable resource the month following the month of receipt.

50.3. Verification

Use documents in the individual's possession to verify the nature of these payments. The award letter will state that the payments are made under section 657 of the National Defense Authorization Act. The award letter will be signed by Carl Witfchonke, Chairman of the Vietnamese Compensation Commission.

If such documents are not available, suggest the individual contact the appropriate Military Finance Center.

51. Other Property Rights

See Non-Home Real Property, Chapter E – 49.

52. Promissory Notes and Property Agreements

Promissory Note

A promissory note is a written, unconditional agreement whereby one party promises to pay a specified sum of money at a specified time (or on demand) to another party. It may be given in return for goods, money loaned, or services rendered.

Property Agreement

A property agreement is a pledge or security of particular property for the payment of a debt or the performance of some other obligation within a specified period. Property agreements on real estate generally are referred to as mortgages but also may be called real estate or land contracts, contracts for deed, deeds of trust, and so on. Personal property agreements (e.g., pledges of crops, fixtures, inventory, etc.) are commonly known as chattel mortgages.

Negotiable Agreement

A negotiable agreement is an agreement whereby the ownership of the instrument itself and the whole amount of money expressed on its face can be transferred (e.g., sold) from one person to another.

52.1. For the Buyer (Debtor)

For the buyer of the property (debtor), the promissory note is not a resource. However, the property purchased may be a countable resource in the month following the month of the transaction.

52.2. For the Seller (Creditor)

For the owner of the agreement (the seller), a promissory note or property agreement is a resource. The property itself is not a resource because the seller cannot legally convert it to cash while it is encumbered by the agreement.

52.2.1. Property Agreements Prior to Settlement

An individual who enters into a contract for the sale of real estate owns two items until the settlement of the sale is completed: the real estate and the contract. The real estate is not a resource because the seller cannot legally convert it to cash while it is encumbered by the contract. The real estate contract is a property agreement that is a resource to the seller.

52.2.2. Resource Value of the Agreement

Assume that the resource value of a promissory note or property agreement is its outstanding principal balance unless the individual furnishes evidence that it has a lower cash value.

52.2.2.1. Rebuttal

Inform the individual that the outstanding principal balance will be used in determining resources unless he or she submits:

- Evidence of a legal bar to the sale of the agreement; or
- An estimate from a knowledgeable source, showing that the CMV of the agreement is less than its outstanding principal balance.

Knowledgeable sources include anyone in the business of making such estimates (e.g., banks or other financial institutions, private investors, real estate brokers, etc.). The estimate must show the name, title, and address of the source.

52.2.3. Verification

- Obtain a copy of the agreement. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
- Obtain evidence of the outstanding principal balance. The outstanding principal balance is the balance in the month for which a determination is being made. An amortization schedule can be used to determine the outstanding principal balance and the interest income if the terms of the agreement are known (e.g., interest rate, payment period, original principal amount, etc.).

53. Radiation Exposure Compensation Trust Fund

Fallout emitted during the U.S. Government's atmospheric nuclear testing in Nevada during the 1950s and during a brief period in 1962 exposed some individuals to doses of radiation that put their health at risk. In addition, some individuals employed in uranium mines during the period January 1, 1947 to December 31, 1971 were exposed to large doses of radiation. P.L. 101-426 created the Radiation Exposure Compensation Trust

Fund (RECTF) and authorizes the Department of Justice (DOJ) to make compensation payments to individuals (or their survivors) that were found to have contracted certain diseases after exposure. The payments will be made as a one-time lump sum. Generally, the exposure occurred in parts of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming.

53.1. Exclusion

Unspent payments received from the RECTF are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

53.2. Interest

Interest earned on unspent RECTF payments is excluded income.

53.3. Verification

Use documents in the individual's possession to verify that the payment is from the RECTF. Accept the individuals signed allegation of the amount and date of receipt if it is not evident from the documents.

If the individual has no documents or there is reason to question the source of the payments, obtain verification from:

The Radiation Exposure Compensation Program
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

Use the individual's name and Social Security number (SSN) as identifying information when writing to the DOJ. When writing on behalf of a survivor, also include the survivor's name and SSN.

54. Relocation Assistance

Relocation assistance is provided to persons displaced by projects which acquire real property. The following types of reimbursement, allowances, and help are provided:

- Moving expenses;

- Reimbursement for losses of tangible property;
- Expenses of looking for a business or farm;
- Displacement allowances;
- Amounts required to replace a dwelling which exceed the agency's acquisition cost for the prior dwelling;
- Compensation for increased interest costs and other debt service costs of replacement dwelling (if it is encumbered by a mortgage);
- Expenses for closing costs (but not prepaid expenses) on replacement dwelling (if it is encumbered by a mortgage);
- Rental expenses for displaced tenants;
- Amounts for down payments on replacement housing for tenants who decide to buy;
- Mortgage insurance through federal programs with waiver of requirements of age, physical condition, personal characteristics, etc., which borrowers must usually meet; and
- Direct provision of replacement housing (as a last resort).

54.1. Federal Relocation Assistance Exclusion

Federal relocation assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (subchapter II, chapter 61, title 42 of the U.S. Code) is excluded from resources. **There is no time limit on the exclusion for federal relocation assistance.**

This exclusion applies to relocation assistance provided to persons displaced by any Federal or federally-assisted project.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

54.1.1. Exception: Revenue Sharing

If the only Federal assistance is revenue sharing, this exclusion does not apply.

54.1.2. Interest

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision.

54.2. State Or Local Relocation Assistance Exclusion

Unspent relocation assistance payments from a State or local government are **excluded from resources for 9 months**.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

54.2.1. Interest

Interest earned on unspent relocation assistance payments is **not** excluded from income or resources by this provision.

54.3. Verification

Verify that the project which displaces the individual has governmental involvement. This can be done by using documents in the individual's possession, or contacting the provider or entity involved in the project. Once verified, accept the individual's signed statement of the assistance.

55. Repair/Replacement of Lost, Damaged or Stolen Resources Payments

Individuals may receive payments to repair or replace items damaged or lost as the result of a catastrophe. Funds received to repair or replace non-excluded resources or personal injury is income in the month received and, if retained, a resource the month following the month of receipt. Funds received to repair or replace excluded resources are excluded as income and excluded as a resource for 9 months.

55.1. Exclusion

Cash and in-kind receipts from any source for the replacement or repair of lost, damaged, or stolen **excluded** resources are themselves not treated as resources for 9 months from the date of their receipt. The exclusion period may be extended if good cause exists. Retained funds become countable resources the month following the end of the exclusion period.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

55.1.1. Interest

Interest earned by these excluded funds is not counted as income and resources for the period during which the funds themselves are not considered resources.

55.1.2. 9-Month Extension for Good Cause

The initial 9-month period can be extended for a reasonable period up to an additional 9 months if the individual shows good cause why repair or replacement was not possible during the first 9 months.

55.1.3. Presidential-Declared Major Disasters

For presidential declared major disasters, the 18-month period (9-month initial period plus 9-month good cause extension) exclusion period can be extended for up to an additional 12 months for a maximum exclusion period of 30 months if:

- The excluded resource is geographically within the disaster area as defined in the presidential order;
- The individual intends to repair or replace the excluded resource; and
- The individual presents evidence of good cause, as defined above.

This extension should not be granted automatically, but only after a thorough examination of the evidence of good cause.

55.1.4. Good Cause

Good cause is present if circumstances beyond the individual's control:

- Prevent repair or replacement of the lost, damaged, or stolen property; or
- Keep the individual from contracting for such repair or replacement.

Example - Good Cause

An individual's home was destroyed by a severe hurricane. Due to the extent of the devastation to the area, there were not a sufficient number of contractors available to rebuild the house. There were so many homes to rebuild and repair that the contractors could not estimate when they could begin to rebuild the recipient's home and could not accept any new contracts at the time.

55.1.4.1. Good Cause Claimed

If payment(s) remain unspent, but the individual alleges:

- Good cause; and
- The intent to use the funds for their designated repairs or replacement.

Obtain and evaluate

- Evidence of the amount of payment(s) not treated as resources that are still unspent ,
- The individual’s signed statement regarding intent and
- Evidence to substantiate the allegation of good cause, (e.g., letters from contractors, etc).

55.1.4.2. Intent to Use

An individual cannot qualify for an extension of the initial 9-month period unless he/she intends to use the funds for their designated purpose, i.e., repair or replacement of excluded resources.

55.1.4.2.1. Change of Intent During Extension

The good cause extension will terminate as of the date of the change of intent. The funds previously not treated as resources will be taken into account in determining resources for the following month.

55.1.4.3. Good Cause Not Established

If the evidence does not establish good cause, document your determination and include the unspent payment(s) in determining countable resources.

55.1.4.4. Good Cause Established

If the evidence shows good cause, discuss with the individual how much additional time is needed and why. On the basis of that discussion, extend the initial 9-month period for a reasonable period up to an additional 9 months (or, after an initial 9-month good cause extension, up to an additional 12 months in the case of victims of presidential-declared disasters),

55.2. Verification

Obtain a copy of any evidence the individual has that shows the source, value, date(s), and intended purpose of the items received, including whether any cash received is for a purpose other than the replacement or repair of the lost, damaged, or stolen (and excluded) resource.

56. Retirement Funds

Retirement funds are annuities or work- related plans for providing income later in life or when employment ends (e.g., pension, disability, or retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans. Also, depending on the requirements established by the employer, some profit sharing plans may qualify as retirement funds.

This section applies to all items that meet the above definition of retirement funds. Retirement funds may be evaluated as a resource or as income.

56.1. Resource Or Income

The treatment of retirement funds is based on the availability of the funds and if available, the payout options. The funds may not be available, may be paid out in periodic payments or may be available in a lump sum payment.

Unavailable funds are neither income nor a resource. If the funds are distributed in periodic payments, the payments are income in the month received. If the funds can be distributed as a lumps sum, the value of the fund is a resource.

56.1.1. Periodic Payments

Periodic retirement benefits are payments made to an individual at some regular interval (e.g., monthly). If the individual receives periodic payments, the payments are evaluated as unearned income in the month received. The balance of the retirement funds is not a resource.

If the individual has a choice between periodic benefits and a lump sum, he/she must choose the periodic benefits.

56.1.1.1. Requirement To Apply

If an individual is eligible for periodic retirement benefits, he/she must apply for those benefits. If he/she fails to apply, he/she does not meet the non-financial requirement to apply for other benefits and will be ineligible for AG. (Application for Other Benefits, Chapter C - 10)

Note: The individual does not have to pursue withdrawal if the funds are only available in a lump sum payment.

56.1.2. Lump Sum Payments

A lump sum payment is a payment that is issued once and includes the full amount of money that an individual can withdraw from the fund.

A retirement fund owned by an eligible individual is a resource if periodic payments have been denied and he/she has the option of withdrawing a lump sum. Withdrawal of the lump sum is not income but is a conversion of a resource.

56.2. Termination of Employment

A retirement fund is not a resource if an individual must terminate employment in order to obtain any payment.

56.3. Fund Not Immediately Available

If the retirement funds are unavailable they are not a resource. They become a resource and are counted in the month following the month the funds become available for withdrawal.

A delay in payment for reasons beyond the individual's control (e.g., an organization's processing time) does not mean that the fund is not a resource since the individual is legally able to obtain the money. It is a non-liquid resource.

56.4. Value

The value of a retirement fund is the amount of money that an individual can currently withdraw from the fund. If there is a penalty for early withdrawal, the fund's value is the amount available to an individual after penalty deduction. Any taxes due are not deductible in determining the fund's value.

56.5. Verification

Verify the source of the benefits, the availability of funds, the payment options, the approval/denial of a request for periodic payments, the amount of available funds, and the amount of an early withdrawal penalty, if any.

56.6. Excess Resources/Conditional Benefits

An individual with excess non-liquid resources, such as retirement funds, may qualify for Conditional Benefits while awaiting payment. See Conditional Benefits, Chapter F.

57. Retroactive RSDI and SSI Payments (Title II and Title XVI)

Retroactive RSDI benefits are those issued in any month that is **more than a month** after the calendar month for which they are paid. Thus, RSDI benefits for January that are issued in February are not retroactive, but RSDI benefits for January that are issued in March are retroactive.

Retroactive SSI benefits are SSI benefits issued in any month after the calendar month for which they are paid. Thus, benefits for January that are issued in February are retroactive.

Note: General Relief Interim Assistance Reimbursement (IAR)

When SSA reimburses a local department of social services under an IAR agreement and the agency refunds a portion of this to the individual, what the individual receives is treated as a retroactive SSI payment.

57.1. Exclusion

The unspent portion of retroactive SSI and RSDI benefits is excluded from resources for the 9 calendar months following the month in which the individual receives the benefits. The exclusion begins with the month after the individual receives the payment.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

57.1.1. Written Notice

The individual must be given a written notice of this exclusion and its limited duration.

57.2. Verification

Absent evidence to the contrary, accept the individual's allegation as to when he/she received a retroactive SSI or RSDI payment.

Obtain evidence of the amount of retroactive payment, such as a copy of a notice to the recipient, a systems record of the payment (e.g., payment history through SVES), etc.

58. Reverse Mortgage

A reverse mortgage is a loan against the equity in a home that provides tax-free cash advances, but requires no payments during the term of the loan. Since there are no monthly payments during the life of the loan, the balance grows larger and the equity value in the home gets smaller.

The mortgage contract itself is not a resource to the borrower. The payments the individual receives from the reverse mortgage are proceeds from a bona fide loan. The proceeds are neither income nor a resource in the month received. If the funds are retained beyond the month of receipt, they are a countable resource.

Example: Eleanor Jones, an AG eligible individual who owns her home, enters into a mortgage contract with a local bank. Under this contract, the bank provides her with monthly payments which do not have to be repaid as long as she lives in the home. These payments are actually a loan against her equity in the home and must be repaid when she dies, sells the home, or moves.

Analysis: Since Ms. Jones is the borrower, the mortgage contract itself is not a resource to her. Since she intends to return to the home, it continues to be excluded from resource counting. The payments she receives from the reverse mortgage are loan proceeds so they are not counted as income.

58.1. Verification

Obtain a copy of the mortgage contract.

59. Ricky Ray Hemophilia Relief Fund

The Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369 provided for a single payment of $100,000 from the Ricky Ray Hemophilia Relief Fund to:

- Certain individuals with a blood-clotting disorder who may have contracted an HIV infection from a blood transfusion, and
- Certain current and former spouses of these individuals who also contracted an HIV infection, and
- Certain children of these individuals who also contracted an HIV infection, and
- Certain surviving spouses, children, and parents of the above persons.

Payments from this program have ended but individuals may have retained some of the funds.

59.1. Exclusion

The Act provides for exclusion of payments from the Ricky Ray Hemophilia Relief Fund for AG eligibility/payment purposes. The Act also provides for exclusion of certain private payments.

The following payments, regardless of when received, are excluded from income and resources:

- Payments from the Ricky Ray Hemophilia Fund;
- Payments made from any fund established pursuant to a class settlement in the case of *Susan Walker v. Bayer Corporation, et al.*, 96-C-5024 (N.D. Ill); and
- Payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement mentioned above and that is signed by all parties in the case on or before the later of (1) December 31, 1997, or (2) the date that is 270 days after the date on which such release is first sent to persons (or the legal representative of such persons) to whom the payment is to be made.

Retained funds must be identifiable in order to be excluded. See Commingled Funds Chapter E - 26 if funds excluded under this provision are commingled with other funds.

59.2. Interest

Interest earned on retained funds is excluded from resources and income.

59.3. Verification

Obtain evidence of the payment.

If evidence is not available:

- For private payments, have the individual contact Metropolitan Life at 1-800-638-8787 for verification of the type and amount of the private payment.
- For payments from the Ricky Ray Hemophilia Relief Fund, have the individual contact the Ricky Ray Program Office at 1-888-496-0338 for verification of the type and amount of the Ricky Ray Hemophilia Relief Fund payment.

60. Stocks

Shares of stock represent ownership in a business corporation. Their value shifts with demand and may fluctuate widely. The following guidelines apply to all stocks, including preferred stocks, warrants and rights, and options to purchase stocks.

60.1. Ownership

Ask the individual to submit the stock certificate or most recent statement of account (including dividend account) from the firm that issued or is holding the stock. Document the file with a photocopy. If the individual does not have this documentation, have him/her obtain a statement from the firm.

Absent evidence to the contrary, assume that each owner owns an equal share of the value of the stock.

Absent evidence to the contrary, assume that the owner of shares of stock can sell them at will at current value.

60.2. Value — Publicly Traded Stocks

The CMV of a stock as of the first moment of a given month is its closing price on the last business day of the preceding month.

The values of over-the-counter stocks are shown on a “bid” and “asked” basis. For example, “18 bid, 19 asked.” Use the bid price as the CMV. The “par value” or “stated value” shown on some stock certificates is not the market value of the stock.

Note: Broker fees do not reduce the value that stocks have as resources**.**

60.2.1. Verification

The closing price of a stock on a given day can usually be found in the next day's regular or financial newspaper. If the value of a stock does not appear in the newspaper, the individual may use the internet or contact a local securities firm. Record the appropriate closing price and the source of the information.

60.3. Value — Stock That Is Not Publicly Traded

The stock of some corporations is held within close groups and traded very infrequently. The sale of such stock is often handled privately and subject to restrictions. As a rule, it cannot be converted to cash within 20 working days.

Note: Broker fees do not reduce the value that stocks have as resources.

60.3.1. Verification

The burden of proof for establishing the value of this kind of stock is on the individual. The preferred evidence is a letter or other written statement from the firm's accountants giving their best estimate of the stock's value and the basis for the estimate, e.g.:

- Most recent sale,
- Most recent offer from outsiders,
- CMV of assets less debts on them,
- Cessation of activity and sale of assets,
- Bankruptcy, etc.

61. Term Insurance

Term insurance is a death benefit plan and offers no cash values. It is not a resource and does not impact the Burial Fund Exclusion unless the policy is assigned to fund a pre-need funeral.

61.1. Verification

If the policy is assigned to fund a preneed funeral, obtain a copy of the policy. If not, accept the individual's statement.

62. Time Deposits (Certificates of Deposit and Savings Certificates)

A time deposit is a contract between an individual and a financial institution whereby the individual agrees to leave funds on deposit for a specified period (six months, two years, five years, etc.) and the financial institution agrees to pay interest at a specified rate for that period. Certificates of deposit (CDs) and savings certificates are common forms of time deposits.

62.1. Ownership

Assume that the person designated as owner in the account title owns all the funds in the account.

62.2. Value

The resource value of a time deposit at any given time is the amount the owner would receive upon withdrawing it at that time, excluding interest paid that month. Generally, this is:

- The amount originally deposited;
- Plus accrued interest for all but the current month;
- Minus any penalty specified on the certificate for early withdrawal.

62.2.1. Early Withdrawal

Withdrawal of a time deposit before the specified period expires incurs a penalty, which usually is imposed against the principal. This reduces its value as a resource. On rare occasions, the terms of a time deposit will prohibit early withdrawal altogether. If the owner cannot under any circumstances withdraw it before it matures, it is not a resource.

62.2.2. Interest

If the owner cannot withdraw any portion of the interest prior to the maturity date, the interest is not a resource.

62.3. Verification:

Verify the original amount deposited, interest accrued, and what penalty applies for early withdrawal. If the individual alleges that the deposit cannot be withdrawn prior to maturity under any circumstances, verify that. Obtain this information from the individual's copies of account records to the extent possible. Ask the individual to contact the financial institution to obtain information the individual's records do not provide.

63. Trusts

A trust is a legal arrangement whereby a property interest is held by one person for the benefit of another. A trust may or may not be a resource. The availability of the trust funds; whose funds were used to establish the trust; and when the trust was established are all factors in determining the trust's value as a resource.

Information concerning trusts is contained in four sections, Chapter E – 63, 64, 65, and 66. This section provides a chart to direct the worker to the guidelines that apply to the type of trust that is being evaluated. Section 64 provides definitions of terms commonly used in trusts. Section 65 contains Trust Type A and Section 66 contains Trust Type B. Each of those sections identify the types of trust to which they apply.

Use this chart to determine the appropriate guidelines to use to evaluate a specific trust.

If the trust was established…	**And contains…**	**Then follow instructions in:**
Before 1/1/00	1. Only the assets of the individual (or spouse) and all or a portion the of the assets were transferred into the trust **before** 1/1/00 This includes Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act and Pooled Trusts Established under Section 1917(d)(4)(C) of the Act	Trust Type A

If the trust was established…	**And contains…**	**Then follow instructions in:**
	2. Assets of a third party and assets of the individual when a portion of the individual's assets that were transferred into the trust were transferred before 1/1/00	Trust Type A
	3. Assets of a third party and assets of the individual when a portion of the individual's assets that were transferred into the trust were transferred on or after 1/1/00	Trust Type A for the third party's portion Trust Type B for the individual's portion
	4. Only the assets of third parties	Trust Type A
On or after 1/1/00	1. Only the assets of the individual (or spouse) and all assets were transferred into the trust on or after 1/1/00 This includes Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act and Pooled Trusts Established under Section 1917(d)(4)(C) of the Act	Trust Type B

If the trust was established…	And contains…	Then follow instructions in:
	2. Assets of a third party and the individual when all of the individual's assets that were transferred into the trust were transferred on or after 1/1/00	Trust Type B for the individual's portion Trust Type A for the third party's portion
	3. Only assets of third parties	Trust Type A

64. Trusts – General Information

This section provides definitions of terms commonly used in trusts.

64.1. Definitions

64.1.1. Asset

For purposes of this section, an **asset** is **any income or resource** of the individual or the individual's spouse including:

- Excluded income.
- Excluded resources.
- Any other payment or property to which the individual or individual's spouse is entitled, but does not receive or have access to because of action by:
    - The individual or individual's spouse;

- A person or entity (including a court)) with legal authority to act in place of, or on behalf of, the individual or spouse; or
- A person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse.

64.1.2. Exculpatory Clause

An exculpatory clause is one that attempts to exempt the trust from the applicability of these rules. For example, an exculpatory clause would be one that states, "Section 1613(e) of the Social Security Act does not apply to this trust." Such a statement has no effect as to whether these rules apply to the trust.

64.1.3. Grantor

A grantor (also called a settlor or trustor) is the individual who **provides the trust principal** (or corpus). Therefore, an individual may be a grantor if an agent, or other individual legally empowered to act on his/her behalf (e.g., a legal guardian, person acting under a power of attorney, or conservator), establishes the trust with funds or property that belong to the individual. Where more than one person provides property to the trust, there may be multiple grantors.

64.1.4. Spendthrift Clause or Spendthrift Trust

A **spendthrift clause or trust** prohibits anticipatory transfer of the beneficiary's interest in the trust income or principal. It means that, for example, if the beneficiary is entitled to $100 a month from the trust, the beneficiary cannot sell his/her right to receive the monthly payments to a third party for a lump sum. Because he does not have the right to sell his future benefits they are not countable as a resource.

64.1.5. Trust Beneficiary

A trust beneficiary is a person **for whose benefit** a trust exists. A beneficiary does not hold legal title to trust property but does have an equitable ownership interest in it. The beneficiary owns the benefits of the trust while the trustee holds the title and duties.

A beneficiary generally does not have the power to revoke a trust. However, the trust may be a resource to the beneficiary if he/she has the authority under the trust to direct the use of the trust principal. In such a case, the beneficiary's equitable ownership in the trust principal

and his/her ability to use it for support and maintenance means it **is** a resource.

The beneficiary's right to mandatory periodic payments **may be** a resource equal to the value of the anticipated string of payments unless a spendthrift clause or other language prohibits anticipation of payments.

64.1.6. Trustee

A trustee is a person or entity who holds legal title to property. Actions of a trustee are to be considered actions of a third party. The trustee is not an agent for the individual.

In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit. If the trustee has the legal authority to withdraw and use the trust principal for his/her **own** support and maintenance, the principal **is** the trustee's resource for AG purposes in the amount that can be used.

64.1.7. Trust Principal

The **principal** (corpus) of the trust is all property and other interests held by the trust, including accumulated earnings and any other additions, such as new deposits, to the trust after its establishment. Earnings or additions are not included in the principal in the month that they are credited or transferred into the trust because they are considered under income counting rules in that month.

64.2. Trust Evaluation

Trusts are complex legal arrangements involving State law and legal principles. A worker who has questions about a trust may seek guidance from the AG consultant.

64.2.1. Procedures

Forward a copy of the trust along with appropriate documents to the area AG consultant. Allow at least two weeks for a response.

The AG consultant can assist with determining if the

- Individual (applicant or recipient) is grantor, trustee, or beneficiary;

- Trust is revocable or irrevocable and, if so, whether the individual has authority to revoke the trust and to use the principal for his/her own support and maintenance;
- Individual can direct the use of the trust principal for his/her support and maintenance;
- Trust provides for payments to the individual or on his/her behalf;
- Trust contains a spendthrift clause that prohibits anticipation of any trust payments ; and
- Irrevocable trust established after 1/1/00 permits any payment under any circumstances to or for the benefit of the individual.

65. Trust Type A

Trusts may or may not be a resource. If an individual (applicant/recipient) **has legal authority to revoke** the trust and use the funds to meet his food, clothing or shelter needs, **or** if the individual **can direct the use of the trust principal** for his/her support and maintenance under the terms of the trust, the trust **principal is** a resource. If an individual **does not** have the legal authority to revoke the trust or direct the use of the trust assets, the trust principal **is not** the individual's resource for AG purposes.

This section applies to the following types of trusts.

65.1. Trusts Established With The Assets Of An Individual (Or Spouse) Prior to 1/1/00

Trusts established with the assets of an individual (or spouse), before 1/1/00 are evaluated using the guideline in this section, Trust Type A.

- A trust established by an individual prior to 1/1/00 but added to on or after 1/1/00 is still considered to be established prior to 1/1/00 and are evaluated using Trust Type A. (Additions to such a trust may be considered a transfer of resources. See Transfer To Trust Established With Individual's Resources, Chapter G – 10.)

- If the trust being evaluated is a burial trust, see Burial Trusts, Chapter E – 20.

65.1.1. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Social Security Act

A Special Needs Trust Established under Section 1917(d)(4)(A) of the Act is a type of trust established with an individual's assets. A special needs trust is one that:

- Contains the assets of an individual under age 65 and who is disabled; and

- Is established for the benefit of such individual by a parent, grandparent, legal guardian or a court; and

- Provides that the State will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State Medicaid plan.

65.1.2. Pooled Trusts Established under Section 1917(d)(4)(C) of the Social Security Act

A Pooled Trust Established under Section 1917(d)(4)(C) of the Act is a type of trust established with an individual's assets. A pooled trust is a trust containing the **assets of a disabled individual** which meets the following conditions:

- The pooled trust is established and maintained by a nonprofit association;

- Separate accounts are maintained for each beneficiary, but assets are pooled for investing and management purposes;

- Accounts are established solely for the benefit of the disabled individual;
- The account in the trust is established by the individual, a parent, grandparent, legal guardian, or a court; and
- The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the State the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a State Medicaid plan.

65.2. Trusts Established by Third Parties (Either Prior To or After 1/1/00)

A third-party trust is a trust established for the benefit of the individual with the assets of anyone other than the individual (or spouse). For example, a third-party trust may be established by a grandparent for a grandchild. Trusts established by someone other than the individual (or spouse) with the individual's (or spouse's) assets are not third party trusts. All third party trusts are evaluated using this section.

- If at any point, an individual's assets are added to a third party trust, the individual's portion of the trust must be evaluated under Chapter E – 65.1 if the funds were added prior to 1-1-00 or under Trust Type B, Chapter E – 66 if the individual's funds were added after 1-1-00.
- Burial trusts established with funds that have been irrevocably paid to a funeral provider are third party trusts. Evaluate this type of third party trust based on information in Burial Trusts, Chapter E – 20.

65.3. Trust Type A Procedures

Use the following procedures to evaluate trusts established prior to 1-1-2000 and third party trusts. Detailed information follows.

STEPS	Trust Type A Procedures ACTIONS
Step 1	**Obtain and review a copy of the trust and all related documents.**
Step 2	**Determine the date the trust was established.** • **Was the trust established prior to 1/1/00?** o **Yes – Continue.** o **No** – Was the trust established with third party funds? ▪ **Yes – Continue** ▪ **No – Stop.** Use Trust Type B to evaluate the trust**.**
Step 3	**Does the individual have the right to revoke the trust and use it for his/her support or maintenance?** • **Yes** – The trust principal is a countable resource. Go to **Step 8** to determine the countable resource value. • **No – Continue.**
Step 4	**Can the individual direct the use of the trust for his/her support or maintenance?** • **Yes –** The trust principal is a countable resource. Go to **Step 8** to determine the countable resource value. • **No –** The trust principal is not a resource. **Continue.**

STEPS	Trust Type A Procedures ACTIONS
Step 5	**Does the trust provide for mandatory payments to the individual?** • **Yes – Continue.** • **No –** The trust is not a countable resource. **Stop.**
Step 6	**Does the trust contain a clause that prohibits the individual from anticipating, assigning, or selling the right to future payments?** • **Yes –** The trust is not a countable resource. **Stop.** • **No –** Go to **Step 7** to determine the countable resource value of the mandatory payments.
Step 7	**Determine the countable resource value of the mandatory payments.** • The total value of all payments to be received in the future is the countable resource value. **Stop.**
Step 8	**Determine the countable resource value of the trust principal.** • Use resource guidelines to determine the countable value of each asset in the trust. All resource exclusions that according to the manual, are permitted, are applicable to the resources in the trust. • The total countable value of all trust assets is the countable resource value of the trust principal. **Stop.**

65.4. Trusts Whose Principals Are Resources

If an individual (applicant/recipient) **has legal authority to revoke** the trust and use the funds to meet his food, clothing or shelter needs, **or** if the individual **can direct the use of the trust principal** for his/her support and maintenance under the terms of the trust, the trust **principal is** a resource.

65.4.1. Trust Principal

When the trust principal is a resource, its value is determined by evaluating each asset in the trust. Each asset's countable value is determined by applying the resource guidelines **and exclusions** that are specific to the type of asset being evaluated. The total countable value of all trust assets is the countable resource value of the trust.

Note: Earnings or additions are not included in the principal in the month that they are credited or transferred into the trust because they are considered under income counting rules in that month. See Unearned Income, Chapter I.

65.4.1.1. Excluded Resources in a Trust

If an individual places an excluded resource in a trust and the trust is a countable resource, the resource exclusion can still be applied to that resource. For example, if an individual transfers ownership of his/her excluded home to a trust and the trust is a countable resource, the home is still subject to exclusion as home property. See Home Property, Chapter E – 35.

Example

An applicant's revocable trust contains $1,500 cash, a $100,000 home to which the individual intends to return and a $15,000 automobile that the individual's household uses for transportation. The total value of the trust is $116,500. **The countable value is determined by applying resource guidelines to each of the trust assets.** The home is excluded as home property as the applicant has an equitable ownership in the property, it was his home and he intends to return to it. The automobile is exempted under the vehicle guidelines which permit one vehicle to be

excluded for household transportation. Only the cash in the trust has a countable value, $1500. The total countable resource value of the trust is $1,500. (See Home Property, Chapter E – 35 and Automobiles, Chapter E - 15)

65.4.2. Trust Payments

If the trust principal is a resource, disbursements from the trust to or for the benefit of the individual are not income but conversion of a resource. Disbursements, not to or for the benefit of the individual (or spouse), need to be evaluated as resource transfers. See Resource Transfers, Chapter G.

65.5. Trusts Whose Principals Are Not Resources

If an individual **does not** have the legal authority to revoke the trust or direct the use of the trust assets for his/her own support and maintenance, the trust principal **is not** the individual's resource for AG purposes. However, mandatory payments from the trust may be a resource.

If the neither the trust principal nor mandatory payments to the individual is a resource, disbursements from the trust may be income to the AG recipient beneficiary. Cash paid directly to the individual is unearned income. See Trust Disbursements, Chapter I - 64.

65.5.1. Mandatory Trust Payments

If the trust principal is not a resource but provides for mandatory payments to the beneficiary and the beneficiary is not prohibited from anticipating, assigning or selling the right to future payments, **the current value of these payments may be a resource** to the beneficiary.

65.5.1.1. Value

Current resource value is assumed to be the total of all payments to be received in the future. If the trust identifies the period over which the payments are to be made, the resource value will be the total amount that will be received within that period. If the payments are to continue for life, determine the countable resource value by multiplying the total amount to be received within a 12 month period times the individual’s life expectancy.

The individual **may rebut** the value by providing a written statement from a knowledgeable source such as a bank or other entity whose professional duties include the sale and purchase of future benefits.

Use the Life Expectancy Table below to determine the individual's life expectancy. If the individual's age falls between the ages listed in the table, use the next higher age.

Example - A trust provides for payment of $100 (spending money) per month for life to the 42 year old male beneficiary. Because the trust does not prohibit the sale of future benefits, the beneficiary may be able to sell the right to future payments for a lump-sum settlement. The value of the payments to be received over the lifetime of the individual is a resource.

$1200 a year X 37 years (life expectancy at 45) = $44,400 countable resource value.

Life Expectancy Table

by Age and Sex:

United States, 2002

National Vital Statistics Reports, Vol. 53, No. 6,

November 10, 2004

All Races

Age	Male	Female		Age	Male	Female
0	74.5	79.9		**55**	28.3	32.2
5	74.1	79.4		**60**	24.1	27.7
10	70.2	75.4		**65**	20.2	23.5
15	65.3	70.5		**70**	16.6	19.5
20	60.3	65.5		**75**	13.2	15.8
25	55.6	60.7		**80**	10.3	12.4
30	51.0	55.8		**85**	**7.8**	**9.4**
35	46.3	51.0		**90**	**5.7**	**6.9**
40	41.6	46.1		**95**	**4.2**	**5.0**
45	37.0	41.4		**100**	**3.2**	**3.7**
50	32.6	36.7		**105**	**2.5**	**2.8**

65.6. Verification

65.6.1. Written Trust

Obtain a copy of the trust document and related documents.

65.6.2. Oral Trusts

Obtain from all parties signed statements describing the arrangement.

Note: Virginia does recognize oral trusts as binding.

65.6.3. Written and Oral

Obtain from the trustee:

- **A statement to include**
  - The name of the grantor(s) – the individual(s) whose funds/property were used to establish the trust.
  - The amount of cash or the value of property each grantor placed in the trust.
  - The date the trust was established.
  - The date the individual first transferred his/her assets into the trust.
- **Verification of**
  - The current value of the trust if it is a cash trust.
  - A list of personal and/or real property that is owned by the trust.
  - Dates, amounts, to whom and for what purposes all distributions were made during the past 12 months.
  - Dates, amounts and the source of all additions to the trust during the past 12 months.

66. Trust Type B

Trusts may or may not be a resource. If a trust that was established by the individual is revocable, the individual's portion of the trust principal is a resource to the individual. If the trust is irrevocable, the trust principal is not a resource but disbursements from the individual's portion of the trust principal may be.

This section applies to **trusts established with the assets of an individual (or spouse) on or after 1/1/00.**

- **Trust Established by an Individual**

  An individual is considered to have established a trust if any assets of the individual (or spouse), regardless of how little, were transferred to a trust other than by a will.

  - **The transfer of an individual's property to an existing third party trust is considered to be the establishment of a trust** subject to the provisions of this section if:

    - The transfer occurs on or after 1/1/00; and

    - The principal of the trust does not contain property transferred from the individual prior to 1/1/00.

66.1. Trust Development Procedures Summary

Use the following procedures to evaluate trusts established prior to 1-1-2000 and third party trusts. Detailed information follows.

STEPS	Trust Type B Procedures ACTIONS
Step 1	**Obtain and review a copy of the trust and all related documents.**

STEPS	Trust Type B Procedures ACTIONS
Step 2	**Does the trust contain any assets of the individual?** • **Yes -** Go to **Step 3**. • **No -** Follow instructions in Trust Type A, Chapter E - 65. **STOP.**
Step 3	**Determine the date the individual's assets were transferred to the trust.** • If any of the individual's assets were transferred **prior to 1/1/00**, follow instructions in Trust Type A, Chapter E - 65. **STOP.** • If all of the individual's assets in the trust were transferred **on or after 1/1/00**, go to **Step 4**.
Step 4	**Determine if the trust is revocable or irrevocable.** • If the trust is revocable, go to **Step 5**. • If the trust is irrevocable, go to **Step 6**
Step 5	**Revocable Trusts** The trust is a resource. **STOP**
Step 6	**Irrevocable Trusts**

STEPS	Trust Type B Procedures ACTIONS
	Does the trust also contain assets of a third party? (See statement from Trustee) • **Yes -** Determine the amounts in the trust attributable to the individual and the third party. Develop resource treatment of the portion attributable to the third party under Trust Type A, Chapter E - 65. Go to **Step 7** for the portion of the trust attributable to the assets of the individual. • **No -** Go to **Step 7**.
Step 7	**Are there any circumstances under which payment from the trust could be made to or for the benefit of the individual?** • **Yes -** The trust is a resource in the amount that could be paid from the portion attributable to the individual **unless an exception applies**. Go to Chapter E – 66.7.4 to see if an exception applies. • **No -** The trust is not a resource. Refer to Chapter G to see if a transfer penalty may be applicable.

66.2. Trust Rules Versus Transfer Rules for Assets in a Trust

When an individual transfers assets to a trust, he/she generally transfers ownership of the asset to the trustee. In some cases, this could be considered a transfer of resources. In order to avoid both counting a trust as a resource and imposing a transfer of resources penalty for the same transaction**, the trust provisions take precedence over the transfer provisions**. If there are portions of the trust that cannot be counted as a resource, then the transfer rules may apply to that portion of the trust. See Resource Transfers, Chapter G.

66.3. Trust Evaluation

These provisions apply to trusts **without regard** to:

- The purpose for which the trust was established;
- Whether the trustees have or exercise any discretion under the trust;
- Any restrictions on when or whether distributions may be made from the trust; or
- Any restrictions on the use of distributions from the trust.

66.3.1. Exculpatory Clause

No clause or requirement in the trust, no matter how specifically it applies to AG or other Federal or State program (i.e., exculpatory clause), **precludes a trust from being evaluated** under the rules in this section.

Note: While exculpatory clauses, use clauses, trustee discretion and restrictions on distributions, etc. do not affect a trust's countability, they do have an impact on how the various components are treated. For example, a prohibition in a discretionary irrevocable trust that limits the trustee to distributing no more than $10,000 to an individual has no effect on whether or not the trust is countable, but limits the amount that is countable to $10,000.

66.4. Verification

66.4.1. Written Trust

Obtain a copy of the trust document and related documents.

66.4.2. Oral Trusts

Obtain from all parties signed statements describing the arrangement.

Note: Virginia does recognize oral trusts as binding.

66.4.3. Written and Oral

Obtain from the trustee:

- **A statement to include**
  - The name of the grantor(s) – the individual(s) whose funds/property were used to establish the trust.

- The amount of cash or the value of property each grantor placed in the trust, initially and subsequently.
- The date the trust was established.
- The date the individual first transferred his/her assets into the trust.

- **Verification of**
  - The current value of the trust if it is a cash trust.
  - A list of personal and/or real property that is owned by the trust.
  - Dates, amounts, to whom and for what purposes all distributions were made during the past 12 months.
  - Dates, amounts and the source of all additions to the trust during the past 12 months.
  - Signed documents between organizations making payments to the individual when the individual is legally entitled to the payments and the payments have been assigned, either revocably or irrevocably, to the trust.

66.5. Revocable Trusts

A revocable trust is one that can be dissolved and the assets of the trust returned to the grantor. If a trust that was established by the individual is revocable, **the individual's portion of the trust principal** is a resource to the individual.

66.5.1. Disbursements To or for the Benefit of the Individual

Disbursements from the trust principal (or the individual's portion of the principal) to or for the benefit of the individual are not income, but conversion of a resource. However, disbursement of trust earnings, e.g., interest, is income. See Trust Disbursements, Chapter I - 64.

66.5.2. Disbursements Not to or for the Benefit of the Individual

Distributions to or for the benefit of someone other than the individual is a transfer of resources as of the date of the payment. See Resource Transfers, Chapter G.

66.5.3. Value

When the trust principal is a resource, its value is determined by evaluating each asset in the trust. Each asset's countable value is determined by applying the resource guidelines **and exclusions** that are specific to the type of asset being evaluated. The total countable value of all trust assets is the countable resource value of the trust.

66.5.3.1. Excluded Resources in a Trust

If an individual places an excluded resource in a trust and the trust is a countable resource, the resource exclusion can still be applied to that resource. For example, if an individual transfers ownership of his/her excluded home to a trust and the trust is a countable resource, the home is still subject to exclusion as home property. See Home Property, Chapter E – 35.

Example

An applicant's revocable trust contains $1,500 cash, a $100,000 home to which the individual intends to return and a $15,000 automobile that the individual's household uses for transportation. The total value of the trust is $116,500. The countable value is determined by applying resource guidelines for each of the trust assets. The home is excluded as home property as the applicant has an equitable ownership in the property, it was his home and he intends to return to it. The automobile is exempted under vehicle guidelines which permit one vehicle to be excluded for household transportation. Only the cash in the trust has a countable value, $1,500. The total countable resource value of the trust is $1,500. (See Home Property Chapter E – 35 and Automobiles Chapter E - 15)

66.5.4. Relationship to Transfer Penalty

Any disbursements from a revocable trust that are not made to, or for the benefit of, the individual are considered a transfer of resources. See Resource Transfers Chapter G.

66.6. Irrevocable Trusts

Irrevocable trusts cannot be dissolved but may permit distributions under certain circumstances. The principal itself is not a resource but disbursements from the individual's portion of the trust principal may be. Disbursements, payments that can be made **to or for the benefit of the individual or individual's spouse**,

under **any** circumstance, no matter how unlikely or distant in the future, **are** a resource. Determine if the Special Needs (Chapter E - 66.7.4.1), Pooled Trust (Chapter E - 66.7.4.2), or Undue Hardship (Chapter E - 66.7.4.3) exclusions apply.

If there are no circumstances under which payment from the trust could be made to or for the benefit of the individual or the individual's spouse, it is not a resource. Develop the establishment of the trust as a transfer of resources. See Resource Transfers Chapter G.

66.6.1. Payments to an Individual

Payments are considered to be made **to the individual** when any amount from the trust, including amounts from the principal or income produced by the trust, is paid directly to the individual or someone acting on his/her behalf, e.g., guardian or legal representative.

66.6.2. Payments on Behalf of/for the Benefit of an Individual

Payments are considered to be made **on behalf of** or **to or for the benefit of** an individual if payments from the principal or income of the trust are paid to another person or entity so that the individual derives some benefit from the payment.

Such payments could include purchase of food, clothing, shelter, household goods, personal items, medical services or personal attendant care.

66.6.3. Value

The resource value of an irrevocable trust is the total amount of payments that can be made from the individual’s portion of the trust to or for the benefit of the individual or spouse. Restrictions within the trust may limit the amount and purpose of distributions.

Examples

- An irrevocable trust provides that the trustee can disburse $2,000 to, or for the benefit of, the individual out of a $20,000 trust. Only $2,000 is considered to be a resource. The other $18,000 is considered to be an amount which cannot, under any circumstances, be paid to the individual. It is not a resource and may be subject to the transfer of resources rule.

- If a trust contains $50,000 that the trustee can pay to the beneficiary only in the event that he/she needs a heart transplant or on his/her 100th birthday, the entire $50,000 is considered to be a payment which could be made to the individual under some circumstance and is a resource.

66.6.3.1. Individual's Assets Form Only a Part of the Trust

In the case of an irrevocable trust where the assets of the individual (or spouse) were transferred along with the assets of another individual(s), **these provisions apply to the distributions made from an individual's (or spouse's) assets in the trust.** Distributions made from the third party's trust assets must be evaluated under Trust Type A. See Chapter E – 64.

Example: Jimmy Smith is an adult with cerebral palsy. His grandparents left $75,000 in trust for him in their wills. Recently (after 1/1/00), Mr. Smith won an employment discrimination lawsuit and was awarded a $1,500 judgment which was deposited into the trust established by his grandparents. The $1,500 of Mr. Smith's funds is subject to these provisions, Trust Type B, and could be a resource if payment could be made to or for Mr. Smith's benefit. The $75,000 deposited by his grandparents is not subject to these provisions but must be evaluated under Trust Type A.

66.6.3.1.1. Disbursement

Consult the trust document to determine from which portion of the trust disbursements were made. If the trust document does not specify, a statement from the trustee regarding the source of the disbursements will be determinative. If the trustee is unable to provide a statement, presume that disbursements were made first from the portion of the trust established with the funds of other individuals. When that portion is depleted, presume that disbursements were made from the portion of the trust established with funds of the individual.

66.6.4. Exceptions to Counting Irrevocable Trusts Established on or after 1/1/00

Three types of written irrevocable trusts are excluded as resources:

- Special Needs Trusts Established under Section 1917(d)(4)(A) of the Social Security Act,
- Pooled Trusts Established under Section 1917(d)(4)(C) of the Social Security Act, and
- Trusts that if counted would result in undue hardship to the individual. Each irrevocable trust must be evaluated to determine if one of the exclusions applies.

66.6.4.1. Special Needs Trusts Established under Section 1917(d)(4)(A) of the Act

Although this exception is commonly referred to as the **special needs** trust exception, the exception applies to any trust meeting the following requirements. The trust must

- Contain the assets of an individual under age 65 and who is disabled by SSI standards.
  - This exception does not apply to a trust established for the benefit of an individual age 65 or older.
  - If the trust was established for the benefit of a disabled individual prior to the date the individual attained age 65, the exception continues to apply after the individual reaches age 65.
- Be established for the benefit of such individual by a parent, grandparent, legal guardian or a court; and
  - This requirement refers to the individual who physically took action to establish the trust even though the trust was established with the assets of the AG claimant/recipient.
  - The special-needs trust exception does not apply to a trust established by the individual himself/herself.

- Contain specific language that provides that upon the death of the individual, the State will receive all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan.

Use the following procedures to determine if the exclusion applies.

STEPS	Special Needs Trust Exception Procedures ACTIONS
Step 1	**Was the trust established with the assets of an individual under age 65?** • **Yes** - Go to **Step 2**. • **No** - Go to **Step 8**.
Step 2	**Was the trust established with the assets of a disabled individual?** • **Yes** - Go to **Step 3**. • **No** - Go to **Step 8**.
Step 3	**Is the disabled individual beneficiary of the trust?** • **Yes** - Go to **Step 4.** • **No** - Go to **Step 8.**

STEPS	Special Needs Trust Exception Procedures ACTIONS
Step 4	**Did a parent, grandparent, legal guardian or a court establish the trust?** • **Yes** - Go to **Step 5**. • **No** - Go to **Step 8.**
Step 5	**Does the trust provide specific language to reimburse the State for medical assistance paid upon the individual's death?** • **Yes** - Go to **Step 6**. • **No** - Go to **Step 8**.
Step 6	**The trust meets the special needs trust exception to the extent that the assets of the individual were put in trust prior to the individual attaining age 65.** Any assets placed in the trust after the individual attained age 65 are not subject to this exception. • Go to **Step 7** for treatment of assets placed in trust prior to age 65. • Go to **Step 8** for treatment of assets placed in trust after attaining age 65.

STEPS	Special Needs Trust Exception Procedures ACTIONS
Step 7	**Is the trust irrevocable?** • **Yes -** Assets placed in the trust prior to age 65 are not a countable resource. **STOP**. • **No -** Evaluate the trust to determine if it is a countable resource.
Step 8	**The trust (or portion thereof) does not meet the requirements for the special-needs trust exception.** Determine whether the pooled trust exception in Chapter E - 66.7.4.2 applies.

66.6.4.2. Pooled Trusts Established under Section 1917(d)(4)(C) of the Act

A pooled trust is a trust established and administered by a non-profit organization. It is sometimes called a "master trust" because it contains the assets of many different individuals, each in separate accounts established by individuals, and each with a beneficiary.

The master trust is established by the nonprofit association, and the individual trust accounts within the master trust, are established by the individual or another person for the individual.

This exclusion applies to a trust containing the **assets of a disabled individual** which meets the following conditions:

- The pooled trust is established and maintained by a nonprofit association;

- A nonprofit association is an organization that has tax-exempt status under section 501(a) of the IRC.
  - Contact the organization and request a copy of its IRS section 501(c) tax-exempt certification

- Separate accounts are maintained for each beneficiary, but assets are pooled for investing and management purposes;
  - The trust must be able to provide an individual accounting for the individual.

- Accounts are established solely for the benefit of the disabled individual;

- The account in the trust is established by the individual, a parent, grandparent, legal guardian, or a court;
  - This requirement refers to the individual who physically took action to establish the trust even though the trust was established with the assets of the AG claimant/recipient.

- The trust provides that to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the State the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under a State Medicaid plan.

  Note: There is **no age restriction** under this exception.

Use the following procedures to determine if the exclusion applies.

STEPS	**Pooled Trust Exception Procedures** **ACTIONS**
Step 1	**Was the trust account established with**

STEPS	Pooled Trust Exception Procedures ACTIONS
	assets of a disabled individual? • **Yes -** Go to **Step 2**. • **No -** Go to **Step 8**.
Step 2	**Was the pooled trust established and maintained by a nonprofit association?** • **Yes -** Go to **Step 3**. • **No -** Go to **Step 8**.
Step 3	**Does the trust pool the funds, yet maintain an individual account for each beneficiary, and can it provide an individual accounting?** • **Yes -** Go to **Step 4**. • **No -** Go to **Step 8**.
Step 4	**Is the disabled individual the sole beneficiary of the trust account?** • **Yes -** Go to **Step 5**. • **No -** Go to **Step 8**.
Step 5	**Did the individual, parent(s), grandparent(s), legal guardian(s) or a court**

STEPS	**Pooled Trust Exception Procedures** **ACTIONS**
	establish the trust account? • **Yes -** Go to **Step 6**. • **No -** Go to **Step 8**.
Step 6	**Does the trust provide specific language to reimburse the State for medical assistance paid upon the individual's death from funds not retained by the trust**? • **Yes -** Go to **Step 7**. • **No -** Go to **Step 8**.
Step 7	**Is the trust irrevocable?** • **Yes - The trust meets the Medicaid pooled trust exception.** The trust is not a countable resource. **STOP.** • **No -** Evaluate the trust under Trust Type A, Chapter E - 65 to determine if it is a countable resource.
Step 8	**The trust does not meet the requirements for the Medicaid pooled trust exception.** Determine if the undue hardship waiver applies. See Chapter E – 66.7.4.3 below.

66.6.4.3. Undue Hardship

The counting of an irrevocable trust as a resource is not applicable in any month for which counting the trust would cause undue hardship to the individual. Counting the trust as a resource resumes for any month(s) in which undue hardship does not exist.

Note: Since an individual may revoke a revocable trust and access the funds for his/her support and maintenance, the requirements for undue hardship cannot be met if the individual established a revocable trust.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 1	**Is the trust irrevocable?** • **Yes** - Go to **Step 2**. • **No** - Go to **Step 8**.
Step 2	**Does counting the trust result in excess resources?** • **Yes** - Go to **Step 3**. • **No** - Go to **Step 8**.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 3	**Does the individual allege (or information in the file indicates) that not receiving AG would deprive him/her of food or shelter?** • **Yes** - Go to **Step 4**. • **No** - Go to **Step 8**.
Step 4	**Obtain the individual's signed statement as to whether:** • Failure to receive AG payments would deprive the individual of food or shelter; • The individual's total available funds are less than the FBR plus federally administered State supplement; • The individual agrees to report promptly any changes in income and resources; and • The individual understands that he/she may be overpaid if available funds exceed the FBR plus State supplement for any month, or other situations change. • Go to **Step 5**.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 5	**Does the trust contain language that specifically prohibits the trustee from making disbursements for support and maintenance or that prohibits the trustee from exercising discretion to disburse funds for support and maintenance?** • **Yes** - Go to **Step 6**. • **No** - Go to **Step 8**.
Step 6	**Add up all of the individual's income, both countable and excludable.** (Do not include any AG payments received or items that are not income.) Add up all of the individual's **liquid** resources, both countable and excludable. Does the total of the income and the liquid resources equal or exceed the FBR? • **Yes** - Go to **Step 8.** • **No** - Go to **Step7**.
Step 7	**Suspend counting of the trust as a resource for any month in which all requirements above are met.** • Document the findings of undue hardship and the applicable months. **STOP**.

STEPS	Undue Hardship Exception Procedures ACTIONS
Step 8	**Undue hardship does not apply.**

66.6.4.3.1. Applicability

Consider the possibility of undue hardship under this provision only when:

- Counting an **irrevocable** trust as a resource results in the individual's ineligibility for AG due to excess resources;
- The individual alleges in a written statement or information in the file indicates that not receiving AG would deprive him/her of food or shelter; and
- The trust specifically prohibits disbursements or prohibits the trustee from exercising his/her discretion to disburse funds from the trust for the individual's support and maintenance

66.6.4.3.2. Undue hardship exists in a month if:

- Failure to receive AG payments would deprive the individual of food or shelter; and
- The individual's available funds do not equal or exceed the AG rate for the area

Note: Inability to obtain medical care does not constitute undue hardship for AG purposes.

66.6.4.3.3. Loss of Shelter

For purposes of this provision, an individual would be deprived of shelter if:

- He/she would be subject to eviction from the ALF if AG benefits were not received; and
- There is no other affordable housing available, or there is no other housing available with necessary modifications for a disabled individual

66.6.4.3.4. Available Funds

In determining the individual's available funds total the individual's income and resources.

- **Income**
  - All **countable income** received in the month(s) for which undue hardship is determined.
  - All excluded income received in the month(s) for which undue hardship is an issue.

    Do not include AG payments received or items that are not income per Chapter I – 3.
- **Resources**
  - All countable liquid resources as of the first moment of the month(s) for which undue hardship is at issue.

    Liquid resources are any resources in the form of cash or in any other form which can be converted to cash within 20 workdays. See Conditional Benefits Chapter F – 4.2 for further information on liquid resources.

- All liquid resources excluded as of the first moment of the month(s) for which undue hardship is at issue.

AG benefits retained into the month following the month of receipt are counted as a resource for purposes of determining available funds.

Do not include non-liquid resources or assets determined not to be a resource.

Example

Frank Williams filed for AG in 1/06 as an aged individual. In 2/06, he received an insurance settlement from an accident that was placed in an irrevocable trust. After determining that he met the other requirements for undue hardship, the worker determined Mr. Williams' available funds.

He receives $750 Title II benefits and $10 per month interest on a bank account. His only liquid resource is the bank account that has $600 in it. The total of $1360 in available funds ($750 Title II, $10 interest and $600 bank account balance) means that undue hardship does not apply in 3/06 because that amount exceeds the AG rate.

Mr. Williams reapplies in 6/06. He presents evidence that he has spent down the $600 in his bank account on living expenses in the past 3 months. As of 6/06, he has no liquid resources and his income total of $760 is below the AG rate for his area. Mr. Williams meets the undue hardship test for 6/06. The trust does not count as his resource in that month. If his situation does not change, he will qualify for an ongoing AG payment.

66.6.4.3.5. Follow-Up To A Finding Of Undue Hardship

If the individual's income and resources are not expected to change significantly, recontact the individual **no less than every 6 months**. If the individual's income and resources are expected to fluctuate, the recontact period should be shorter, even monthly in some cases.

At each recontact:

- Obtain the individual's signed allegation that failure to receive AG will deprive the individual of food or shelter.
- Determine whether total income and liquid resources exceeds the AG rate.
- If undue hardship is expected to continue in the future period, continue payment.
- If it is not expected to continue, redetermine resource eligibility counting the trust as a resource.

67. U.S. Savings Bonds

U.S. Savings Bonds are obligations of the Federal Government. Unlike other government bonds, they are not transferable; they can only be sold back to the Federal Government. U.S. Savings Bonds become countable resources after a mandatory retention period.

Savings bonds are issued as traditional paper bonds or as book-entry securities. Book-entry securities (also called “savings security instruments”) are electronic savings bonds sold online by the U.S. Treasury Department. No paper bond is issued when an individual purchases an electronic savings bond. Currently, only Series EE and Series I savings bonds are issued as electronic bonds. Record of ownership of electronic savings bonds is maintained electronically by the Treasury Department.

67.1. Mandatory Retention Period

The mandatory retention period is the same for paper Series EE and I bonds and electronic Series EE and I bonds. Series E bonds have not been issued since June 1980.

- U.S. Savings Bonds (including Series E, EE, and I) issued prior to 2/1/03 are resources. Their retention period has passed.

Series EE and Series I U.S. Savings Bonds issued on or after 2/1/03 have a 12 month mandatory retention period. They are not resources during that period. They are resources (not income) as of the first moment of the thirteenth month.

- Series H and HH bonds have a 6-month mandatory retention period regardless of the issue date. They are resources (not income) as of the first moment of the seventh month.

67.2. Paper Savings Bonds

67.2.1. Ownership

67.2.1.1. Sole Ownership

The individual in whose name a U.S. Savings Bond is registered owns it. The Social Security Number shown on a bond is not proof of ownership.

67.2.1.2. Co-Ownership

The co-owners of a U.S. Savings Bond own equal shares of the redemption value of the bond.

67.2.1.3. Beneficiary Registration

Beneficiary registration means that there are two persons named on the paper savings bond—the owner and a beneficiary. Their names are connected by the initials “POD” (“Payable on Death”) on the face of the savings bond. The owner has sole ownership rights during his or her lifetime including redeeming the savings bond. Upon death of the owner, the beneficiary becomes the owner of the savings bond.

67.2.1.4. Verification of Ownership

Have the individual submit any paper bonds in which he/she has an ownership interest. Use the name(s) shown on the bond to determine ownership.

67.2.2. Access

Physical possession of a paper U.S. Savings Bond is a requirement for redeeming it. If a person other than the AG recipient will not relinquish possession of the bond, it is not a resource for AG purposes.

If the individual alleges that he/she cannot submit a bond because a co-owner or other individual has, and will not relinquish, physical possession of the bond, obtain from the co-owner or the other individual a signed statement verifying that he/she:

- Has physical possession of the bond;
- Will not allow the individual to cash the bond; and
- In the case of a co-owner, will not cash the bond and give the individual his/her share of its value.

67.2.3. Value of Paper Bonds

67.2.3.1. Series E, EE, And I Bonds (Paper)

Series E and EE bonds are sold at one half of their face value and they increase in value as interest accrues. Series I bonds are sold at their full face value and they increase in value as interest accrues. To determine the value of a paper bond:

- Use the Savings Bond Calculator or the Comprehensive Savings Bond Value Table on the U.S. Bureau of Public Debt's Internet web site at http://www.treasurydirect.gov/BC/SBCPrice
- Use a current copy of the Table of Redemption Values for U.S. Savings Bonds; or
- Obtain the value by telephone from a local bank. The bank will need the series, denomination, date of purchase and/or issue date.

67.2.3.2. Series H And HH Bonds

Series H and HH bonds are issued only as paper bonds, not as electronic bonds. They are issued at their face value and do not increase in value. Instead, they pay interest to the owner each six months which is unearned income. After

the 6-month retention period, the redemption value of a series H or HH bond is its face value. Do not verify the value of an H or HH bond using the procedures above.

67.3. Electronic Savings Bonds

67.3.1. Ownership

67.3.1.1. Single Owner Bond

The individual named on the Treasury Department's record for that electronic savings bond is the owner. A record of bond ownership is maintained under an account number issued by the Treasury to that individual.

67.3.1.2. "With" Bonds

A "with" bond is a bond whose titling lists one person in addition to the owner. The bond owner may grant transaction authority that will allow the "with" person to cash the bond. However, even with transaction authority the "with" person is not considered an owner of the bond. The owner can grant transaction authority at the time the bond is purchased, or later. The owner can also remove the "with" person from the bond at any time without that person's permission.

EXAMPLE: Ownership record is titled "John Smith with Mary Smith." Mary is not an owner but could redeem the bond for him if given transaction authority by John Smith.

67.3.1.3. Verification of Ownership

When an individual alleges ownership of electronic savings bonds, it will be necessary to document the bond ownership by asking the individual to download a record of the individual's bond holdings from the Treasury Department.

67.3.2. Beneficiary Registration

The bond owner can name a beneficiary of the electronic savings bond. The owner has sole ownership rights during his or her lifetime and is the only person who can redeem the bond. When the owner dies, the beneficiary becomes the owner of the bond and can cash the bond.

67.3.3. Access

With electronic savings bonds, a paper bond is not issued. Thus, physical possession of the bond is not a requirement for redeeming it. The owner of an electronic savings bond can redeem it at any time after the mandatory retention period.

67.3.4. Value

Electronic Series EE and I bonds are always issued at their full face value. As interest accrues, the bond's value is the face value plus the accrued interest. Unlike paper bonds, there are no set denominations for electronic Series EE and I bonds. Determine the value of electronic savings bonds as follows.

- Ask the individual to obtain his or her "Current Holdings" list from the Treasury Direct web site. http://www.savingsbonds.gov/
- Verify the total current value of all of the individual's electronic Series EE and I bonds using the Current Holdings list.
- Use the "Current Holdings—Summary" page to verify the number of bonds, face value of the bonds, issue dates, confirmation numbers, and the value of individual bonds.
- If the individual alleges that the Current Holdings list cannot be obtained because the password or account number has been lost, the individual must contact the Treasury Department to retrieve them.

Note: The Current Holdings list is protected by password, so only the bond owner can access this information. The individual will also need to know his or her account number (issued by Treasury) to access the Current Holdings list.

68. Veterans' Children With Certain Birth Defects Payments

The Department of Veterans Affairs (VA) provides three types of benefits to natural children of veterans:

- Benefits for Vietnam veterans' children born with spina bifida,
- Benefits for Korea service veterans' children born with spina bifida, and

- Benefits for women Vietnam veterans' children born with certain birth defects.

The child status is not changed by age and marital status. Children do not receive benefits under more than one of these programs. VA determines eligibility for VA benefits.

68.1. Exclusion

Unspent payments paid to Veterans' Children with Certain Birth Defects Payments are excluded from resources.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

68.2. Verification

Use documents such as letters or notices from VA to verify the type of payment. If documents from VA do not show the type of the payment or if no documents are available to verify the type of payment, contact VA.

69. Victims' Compensation Payments

Victims' Compensation Payments are payments received from a fund established by a State to aid victims of crime.

69.1. Exclusion

Unspent payments received from a fund established by a State to aid victims of crime are excluded from resources for 9 months. To be excluded from resources under this provision, the individual must demonstrate that the payment was compensation for expenses incurred or losses suffered as the result of crime.

Retained funds must be identifiable in order to be excluded. See Commingled Funds, Chapter E - 26 if funds excluded under this provision are commingled with other funds.

69.2. Interest

Interest earned on unspent victims' compensation payments is not excluded from income or resources by this provision.

69.3. Verification

If an individual alleges that his or her resources include unspent victims' compensation payments, ask the individual to submit evidence that:

- Verifies the source, date(s), and amount(s) of such payment(s); and
- Establishes that the payment was paid as compensation for expenses incurred or losses suffered as the result of a crime.

Accept the following as evidence establishing that the payment was paid for expenses incurred or losses suffered as the result of a crime:

- A letter or check stub accompanying the payment indicating the reason for the payment;
- A subsequent letter requested by the claimant/recipient to clarify the reason for the payment; or any other document indicating the reason for the payment.

TABLE OF CONTENTS

CONDITIONAL BENEFITS - INTRODUCTION **1**

1. WHO MUST BE EVALUATED **1**

2. WHO QUALIFIES FOR CONDITIONAL BENEFITS **1**

2.1. INITIALLY 1
2.2. CONTINUING 2
2.3. TERMINATION AND REAPPLICATION 2

3. SUMMARY OF CONDITIONAL BENEFITS PROCEDURES **3**

4. CONDITIONAL BENEFITS RESOURCE ELIGIBILITY **6**

4.1. PROCEDURE 6
4.2. LIQUID & NON-LIQUID RESOURCES 6
4.2.1. Resources Assumed to be Liquid *7*
4.2.2. Resources Assumed to be Non-liquid *7*

5. THE INDIVIDUAL'S CHOICE **9**

5.1. EXPLANATION TO THE INDIVIDUAL: 9
5.2. INDIVIDUAL'S WRITTEN STATEMENT 11
5.3. CONDITIONAL BENEFITS ACCEPTED 11

6. DISPOSAL/EXCLUSION PERIOD **11**

6.1. BEGINNING DATE 12
6.2. ENDING DATE 12

7. PAYMENT PERIOD **13**

8. REASONABLE EFFORTS TO SELL **13**

8.1. EFFORTS TO SELL REQUIREMENTS 13
8.1.1. Initial Efforts to Sell *13*
8.1.2. Continuing Efforts to Sell *14*
8.1.3. Individual Must Accept Any Reasonable Offer *14*
8.2. VERIFICATION OF EFFORTS TO SELL 14
8.2.1. Supporting Evidence *14*
8.3. EXAMPLES - EFFORTS TO SELL REAL PROPERTY 15
8.3.1. First Contact— Reasonable Efforts Exist *15*
8.3.2. Second Contact— Reasonable Efforts Have Stopped *16*
8.4. FAILURE TO ESTABLISH OR CONTINUE REASONABLE EFFORTS TO SELL 16
8.5. GOOD CAUSE 16
8.5.1. Examples of Good Cause *16*
8.5.2. Verification *17*

9. FOLLOW-UP CONTACTS **17**

9.1. FREQUENCY OF CONTACTS 18
9.2. INDIVIDUAL MAKING REASONABLE EFFORTS 18
9.3. INDIVIDUAL NOT MAKING REASONABLE EFFORTS 18

10. CLIENT WISHES TO WITHDRAW AGREEMENT TO SELL NON-LIQUID RESOURCES **19**

10.1. VERIFICATION 19

11. EXCESS RESOURCES REDUCED **19**

11.1. VERIFICATION OF SALE 20

TABLE OF CONTENTS

11.2. CASH SALE 20
11.3. OTHER THAN CASH SALE 20
11.3.1. Contract Received for Sale 20
11.3.2. Exchange of Excess Property 21

12. CONDITIONAL BENEFITS ENDS 21

12.1. REGULAR AG ELIGIBILITY 21
12.2. CONDITIONAL BENEFITS OVERPAYMENT 22
12.2.1. Contact Individual 22
12.3. APPLICABILITY 22
12.4. COMPUTING THE OVERPAYMENT 22
12.4.1. Disposal of Excess Non-Liquid Resources 23
12.4.2. No Disposal of Excess Non-Liquid Resources 23

13. CONDITIONAL BENEFITS NOTICE 24

13.1. INITIAL APPLICATION/REAPPLICATION 24
13.1.1. Potential Eligibility 24
13.1.2. Eligibility Approved 24
13.2. REDETERMINATION OR CHANGE 24
13.2.1. Time Frames 25

14. AGREEMENT TO SELL NON-LIQUID RESOURCES 25

Conditional Benefits - Introduction

A non-SSI individual (or couple) who meets **all non-resource** eligibility requirements, but fails to meet the resources requirement due solely to **excess non-liquid resources**, may qualify for the conditional exclusion of those excess resources.

The Manual provides for an exclusion of excess **non-liquid** resources for a set period of time if the individual agrees to take action to dispose of the excess **non-liquid** resources and to repay the amount of the AG Conditional Benefits he/she will receive during the disposal period. The AG benefits paid during the period the exclusion is applied are Conditional Benefits (CB), benefits paid on the condition they be repaid.

Conditional Benefits are basically an "advance" to the individual, one that must be repaid from the proceeds of the sale of the excess resources. In this manner, the individual is permitted to use his/her own resources to meet his/her needs. Conditional Benefits differ from regular AG benefits only in that they must be repaid.

1. Who Must Be Evaluated

Each individual found to be ineligible due to excess resources **must** be evaluated to determine if he/she qualifies for the application of the conditional exclusion and the receipt of Conditional Benefits. This applies to ongoing cases as well as initial applications.

Note: An individual that is ineligible due to excess **liquid** resources does not qualify for this exclusion.

2. Who Qualifies for Conditional Benefits

An individual (or couple) who meets **all non-resource** eligibility requirements, but fails to meet the resources requirement due solely to **excess non-liquid resources**, can receive Conditional Benefits for a **limited period of time** if the individual agrees to certain conditions.

Note: There is no maximum limit on the value of the total countable resources for the purpose of this provision.

2.1. Initially

The conditional exclusion of the excess non-liquid resources is available if the individual (couple) meets the following conditions.

- **Countable non-liquid resources exceed the resource limit**
- **Countable liquid resources do not exceed the current resource limit.**
- **The individual/couple agrees in writing to:**
  - Sell excess non-liquid resources at their current market value (CMV) within a specified period; and
  - Use the proceeds of sale to refund overpayments of conditional benefits.

    The Agreement to Sell Non-Liquid Resources form must be used to document the individual's acceptance of CB.

2.2. Continuing

The conditional exclusion of the excess non-liquid resources continues throughout the disposal period if:

- The individual conducts and verifies reasonable efforts to sell;
- The individual's non-liquid resources remain in excess of the resource limit;
- The individual's liquid resources do not exceed the current resource limit; and
- The individual does not become ineligible due to any other reason.

2.3. Termination and Reapplication

Termination of eligibility during a Conditional Benefit period ends the disposal period. If the individual reapplies for benefits and still has excess resources, he/she must be re-evaluated for Conditional Benefits and have a new conditional benefits period established.

3. Summary of Conditional Benefits Procedures

The chart below summarizes the process for determining whether or not an individual qualifies for CB. Detailed information follows.

Steps	Conditional Benefits Procedure ACTIONS
Step 1	**Determine if the individual is ineligible solely due to excess resources** • No - Client is not eligible for Conditional Benefits **STOP** • Yes - **CONTINUE**
Step 2	**Divide the individual's resources into two classifications, liquid and non-liquid.** • Total the value of the non-liquid resources • Total the value of the liquid resources **CONTINUE**

Step 2	**Determine if the individual is ineligible solely due to excess NON-LIQUID resources**
	• Compare the total value of the individual's (couple's) **NON-LIQUID** resources to the resource limit
	  o Total non-liquid resource value is equal to or less than the resource limit - Client is not eligible for Conditional Benefits. Deny the application due to excess resources. **STOP**
	  o Total non-liquid resource value exceeds the limit - **CONTINUE**

Steps	Conditional Benefits Procedure ACTIONS

Step 3	**Compare the total value of the individual's (couple's) LIQUID resources to the amount equal to 3 X the current SSI payment rate for 1 (couples –SSI payment rate for 2)**
	
	• Total **liquid** resource value exceeds 3 X the SSI rate - Client is not eligible for Conditional Benefits **STOP**
	
	• Total liquid resource value is less than 3 x the SSI rate -
	
	  o Send the Conditional Benefits Notice to notify the individual of his/her potential eligibility for Conditional Benefits and explain the requirements to him/her.
	
	  ▪ Include a completed Agreement to Sell Non-Liquid Resources form with instructions to sign it if he/she wishes to receive CB.
	
	  ▪ Also instruct the individual to return a written statement if he/she wishes to decline CB. **CONTINUE**

Step 4	**Evaluate the individual's Agreement to Sell Non-Liquid Resources in which he/she agrees to sell excess non-liquid resources or his/her written statement declining conditional benefits**
	
	• Agreement not received or conditional benefits declined - Client is not eligible for Conditional Benefits **STOP**
	
	• An appropriately signed Agreement received – Client is eligible for Conditional Benefits
	
	  o Set special review for follow-up.
	
	  o Send the individual notice that his Agreement to Sell Non-Liquid Resources has been received and accepted and inform him/her of the dates his/her disposal period and Conditional Benefits will begin.

Steps	Conditional Benefits Procedure ACTIONS
	○ Approve the individual for Conditional Benefits effective the month following the month the agreement becomes effective. **CONTINUE**
Step 5	**Recontact the individual periodically as required to determine continued eligibility for conditional benefits. Use the procedures in Steps 2 and 3.** • Eligibility continues – No change is required. Set a special review date for the next follow-up. **STOP** • Eligibility for Conditional Benefits ends – **CONTINUE**
Step 6	**Determine the individual's eligibility for regular AG.** • Total resources exceed limit – Close case. • Total resources are equal to or less than the limit and the individual continues to meet all other eligibility requirements – The individual is eligible for regular AG. Note – Determine if the "Reasonable Effort to Sell Real Property" applies. **CONTINUE**
Step 7	**Determine the amount of the Conditional Benefits overpayment and use the Conditional Benefits Notice to notify the individual.**

4. Conditional Benefits Resource Eligibility

Once it is determined that an individual is ineligible for regular AG solely due to excess resources, it is necessary to determine if the individual meets the special resource requirements for Conditional Benefits. To qualify for CB an individual must have non-liquid resources in excess of the regular resource limit and have liquid resources that do not exceed three times the SSI payment level. If the individual's resources do not meet both of these requirements the individual does not qualify for CB.

4.1. Procedure

Tally the values of liquid resources and non-liquid resources separately.

- Compare the total value of **non-liquid** resources to the regular resource limit. If the total is
  - Equal to or less than the resource limit, the individual is ineligible for CB. Deny the application due to excess resources.
  - Greater than the regular resource limit, continue evaluating the individual for CB eligibility.
- Compare the total value of liquid resources to 3 X the SSI payment level. If the total is
  - Greater than 3 X the SSI payment level, the individual is ineligible for CB. Deny the application due to excess resources.
  - Equal to or less than 3 X the SSI payment level, continue evaluating the individual for CB eligibility.

4.2. Liquid & Non-liquid Resources

Liquid resources are any resources in the form of cash or in any other form which **can** be converted to cash within 20 workdays.

Non-liquid resources are any resources which are not in the form of cash and which **cannot** be converted to cash within 20 workdays.

Workdays are any days other than Saturdays, Sundays, and Federal holidays.

Note: Both **real property and personal property** may be classified as non-liquid resources.

4.2.1. Resources Assumed to be Liquid

Cash is **always** liquid. Absent evidence to the contrary, assume that the following types of resources are liquid:

- Stocks, bonds, and mutual fund shares;
- Checking and savings accounts and time deposits;
- United States Savings Bonds and Treasury bills, notes and bonds;
- Mortgages and promissory notes; and
- Cash value of life insurance policies.

4.2.2. Resources Assumed to be Non-liquid

Absent evidence to the contrary, assume that the following types of resources are non-liquid:

- Automobiles, trucks, tractors and other vehicles;
- Machinery and livestock;
- Buildings, land and other real property rights; and
- Non-cash business property.

4.2.2.1. Evidence To The Contrary

If there is no apparent evidence to the contrary, do not seek out any evidence to the contrary. There is no need to document a lack of evidence to the contrary.

When evidence to the contrary is presented, evaluate it Do not reopen a prior determination of non- liquidity retroactively. Consider the prior determination correct when made since there was no evidence to the contrary at that time.

Examples — Evidence to the Contrary

1. Non-Liquid Resource Becomes Liquid

Situation - On October 10, 2005, Mr. Hosea Hooper, a widower, filed for AG. Mr. Hooper alleged owning countable liquid resources totaling $900 plus a second automobile, a non-liquid resource, worth $3,000. (His only other resource, another automobile, was excluded.) Mr. Hooper volunteered the information that he only expected to have the second car for about 2 more weeks since his neighbor had agreed to buy it and Mr. Hooper was confident that the transaction would be completed by November 1.

Analysis - Based on Mr. Hooper's statements, the worker categorized the second vehicle as a “liquid” resource and documented the file accordingly. This established why Conditional Benefits could apply.

2. Recently Issued U.S. Savings Bond: Not A Resource

Situation - On January 6, 2005 Ms. Minnie Marbel filed for AG. Among her alleged resources was a $500 series EE U.S. Savings Bond which she had won a month earlier. Since series EE bonds are never redeemable for 6 months following issue, the worker questioned whether the minimum retention period had expired.

Analysis - The bond's issue date was December 1, 2004. Therefore, Ms. Marbel by law could not redeem it before June 1, 2005. Consequently, the bond not only was not a liquid resource, it was not a resource at all. 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. The value of the bond, including any interest accrued, does not become a liquid resource until July 1, 2005.

3. Guardianship Account — Guardian Dies: Non-Liquid Resource

Situation - Ms. Harriet Dalton had a court-appointed guardian who had sole access to Ms. Dalton's savings account. On September 8, 2005 the guardian filed for AG 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.

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 non-liquid resource.

The guardianship account continued 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.

5. The Individual's Choice

At the point it is determined that an individual meets all eligibility factors other than excess non-liquid resources and that his/her liquid resources do not exceed triple the SSI rate, the individual must be contacted to explain the Conditional Benefits provision and its implications. The individual must choose whether to accept Conditional Benefits.

5.1. Explanation to the Individual:

To permit the individual to make an educated choice, all details of the Conditional Benefits program and its requirements must be explained to him/her. The explanation may be verbal but must be followed up in writing. The Conditional Benefits Notice must be sent to the individual to explain that:

- His/her total resources exceed the amount allowable for regular AG benefits and benefits are about to be denied due solely to his/her excess non-liquid resources;
- Refundable AG benefits are possible for a limited number of months if the individual agrees in writing to:
  - sell certain property within a specified period (identify the excess resources and the applicable disposal period);
  - sell the property for as much as he/she can within this period, while **asking no more than the highest CMV** estimated by a knowledgeable and disinterested third party;
  - notify worker **within 5 working days** of the sale of the resource; and
  - **Refund** the benefits paid during the period.
- The agreement becomes effective on the date the individual receives written notice that the agreement is in effect.
- The first payment will be for the month after the month the agreement becomes effective. Payment cannot be made for any month before the agreement takes effect or in the month the agreement takes effect.
- The significance of continuing reasonable efforts to sell.
- Before, during, or after the disposal period, the individual can submit evidence that the resource has a lower value than currently estimated.
- Selling the resource will not necessarily result in ongoing eligibility since any sale proceeds remaining **after refund of conditional benefits** will be countable resources which could cause ineligibility.
- The overpayment is an appealable initial determination. However, the refund will not be waived because conditional benefits are not paid without an agreement to make refund. The individual cannot be found without fault with regard to the overpayment because he/she signed the agreement and received written notice of the repayment requirement.

5.2. Individual's Written Statement

The Agreement to Sell Non-Liquid Resources form is to be used to notify the individual of his/her excess non-liquid resources and to document the individual's agreement to dispose of them and repay the CB received. The form is to be sent to the individual as soon as it is determined that he/she meets all eligibility factors other than excess non-liquid resources and his/her liquid resources do not exceed triple the SSI rate. Instruct the individual to return the form if he/she wants to accept CB or to return a written statement declining the benefits. Allow the individual a minimum of 10 days to return the form.

If the Agreement to Sell Non-Liquid Resources form is not returned or the individual submits a statement declining CB, the application must be denied. If the individual refuses to sign a statement declining the CB, document the file to that effect.

5.3. Conditional Benefits Accepted

On receipt of the Agreement to Sell Non-Liquid Resources form review it for completeness and proper signature. Issue the Conditional Benefits Notice to inform the individual that the worker accepts the agreement, the beginning date of and the length of the disposal period and the date the Conditional Benefits will begin.

Tell the individual about the:

- Requirement to make continuing reasonable efforts to sell, including not refusing any reasonable offer to buy;
- Types of evidence he/she must provide; and
- Periodic follow-up contacts that will be conducted.

6. Disposal/Exclusion Period

The individual is allowed a set period of time to dispose of his/her excess non-liquid resources. The disposal period and the exclusion period are one and the same. The length of the disposal period is determined by the type of non-liquid asset that must be disposed.

The periods for the disposal of excess **non-liquid resources** are:

- 9 months for real property;
    - There is no extension of the disposal period for real property.

- 3 months for personal property.
  - One 3-month extension for disposition of personal property is permitted if good cause exists. Chapter F – 8.5.

6.1. Beginning Date

The disposal/exclusion period begins on the date the worker "accepts" the individual's signed written agreement, the Agreement to Sell Non-Liquid Resources.

- The date of acceptance is 5 days from the date the notice is mailed unless the individual shows that he/she did not receive it within the 5-day period.
- If the written notice is handed to the individual, the date of acceptance is that date.

6.2. Ending Date

The disposal/exclusion period ends at the earliest of the following:

- The month the property is sold;
- The month continued reasonable efforts to sell end, absent good cause;
- The month the individual submits a written request for cancellation;
- The month countable resources, without the conditional exclusion, fall within the applicable limit (e.g., the individual depletes liquid resources); or
- The month in which the individual's full period of conditional benefits ends (including any allowable extension);
- The month the case is closed due to another reason.

Example

Mr. Jones' disposal/exclusion period for his second car begins on May 12 when Mr. Jones receives written notice that his agreement to sell is in effect. He sells the car on July 20 which ends the disposal/ exclusion period. He is eligible for conditional benefits for June and July, the 2 full months whose first moments fall within the disposal/exclusion period. If no sale had occurred, the basic period would have ended on August 11, and he could have received conditional benefits for the 3 months of June, July and August assuming no extension of the disposal/exclusion period for good cause was granted.

7. Payment Period

Conditional benefits are paid only for full calendar months. Thus:

- the first month of a payment period is the month after the month in which the disposal/exclusion period begins; and
- The last month of a payment period is the month in which the disposal /exclusion period ends.

Note: If the required advance notice period extends into the month following the month the disposal period ends, Conditional Benefits are issued for that month. That month is included in the computation of the Conditional Benefits overpayment.

EXAMPLE: Mr. Jones' disposal/exclusion period for his second car begins on May 12 when Mr. Jones receives written notice that his agreement to sell is in effect. He sells the car on July 20 which ends the disposal/ exclusion period. He is eligible for conditional benefits for June and July, the 2 full months whose first moments fall within the disposal/exclusion period. If no sale had occurred, the basic period would have ended on August 11, and he could have received conditional benefits for the 3 months of June, July and August assuming no extension of the disposal/exclusion period for good cause was granted.

8. Reasonable Efforts to Sell

The individual must make reasonable efforts to sell excess non-liquid property by taking all necessary steps to sell it through media serving the geographic area in which the person lives or, if different, where the property is located. The individual must attempt to sell the property for as much as he/she can but cannot ask for more than the highest CMV estimated by a knowledgeable and disinterested third party.

8.1. Efforts to Sell Requirements

8.1.1. Initial Efforts to Sell

Within 30 days of signing a conditional benefits 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.

8.1.2. Continuing Efforts to Sell

Except for gaps of no more than 1 week, the owner must maintain efforts of the type listed above; and

8.1.3. Individual Must Accept Any Reasonable Offer

The owner must not reject any reasonable offer to buy the property and must accept the burden of demonstrating to the worker's satisfaction that he/she rejected an offer because it was not reasonable.

- Assume that an offer to buy real property is reasonable if it is at least two-thirds of the estimated CMV unless the owner proves otherwise.

8.2. Verification of Efforts to Sell

Document the individual's allegations regarding ads, listings, consignments, and other efforts to sell the resources. Obtain any supporting evidence the individual can provide. If the individual cannot provide evidence, verify allegations with the appropriate third party (by telephone if possible).

Verify only those allegations necessary to establish that the individual is making reasonable efforts to sell. Verifying duration of an ad, listing or consignment at the outset will prevent the need to verify its continuing existence at subsequent follow-up contacts.

Note: Reasonable efforts to sell do not have to be confined to traditional methods such as listing the property with a real estate agent or placing an ad in the newspaper. Any reasonable effort, considering the individual's circumstances, may be acceptable.

8.2.1. ***Supporting Evidence***

Ask the individual to submit all appropriate proof such as:

8.2.1.1. Real Property

- Copy of the listing agreement with the real estate agency in current use;
- Dated advertisement(s) indicating the property is for sale;
- Contracts with media to advertise the property;
- A photograph of the "for sale" sign on the property;
- Copies of fliers or posted notices; and/or
- Any other evidence of reasonable efforts to sell property.

8.2.1.2. Personal Property

- Dated advertisement(s) indicating the property is for sale;
- Contracts with media to advertise the property;
- Copies of fliers or posted notices; and/or
- Any other evidence of reasonable efforts to sell property.

8.3. Examples - Efforts to Sell Real Property

8.3.1. First Contact— Reasonable Efforts Exist

Mrs. Darwin, an AG recipient, signed an Agreement to Sell Non-Liquid Resources on April 11, agreeing to sell recently inherited non-home real property valued at $8,000. When contacted on May 16, she stated that the property had been listed with a realtor at $8,000 since April 24. Mrs. Darwin submits a copy of the listing for the file and the worker determines that she is making reasonable efforts to sell. Therefore, the conditional exclusion of the property remains in effect.

8.3.2. Second Contact— Reasonable Efforts Have Stopped

When the worker recontacts Mrs. Darwin on September 19, she states that she had just refused an offer of $6,000 as being too low. Mrs. Darwin says she has no proof that $6,000 was unreasonable; it was her opinion that it was too low. The worker determines that the offer was reasonable ($6,000 is more than two-thirds of $8,000) and that Mrs. Darwin is no longer making reasonable efforts to sell. As of October 1, conditional benefits are no longer payable and the worker issues a notice of planned action on the basis of excess resources.

8.4. Failure to Establish or Continue Reasonable Efforts to Sell

Without good cause, failure to meet the criteria outlined above, as applicable, means that the individual is not making reasonable efforts to sell the property and the property becomes a countable resource. His/her countable resources will include the value of the excess property retroactive to the beginning of the conditional benefits period and he/she owes the resultant overpayment.

8.5. Good Cause

Good cause exists when circumstances beyond an individual's control prevent his/her taking the required actions to accomplish reasonable efforts to sell. With good cause, failure to meet the criteria above means that the conditional benefits period continues to run its term.

8.5.1. Examples of Good Cause

- **No Offer to Buy**

  The individual makes good faith efforts to sell excess non-liquid resources throughout the disposal period (or is prevented from doing so by circumstances beyond his/her control) but receives no offer to buy them.

- **Reliance on an Offer That Does Not Result in a Sale**

  A legitimate or apparently legitimate offer to buy an excess non-liquid 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.

- **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.

- **Incapacitating Illness or Injury**

  The individual becomes homebound or hospitalized for a prolonged period, due to illness or injury, and cannot take the steps necessary to sell the resource or to arrange for someone to sell it on his/her behalf.

- **Part-Owner Dies**

  A part-owner of a resource dies, and administration or probate of the estate delays efforts to sell the resource (assuming that the property continues to be a resource).

8.5.2. Verification

Verify good cause by documents in the individual's possession, the individual's statement, or contact with knowledgeable third parties as appropriate.

9. Follow-up Contacts

During a conditional benefits period, the worker must make follow-up contacts with the individual. Contacts should be made by telephone whenever possible. Contact the individual in order to:

- Remind him/her of the responsibility for selling the property and the time remaining in the disposal period;
- Verify the efforts being made to accomplish a sale;
- Verify if there has been an offer to buy since the prior contact; and
  - Document:
    - Whether there have been any offers to buy since prior contact;

- The amount of the offer and whether the owner accepted it; and
- If the owner has refused an offer that was at least two-thirds of the estimated CMV, his explanation for refusal.

- Verify good cause in the absence of reasonable efforts to sell.

9.1. Frequency of Contacts

- Personal Property - make contact every 30 days during the initial 3-month period as well as during any good cause extension period.
- Real Property - make contact:
  - 35 days following the date of the conditional benefits agreement; and
  - Every 60 days thereafter until the end of the 9-month period.

9.2. Individual Making Reasonable Efforts

If it is decided that the individual is making continuing reasonable efforts to sell, document the case and set a special review for the next follow-up contact.

9.3. Individual Not Making Reasonable Efforts

- Investigate Good Cause - If it is judged the individual is not making continuing reasonable efforts to sell:
  - Record the individual's allegations as to why;
  - Obtain any evidence the individual has to support allegations of good cause; and
  - Verify with a third party allegations the individual cannot support with evidence.
- Make Good Cause Determination - Make a good cause determination regarding, as applicable, whether to:
  - Continue or terminate the existing (basic or extended) disposal period; or
  - Extend the basic disposal period 3 months in the case of personal property.

- Good Cause Does Not Exist - If it is determined that the individual is not making reasonable efforts to sell and there is no evidence to establish both that the individual cannot pursue reasonable efforts to sell the property on his/her own and cannot make arrangements for someone else to act on his/ her behalf:
    - Terminate the conditional benefits period effective with the month following the month in which reasonable efforts cease.
    - Determine the amount of the overpayment.

10. Client Wishes To Withdraw Agreement to Sell Non-Liquid Resources

If the individual wishes to cancel the Agreement to Sell Non-Liquid Resources and keep the excess non-liquid resources, make sure that he/she understands that he/she:

- Will be ineligible for regular and Conditional Benefits AG; and
- Will have to refund all conditional benefits.

10.1. Verification

Obtain the individual's written statement that he/she:

- Wishes to cancel the Agreement to Sell Non-Liquid Resources;
- Understands that he/she will be ineligible for AG; and
- Understands he/she must refund all conditional benefits received.

Terminate the benefits immediately, the first of the following month. Advance notice is not required. Begin recovery action.

11. Excess Resources Reduced

If non-liquid resources are reduced to below the resource limit, eligibility for Conditional Benefits ends. The sale of the property must be verified, eligibility for regular AG must be determined and the Conditional Benefit overpayment must be calculated.

11.1. Verification of Sale

Obtain evidence of:

- The gross purchase price (whether in cash, on a contract, or both);
- Any encumbrances on the property (taxes due and payable by seller, mortgage or other lien balance, etc.); and
- Any expenses incurred in connection with the sale (advertising costs, realtor or other listing fees, consignment or auction fees, attorney fees, etc.).

11.2. Cash Sale

When someone sells an excess non-liquid resource for cash, this satisfies the terms of the agreement to sell.

- For computation of overpayment purposes, the purchase price is the CMV or the gross sale price, whichever is higher.
- Refund requirement
  - The individual is expected to repay the CB from the proceeds of the sale

11.3. Other than Cash Sale

11.3.1. Contract Received for Sale

When someone sells an excess non-liquid resource on a contract for sale, promissory note, installment payment contract or other property agreement, this satisfies the terms of the agreement to sell.

- For computation of overpayment purposes, the purchase price is:
  - The down payment in cash (if any); plus
  - The principal amount of the contract.
- Refund requirement - Negotiate installment refunds that are reasonable considering the individual's income and resources if he/she:
  - Is ineligible for AG;
  - Does not have liquid resources to make immediate refund; and

  - Will rely on the contract payments for living expenses.

- In determining the value of the contract for continuing eligibility purposes, consider any amount which must be refunded to AG as an encumbrance on the contract.

- If the contract is an excess non-liquid resource, the individual can, if otherwise qualified, **enter into another conditional benefits agreement** based on the contract subject to a 3-month disposal period for personal property.

11.3.2. Exchange of Excess Property

The exchange or trade of property **does not** satisfy the terms of the Agreement to Sell Non-Liquid Resources.

- If the newly acquired property is an excluded resource, the individual no longer has excess non-liquid resources so the conditional benefits period ends, but the conditional benefits refund is due.

- If the newly acquired property is an excess non-liquid resource, the individual can still satisfy the agreement by selling the new property within what remains of the disposal/exclusion period. The new property **cannot** qualify for a new conditional benefits agreement.

12. Conditional Benefits Ends

When the conditional benefits period ends, the excess non-liquid resources are disposed of or the individual becomes ineligible for any reason during the disposition period, the individual's eligibility for regular AG must be determined and the conditional benefits overpayment calculated.

12.1. Regular AG Eligibility

When determining regular AG resource eligibility:

- The resource value of the monies received from the sale of the previously excluded non-liquid resources will be determined by deducting the amount of the CB overpayment from the sale proceeds.

- If the nine month disposal ends without the sale of real property, determine if the Reasonable Efforts to Sell Real Property after End of 9 Months of Conditional Benefits Exclusion applies. See Chapter E – 10.

12.2. Conditional Benefits Overpayment

When the conditional benefits period ends, the excess non-liquid resources are disposed of or the individual becomes ineligible for any reason during the disposition period, the conditional benefits overpayment must be computed. The individual's **net** proceeds are considered to be available to repay the overpayment resulting from the conditional benefits.

Exception:

If the individual qualifies for regular AG based on the application of the Reasonable Efforts to Sell Real Property after End of 9 Months of Conditional Benefits Exclusion, calculation and repayment of the conditional benefits overpayment is postponed until the property is sold.

Note: The total conditional benefits overpayment includes any amounts still due from any prior conditional benefits period.

12.2.1. Contact Individual

Tell the individual that the CB overpayment will be computed using the CMV.

Before computing an overpayment due to correctly paid conditional benefits, remind the individual of the right to submit evidence which would help establish a lower CMV than the one originally estimated. Allow the individual a minimum of ten days to provide the rebuttal information.

12.3. Applicability

The rules in this section apply only to **correctly** paid conditional benefits. If an individual receives more in conditional benefits than was due, such amounts are subject to normal overpayment and recovery procedures. See Volume II, Part I, Chapter G, 3.

12.4. Computing the Overpayment

Use the following procedures to determine the amount of the overpayment.

12.4.1. Disposal of Excess Non-Liquid Resources

- Determine the total amount of conditional benefits received.
- Determine the revised value of the individual's countable resources.
  - The revised value of countable resources is the net sale proceeds plus the value of other **countable** resources at the beginning of the **payment** period.
    - The net sale proceeds are the CMV or sale price minus any encumbrances on the property and the expenses of sale.
      - Use the CMV if the sale is made for an amount that is less than or equal to the CMV.
      - Use the sales price if the sale is made for an amount in excess of the CMV.
- Subtract the resource limit in effect at the beginning of the payment period from the revised value of the individual's resources.
- Compare the result to the total amount of conditional benefits received.
- The required refund is the lesser of the two amounts.

12.4.2. No Disposal of Excess Non-Liquid Resources

12.4.2.1. Personal Property

If the conditional benefits period ends without the sale of excess personal property, compute the conditional benefits overpayment as directed above. Substitute the estimated CMV for the net sale proceeds. Determine the individual's eligibility for regular AG including the value of the previously excluded non-liquid resources.

12.4.2.2. Real Property

Determine the individual's eligibility for regular AG. If the conditional benefits period ends without sale of excess real property, despite continuing reasonable efforts to sell, see Chapter E – 10 to determine if it can be excluded under the Reasonable Efforts to Sell Real Property after End of 9 Months of Conditional Benefits Exclusion. If it can be excluded under that exclusion, repayment of the conditional benefits overpayment is not due unless or until a sale occurs.

13. Conditional Benefits Notice

The Conditional Benefits Notice is a multipurpose form. It is used to notify an individual of his/her potential eligibility for Conditional Benefits, approval of Conditional Benefits, and the termination of Conditional Benefits.

13.1. Initial Application/Reapplication

The Conditional Benefits Notice is used at two points in the application eligibility determination process.

13.1.1. Potential Eligibility

The Conditional Benefits Notice must be mailed within the 45-day processing period to inform the individual of his ineligibility for regular AG due to excess non-liquid resources and his potential eligibility for Conditional Benefits. An Agreement to Sell Non-Liquid Resources Form must be sent with the notice.

13.1.2. Eligibility Approved

The Conditional Benefits Notice must be mailed at the point it is determined the individual is eligible for Conditional Benefits. It must be mailed within 60 days from the date of application.

13.2. Redetermination or Change

The Conditional Benefits Notice is used as an advance notice of proposed action to notify an individual that he/she is no longer eligible for Conditional Benefits.

13.2.1. Time Frames

The individual must be given a minimum of 10 days advance notice before his/her case can be closed.

- The Conditional Benefits Notice must be completed and mailed at least 11 days prior to the effective date of the proposed case closure. The notice must state the effective date, the reason for the action, and cite the supporting manual reference.

- The effective date of the closure will be the first of the month following the expiration of the advance notice period.

14. Agreement to Sell Non-Liquid Resources

The Agreement to Sell Non-Liquid Resources is the form used to notify an individual of the requirements he/she must meet to be eligible for Conditional Benefits and to obtain the individual's agreement to accept Conditional Benefits.

The worker must list the individual's non-liquid resources on the form and mail it to the individual along with the Conditional Benefits Notice when the individual is being notified of his/her potential eligibility for Conditional Benefits.

TABLE OF CONTENTS

TRANSFER OF RESOURCES - INTRODUCTION **1**

1. TRANSFERS **1**

1.1. COMPENSATED TRANSFER 1
1.2. UNCOMPENSATED TRANSFER 1
1.3. TRANSFERORS 1

2. PERIOD EVALUATED **2**

2.1. INITIAL CLAIMS 2
2.2. ONGOING 3

3. NOTIFYING INDIVIDUALS ABOUT THE EFFECT OF RESOURCE TRANSFERS **3**

4. INFORMATION TO BE OBTAINED **3**

5. PROCEDURES SUMMARY **3**

6. VALID TRANSFER **6**

6.1. DOCUMENTING DATE AND VALIDITY OF TRANSFER 7
6.2. VERIFICATION OF VALIDITY 7

7. CURRENT MARKET VALUE **8**

7.1. PROPERTY SOLD ON THE OPEN MARKET 8

8. COMPENSATION **8**

8.1. COMPENSATION FOR CASH TRANSFERRED 8
8.1.1. Verification *9*

9. VALUE OF COMPENSATION RECEIVED **10**

9.1. CASH COMPENSATION 10
9.2. NON-CASH COMPENSATION 10
9.2.1. Value Of Non-cash Compensation *10*
9.3. IN-KIND SUPPORT AND MAINTENANCE (ISM) 11
9.3.1. Verification *11*
9.3.2. Value *11*
9.4. SERVICES 13
9.4.1. Verification *13*
9.4.2. Services For Life *14*
9.4.3. Uncompensated Value *14*
9.4.4. Remaining Years of Life Table *14*
9.5. ASSUMPTION OF A LEGAL DEBT 16
9.5.1. Verification *17*
9.5.2. Uncompensated Value *17*

10. TRANSFER TO TRUST ESTABLISHED WITH INDIVIDUAL'S RESOURCES **17**

10.1. VALUE 17

11. TRANSFERS TO OR FROM TRUSTS ESTABLISHED WITH INDIVIDUAL'S NON-RESOURCE ASSETS **18**

11.1. VALUE 18

12. TRANSFER - TRUST PAYMENTS MADE TO OR FOR THE BENEFIT OF ANOTHER **19**

12.1. TRUST ESTABLISHED TO/FOR THE BENEFIT OF ANOTHER PERSON 19

TABLE OF CONTENTS

13. APPLYING EXCEPTIONS TO THE INELIGIBILITY PERIOD 19

14. TRANSFER TO A TRUST EXCEPTIONS 20

14.1. THE TRUST IS A COUNTABLE RESOURCE 20
14.2. TRANSFERS TO A TRUST FOR DISABLED OR BLIND CHILD 20
14.2.1. Sole Benefit 20
14.2.2. Verification 21
14.3. TRANSFERS TO A TRUST FOR A DISABLED OR BLIND INDIVIDUAL UNDER AGE 65 21
14.3.1. Sole Benefit 21
14.3.2. Verification 22

15. TRANSFER OF THE INDIVIDUAL'S HOME EXCEPTIONS 22

15.1. SPOUSE (INCLUDING A SEPARATED SPOUSE) 22
15.1.1. Verification 22
15.2. CHILD UNDER AGE 21 REGARDLESS OF STUDENT OR MARITAL STATUS 22
15.2.1. Verification 22
15.3. CHILD OF ANY AGE OR ANY MARITAL STATUS WHO IS BLIND OR DISABLED 22
15.3.1. Verification 23
15.4. CHILD OF ANY AGE OR ANY MARITAL STATUS WHO PROVIDED CARE: 23
15.4.1. Verification 23
15.5. SIBLING (FULL SIBLING, STEPSIBLING, OR HALF SIBLING) 24
15.5.1. Verification 25

16. NON-HOME TRANSFERS TO CERTAIN FAMILY MEMBERS EXCEPTION 25

16.1. SOLE BENEFIT 25
16.2. VERIFICATION 25

17. TRANSFER FOR PURPOSE OTHER THAN TO OBTAIN AG EXCEPTION 26

17.1. ASSUMPTION 26
17.2. REBUTTAL 26
17.3. TRANSFERS UNDER THE $2,000/$3,000 LIMIT 27
17.3.1. Verification 27
17.4. TRANSFERS FOR LESS THAN THE ALF/AFCH RATE 27
17.5. CONVINCING EVIDENCE 27
17.6. VERIFICATION 28
17.7. EXAMPLES—REBUTTAL DETERMINATION 29

18. TRANSFERRED RESOURCES RETURNED TO THE INDIVIDUAL EXCEPTION 29

18.1. ENTIRE RESOURCE RETURNED IN SAME MONTH 29
18.2. ENTIRE RESOURCE RETURNED IN A SUBSEQUENT MONTH 30
18.3. LESS THAN THE ENTIRE RESOURCE RETURNED 31
18.4. VERIFICATION 32

19. UNCOMPENSATED VALUE 32

19.1. MULTIPLE TRANSFERS WITHIN THE LOOK BACK PERIOD 33

20. PERIOD OF INELIGIBILITY 33

20.1. LENGTH OF PERIOD OF INELIGIBILITY 34
20.2. PERIOD OF INELIGIBILITY BEGIN DATE 34
20.3. COMPUTING THE PERIOD OF INELIGIBILITY - INDIVIDUAL 35
20.4. COMPUTING THE PERIOD OF INELIGIBILITY - COUPLE (INITIAL APPLICATION ONLY) 35
20.5. PROCEDURE 35

TABLE OF CONTENTS

21. UNDUE HARDSHIP EXCEPTION 36

21.1. WHEN TO CONSIDER UNDUE HARDSHIP 36
21.2. UNDUE HARDSHIP ALLEGED 36
21.3. VERIFICATION OF LOSS 37
21.3.1. Loss Of Food 37
21.3.2. Loss Of Shelter 37
21.4. PERIOD TO DEVELOP 37
21.5. DETERMINE TOTAL AVAILABLE FUNDS 38
21.5.1. Income 38
21.5.2. Resources 38
21.5.3. Verification Of Income And Liquid Resources 38
21.6. COMPARE TOTAL AVAILABLE FUNDS WITH APPLICABLE ALF/AFCH RATE 38
21.7. DOCUMENT THE UNDUE HARDSHIP DETERMINATION 39
21.8. EXAMPLES OF UNDUE HARDSHIP DETERMINATIONS 39
21.9. RECONTACTING INDIVIDUAL 40
21.9.1. Period Of Ineligibility Is 6 Months Or Less 40
21.9.2. Period Of Ineligibility Is Longer Than 6 Months 40
21.9.3. Documenting Whether Undue Hardship Has Continued 40
21.10. DETERMINING UNDUE HARDSHIP FOR PAST MONTHS IN ONGOING CASES 41
21.10.1. Step One 41
21.10.2. Step Two 41
21.11. COUPLES CASES – MONTH OF APPLICATION ONLY 42

22. TRANSFER OF RESOURCES NOTICE 43

22.1. INITIAL APPLICATION/REAPPLICATION 43
22.2. REDETERMINATION OR CHANGE 43

Transfer of Resources - Introduction

Transferring ownership of a **resource** may affect the value of an individual's countable resources which in turn can affect AG eligibility. Therefore, when an individual alleges that a resource has been transferred within 36 months prior to his/her application for AG or within his/her eligibility period, it is necessary to develop the issue to determine the effect on AG eligibility.

It is important to assure that the individual uses his/her resources to meet his/her own needs. Transferring ownership of a resource **for less than current market value** reduces the amount of resources the individual has to meet his/her needs and increases his/her need for AG. A penalty may be applied in these situations. The penalty period will be based on the uncompensated value of the transferred resource.

Note: AG transfer procedures differ from Medicaid guidelines in that AG only evaluates transfers of **resources;** items that meet the specific definition of resources as stated in Chapter E - 1. AG does not evaluate transfers of assets that do not meet the resource definition and it does not evaluate income transfers. Medicaid evaluates the transfer of all assets**,** including income.

1. Transfers

A resource transfer is any action by an individual or other person that reduces or eliminates the individual's ownership or control of a resource. Transfers of resources must be evaluated to determine if the individual received the current market value for the transferred resource. Transfers are either compensated or uncompensated.

1.1. Compensated Transfer

If the individual receives the CMV for the transferred resource, the transfer is a compensated transfer. No penalty is applied.

1.2. Uncompensated Transfer

If the individual receives less than CMV for the resource, the difference between the CMV and the amount received is the uncompensated value. If the uncompensated value exceeds the AG Rate, the individual is ineligible for a period of time.

1.3. Transferors

This section applies to transfers made:

- By an individual;

- By the individual's spouse if
  - The transfer was made prior to the individual's move to an ALF/AFCH; or
  - The transfer was made during the month of entry when both spouses enter an ALF/AFCH and apply for AG in the same month (the only month they are considered an AU of 2); or

    Note: If the individual's spouse transfers his/her own resources after the individual's month of ALF/AFCH entry, the transfer does not impact the individual's AG eligibility.
  - The transfer was made at any time during the evaluation period by the spouse who is a co-owner of the resource being transferred
- By persons who are co-owners of the resource being transferred;
- On behalf of the individual by a person acting for and legally authorized to execute a contract (e.g., a legal representative, a legal guardian, etc);
- By an individual transferring assets which he constructively received (e.g., he/she refused an inheritance.)

2. Period Evaluated

Transfers made within the three year period prior to the month of AG application can impact an individual's eligibility for AG. Transfers made prior to that do not impact an individual's AG eligibility. All resource transfers that occurred during that three year period and any that occur while an individual is receiving AG must be evaluated. The periods to be evaluated are called the look-back periods.

Periods of ineligibility can be imposed for transfers that took place during a look-back period but cannot be imposed for transfers that took place before that period.

2.1. Initial Claims

The look-back period for initial applications is the 36 months before the month of application. A transfer for less than fair market value at any time within the look-back period and after the application was filed may result in a period of ineligibility.

2.2. Ongoing

When redetermining AG eligibility, it is always necessary to ask whether any resources were transferred since the previous redetermination. Absent evidence to the contrary, assume that any transfers before the redetermination have already been evaluated. However, if it is determined that a transfer that occurred before the redetermination has not been evaluated, it must be evaluated to determine if it affects past or current eligibility.

3. Notifying Individuals About The Effect Of Resource Transfers

The local department of social services must inform all AG applicants and recipients about the transfer of resources penalty and the Medicaid transfer of assets penalty. The individual must be given a copy of the AG Resource Transfer Fact Sheet and the Medicaid Fact Sheet #3 - Asset Transfer.

4. Information To Be Obtained

Information must be obtained from all AG applicants about transfers of resources that occurred during the three years before the AG application date. Whether the transfer will affect AG eligibility depends on:

- The date the transfer occurred,
- To whom the resource was transferred,
- The type of resource that was transferred,
- The reason for the transfer,
- The value of the transferred resource, and
- The amount of compensation received.

5. Procedures Summary

This table provides a summary of the procedures that must be followed to process resource transfers. Detailed information follows.

Steps	**Resource Transfer Procedure Chart** **ACTIONS**
Step 1	**Interviewing – Initial App and Redetermination** Always ask whether the individual, the spouse, the joint owner, or anyone acting for the individual transferred a resource since the beginning of the look-back period. **CONTINUE**
Step 2	**Determine Whether the Transfer is Valid** Determine whether the transfer is valid and document the file • If the transfer is invalid, no transfer occurred and the item in question remains a resource to the individual. **STOP** • If the transfer is valid, do not count the transferred item as a resource beginning with the month following the month of transfer. **CONTINUE**
Step 3	**Determine Whether a Transfer Exception Applies** Determine if the transfer meets one of the exceptions described in Chapter G - Sections 14 through 18 apply. • If one of the exceptions applies, the period of ineligibility does not apply. Document your determination that an exception applies and process the case normally. **STOP** • If none of the exceptions apply, **CONTINUE**

Steps	Resource Transfer Procedure Chart ACTIONS
Step 4	**Determine Whether the Individual Received Compensation Equal to the Current Market Value** • If the individual received current market value for the transferred resource, the period of ineligibility does not apply. Document the determination and process the case normally. STOP • If the individual did not receive current market value for the transferred resource, document this determination. A period of ineligibility may apply. **CONTINUE**
Step 5	**Compute The Period Of Ineligibility** • Determine the uncompensated value by subtracting the compensation received from the CMV. • Divide the uncompensated value by the appropriate AG Rate and round down. • The result is the number of months in the period of ineligibility. **CONTINUE**
Step 6	**Notify The Individual** Send the individual a Transfer of Resources Notice to notify him/her of his/her period of ineligibility and his/her right to claim undue hardship. Allow 10 days for the individual to respond. • If the individual claims undue hardship **CONTINUE** • The individual does not claim undue hardship, impose the period of ineligibility and send a Notice of Action to deny the application or an Advance Notice of Proposed Action to close the case. **STOP**

Steps	Resource Transfer Procedure Chart ACTIONS

Step 7	**Determine Whether the Undue Hardship Exception Applies**
	
	• Develop undue hardship only after determining that the individual does not meet one of the other exceptions and after computing the period of ineligibility.
	
	• Determine if hardship exists in any month
	
	  o The individual can be paid for any month in which hardship exists.
	
	  o The period of ineligibility is applied to each month in which undue hardship does not exist.
	
	• Send the individual a Transfer of Resources Notice to notify him/her of the results of the undue hardship evaluation.

6. Valid Transfer

It is always necessary to determine whether an alleged transfer of a resource was a valid transfer. A valid transfer is one that transfers ownership of an item from one person to another based on a legally binding agreement. When there is a valid transfer, the transferor no longer owns the property. If a transfer is not valid, the transferring person still owns the property and it is counted as a resource to that person.

When property is validly transferred, it no longer counts as a resource as of the first moment of the month following the transfer.

Example: The individual sells his sailboat on 5/15/06. For AG purposes, the boat is considered a resource for May. As of June the boat is not a resource.

Valid transfers of resource ownership may occur through any of the following types of transactions:

- Sale of property;

- Trade or exchange of one property for another;
- Spending cash;
- Giving away cash;
- Transferring any financial instrument (e.g., stocks, bonds);
- Transfers of an inheritance
- Giving away property (including adding another person's name as an owner of the property);

Example: If the owner of a home adds the name of another person to the deed as a co-owner, the owner has transferred a portion of the value of the resource to that person. This transaction is considered a transfer of resources. The deed is the legally binding agreement.

6.1. Documenting Date and Validity of Transfer

Obtain the individual's signed statement that explains:

- The nature of the transfer (sold, given away, traded, etc);
- The method of transfer (sold on open market, transferred without compensation, etc.);
- The date of the transfer;
- A description of the transferred resource;
- The amount of cash transferred or the current market value (CMV) of the transferred resource;
- The amount and type of compensation received;
- Any remaining ownership interest.

6.2. Verification of Validity

Verify the date and validity of a transfer that is alleged to have occurred. To verify, obtain copies of available evidence of the transaction such as:

- Bills of sale;
- Receipts for prepayment of rent;

- Signed statement by the person to whom the property was transferred;
- A signed statement by the transferor, if the evidence above cannot be obtained and the sale was on the open market (not to a relative).

7. Current Market Value

The **current market value** (CMV) of a resource is the going price for which it can be reasonably expected to sell on the open market in the geographic area involved. Use the CMV value of a resource **at the time the resource is transferred**.

7.1. Property Sold On the Open Market

If the property was sold on the open market, the selling price is accepted as the CMV. If the property was not sold on the open market (e.g., it was sold to a relative), obtain a CMV estimate from a knowledgeable third party. Use the resource procedures that apply to the type of resource transferred to determine who an appropriate third party would be.

8. Compensation

Compensation is the cash or other valuable consideration provided in exchange for the resource. Compensation can include real or personal property received by the individual in exchange for the resource. Compensation also may include in-kind support and maintenance or services to be provided to the individual because of the transfer. Compensation also may include assumption of the transferor's legal debt.

A transferor receives compensation when he/she receives something of value pursuant to a legally binding agreement (e.g., a contract, a bill of sale, a deed) that was **in effect at the time of transfer**. The transferor may actually receive the compensation before, at, or after the actual time of transfer.

If the individual received compensation equal to or greater than the transferred resource's current market value, the transfer is a compensated transfer that does not impact eligibility.

8.1. Compensation For Cash Transferred

Assume, absent evidence to the contrary, that an individual gets current market value when he/she **spends** cash resources. Purchases of goods and services are compensated transfers.

When an individual **gives away cash**, he does not receive any compensation. The amount given away is the amount of the transfer. The period of ineligibility for transferring a resource for less than fair market value may apply unless one of the exceptions in Chapter G – Sections 13 through 18 apply.

8.1.1. Verification

Use the following procedures when an individual alleges having spent or given away cash in order to determine whether the spent/given away cash was a compensated transfer of resources and current market value was received in return:

- Obtain the individual's signed statement to document how the cash was spent.
- **If the allegation is questionable,** obtain available evidence to support the allegation (e.g., sales receipts for purchases, bank statements showing withdrawals, etc.).
    - An individual may not be able to provide an exact “to the penny” accounting for purchases. Therefore, any reasonable accounting should be accepted.
    - An individual may allege an expenditure that cannot be corroborated. If the explanation appears reasonable, accept the individual’s written statement.
- Document your determination. For example: “Mr. Jones' spending of $1400 in 7/06 is a valid transfer and he received fair market value.”

Example 1: Allegation Accepted - During her redetermination, Ms. Barrett submitted bank records showing resources over the $2,000 limit for 3/06 and 4/06 followed by a $750 withdrawal in 5/06 which brought her total resources below the limit. Ms. Barrett provides a signed statement that she used $150 for utility bills, $170 for a dentist bill, $300 for car repairs, and $130 for plumbing repairs. Assuming there is no conflicting information, there is no need to request receipts to verify these allegations.

Example 2: Allegation Questionable - Mr. Jones filed for AG on 6/5/06 and he alleged liquid resources of $1,800 on 6/1/06. Mr. Jones alleged that he spent about $4,000 from savings in 5/06 just prior to filing for AG. He said that $2,000 was spent for a new furnace and the rest was spent on a series of small purchases. Prior to spending this money, Mr. Jones was over the AG resource limit. At the time of the interview, Mr. Jones could not explain how and when the additional $2,000 was spent. Since he could not provide a reasonable accounting of how he spent the funds, his allegation is questionable. The worker requests additional verification to support Mr. Jones' allegation of how the money was spent.

9. Value Of Compensation Received

Compensation may be received as cash, non-cash items, or in-kind support and maintenance (ISM). The value of the compensation is determined using the following procedures.

9.1. Cash Compensation

Obtain evidence that verifies the amount of the cash received in exchange for the transferred resource (e.g., bill of sale, contract, receipts, etc.). If such evidence is not available, obtain signed statements from the individual and the person to whom the property was transferred to establish the amount of cash compensation received or to be received.

9.2. Non-cash Compensation

The value of compensation received is based on the legally binding agreement and the expectations of payment at the time of the transfer or contract for sale, if earlier.

Example 1: A purchaser agreed to pay an eligible individual $10,000 in 10 installments of $1,000 each, but has thus far paid only $7,000. The compensation is $10,000.

Example 2: A purchaser agreed to provide nursing services valued at $3,000, but to date has not provided any of the services. The compensation is $3,000.

9.2.1. Value Of Non-cash Compensation

Value non-cash compensation at its CMV at the time of transfer or contract for sale, whichever is earlier. The value of compensation is the gross value paid or to be paid. Expenses attributed to the sale do not reduce the value of the compensation.

9.3. In-kind Support And Maintenance (ISM)

ISM is food and/or shelter that are provided to an individual. An agreement specifying the services to be provided and the rate of compensation must be in effect at the time that the ISM is provided to the individual. ISM given to an individual by friends or relatives with no obligation for repayment cannot be considered a debt retroactively. A transfer made to pay for previously provided ISM, for which there was no agreement, is an uncompensated transfer.

9.3.1. Verification

Obtain a signed statement from the person providing the ISM to verify that the ISM is being provided in exchange for the transferred resource. The statement must include

- Total monthly household operating expenses which includes
  - Food costs if food is to be provided
- Number of household members
- The period of time for which ISM will be provided.

9.3.2. Value

The CMV is the individual's pro rata share of the household's expenses times the number of months/years ISM is to be provided. Value compensation received in the form of ISM at its full CMV (monthly or annually depending upon the agreement) multiplied by the length of time for which it is to be provided under the agreement.

Note: If an individual consumes all meals outside the household or purchases food separately, use only shelter expenses instead of total household operating expenses when computing ISM.

If the agreement is that the receiver of the property will provide ISM for the life of the eligible individual, use the table below to determine the individual's life expectancy. The individual's life expectancy is the figure in the "Years of Life Remaining" column which corresponds to the age (or next lower age) of the eligible individual as of his/her last birthday at the time the resource was transferred.

Example 1: Valerie Payne transferred non-home real property valued at $185,000 to her sister. As compensation, her sister agreed to provide Ms. Payne with room and board in the sister's home for the rest of Ms. Payne's life. ISM development showed that her sister's total household expenses were $1,500 per month. The household consisted of 3 persons, including Ms. Payne who was age 53 at the time of the transfer. The CMV of the ISM was $6,000 per year ($1,500/3 = $500 per month X 12 months = $6,000). Then, $6,000 X 31.61 (average years of life remaining at age 50) = $189,660 compensation. In this case, Ms. Payne received CMV for the transferred resource.

Example 2: Assume the same case facts as Example 1 except that Ms. Payne is 80 years old at the time of the transfer. As in Example 1 the ISM is worth $6,000 per year. At 80 years of age the life expectancy table indicates 7.16 years; multiplying 7.16 years times $6,000 results in compensation of $42,960. In this case there is uncompensated value of $142,040 ($185,000 minus $42,960). Therefore, Ms. Payne would be subject to a period of ineligibility for AG because she transferred the house for less than fair market value.

9.3.2.1. ISM Value Computation

Use the following computation method to compute the CMV of ISM

1. Total monthly household operating expenses
   ___

2. Divide by number of household members
   ÷ ____

   Result equals individual's pro rata share (Monthly CMV)
   = ___

3. Multiply monthly CMV by 12 months for yearly total (Yearly CMV)

   =____

4. Multiply the yearly CMV by the number years it’s to be provided or if for life, by the individual’s remaining years of life

   = ____ Total ISM Value

9.3.2.2. Uncompensated Value

Subtract the Total ISM Value from the transferred amount. The remainder, if any, is the uncompensated value.

9.4. Services

Determine the value of services provided to the transferor based on the CMV of the services (monthly or annually) and their frequency and duration under the agreement.

Example: In exchange for $9,000 cash, the individual contracts for yard maintenance services for 5 years. The maintenance company charges $150 per month ($1,800 per year). The CMV of five years of maintenance at $1,800 per year equals $9,000. This was a compensated transfer.

9.4.1. Verification

- Verify the CMV of the services. If the services were purchased on the open market, accept the price paid as the CMV. If the services were not purchased on the open market, contact at least one local knowledgeable source in addition to the provider to verify the value.

- Verify the agreement to provide services by getting a copy of the services contract or a signed statement from the person getting the transferred resource that shows the type, frequency, and duration of the services to be provided. If the agreement does not specify the frequency, but rather that the services are to be provided on an “as needed” basis, the statement must include his/her expectations as to the frequency of the services and the basis for the expectation.

  Example—Compensation Received as Services: Roy Linden transferred livestock valued at $2,000 to his neighbor. As compensation, the neighbor agreed to put a new roof on Mr. Linden's home. The worker contacted a local roofing contractor and found that the cost of a new roof would be about $2,100. The compensation received by Mr. Linden was valued at $2,100. Therefore, the worker determines that Mr. Linden received CMV for his livestock.

9.4.2. Services For Life

If the services are to be provided for the life of the claimant, first determine the yearly value of the services, and multiply that amount by the individual's life expectancy. The individual's life expectancy is the figure in the "Years of Life Remaining" column which corresponds to the age (or next lower age) of the eligible individual as of his/her last birthday at the time the resource was transferred. See the life expectancy table below.

9.4.3. Uncompensated Value

Subtract the total value of the services from the transferred amount. The remainder, if any, is the uncompensated value.

9.4.4. Remaining Years of Life Table

The data in this table was developed by the Social Security Administration's Office of the Chief Actuary for the Year 2000 Trustees Report. Use this table in determining the value of compensation of services for life and ISM for life. After you determine the yearly value of services (or ISM), multiply it by the "years of life remaining" for the year corresponding to the individual's age and gender. If the exact age is not on the chart, **use the next lower age**. For example, if an individual is age 47 at the time of the resource transfer, use the life expectancy corresponding to age 40 on the chart.

AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining	AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining
10	64.03	69.93	**75**	9.58	12.09
20	54.41	60.13	**76**	9.06	11.46

AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining	AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining
30	45.14	50.43	**77**	8.56	10.85
40	35.94	40.86	**78**	8.07	10.25
50	27.13	31.61	**79**	7.61	9.67
60	19.07	22.99	**80**	7.16	9.11
61	18.33	22.18	**81**	6.72	8.57
62	17.60	21.38	**82**	6.31	8.04
63	16.89	20.60	**83**	5.92	7.54
64	16.19	19.82	**84**	5.55	7.05
65	15.52	19.06	**85**	5.20	6.59
66	14.86	18.31	**86**	4.86	6.15
67	14.23	17.58	**87**	4.55	5.74

AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining	AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining
68	13.61	16.85	**88**	4.26	5.34
69	13.00	16.14	**89**	3.98	4.97
70	12.41	15.44	**90**	3.73	4.63
71	11.82	14.85	**95**	2.71	3.26
72	11.24	14.06	**100**	2.05	2.39
73	10.67	13.40	**110**	1.14	1.22

9.5. Assumption Of A Legal Debt

Value compensation when an assumption of the transferor's legal debt is made at the outstanding principal amount at the time of the assumption. Interest payments are not compensation.

Example: The individual had ownership interest in a piece of real property with a current market value of $12,000. The individual had equity of $2,000 and owed $10,000. The individual alleges that he could not keep up the payments and transferred title to the property to his brother in exchange for his brother assuming responsibility for the real estate contract. The value of the compensation received is $10,000 which is the amount of the outstanding debt. The uncompensated value is $2,000—the difference between the CMV and the outstanding debt.

9.5.1. Verification

- Obtain documents from the individual to verify the assumption of the legal debt, the amount of the debt, and that the person purchasing the resource has assumed the debt.
- Contact the lender if the individual's documents do not verify this information.

9.5.2. Uncompensated Value

Determine the amount of compensation by comparing the CMV of the resource with the amount of debt assumed. The uncompensated value, if any, is the difference between the CMV and the amount of debt assumed.

10. Transfer To Trust Established With Individual's Resources

A transfer of the individual's or spouse's resources to a trust that is available to the individual, is not a transfer of resources. When all or a portion of the principal of a trust, established by an individual or spouse with the individual's or spouse's resources, cannot be paid to, or for the benefit of, the individual, the portion which cannot be paid is considered a transfer of resources for less than fair market value. Certain exceptions apply. See Chapter G – 14.

The date of the transfer is considered to be:

- The date the trust was established; or
- If later, the date on which payment to the individual was prohibited (i.e., an action was taken which precludes future payments from the trust).

10.1. Value

The value of the transfer is the value of the trust or portion of the trust that became unavailable to the individual at the point the trust was established or at the point a change was made to prohibit the distribution of the funds to the individual. Do not subtract the value of any disbursements made after the date determined above. Additions to the unavailable portion of the trust after the above date may be new transfers that must be developed separately.

11. Transfers To Or From Trusts Established With Individual's Non-Resource Assets

A **non-resource asset** is an asset that does not meet the definition of a resource. Transfer of non-resource assets **into** a trust does not constitute a transfer of resources. However, when non-resources are placed in a trust, they become countable in determining the resource value of the trust. Therefore, when all or a portion of the corpus of a trust is considered to be a countable resource under Trust Type A or B, the transfer of funds **from** the trust is a transfer of resources and a penalty may apply in the following circumstances:

- When an action is taken to prohibit future payments from the countable resource portion of the trust to the individual or spouse, that action is a transfer of resources as of the date that payment was prohibited.

- If payment is made, from the portion of the trust that is a resource, to or for the benefit of another individual, then such payment is a transfer as of the date the payment was made.

Note: If a trust established with the individual's non-resource assets is not a resource to the individual, payments to or for the benefit of another person or prohibiting payment to the individual is not subject to the transfer of resources penalty because the trust was not a resource.

Example - An individual has non-resource assets of $10,000 that she places into an irrevocable trust for the benefit of her daughter. The trust is not a resource to the individual because nothing can be paid to or for her benefit. It is also not a transfer of resources subject to the penalty provision since the trust is not a resource and the trust was established with non-resource assets. Likewise, payments from the trust to or for the benefit of the daughter are not transfers of resources.

11.1. Value

The value of the transfer is the value of the trust or portion of the trust that became unavailable to the individual at the point the trust was established or at the point a change was made to prohibit the distribution of the funds to the individual. Do not subtract the value of any disbursements made after the date determined above. Additions to the unavailable portion of the trust after the above date may be new transfers that must be developed separately.

12. Transfer - Trust Payments Made To Or For The Benefit of Another

When all or a portion of a trust established by an individual or spouse with the individual's or spouse's resources or non-resource assets is a resource to the individual, any payment made from the countable resource portion of the trust to or for the benefit of another is a transfer of resources.

12.1. Trust Established To/For The Benefit Of Another Person

Consider a trust established for the benefit of another person if payments of any sort from the corpus or income of the trust are paid to someone so that the person derives some benefit from the payment. Such payments could include purchase of food, clothing or shelter, or household goods and personal items. The payments could also include services for medical or personal attendant care that the individual may need.

Example 1: Millie Russell is an adult AG recipient. Upon the death of her mother, Ms. Russell receives the proceeds of a life insurance policy in the amount of $30,000. She uses the proceeds to establish an irrevocable trust solely to pay for the college expenses of her younger sister, in accordance with her mother's wishes. Receipt of the insurance proceeds is income to Ms. Russell. Establishment of the trust is a transfer of resources by Ms. Russell since payment to or for her own behalf is prohibited by terms of the trust. Even though establishing the trust was her mother's wish, she was not legally obligated to do so. Her mother could have established a trust in her will or named the younger sister as beneficiary of the insurance policy.

Example 2: Same scenario as in Example 1 except that Ms. Russell establishes an irrevocable trust for the benefit of her sister and herself. The trust is a resource to Ms. Russell and makes her ineligible. The trust makes a $5,000 payment to State College on behalf of her sister for tuition. The $5,000 payment is a transfer of resources for Ms. Russell. If the trust principal was spent down to the point where it would allow resource eligibility, the tuition payments or other payments to or on behalf of her sister would be evaluated as a transfer of resources.

13. Applying Exceptions To The Ineligibility Period

The following sections provide instructions for determining whether an individual meets one of the exceptions to the period of ineligibility for transferring a resource at less than fair market value. If an individual meets one of the exceptions, the period of ineligibility does not apply.

Note: The Undue Hardship exclusion is developed only if the individual has a period of ineligibility due to a resource transfer and does not meet one of the other exceptions. See Chapter G – 21.

14. Transfer To A Trust Exceptions

The **period of ineligibility** for transferring a resource at less than fair market value **does not** apply to an individual in the following situations.

14.1. The Trust Is A Countable Resource

The **period of ineligibility does not** apply to an individual who transfers resources to a trust if either of the following is true:

- The trust has been evaluated under Trust Type A or Trust Type B, as appropriate, and the portion of the trust to which the resources were transferred is a countable resource to the individual or
- The trust would be considered a countable resource but was excluded under the trust undue hardship provision.

14.2. Transfers To A Trust For Disabled Or Blind Child

The period of ineligibility does not apply to an individual who transfers a resource to a trust established for the sole benefit of the individual's child of any age who is blind or disabled. Child means biological child, adopted child, or stepchild **of any age and of any marital status.**

14.2.1. Sole Benefit

A transfer is considered to be for the sole benefit of a child if the transfer is arranged so that **no other person or entity can benefit** from the transferred resources **at the time of the transfer or for the remainder of the child's life.**

A transfer is considered “for the sole benefit” of a child only if established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the sole benefit of the child. Without such a document, a transfer cannot be determined to be for the sole benefit of the child.

Examples of legally binding written agreements are a trust, a deed that establishes that the person getting the resource is the sole owner, or a legally enforceable contract that shows that the transfer is for the sole benefit of the child.

14.2.2. Verification

- Verify the relationship of the individual to the child.
- Verify that the child for whom the trust was established meets the SSI requirements for blindness or disability.
  - Assume that a child who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception.
  - If the child who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from disability determination services (DDS). See Chapter C – 2.3.4.
- Verify that the trust was established for the sole benefit of the child.

14.3. Transfers To A Trust For A Disabled Or Blind Individual Under Age 65

The period of ineligibility does not apply to an individual who transfers a resource to a trust established for the **sole benefit** of a person, including himself or herself, who is under age 65 and is blind or disabled.

14.3.1. Sole Benefit

A transfer is considered to be for the sole benefit of a blind/disabled person if the transfer is arranged so that **no other person or entity can benefit** from the transferred resources **at the time of the transfer or for the remainder of the blind/disabled person's life.**

A transfer is considered “for the sole benefit” of a blind/disabled person only if established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the sole benefit of the blind/disabled person. Without such a document, a transfer cannot be determined to be for the sole benefit of the blind/disabled person.

Examples of legally binding written agreements are a trust, a deed that establishes that the person getting the resource is the sole owner, or a

legally enforceable contract that shows that the transfer is for the sole benefit of the person.

14.3.2. Verification

- Verify the age of the person for whom the trust was established,
- Verify that the person for whom the trust was established meets the SSI requirements for blindness or disability.
  - Assume that a person who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception.
  - If the individual who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from (DDS). See Chapter C – 2.3.4.
- Verify that the trust was established for the sole benefit of the disabled person.

15. Transfer Of The Individual's Home Exceptions

The period of ineligibility for transferring a resource at less than fair market value will **not apply** if the individual or individual's spouse transfers title to his/her home to his/her:

15.1. Spouse (Including A Separated Spouse)

15.1.1. Verification

Verify using any appropriate document the **relationship** of the transferor to the individual getting the resource (spouse).

15.2. Child Under Age 21 Regardless Of Student Or Marital Status

15.2.1. Verification

- Verify using any appropriate document the **relationship** of the transferor to the individual receiving the home.
- Verify the child's **age**.

15.3. Child Of Any Age Or Any Marital Status Who Is Blind Or Disabled

15.3.1. Verification

- Verify that the child to whom the home was transferred meets the SSI requirements for blindness or disability.
  - Assume that an individual who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception. For this purpose, "eligible" includes an individual in a payment suspension status.
  - If the individual who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from (DDS). See Chapter C – 2.3.4.
- Verify using any appropriate document the relationship of the transferor to the individual receiving the home.

15.4. Child Of Any Age Or Any Marital Status Who Provided Care:

- Who was residing in the parent's home for at least **2 years** immediately before the date the individual became institutionalized; and
- Who **provided care** to the individual which permitted the individual to reside at home instead of in an institution

15.4.1. Verification

- Verify the **length of residency** in the home through available documents or by a statement from a knowledgeable third party. A person resides in the transferor's home if it is that person's primary place of residence.
- Verify using any appropriate document the relationship of the transferor to the individual receiving the home.
- Verify that the parent's dates of institutionalization. For purposes of the transfer of a home exception, the following individuals are considered to be institutionalized:
  - An individual who is an inpatient in a nursing facility;
  - An individual who is an inpatient in a medical treatment facility and for whom Medicaid payments are made based on a level of care provided in a nursing facility;

- An individual who is eligible for home or community based services under a Medicaid waiver;
- An individual who is in an ALF or Adult Foster Care

- Verify that the son or daughter provided care for the individual using available documents or a signed statement by a knowledgeable third party.
  - Providing Care for the Parent

    The transfer of a home exception requires that the son or daughter (who received the transferred home) provided care that enabled the parent to reside at home instead of in an institution or facility. Such care is substantial but not necessarily full-time care. A son or daughter is providing care for purposes of this exception if he/she does most of the following for the transferor on regular basis:

    - Prepares meals;
    - Shops for food and clothing;
    - Helps maintain the home;
    - Assists with financial affairs (banking, paying bills, taxes);
    - Runs errands;
    - Provides transportation;
    - Provides personal services;
    - Arranges for medical appointments;
    - Assists with medication

Note: The issue of providing care needs to be developed only when the resource is transferred to a son or daughter who is not blind or disabled, and who resides with the transferor for at least 2 years prior to the transferor becoming institutionalized.

15.5. Sibling (Full Sibling, Stepsibling, Or Half Sibling)

- Who has ownership interest (including life estate and equitable ownership) in the home; and
- Who was residing in the transferor's home for at least 1 year immediately before the date the transferor becomes institutionalized

15.5.1. Verification

- Verify that the sibling had an ownership interest in the home using appropriate documents.
- Verify the relationship of the transferor to the person receiving the home. Use any appropriate documents.
- Verify the length of residency in the home through available documents or by a statement from a knowledgeable third party. A person resides in the transferor's home if it is that person's primary place of residence.

16. Non-Home Transfers To Certain Family Members Exception

The period of ineligibility for transferring a non-home resource at less than fair market value **does not** apply if the resource was transferred to:

- the transferor's spouse (including a separated spouse); or
- another person for the **sole benefit of** the transferor's **spouse**; or
- The transferor's **child** of any age who is **blind or disabled**.

Note: The period of ineligibility also does not apply if the resource is first transferred to the transferor's spouse and the spouse subsequently transfers it to another individual for the sole benefit of the spouse.

16.1. Sole Benefit

A transfer is considered “for the sole benefit” of a spouse only if established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the sole benefit of the spouse. Without such a document, a transfer cannot be determined to be for the sole benefit of the spouse.

16.2. Verification

- Verify that the resource was transferred, to whom, the amount of compensation if any, and the date of transfer using the individual's signed statement and appropriate documents (e.g., sales agreement or any other document that verifies change of ownership).

- Verify using any appropriate document the relationship of the transferor to the individual getting the resource (spouse, child).

- As needed, verify that the transfer was for the sole benefit of the transferor's spouse by obtaining a copy of the appropriate legally binding written document. Allegations by both parties are not sufficient.

- As needed, verify that the child to whom the resource was transferred meets the AG requirements for blindness or disability.

  - Assume that an individual who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception. For this purpose, "eligible" includes an individual in a payment suspension status.

  - If the individual who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from (DDS). See Chapter C – 2.3.4.

17. Transfer For Purpose Other Than To Obtain AG Exception

The period of ineligibility for transferring a non-home resource at less than fair market value **does not** apply if the individual transferred the resource **exclusively** for a purpose other than to obtain AG benefits.

17.1. Assumption

If an individual gives away resources or sells resources for less than current market value (CMV), assume that the resources were transferred for the purpose of establishing or maintaining eligibility for AG. This assumption may be rebutted.

17.2. Rebuttal

To rebut the assumption, the individual must provide convincing evidence that the resources were transferred exclusively for a purpose other than to become or remain eligible for AG.

Note: If the individual had some other purpose for transferring the resource, but an expectation of establishing or maintaining AG eligibility was also a factor, the period of ineligibility would apply.

17.3. Transfers Under The $2,000/$3,000 Limit

If the individual's countable resources (including the transferred resource) in the month of transfer were below the $2,000 limit ($3,000 for a couple), accept the following verification as convincing evidence that the transfer was for a reason other than qualifying for AG.

17.3.1. Verification

- Obtain the individual's signed statement and appropriate documents (e.g., bank statements, a sales agreement, or any other document that verifies change of ownership).

- Verify that the individual's/couple's total countable resources were under the $2,000/$3,000 limit as of the date of the transfer.

17.4. Transfers For Less Than The ALF/AFCH Rate

If the individual transfers a resource with a CMV that is less than the ALF/AFCH rate, because of the way the period of ineligibility is computed, the transfer would not result in a period of ineligibility. Accept this as convincing evidence that the transfer was for a reason other than qualifying for AG.

EXCEPTION: This does not apply to situations where the individual transferred small amounts of resources on several occasions. Remember that all resource transfers during the look-back period must be considered. Thus, several small transfers scattered over a period of months would not qualify for this abbreviated development if the total value of the transfers exceeds the ALF/AFCH rate. A full evaluation and convincing evidence would be required.

17.5. Convincing Evidence

The individual must provide convincing evidence that the transfer of resources was exclusively for a purpose other than to qualify for AG benefits. A signed statement by the individual is not, by itself, convincing evidence. Assist the individual in obtaining evidence when necessary.

Examples of convincing evidence are:

- Documents showing that, in the month of transfer, total countable resources would have been below the appropriate resource limit even if the individual had retained the transferred resource.
- Documents showing that the transfer was not within the individual's control (e.g., was ordered by a court); or
- Documents establishing that, at the time of the transfer, the individual could not have anticipated AG eligibility (e.g., the individual became disabled following a traumatic accident, but was not disabled at the time the transfer occurred); or
- Documents which verify the unexpected loss of other resources or income which would have precluded AG eligibility (e.g., a divorce which results in loss of income or resources provided by a spouse); or
- Documents establishing that, at the time of the transfer, the transferred resource would have been an excluded resource under AG rules (e.g., documents that establish the type of resource, the value, the date of transfer, etc.).
- The resources were given to a religious order by a member of that order in accordance with a vow of poverty.

17.6. Verification

- Individual's Statement - Obtain the individual's written and signed statement regarding the circumstances of the transfer. The statement should cover the individual's:
  - Purpose for transferring the resource;
  - Attempts, if any, to dispose of the resource at CMV;
  - Reason for accepting less than CMV for the resource;
  - Means or plans for self-support after the transfer;
  - Relationship, if any, to the person(s) to whom the resource was transferred;
  - Belief that he/she received CMV, if applicable.

- Relevant documentary evidence (e.g., legal documents, real estate agreements, relevant correspondence, medical reports, etc.).
- Obtain signed statements from other individuals if material to the decision.

17.7. Examples—Rebuttal Determination

Example 1: Ms. Berry has resided in an ALF since 8/14/97. She owns a home which has continued to be excluded because she expressed intent to return to the home. On 7/27/06 she deeds the home to her son. After discussing the transfer with Ms. Berry and her son, the worker learns that Ms. Berry had decided on 7/5/06 that she would never return to her home. The worker determines that this transfer does not meet any of the "transfer of a home" exceptions. In considering whether the transfer was for a purpose other than to preserve AG eligibility, the worker develops the issue of "intent to return". The worker determines that Ms. Berry no longer intended to return home as of 7/5/06. Therefore, the home was not an excluded resource at the time Ms. Berry transferred ownership. This factor must be considered when the worker determines whether Ms. Berry transferred her home exclusively for a purpose other than to preserve AG eligibility.

18. Transferred Resources Returned To The Individual Exception

The **period of ineligibility** for transferring a resource at less than fair market value **does not** apply to an individual if the entire resource is returned to the individual within the month of transfer. Return of the entire resource in a subsequent month or return of a portion of the resource requires that the period of ineligibility be reevaluated.

18.1. Entire Resource Returned In Same Month

If the individual transfers a resource and the **entire** resource is returned in the **same** month, the period of ineligibility does not apply. To meet this exception, the individual must reacquire the same percentage of ownership interest in the resource that existed prior to the original transfer. Reacquiring a lower ownership interest is not sufficient to meet this exception nor is reacquiring physical possession of the resource. It is necessary to reacquire legal ownership. If the entire resource was returned in the same month as the transfer, process the case as if no transfer has occurred.

Note: The return of the resource to the individual is not counted as income to the individual.

Example: Ms. Smith transfers a non-excluded automobile for less than fair market value on 8/3/06. On 8/6/06 she files for AG and learns that the transferred resource will make her ineligible. On 8/10/06 she returns to the LDSS and provides evidence that the transferred automobile was returned to her on 8/9/06. Since the entire resource was transferred and returned in the same month, Ms. Smith is not subject to a period of ineligibility due to a resource transfer. However, Ms. Smith's eligibility for AG is based on the value of her resources as of 8/1/06, including the value of the non-excluded automobile.

18.2. Entire Resource Returned In A Subsequent Month

If the individual transfers a resource and the **entire** resource is returned in a **subsequent month**, the **period of ineligibility continues through the month the resource is returned** (even if the resource is returned on the first day of the month). The period of ineligibility due to the transfer ends as of the month following the month the resource is returned. In that month, the returned resource is counted towards the individual's AG resource limit.

Example 1: Mr. Johnson transferred a sailboat for less than fair market value on 8/5/06. The uncompensated value is determined to be $3,000. On 8/10/06 he files for AG benefits and learns that transferring a resource for less than fair market value makes him subject to a period of ineligibility. On 9/20/06 he reports to the LDSS that the transferred resource was returned to him on 9/15/06. For 8/06, Mr. Johnson's eligibility would be based on his resources as of 8/1/06 including the sailboat. For 9/06 he would be subject to a period of ineligibility due to the uncompensated value of the resource transfer. As of 10/06 the period of ineligibility due to the transfer ends. For 10/06 his eligibility would be based on all of his countable resources as of 10/1/06, including the sailboat. If Mr. Johnson is ineligible due to excess resources but otherwise eligible, the worker would advise him that he could be eligible for AG based on conditional benefits. See Chapter F.

Example 2: Mr. Jones files for AG on 10/3/06. He informs the worker that he transferred a boat worth $5,000 to his nephew in 4/06. He further states that the nephew returned the boat to him in 6/06. Since the boat was returned to Mr. Jones before he filed for AG, the transfer has no effect on AG eligibility. However, if Mr. Jones still owned the boat in the month he filed for AG, it would be counted as a resource.

18.3. Less Than The Entire Resource Returned

If less than the entire resource is returned, recompute the period of ineligibility. The adjusted uncompensated value will be computed by subtracting the amount of the resource that was returned from the CMV of the resource. The recomputed period of ineligibility will be based on the adjusted uncompensated value. The **recomputed period of ineligibility will have the same beginning date,** the first of the month following the month of the initial transfer. If additional funds are subsequently returned, it will be necessary to recompute the uncompensated value again.

Note: Assume, absent evidence to the contrary, that the returned resource has the same current market value (CMV) it had when it was originally transferred. But, if there is evidence that the returned resource has a different CMV verify the new value, recompute the uncompensated value by comparing the CMV in the month the resource is returned with the CMV at the time of the original transfer.

Example 1: Ms. Jones files for AG on 8/6/05 and alleges ownership of 50 shares of stock worth $5,000. She learns that the stocks would make her ineligible for AG due to excess resources, so she gives all 50 shares to her brother on 8/9/05. She returns to the LDSS and alleges that she no longer owns the stocks. The worker determines that she transferred the stocks for less than current market value and determines that she is ineligible due to excess resources in 8/05, and subject to a period of ineligibility beginning in 9/05 based on $5,000 uncompensated value.

On 10/5/05 Ms. Jones returns to the LDSS and reports that the stocks were returned to her on 10/3/05. After reviewing the evidence, the worker determines that 15 shares of stock worth $1,850 had been returned to Ms. Jones. Since the entire resource was not returned, Ms. Jones does not meet the exception to the period of ineligibility. The worker recomputes the uncompensated value ($5,000 minus $1,850 = $3,150) and uses the new, lower uncompensated value to recompute the period of ineligibility. The recomputed period of ineligibility would have the same beginning date, but it would have fewer months due to the lower uncompensated value.

Example 2: Ms. Green files for AG on 12/5/05 and gives her son $10,000 in stock certificates on 12/21/05. The worker determines that she has a period of ineligibility of 10 months ($10,000 divided by $944 ALF rate = 10.59). Ms. Green is determined to be ineligible for AG from 1/06-10/06. However, in 7/06 her son returns $4,800 of the certificates to Ms. Green. It is necessary to recompute the period of ineligibility based on uncompensated value of $5,200 ($10,000 minus $4,800). The worker determines that the period of ineligibility is only 5 months ($2,500 divided by $500). However, her period of ineligibility continues through 7/06—the month that the resource was returned. She is potentially eligible for AG as of 8/06 if she meets all other requirements for eligibility.

18.4. Verification

Assume, absent evidence to the contrary, that the returned resource has the same current market value (CMV) it had when it was originally transferred. If there is evidence that the returned resource has a different CMV, verify the new value.

Verify that the ownership of the resource has been returned to the individual by obtaining

- The individual's signed statement **and**
- Appropriate documents that show the date the resource was returned, and that ownership of the entire resource was reacquired

A signed statement by the individual is not sufficient. It must be accompanied by the required additional verification. Failure to provide the appropriate verification will result in an inability to recalculate the period of ineligibility. The existing period of ineligibility will continue until the appropriate verifications are provided or the period of ineligibility expires.

19. Uncompensated Value

Uncompensated value (UV) is the difference between the CMV of a resource and the amount of compensation received by the individual in exchange for the resource. The uncompensated value is used to determine the period of ineligibility.

If the individual received compensation equal to or greater than the transferred resource's fair market value, there is no uncompensated value and no period of ineligibility.

19.1. Multiple Transfers Within The Look Back Period

When multiple transfers occur within a look back period each must be evaluated individually to determine the uncompensated value of each. The uncompensated values are totaled to determine the total uncompensated value for all transfers that occurred during the look back period. The total is used to determine the period of ineligibility.

20. Period Of Ineligibility

The period of ineligibility is the period of time for which the individual is totally ineligible for AG due to a transfer of assets for less than the CMV. The period of ineligibility is determined by dividing the **uncompensated value** by the **ALF/AFCH rate** for the area in which the individual lived **at the time of the transfer**. The result is the number of months in the ineligibility period.

Note: If an AG period of ineligibility is assigned, Medicaid eligibility must be determined based on Medicaid guidelines.

MONTHLY MAXIMUM AUXILIARY GRANT RATE HISTORY

2004 – 2007

ALF & AFC Rates	01/04	10/04	01/05	07/05	01/06	01/07	07/07	1/08
District 8	$996	$1,028	$1,045	$1,086	$1,129	$1,205	$1,220	$1,236
All Other Districts	$866	$894	$909	$944	$982	$1,048	$1,061	$1,075

20.1. Length Of Period Of Ineligibility

A period of ineligibility can be from **1 month up to a maximum of 36 months** depending on the amount of the uncompensated value. A period of ineligibility **cannot exceed 36 months** regardless of the uncompensated value of the transfer. Months in the period of ineligibility run consecutively and are not impacted by

- Periods in which the individual may have been ineligible for other reasons, or
- Months in which the Undue Hardship Exception applies.

Example: Mr. Franklin has been receiving AG for several years. While conducting a redetermination in 8/05, the worker finds that Mr. Franklin transferred a resource for less than fair market value on 12/20/04 and is subject to a 6-month period of ineligibility that begins as of 1/05. The worker also finds that Mr. Franklin was ineligible due to excess income in 3/05 and 4/05. Mr. Franklin's period of ineligibility runs from 1/05-6/05. The ineligibility in 3/05 and 4/05 due to excess income does not affect the length of the period of ineligibility due to the resource transfer. An overpayment must be determined for the months of ineligibility. See Volume II, Part I, Chapter G, 3.

20.2. Period Of Ineligibility Begin Date

The period of ineligibility begins on the first day of the month after the month the resource was transferred for less than current market value. The rule applies for initial claims and for ongoing situations.

Exception: If an individual transfers resources several times during the look back period, the total uncompensated value of all the transfers in the applicable period is used to determine the length of the period of ineligibility and the period would begin on the first day of the month after the first transfer.

Example 1: Transfer in Filing Month Mr. Johnson gives away $2,500 cash to his brother on 5/15/06 and files for AG on 5/20/06. The first month of the period of ineligibility is 6/06 (the month after the transfer).

Example 2: Multiple Transfers Ms. Thomas files for AG on 10/22/06. The worker learns that she gave away $2,500 cash on 3/15/06 and that she gave away $1,500 cash on 5/3/06. The period of ineligibility would be based on uncompensated value of $4,000 ($2,500 + $1,500) and would begin in 4/06 (the month after the first transfer).

20.3. Computing The Period Of Ineligibility - Individual

Follow this procedure to compute the period of ineligibility for an individual applicant/recipient.

- Determine the total, cumulative uncompensated value of all resources transferred during the look-back period.
- Divide the uncompensated value by the full amount of the ALF/AFCH rate for the area in which the individual lived at the time of the transfer.
- The resulting amount, computed to 2 decimal places **and rounded down** to the nearest whole number, is the number of months of the period of ineligibility.

Example: The worker determines that Mr. Smith, a Virginia Beach resident, transferred a resource for less than fair market value on 8/10/05. The transfer resulted in uncompensated value of $7,500. The worker divides $7,500 by $944 which equals 7.94. The worker rounds down to the nearest whole number and determines that the period of ineligibility is 7 months and would begin in 9/05.

20.4. Computing The Period Of Ineligibility - Couple (Initial Application Only)

Follow this procedure to compute the period of ineligibility **only** when:

- The individual and the spouse lived in the same household as of the date of application,
- Both of the members of the married couple entered an ALF/AFCH in the same month,
- Both applied for AG in the month of entry, and
- The period of ineligibility begins prior to or in the month of application.

20.5. Procedure

- Determine the total, cumulative uncompensated value of any resources transferred by either member of the couple since the beginning of the look-back period.
- Divide the uncompensated value by the couple's ALF/AFCH rate (ALF/AFCH rate X 2).

- The resulting amount, computed to 2 decimal places and rounded down to the nearest whole number, is the number of months of the period of ineligibility for each member of the couple.

21. Undue Hardship Exception

The **period of ineligibility** for transferring a resource at less than fair market value **does not** apply to any month in which not receiving AG benefits would create undue hardship for the individual. Undue hardship is determined on a month by month basis.

Undue hardship exists within a month if:

- The individual alleges that failure to receive AG payments would deprive the individual of **food or shelter**; **and**
- The individual's **total available funds** (income and **liquid** resources) **do not equal or exceed the ALF/AFCH rate** for the month that undue hardship is alleged

21.1. When To Consider Undue Hardship

Undue hardship must be considered if the individual has transferred a resource for less than current market value and **none of the other exceptions to the period of ineligibility apply**.

Send the individual a Transfer of Resource Notice to explain to him/her that benefits may be payable based on undue hardship. Allow the individual 10 days to respond. If the individual alleges undue hardship, make a determination and document the file. If the individual does not allege undue hardship, a determination is not required. Document the file and impose the period of ineligibility.

21.2. Undue Hardship Alleged

Obtain the individual's signed statement. The statement should cover the month of application through the processing month and the following 6 months. The statement should include the individual's allegation that:

- Lack of AG payments would cause loss of food or shelter;
- The individual expects to be under the total available funds limit for the next 6 months (if the period of ineligibility extends for 6 months or longer and the individual claims undue hardship for the future months);

- The individual agrees to report promptly any changes in income and resources; and

- The individual understands that he/she may be overpaid if the total available resources exceed the limit for undue hardship for any month. (Repayment would be pursued for this type of overpayment. See Volume II, Part I, Chapter G, 3.)

Note: If the individual alleges that other income is expected sooner than 6 months, set a special review for recontacting the individual in the month the other income is expected.

21.3. Verification Of Loss

21.3.1. Loss Of Food

Absent evidence to the contrary, accept the individual's statement that he/she will lose food.

21.3.2. Loss Of Shelter

For purposes of this provision, an individual would be deprived of shelter if:

- He/she would be subject to eviction from the current residence if AG benefits were not received; and

- There is no other affordable housing available, or there is no other housing available with necessary modifications for a disabled individual.

21.4. Period To Develop

- Fully develop undue hardship for the month of filing through the month the claim is being processed.

- Develop undue hardship for the following 6 months if the individual is currently eligible based on undue hardship, and the individual alleges that undue hardship will continue. This determination for future months is done in lieu of contacting the individual every month to evaluate undue hardship.

Note: Do not develop undue hardship for the month of transfer because the period of ineligibility always begins the month after the transfer.

21.5. Determine Total Available Funds

Determine the individual's **total available funds** for **each** month for which undue hardship is claimed by adding the total income for the month and total **liquid** resources for the same month.

21.5.1. Income

All countable and excludable income (except AG and items that are not income per Chapter I) are counted.

21.5.2. Resources

All **liquid resources** (both countable and excludable, except for designated burial funds) as of the first moment of the month being considered are counted.

Liquid resources are any resources in the form of cash or in any other form which **can** be converted to cash within 20 workdays. **Workdays** are any days other than Saturdays, Sundays, and Federal holidays.

AG benefits retained from a prior month are counted as a resource for purposes of determining an individual's total available funds.

Note: The transferred resource is not counted when computing the total available funds.

21.5.3. Verification Of Income And Liquid Resources

Verify the individual's income and liquid resources using appropriate documents as defined in the Manual (e.g., bank statements, award letters).

For the future months assume, based on the individual's signed allegation, that income and resources will stay below the limit through the month that the worker will recontact the individual.

21.6. Compare Total Available Funds With Applicable ALF/AFCH Rate

Compare the individual's total available funds with the ALF/AFCH rate for each month under consideration. Use the ALF/AFCH for the area in which the individual lives.

- Undue hardship does not exist for any month in which the total available funds **equal or exceed** the applicable ALF/AFCH rate. The period of ineligibility applies to any month in which undue hardship does not exist.

- If undue hardship does not exist for the month of action or the following month, deny the case and hardship claim for future months. The individual can reapply if the situation changes.

- Undue hardship exists for any month in which the total available funds are **less than** the applicable ALF/AFCH rate and the individual has alleged that lack of AG payments would cause loss of food or shelter, and no evidence is uncovered that contradicts that allegation.

Note: Undue hardship is a month-by-month determination. Be alert for cases in which undue hardship may exist in some but not all months during the life of the application.

21.7. Document The Undue Hardship Determination

Document the file with your determination of whether or not the individual qualifies for payments based on undue hardship. Use the **Transfer of Resources Notice** to notify the individual of the result of the evaluation.

21.8. Examples Of Undue Hardship Determinations

Example 1: Mr. Johnson files for AG benefits on 7/5/06. He transferred a resource on 5/15/06 and the uncompensated value will result in a period of ineligibility of 14 months (6/06-7/07). Mr. Johnson alleges that not getting AG benefits would cause him undue hardship. Mr. Johnson's AG application indicates that his only monthly income is SSI valued at $603. His only liquid resource is a savings account with a 7/1/06 balance of $1,200. The worker adds Mr. Johnson's income and resources ($603 + $1,200 = $1803.00).

Because his total available funds ($1,803.00) exceed the AG rate, Mr. Johnson does **not** meet the undue hardship test for 7/06. The worker inquires about Mr. Johnson's expected expenditures and Mr. Johnson alleges that he is not likely to spend enough of his savings in 7/06-8/06 to be within the limit for undue hardship. Therefore, since Mr. Johnson will not meet the requirements for undue hardship in the action month or the following month, the worker denies the application and issues a denial notice on 7/12/06.

Example 2: This example uses the same case facts as Example 1. Mr. Johnson returns to the field office on 9/4/06 and files a reapplication alleging that he has spent $1,000 of his savings in 8/06 to pay bills. The worker documents the cash was spent and determines that on 9/1/06 Mr. Johnson's bank account balance was $200. For 9/06 his total available funds are $803 ($603 income + $200 savings). His total available funds are less than the AG rate.

The worker documents the file with Mr. Johnson's allegation that he will not be able to pay for his food and shelter in 9/06 and in future months without AG. The worker determines that Mr. Johnson qualifies for benefits based on undue hardship for 9/06, and will continue to be eligible based on undue hardship for at least the next 6 months. The worker sets a special review for 6 months to recontact Mr. Johnson to determine if he still qualifies for AG based on undue hardship.

21.9. Recontacting Individual

Use this procedure when you need to develop whether the individual continues to meet the requirements to receive benefits based on undue hardship.

21.9.1. Period Of Ineligibility Is 6 Months Or Less

If the individual is subject to a period of ineligibility of 6 months or less, and is getting AG based on undue hardship, recontact the individual in the final month of the period of ineligibility to determine whether he/she was due benefits for each month of the past period.

21.9.2. Period Of Ineligibility Is Longer Than 6 Months

Recontact the individual every 6 months and again in the final month of the ineligibility period if the individual is subject to a period of ineligibility longer than 6 months and is getting AG based on undue hardship. For periods of ineligibility of 6 to 12 months, recontact may be scheduled for the halfway point and the final month.

21.9.3. Documenting Whether Undue Hardship Has Continued

When the individual is recontacted:

- Obtain the individual's signed allegation that AG was needed to prevent the loss of food or shelter for any months not covered by the previous signed allegation.
- Verify the individual's income and resources for any months not previously verified using appropriate documents (e.g., bank statements, award letters).
- Determine whether the total available income and resources in any of the months was over the limit for undue hardship payments. For any month that the individual's total available funds were over the limit, undue hardship does not apply and an overpayment exists. See Volume II, Part I, Chapter G, 3.

- If undue hardship continues for the remaining months of the ineligibility period, continue payments.

21.10. Determining Undue Hardship For Past Months In Ongoing Cases

Use this procedure for ongoing cases when the period of ineligibility includes past months for which AG benefits have already been paid.

21.10.1. Step One

- Assume that the individual needed the AG payments in order to obtain food and shelter. (No statement required.)
- For each month of the past period, determine if the individual's total available funds were below the ALF/AFCH rate.
- Determine that undue hardship existed for each month that the individual was below the limit for total available funds.
- If the individual was not below the total available funds limit for any month, go to step 2.

21.10.2. Step Two

If the individual does not meet undue hardship for months in the past period under Step 1, it is necessary to take into account the effect that not receiving AG would have had on the individual. Therefore, for each past month in the ineligibility period, subtract the amount of AG paid in that month from the **liquid resource total** before determining whether the total available funds were below the undue hardship limit for that month.

Example: During a redetermination on 7/5/05, it is determined that Mr. Smith transferred a resource that resulted in a period of ineligibility that began in 3/05 and continues through 11/05. It is necessary to establish whether Mr. Smith meets the requirements for undue hardship to determine if he was due the AG payments for 3/05-6/05.

Mr. Smith provides evidence that he received $700 of Title II benefits each month from 3/05-6/05. He had no other income in these months except his AG grant of $326. The worker determines that Mr. Smith's liquid resources were $600 on 3/1/05, $350 on 4/1/05, $300 on 5/1/05 and 6/1/05, and $650 for 7/1/05.

- For 3/05, Mr. Smith's other income (Title II of $700) plus his liquid resources ($600) = $1300 which exceeds the undue hardship limit ($982- the ALF rate in this case). The worker considers the effect that not getting AG would have by subtracting $326 from $1300 which results in total available funds of $974 for 3/05. Since $974 still exceeds the undue hardship limit of $944, Mr. Smith is ineligible for 3/05 (an overpayment).

- For 4/05, Mr. Smith's other income ($700) plus his liquid resource balance ($350) = $1050. From $1050 the worker subtracts the $326 AG payment which results in total available funds of $724. This balance is below the undue hardship limit of $944. Therefore, Mr. Smith is eligible for 4/05 based on undue hardship.

- For 5/05 and 6/05, Mr. Smith continues to meet the undue hardship requirement. The worker adds the other income ($700) plus the liquid resource balance ($300) and subtracts the $326 AG payment which results in a balance of $374 for both 5/05 and 6/05. Thus, Mr. Smith is eligible for both months.

- For 7/05 (the current month), Mr. Smith does not meet the undue hardship test. His other income ($700) plus his bank balance ($650) minus the $326 AG payment leaves a balance of $1024 which exceeds the limit for undue hardship.

21.11. Couples Cases – Month Of Application Only

Follow this procedure **only** when undue hardship is claimed for the **application month** when both of the members of a married couple enter an ALF or AFCH and apply for AG in the same month.

(The only month the couple is evaluated as an AU of 2.) For subsequent months determine undue hardship for each as an individual.

When determining total available funds for an eligible couple use the methods outlined in Chapter G – 21.10. However, use the couple's ALF/AFCH rate (ALF/AFCH rate X 2) and the total available funds of both spouses in the computations.

22. Transfer of Resources Notice

The Transfer of Resources Notice is used to notify an individual that he/she is ineligible for a period of time due to the uncompensated transfer of resources, to inform him/her of his/her right to claim undue hardship and to notify him/her of any adjustments made to his/her period of ineligibility. See Chapter G.

22.1. Initial Application/Reapplication

The Transfer of Resources Notice is to be sent with the Notice of Action.

22.2. Redetermination or Change

The Transfer of Resources Notice is to be sent with the Advance Notice of Proposed Action.

TABLE OF CONTENTS

NON-SSI INCOME EXCLUSIONS – INTRODUCTION **1**

1. EXCLUSION FACTS **1**

2. APPLICATION OF EXCLUSIONS **1**

2.1. EXCLUSIONS THAT APPLY TO UNEARNED INCOME 2
2.2. EXCLUSIONS THAT APPLY TO EARNED INCOME 2
2.3. EXCLUSIONS THAT APPLY TO COMBINED INCOME (GENERAL EXCLUSIONS) 2
2.4. APPLICATION OF INCOME EXCLUSIONS 2

3. $20 PER MONTH GENERAL INCOME EXCLUSION **5**

3.1. INCOME BASED ON NEED 5
3.2. COUPLE'S EXCLUSION 6

4. $65 PLUS ONE-HALF OF REMAINDER EXCLUSION **6**

4.1. COUPLE'S EXCLUSION 6

5. CHILD AT HOME EXCLUSION **6**

5.1. EXCLUSION 7
5.2. VERIFICATION 7

6. COMMUNITY EXPENSES EXCLUSION **7**

6.1. VERIFICATION 7

7. EXPENSES OF OBTAINING UNEARNED INCOME **8**

7.1. EXCLUSION 8
7.2. DEDUCTING ALLOWABLE EXPENSES 8
7.3. VERIFICATION 9

8. GUARDIANSHIP FEE EXCLUSION **9**

8.1. EXCLUSION AMOUNT 9
8.1.1. Fee Based On Percentage *9*
8.2. VERIFICATION 11
8.2.1. Verification Not Provided *11*

9. INFREQUENT OR IRREGULAR INCOME EXCLUSION (I&I) **12**

9.1. EXCLUSIONS 12
9.1.1. Earned Income Exclusion *12*
9.1.2. Unearned Income Exclusion *12*
9.1.3. Couple's Exclusion *12*
9.2. SINGLE SOURCE OF INCOME 13
9.3. IDENTIFYING INFREQUENT OR IRREGULAR INCOME 13
EXAMPLES 14

10. SPOUSE AT HOME EXCLUSION **15**

10.1. EXCLUSION 15
10.2. VERIFICATION 15

11. BLIND WORK EXPENSES (BWE) EXCLUSION **16**

11.1. EXCLUSION 16
11.1.1. Deductible Items *16*
11.1.2. Nondeductible Items *17*

TABLE OF CONTENTS

11.2. VERIFICATION 17
11.2.1. Allegation of BWE 17
11.2.2. Verifying Cost Of BWE 18

12. IMPAIRMENT-RELATED WORK EXPENSES (IRWE) EXCLUSION 18

12.1. ELIGIBILITY REQUIREMENTS 18
12.2. EXCLUSION 19
12.2.1. Exclusion Amount 19
12.2.2. More Than One Employer Involved 19
12.3. WORK EXPENSES OF A COUPLE 20
12.4. ALLOCATION OF WORK EXPENSES 20
12.4.1. Expenses Paid While Working 20
12.4.2. Expense Paid After Work Stops 22
12.5. VERIFICATION 22
12.5.1. Allegation of IRWE 22
12.5.2. Verification And Documentation Of Impairment 23
12.5.3. Verify The Need For An Item Or Service 23
12.5.4. Verifying Cost Of An Item Or Service 24

13. LIST OF TYPE AND AMOUNT OF DEDUCTIBLE BWE AND IRWE EXPENSES 24

Non-SSI Income Exclusions – Introduction

An income exclusion is an amount of income which does not count in determining eligibility and the AG payment amount. Exclusions are deducted from gross income to determine the amount of countable income that is to be used in determining the individual's AG payment.

There are two types of exclusions; exclusions that apply only to specific types of income and general exclusions that can be applied to any source of income. Exclusions that are specific to a type of income are addressed in Chapter I – Income Sources within the section that addresses that type of income. The general exclusions are addressed in this chapter.

Sections 1 and 2 of this chapter address general information and sections 3 through 13 address the general income exclusions. The $20 General Income Exclusion and the $65 and ½ Earned Income Exclusion are listed first and the others follow in alphabetical order.

Note: This chapter DOES NOT apply when evaluating an SSI recipient's income eligibility or payment. See Chapter D.

1. Exclusion Facts

Income eligibility and the AG payment amount are determined monthly. Therefore, all income exclusions are applied to the monthly income.

- The application of exclusions never reduces income below zero.
- Except for the $20 general exclusion, any unused earned income exclusion is never applied to unearned income.
- Any unused portion of a monthly exclusion cannot be carried over for use in subsequent months.

2. Application of Exclusions

There are nine general income exclusions. Some apply only to unearned income, others apply to earned income, and others apply to the total of the two income types. Guidelines specify which ones apply to which and in what order they must be applied. The basic procedure is

- Determine countable unearned income and deduct the unearned income disregards.
- Determine countable earned income and deduct the earned income disregards.

- Determine the total income.
- Deduct the exclusions that apply to the combined countable income.
- The result is the total countable income, the amount that will be used in determining the AG payment amount.

2.1. Exclusions That Apply To Unearned Income

There are three types of general exclusions that apply to unearned income;

- The $20 General Exclusion,
- The exclusion of Expenses To Obtain Unearned Income, and
- The exclusion of Infrequent or Irregular Income.

2.2. Exclusions That Apply To Earned Income

- $20 General Income Exclusion, if not used on unearned income.
- Infrequent Or Irregular Income Exclusion,
- $65 and ½ of Earned Income Exclusion,
- Blind Individuals (BWE) Work Expenses Exclusion,
- Impairment-Related Work Expenses (IRWE) Exclusion.

2.3. Exclusions That Apply To Combined Income (General Exclusions)

- Community Expenses Exclusion
- Spouse and Child Or Child At Home
- Spouse At Home
- Guardianship Fee Exclusion

2.4. Application Of Income Exclusions

Income exclusions must be applied in the order outlined in the following chart.

Steps	Application Order of Income Exclusions ACTIONS
Step 1	**Does the individual have unearned income?** **Yes** – Go to Step 2 **No** – Go to Step 8
	The Unearned Income Exclusions Must be Applied In The Following Order
Step 2	Exclude unearned income items that are defined as **Not Income**. These are identified in the section that addresses the specific income.
Step 3	Apply the exclusions that are specific to each income type. These are identified in the section that addresses the specific income. (Example – Exclude the portion of educational grants that are used for educational expenses.)
Step 4	Apply the **Infrequent Or Irregular Exclusion.** (A max of $60 of unearned income may be excluded in a quarter) Do not apply the infrequent or irregular exclusion to an amount remaining after another exclusion has been applied to a particular type of income (e.g., the remaining amount of educational grants after the educational expenses have been excluded).
Step 5	Deduct the **Expenses Of Obtaining Unearned Income** from the related income
Step 6	Total the unearned income.
Step 7	Deduct the **$20 General Income Exclusion**.

Step 8	The result is the **countable unearned income**. Does the individual have earned income? **Yes** – Go to Step 9 **No** – Go to Step 19
	The Earned Income Exclusions Must be Applied In The Following Order
Step 9	Apply the exclusions that are specific to the type of income being received. These exclusions are in the section that addresses each income type.
Step 10	Apply the **Infrequent Or Irregular Exclusion**. (A max of $30 earned income may be excluded in a quarter)
Step 11	Total the earned income.
Step 12	Deduct any portion of the **$20 Monthly General Income Exclusion** which was not used to exclude unearned income in the same month
Step 13	Deduct **$65 of Earned Income** in a month
Step 14	Deduct the **Impairment-Related Work Expenses (IRWE) Of Disabled Individuals**
Step 15	Deduct **One-half** of remaining earned income in a month
Step 16	Deduct the **Blind Individuals (BWE) Work Expenses**
Step 17	The result is the **total earned income.**
Step 18	Total the countable earned and unearned income.

	The Combined Income Exclusions Must be Applied In The Following Order
Step 19	Deduct the **Community Expenses Exclusion**
Step 20	Does the individual have a spouse and a minor child or a minor child at home? **Yes -** Deduct the **Spouse and Child/Child At Home Exclusion.** Go to Step 22. **No –** If the individual has a spouse but no child at home go to Step 21. If the individual does not have either a spouse or child at home, go to Step 22.
Step 21	Deduct the **Spouse At Home Exclusion**
Step 22	Deduct the **Guardianship Fee Exclusion**
Step 23	**The result is the total countable income to be used in determining the AG payment.**

3. $20 Per Month General Income Exclusion

Applicable To Unearned and Earned Income

The first $20 per month of income, other than income based on need (IBON), is excluded. The $20 General Income Exclusion is first applied to any unearned income the individual has. If the individual's unearned income is less than $20, the remainder of the exclusion may be applied to the individual's earned income. Example – TANF.

3.1. Income Based on Need

Income based on need is a benefit that uses financial need as measured by income as a factor to determine eligibility. The $20 exclusion does **not** apply to a benefit based on need that is totally or partially funded by the Federal Government or by a nongovernmental agency.

3.2. Couple's Exclusion

When both the individual and **spouse are in the same assistance unit**, the dollar amount of the exclusion does not increase even if both the individual and spouse have unearned income. An eligible couple receives only one $20 exclusion per month.

4. $65 Plus One-Half Of Remainder Exclusion

Applicable To Earned Income

$65 per month of earned income plus one-half of the remaining earned income in the month is excluded.

Example

Mrs. Kowalski receives $100 a month in earned income. $100 - $65 = $35 X 50% = $17.50 countable earned income (without the application of other exclusions)

Note: If an individual has Impairment-Related Work Expenses (IRWE), the $65 and ½ exclusion is applied in two separate steps. The $65 portion is deducted before the deduction of the IRWE and the ½ after the IRWE deduction.

4.1. Couple's Exclusion

The $65 earned income exclusions are applied only once to a couple, even when both members have income, since the couple's earned income is combined in determining AG payments.

5. Child At Home Exclusion

Applicable To the Combined Total of Earned and Unearned Income

If the applicant/recipient has a spouse and minor children or just minor children at home who have applied and are ineligible for TANF for a reason other than resources, a portion of the applicant's/ recipient's non-exempted income will be excluded to provide for the spouse and child at home.

5.1. Exclusion

To determine the amount of the exclusion, total the income of the spouse and children and subtract it from the appropriate Medicaid Medically Needy level. The resulting amount will be deducted from the AG individual's net countable income, the amount remaining after all other exclusions, other than guardian fees, have been applied.

Medicaid Medically Needy level link –

http://localagency.dss.virginia.gov/divisions/bp/files/me/manual/Manual/s08.pdf

5.2. Verification

Verify the spouse and children's income by documents in their possession. Verify the spouse and children's ineligibility for TANF through the ADAPT system. It is not necessary to determine if the money is actually given to the spouse/child.

6. Community Expenses Exclusion

Applicable To the Combined Total of Earned and Unearned Income

When an individual enters an ALF or AFCH and applies for AG in the same month, any income used to pay for expenses incurred prior to entering the ALF/AFCH is excluded from income for the month of entry only. To be excluded, the expenses must be for things not related to the ALF or AFCH.

If an expense has been incurred but not paid, assume that the individual will pay the expense unless you have reason to question the situation.

Note: The month of entrance into the ALF or AFCH could be the month the home is licensed or approved if the individual was living there prior to the licensure/approval.

6.1. Verification

Use bills, receipts, contact with the provider, etc., to verify all community expenses. If none of these are available, the individual's written statement will be accepted.

7. Expenses of Obtaining Unearned Income

Applicable To Unearned Income

An **expense** of obtaining unearned income is one that is an essential factor in obtaining a particular payment(s).

7.1. Exclusion

Unearned income does not include that part of a payment which is for an essential expense incurred in getting the payment. The expenses are deducted from the specific income for which they were incurred. They cannot be used to reduce other countable income.

Examples:

- From a payment received for damages in connection with an accident, subtract **legal, medical, and other expenses** connected with the accident.
- From a retroactive check from a benefit program other than AG, subtract legal fees connected with that claim.

7.2. Deducting Allowable Expenses

Deduct any expenses which have been verified as essential from the first and any subsequent amount(s) of related income. Deduct even those verified expenses which the recipient has **previously** paid (e.g., a partial payment to an attorney made from the individual's savings account) as long as the expenses are essential.

Note: The remainder is unearned income subject to the general rules pertaining to income and income exclusions.

Examples

Document Fees - A fee to acquire documentation to establish that an individual has a right to certain income (e.g., a fee for a birth certificate or medical examination) is an essential expense**.**

Guardianship Fees - A guardianship fee is an essential expense only if the presence of a guardian is a requirement for receiving the income.

Note: Guardianship fees are **never** an essential expense for obtaining Title II or Title XVI benefits because the appointment of a legal guardian is never an SSA requirement.

7.3. Verification

Use bills, receipts, contact with the provider, etc., to verify all essential expenses.

If an expense has been incurred but not paid, assume that the individual will pay the expense unless you have reason to question the situation.

8. Guardianship Fee Exclusion

When the individual has a guardian or conservator, the fee paid to the guardian or conservator to manage the individual's income may be excluded from the individual's net countable income if the court order stated a fee would be paid.

The court order establishing the guardianship will specify what sources of income will be managed and the fee to be paid for managing those sources of income.

8.1. Exclusion Amount

The amount of the exclusion will equal the amount designated by the court order. The court order may state an exact amount or state the fee will be a percentage of the managed funds. The exclusion amount cannot exceed the amount designated by the court nor include fees for managing income that is not included in the court order.

8.1.1. Fee Based On Percentage

If the court order states the fee will be a percentage of the managed funds, the worker will be responsible for computing the exclusion amount. The exclusion computation method to be used is determined by whether or not the AG payments are included in the managed funds.

8.1.1.1. Managed Funds Do Not Include AG Payment

If the guardian/conservator will not manage the individual's AG, use the following procedure to determine the exclusion amount.

STEPS	ACTIONS
Step 1	Determine the gross amount of the individual's income that is managed by the guardian/conservator. Note: Do not include any income that is not addressed in the court order. The result will be considered the amount of income the guardian/conservator is managing.
Step 2	Multiply the total managed income by the percentage specified in the court order. The result will be the total guardianship fee.
Step 3	Compute the individual's AG payment. Subtract all appropriate exclusions including the Guardianship Fee Exclusion from non-exempt income to obtain net countable income. See Chapter J for Grant Computation and issuance.

8.1.1.2. Managed Funds Will Include AG Payment

If the guardian/conservator will manage the individual's AG as well as other income, the guardianship fee must be computed using the following procedure.

STEPS	ACTIONS
Step 1	Determine the AG payment amount allowing all appropriate exclusions except the Guardianship Fee Exclusion. The result will be considered the amount of AG income the guardian/conservator is managing.
Step 2	Add the AG amount determined in Step 1 to the gross amount of all other managed income. The result will be the total amount of managed income.
Step 3	Multiply the total managed income as determined in Step 2 by the percentage specified in the court order. The result will be the total guardianship fee.
Step 4	Recompute the individual's AG payment. Subtract the guardianship fee from the net countable income. See Chapter J for Grant Computation and issuance.

8.2. Verification

Obtain a signed and dated statement from the guardian/conservator and a copy of the court order. The guardian's/conservator's statement must include the monthly amount and source of funds managed for the applicant/recipient and whether or not the guardian/conservator will manage the AG payment.

8.2.1. Verification Not Provided

If the proper verification is not provided, the exclusion cannot be allowed.

9. Infrequent or Irregular Income Exclusion (I&I)

Applicable To Earned and Unearned Income

Definitions:

Infrequent Income Beginning September 8, 2006

Income is considered to be received infrequently if an individual receives it only once during a calendar quarter from a single source **and** the individual did not receive it in the month immediately preceding that month or in the month immediately subsequent to that month, regardless of whether or not these payments occur in different calendar quarters.

Infrequent Income Prior to September 8, 2006

Income is considered to be received infrequently if an individual receives it no more than once in a calendar quarter from a single source.

9.1. Exclusions

There are two exclusions. One is applicable to both earned income and the other is applicable to unearned income. Each is computed separately and each has a different exclusion amount. An individual may qualify for one or both of the exclusions. Each exclusion is applicable only once per quarter. Infrequent or regular income received in excess of the excluded amount is countable income.

9.1.1. Earned Income Exclusion

The first **$30 per calendar quarter** of irregular or infrequent (I&I) earned income is excluded. Total the value of all I&I earned income received and subtract the exclusion amount from it.

9.1.2. Unearned Income Exclusion

The first **$60 per calendar quarter** of irregular or infrequent (I&I) unearned income is excluded. Total the value of all I&I unearned income received and subtract the exclusion amount from it.

9.1.3. Couple's Exclusion

When both the individual and **spouse are in the same assistance unit**, the dollar amount of the exclusion does not increase even if both the individual and spouse have infrequent or irregular income.

9.2. Single Source of Income

- A single source of **earned income** is an employer, a trade, or a business.
- A single source of unearned income is an individual, a household, an organization or an investment.
  - A household in which an individual lives is a single source even if the household composition changes due to a move by the individual or by other household members.
  - An organization is the Federal Government, a single State or local government, a business or corporation, a charitable agency, or a similar entity which provides an individual with income.
  - An investment is a single financial account, life insurance policy, rental property, or any other resource providing a return to its owner. Two separate accounts, even if with a single financial institution, are two different investments.

9.3. Identifying Infrequent Or Irregular Income

Each payment received must be evaluated separately to determine if it is considered infrequent or irregular.

STEPS	Identifying Infrequent Or Irregular Income ACTIONS
Step 1	**Have any other payments been received within the same quarter from the same source and if relevant, the same investment account**? **Yes** – Go to Step 2 **No** – The payment is infrequent. The exclusion applies.

STEPS	Identifying Infrequent Or Irregular Income ACTIONS
Step 2	**Were the additional payments for the same purpose?** **Yes –** The payments are not infrequent. Go to Step 3 **No –** Each payment is infrequent. The exclusion applies.
Step 3	**Could the individual have reasonably expected to receive it?** **Yes –** The payments are not irregular. The exclusion does not apply. **No –** Each payment is irregular. The exclusion applies.

Examples

Situation 1: In July 2006, an individual's friend repays, with interest, money the individual had loaned him. In August 2006, the same friend gives the individual a gift of some football tickets. The individual has received two different types of income — interest and a gift — from the same source. Evaluating each receipt separately, we see that each can qualify separately as infrequent. The first $60 of their combined value is excludable even if the total received exceeds $60. The remainder is countable unearned income.

Situation 2: The recipient receives a birthday gift of $15 cash and wins $25 playing the State lottery, both of which were received in the last month of a calendar quarter.

Analysis: Since the income received is no more than once a quarter, its receipt is infrequent. Since neither could be anticipated, both are also irregular. All the income may be excluded under the infrequent/irregular income provision.

Situation 3: An individual receives a royalty payment of $85 for artwork published, an unexpected birthday gift of $30 in cash from his daughter, and wins $15 playing Bingo. He receives a monthly SSA II check of $750.

Analysis: The $30 gift is irregular unearned income. The $15 Bingo winnings are irregular unearned income. The $45 of unearned income from these sources may be excluded. The SSA is paid monthly. Therefore, it is not excludable as infrequent or irregular. The royalty payment is infrequent earned income and the first $30, of the $85 received, is excludable. The remaining $55 of earned income will be counted using normal income counting rules unless the earned income can be excluded using other income exclusions.

10. Spouse At Home Exclusion

Applicable To the Combined Total of Earned and Unearned Income

If the applicant/recipient has a spouse at home who has applied and is ineligible for **SSI** because he or she is not aged, disabled, or blind, a portion of the applicant's/ recipient's non-exempted income will be excluded to provide for the spouse at home.

10.1. Exclusion

To determine the amount of the exclusion, total the income of the spouse and subtract it from the appropriate Medicaid Medically Needy level. The resulting amount will be deducted from the AG individual's net countable income, the amount remaining after all other exclusions, other than guardian fees, have been applied.

Note: If there is a spouse and children at home, the Child At Home Exclusion must be used instead of this one.

Medicaid Medically Needy level link –

http://localagency.dss.virginia.gov/divisions/bp/files/me/manual/Manual/s08.pdf

10.2. Verification

Verify the spouse's income and SSI ineligibility by documents in his/her possession.

11. Blind Work Expenses (BWE) Exclusion

Applicable To Earned Income

Blind Work Expenses are monies used by a blind person to meet any expenses reasonably attributable to earning income. BWE are deducted from earned income if the blind person:

- Is under age 65; or
- Is age 65 or older; and received AG payments due to blindness for the month before attaining age 65

11.1. Exclusion

The BWE exclusion applies only to earned income. BWE in excess of the earned income an individual receives during the month are never deducted from unearned income. The BWE exclusion is applied to earned income immediately after applying:

- Any portion of the general income exclusion which has not been deducted from unearned income; and
- All other earned income exclusions.

Note: This exclusion does not need to be pursued if the individual's gross earnings are less than $65.

11.1.1. Deductible Items

- Except as noted below, the cost of any work-related item paid by a blind person may be deducted as BWE, regardless of:
  - Any non-work benefit that may be derived from the item; **or**
  - The item's relationship to the person's blindness.
- A blind individual can claim the amount withheld for Federal, State, and local income taxes even though other factors may affect his or her tax liability (e.g., number of dependents, business loss, etc.).
- Examples of items which may be deductible as BWE are identified in the chart in Section 13 of this chapter.

11.1.2. Nondeductible Items

The following items cannot be deducted from earned income as BWE:

- In-kind payments
- Expenses deducted under other provisions
- Expenses which will be reimbursed
- Life maintenance expenses. Although not all inclusive, life maintenance items include the following:
  - Meals consumed outside of work hours;
  - Self-care items (including items of cosmetic rather than work-related nature);
  - General educational development;
  - Savings plans (e.g., individual retirement accounts (IRA's) or voluntary pensions);
  - Life and health insurance premiums.
- Items furnished by others that are needed in order to work (the value of such items is not income)

  Example: Mrs. Terry Peters, a blind individual, works as a typist. A community organization bought her a special typewriter that she needed to perform satisfactorily on the job. The value of the typewriter is not income to Mrs. Peters, nor is it deducted as a BWE since she did not pay for it.

11.2. Verification

11.2.1. Allegation of BWE

Assume that any working blind individual earning more than $65 a month has BWE. For example, most earnings are subject to income taxes which qualify as BWE.

When earnings are above $65 per month, obtain an allegation from the individual that either:

- Claims a BWE, specifying the type and amount of expense; or
- Explains why he/she has no BWE.

11.2.1.1. Requirement To Maintain Records

Inform the individual of the requirement to maintain records of work expenses and to produce such records when requested. Explain why they are needed.

11.2.2. Verifying Cost Of BWE

Document the file with photocopies of bills, receipts, etc., from the individual to corroborate the allegations.

Accept the individual's allegation of the expense amount when:

- Bills, receipts, etc., cannot be obtained (e.g., lack of receipts for food purchased for a dog guide, meals, transportation, etc.);**and**
- The allegation appears reasonable.

Note: A change in the amount of earnings of a blind worker implies a change in expenses since the amount of taxes deducted probably changed.

12. Impairment-Related Work Expenses (IRWE) Exclusion

Applicable To Earned Income

IRWE are expenses for items or services which are directly related to enabling a person with a disability (other than blindness) to work and which are necessarily incurred by that individual because of a physical or mental impairment. An expense may meet the criteria for an IRWE even if it also is used for daily activities other than work.

12.1. Eligibility Requirements

A payment for a service or item is excludable as IRWE when:

- The individual is disabled (but not blind); **and** is under age 65; **or** received AG as a disabled individual for the month before attaining age 65; **and**

- the severity of the impairment requires the individual to purchase or rent items and services in order to work; **and**

- The expense is reasonable; **and**

- The cost is paid in cash (including checks or other forms of money such as money orders, credit and/or charge cards) **by the individual** and is not reimbursable from another source (e.g., Medicare, private insurance); **and**

- The payment is made in a month the individual receives earned income for a month in which he/she **both** worked **and** received the services or used the item; **or**

- The individual is working but makes a payment before the earned income is received.

12.2. Exclusion

The IRWE exclusion only applies to earned income. IRWE in excess of the earned income an individual receives during the month are never deducted from unearned income.

The IRWE exclusion is applied to earned income in the sequence below:

- Immediately after deducting any portion of the general income exclusion which has not been deducted from unearned income; and

- After the $65 earned income exclusion; and

- Immediately **before** deducting one-half of the remaining earned income.

12.2.1. Exclusion Amount

Deduct the actual amount paid for IRWE unless the amount is unreasonable. The amount is within reasonable limits if it is no more than the prevailing charge for the same item or service. Prevailing charges are those which fall within the range of charges that are most frequently and widely used in a community for a particular item or service. The top of this range establishes the standard or normal cost that can be accepted as within reasonable limits for a given item or service.

12.2.2. More Than One Employer Involved

Add total earnings from all employers. Deduct combined work expenses from this total.

Note: There is no need to relate a specific expense to a particular source of earnings.

12.3. Work Expenses of a Couple

If both members of a couple are eligible and both work, deduct from the couple's earned income each individual's work expenses to the extent that they do not exceed that individual's earnings. Do not deduct excess work expenses of one member of the couple from the earned income of his or her spouse.

12.4. Allocation of Work Expenses

Generally, IRWE is deducted in the month paid. However, in certain circumstances, as discussed below, the individual is given a choice as to when the expenses will be deducted. Document the file to support the allocation of work expenses.

12.4.1. Expenses Paid While Working

12.4.1.1. Expenses Paid Prior to Receipt of Income

Begin deducting the amount paid in the first month income is received. Continue the deductions in subsequent months until the full amount of the expenses has been deducted.

12.4.1.2. Monthly Recurring Expenses

- **No down payment involved**

  Deduct the amount of a monthly recurring work expense in the month in which the expense is paid.

- **Down payment involved**

  - Have the individual decide whether the down payment is to be deducted in the month paid; **or** prorated over a consecutive 12-month period.

    - If the full down payment is to be deducted in the month paid, deduct it when paid.

    - If the down payment is being prorated, deduct 1/12 of it each month for 12 months beginning with the month in which it was paid.

12.4.1.3. Less Frequently Than Monthly

Have the individual decide whether the work expense is to be deducted in the month paid or prorated for the months in the billing period.

12.4.1.4. Daily/Weekly/Biweekly

- Use the submitted receipts, bills, etc., in conjunction with any allegation obtained to determine the number of days the expense is paid each month; **and** whether the expense fluctuates or remains the same.

- If the expense remains the same, multiply the amount of the expense by the number of days the expense is paid each month.

- If the expense fluctuates, add the individual amounts paid in each month.

Note: If the computation is being based on the individual's allegation, assume that the expense remains the same.

12.4.1.5. Expense Is One-Time Payment

Have the individual decide whether the work expense is to be:

- Deducted entirely in the month of payment; or

- Prorated over a consecutive 12-month period beginning with the month of payment.

12.4.1.6. Self-Employment

Deduct the work expenses related to a self-employment activity for an individual who is disabled and self-employed, provided the expenses were not used to compute the net earnings from self-employment (NESE). If it is to the person's advantage, prorate the work expenses over **all** the months of the tax year.

12.4.1.7. Documenting Allocation Decision

Obtain a signed statement to document the individual's decision regarding the allocation of expenses to one month or a 12-month period **only if** it would not be discernable from the file that the method of allocation is advantageous to the individual.

12.4.2. Expense Paid After Work Stops

12.4.2.1. Before Earned Income Stops

Deduct a work expense that is paid in a month after work has stopped from earned income received in a month after work has stopped only when:

- The income is based on work activity (e.g., not income received as a silent partner in a business); and
- The work activity was performed in a period when the individual required the item or service.

12.4.2.2. After Earned Income Stops

Deduct the work expense from the earned income received in the last month of work when:

- The work expense is paid in a month after the individual last worked and received earned income; and
- The payment was for an item or service used while working.

12.5. Verification

12.5.1. Allegation of IRWE

When a disabled individual's earned income exceeds $65 in any month, ask if he/she has IRWE. Record the individual's response by a statement describing the IRWE claimed or that no IRWE is alleged.

12.5.2. Verification And Documentation Of Impairment

Ask the person with a disability to explain for which impairment(s) the reported item or service is needed. For example, if the person alleges two impairments, and reports the use of two medical devices, four drugs, and a physician's treatment on a regular basis, record the person's understanding of which impairment is treated by each of the alleged items and services. Verify that the alleged impairment agrees with either:

- The DDS established medical basis of disability, and/or
- A disability supported by other medical records.

The medical records must establish the existence of an impairment that is being treated by a physician or other health care provider.

12.5.3. Verify The Need For An Item Or Service

- Accept an allegation, as **verification of need**, that a prescription drug is used to control the disabling condition, enabling the individual to function at work, when:
  - There is a paid bill for the drug; and
  - The information on the container indicates that:
  - A physician and a licensed pharmacist were involved in providing the drug; and
  - The drug is for the individual.
- Verify the need for other items or services by a statement from the individual’s physician or other authoritative source, that includes the following information:
  - The impairment(s) for which the person is being treated;
  - The item or service is necessary for the person to have the physical and/or mental capacity to perform the job duties as described, or to travel to and from work (describe job duties).

12.5.4. Verifying Cost Of An Item Or Service

- Accept the individual's allegation as to the recurring use and cost of an IRWE when:
  - At least one available receipt documenting the cost is submitted;
  - Additional receipts are unavailable for the recurring expense (e.g., hearing aid batteries, incontinence pads, etc.); and
  - The allegation of use is consistent with the nature of the expense (e.g., the individual states that he has only a couple of receipts for the box of 60 incontinence pads he buys every month as his condition requires him to use two pads a day).
- Document the file with photocopies of bills, receipts, etc., from the individual to verify other expenses.

  Accept the individual's allegation of the expense amount when:
  - Bills, receipts, etc., cannot be obtained (e.g., lack of receipts for food purchased for a dog guide, meals, transportation, etc.); **and**
  - The allegation appears reasonable.

13. List of Type and Amount of Deductible BWE and IRWE Expenses

The following chart provides guidance on types of expenses that are deductible as BWE, IRWE, or both, and the amount deductible. The chart is not intended to be all-inclusive. Refer to the manual to determine whether an expense, which is not listed, can be deducted as a work expense.

TYPE OF EXPENSE	DEDUCTIBLE AS		AMOUNT DEDUCTIBLE
	BWE	**IRWE**	
Attendant care services which are rendered in the: • home (with certain limitations as described below); • process of assisting an individual in making the trip to and from work; or • Work setting. This is applicable only to those services which can be shown to be needed to enable the person with a disability to work. Attendant care services can include services provided to help a person with a disability in performing the functions of his or her job, such as a reader or a job coach.	X	X	The amount paid.
Drugs and medical services which are essential to enable the individual to work (e.g., medication to control epileptic seizures)	X	X	The amount paid.

Expendable medical supplies **Examples:** • Bandages • Catheters • Face masks • Incontinence pads	X	X	The amount paid.
Federal, State and local income taxes and Social Security taxes	X		The amount withheld. Assume the amount withheld reflects the individual's tax liability.
Dog Guide	X	X	The cost of purchasing the dog and all associated expenses (e.g., its food, breast straps, licenses, veterinary services, etc.).
Fees **Examples:** • Licenses • Professional association dues • Union dues	X		The amount paid
Mandatory contributions **Examples:** • Pensions	X		The actual amount of the mandatory contribution.

• Disability			For example, mandatory pension contributions are considered reasonably attributable to earning income and, therefore, deductible. Voluntary pension contributions are considered savings plans and, as such, are life maintenance expenses and not deductible.
Meals consumed during work hours	X		The actual value of the meals whether bought during work hours or brought from home.
Medical devices **Examples:** • Braces • Inhalers • Pacemaker • Respirator • Wheelchair	X	X	The cost of the items plus maintenance and repair of such items whether the individual works at home or at the employer's place of business.
Non medical equipment/services **Examples:** • Air cleaners • Air conditioners • Child care costs	X	X*	The cost of the item plus maintenance and repair of such item whether the individual works at home or at the employer's place of business.

• Humidifiers • Portable room heaters • Posture chairs • Safety shoes • Tools used on the job • Uniforms			*To be deductible as an IRWE, the item or service must be impairment-related.
Other work-related equipment/services **Examples:** • Job coaching fees • One-handed typewriters • Special tools designed to accommodate an individual's impairment • Telecommunications devices for the deaf • Translation of materials into Braille • Typing aids (e.g. page turning devices) • Vision and sensory aids for the blind	X	X	The cost of the item plus maintenance and repair of such item whether the individual works at home or at the employer's place of business.

Physical therapy	X	X	The amount paid.
Prosthesis	X	X	The cost of the item plus maintenance and repair of such item.
Structural modifications to the individual's home to create a work space or to allow the individual to get to and from work.	X	X	The cost of the modifications.
Training to use an impairment-related item or an item which is reasonably attributable to work **Examples** • Braille • Cane travel • Computer program course for a computer operator • Grammar • Stenotype instruction for a typist • Use of one-handed typewriter • Use of special equipment	X	X	The cost of the training plus travel expenses to and from the training facility. Compute travel expenses to and from the training facility in the same manner as transportation to and from work (shown below in this chart).

<table>
<tr><td>

- Use of vision and sensory aids for the blind

NOTE: Training does not include general education courses.

</td><td></td><td></td><td></td></tr>
<tr><td>Transportation to and from work</td><td>X</td><td>X</td><td>

BWE

In own vehicle:

The standard mileage rate permitted by IRS for non-governmental business use.

<table>
<tr><td>IRS STANDARD MILEAGE RATE</td></tr>
<tr><td><u>Year - Cents Per Mile</u></td></tr>
<tr><td>2006 - 44.5</td></tr>
</table>

For other than in own vehicle: The actual cost of the bus, car pool, or cab fare.

</td></tr>
</table>

			IRWE **Unmodified Vehicle** If a person's impairment(s) prevents him or her from taking available public transportation and he or she must drive an unmodified vehicle to and from work, deduct a mileage allowance. IRS STANDARD MILEAGE RATE Year - Cents Per Mile 2006 - 44.5 No separate amount can be deducted for maintenance and repair of the automobile or van. A physician, Vocational Rehabilitation counselor, or other medical provider must verify the person's inability to use available public transportation.

			Other Transportation Situations If a person's impairment(s) prevents him or her from taking available public transportation and he or she must use driver assistance, taxis, or other hired vehicles to work, deduct amounts paid to the driver as IRWE
Vehicle modification	X	X	A person with a disability may have deductible transportation costs if his or her impairment(s) requires structural or operational modifications to a vehicle in order to drive or be driven to work. The modification must be critical to the operation or use of the vehicle, and must be directly related to the person's impairment(s). The cost of the modification, but not the cost of the vehicle, may be deducted as an IRWE. The maintenance and repair costs for the **impairment-related modification** may also be deducted as an IRWE, **but not the cost for maintenance and repair** of the automobile or van.

			A mileage allowance for the trip to and from work is also deductible. IRS STANDARD MILEAGE RATE Year - Cents Per Mile 2006 - 44.5

TABLE OF CONTENTS

NON-SSI INCOME SOURCES - INTRODUCTION **1**

1. WHAT IS INCOME **1**

2. RELATIONSHIP OF INCOME TO RESOURCES **2**

2.1. CONVERSION OR SALE OF A RESOURCE 2
2.1.1. Verification *2*

3. WHAT IS NOT INCOME **3**

4. TYPES OF INCOME **3**

4.1. EARNED INCOME 3
4.2. UNEARNED INCOME 4
4.3. STABLE VS. FLUCTUATING INCOME 4

5. VALUE OF INCOME **5**

5.1. CASH 5
5.2. REAL OR PERSONAL PROPERTY 5

6. WHEN INCOME IS COUNTED **5**

6.1. MAILING TIME/ DATE OF RECEIPT 5
6.1.1. Exceptions *5*

7. COUNTABLE INCOME (CI) **7**

7.1. DETERMINING COUNTABLE INCOME 7

8. INCOME VERIFICATION **10**

8.1. APPLICANT'S/RECIPIENT'S RESPONSIBILITY 10
8.1.1. Exception - Alleged Excess Income *10*
8.2. VERIFICATION PERIODS 10
8.2.1. Stable Income *11*
8.2.2. Fluctuating Income *11*
8.3. VERIFICATION SOURCES 11

9. PROJECTION OF INCOME **11**

9.1. STABLE INCOME 12
9.2. FLUCTUATING INCOME 12
9.2.1. Averaging Income *12*

10. ALIMONY AND SPOUSAL SUPPORT **13**

10.1. INCOME TREATMENT 13
10.2. VERIFICATION 13
10.2.1. Verification Not Available *14*

11. ANNUITY PAYMENTS **14**

11.1. INCOME TREATMENT 14

12. ASSISTANCE BASED ON NEED (ABON) **14**

12.1. INCOME TREATMENT 14
12.2. VERIFICATION 15

13. AWARDS **15**

13.1. INCOME TREATMENT 15

TABLE OF CONTENTS

13.2. VERIFICATION 15
13.2.1. Value Of Award 15

14. BILLS PAID BY A THIRD PARTY 16

14.1. INCOME TREATMENT 16
14.1.1. Exception - Third Party Payment To ALF/AFCH 16
14.2. VERIFICATION 16
14.2.1. Third Party Payment To ALF/AFCH 16
14.2.2. Other Third Party Payments 16

15. BLACK LUNG BENEFITS 17

15.1. INCOME TREATMENT 17
15.1.1. Countable BL Income 17
15.2. PAYMENT DATES 17
15.3. VERIFICATION 17

16. CAFETERIA BENEFIT PLANS 17

16.1.1. Qualified Benefits 18
16.1.2. Cash Received Under A Cafeteria Plan 18

17. CHILD SUPPORT PAYMENTS 18

17.1. MINOR CHILD 19
17.1.1. Income Treatment 19
17.2. ADULT CHILD 19
17.2.1. Current Adult Child Support 19
17.2.2. Adult Child Support Arrearages 19
17.3. ONE PAYMENT IS MADE FOR TWO OR MORE INDIVIDUALS 20
17.4. VERIFICATION 21

18. CIVIL SERVICE AND FEDERAL EMPLOYEE RETIREMENT PAYMENTS 21

18.1. INCOME TREATMENT 21
18.1.1. Certain Disability Benefits 22
18.1.2. Countable Civil Service and FERS Income 22
18.2. VERIFICATION 22

19. CREDIT LIFE OR CREDIT DISABILITY INSURANCE PAYMENTS 22

19.1. INCOME TREATMENT 23
19.2. VERIFICATION 23

20. DEATH BENEFITS 23

20.1. INCOME TREATMENT 24
20.1.1. Value 24
20.1.2. When To Count 24
20.2. VERIFICATION OF DEATH BENEFITS 24
20.3. LAST ILLNESS AND BURIAL EXPENSES 24
20.3.1. Verification Of Expenses 24

21. DISABILITY PAYMENTS 25

22. DISASTER ASSISTANCE 25

22.1. DECLARATION 25
22.2. SOURCE 25
22.2.1. Income Treatment 26

TABLE OF CONTENTS

22.3. VERIFICATION 26

23. DIVIDENDS AND INTEREST 26

23.1. INCOME TREATMENT 26
23.1.1. Interest Earned On Countable Resources 26
23.1.2. Interest Earned On Excluded Resources 26
23.2. VERIFICATION 27

24. DUPLICATE OR ERRONEOUS PAYMENTS 27

24.1. INCOME TREATMENT 27
24.1.1. Timely Return 27
24.1.2. Delayed Return 27
24.1.3. Not Returned 28

25. GAMBLING WINNINGS, LOTTERY WINNINGS AND OTHER PRIZES 28

25.1. INCOME TREATMENT 28
25.1.1. Choice Between Cash and In-Kind Item 28
25.1.2. Exclusions 29
25.2. VERIFICATION 29
25.2.1. Value 29

26. GIFTS 29

26.1. INCOME TREATMENT 29
26.1.1. Exception 30
26.2. VALUE OF GIFT 30
26.3. EXCLUSIONS 30
26.3.1. Gifts Used To Pay Tuition, Fees, Or Other Necessary Educational Expenses 30
26.3.2. Other Exclusions 30

27. GIFTS OF DOMESTIC TRAVEL TICKETS 31

27.1. INCOME TREATMENT 31
27.1.1. Gift of Domestic Travel Ticket Not Converted To Cash 31
27.1.2. Gift of Domestic Travel Ticket Converted to Cash 31
27.2. VERIFICATION 31

28. GIFT OF NON-DOMESTIC TRAVEL TICKET 31

28.1. INCOME TREATMENT 32
28.1.1. Cannot Be Converted To Cash 32
28.1.2. Can Be Converted To Cash 32
28.2. VERIFICATION 32

29. GRANTS, SCHOLARSHIPS, FELLOWSHIPS, AND GIFTS 32

29.1. INCOME TREATMENT 32
29.2. ASSISTANCE UNDER TITLE IV OF THE HIGHER EDUCATION ACT OF 1965 (HEA) OR BUREAU OF INDIAN AFFAIRS (BIA) 33
29.2.1. Interest And Dividends Earned On Title IV Of HEA Or BIA Educational Assistance 33
29.3. OTHER GRANTS, SCHOLARSHIPS, FELLOWSHIPS, AND GIFTS 34
29.3.1. Used For Paying Educational Expenses 34
29.3.2. Not Used Or Set Aside For Paying Educational Expenses 34
29.3.3. Set Aside Funds Used For Another Purpose 34
29.4. INTEREST AND DIVIDENDS EARNED ON EDUCATIONAL ASSISTANCE 35
29.5. DETERMINE COUNTABLE AND EXCLUDABLE AMOUNTS OF EDUCATIONAL ASSISTANCE 35

TABLE OF CONTENTS

30. EMERGENCY ASSISTANCE (EA) 37

30.1. INCOME TREATMENT 37
30.1.1. Exclusions 37
30.2. VERIFICATION 38

31. GARNISHMENT OR OTHER WITHHOLDING 38

31.1. KINDS OF WITHHOLDINGS 38
31.2. INCOME TREATMENT 39
31.2.1. Exclusions 39
31.3. VERIFICATION 39

32. HEALTH INSURANCE PAYMENTS 39

32.1. INCOME TREATMENT 39
32.2. VERIFICATION 39

33. HONORARIA 40

33.1. INCOME TREATMENT 40
33.1.1. Possible Exclusions 40
33.2. VERIFICATION 40

34. INCOME BASED ON NEED (IBON) 41

34.1. INCOME TREATMENT 41
34.1.1. Exclusions 41
34.2. VERIFICATION 41

35. INCOME TAX REFUNDS 42

35.1. VERIFICATION 42

36. INHERITANCES 42

36.1. INHERITANCE ALREADY A RESOURCE 42
36.2. INCOME TREATMENT 42
36.2.1. Date of Receipt 43
36.2.2. Value 43
36.3. VERIFICATION 43

37. IN-KIND SUPPORT AND MAINTENANCE 43

38. JOINT BANK ACCOUNTS - INCOME DERIVED FROM 44

38.1. INCOME TREATMENT 44
38.1.1. Joint Bank Account Is Held By An AG Recipient And An Ineligible Individual 44
38.1.2. Joint Bank Account Is Held By Multiple AG Recipients 44
38.2. EXCLUSIONS 45
38.3. OWNERSHIP REBUTTAL 45
38.3.1. Rebuttal Verification 45
38.3.2. Rebuttal Results 45
38.4. VERIFICATION 46

39. JURY FEES 46

39.1. INCOME TREATMENT 46
39.2. VERIFICATION 46

40. LIFE INSURANCE – ACCELERATED PAYMENTS 47

TABLE OF CONTENTS

40.1. RESOURCE VALUE 47

41. LIFE INSURANCE PROCEEDS 47

42. LOAN PROCEEDS 47

42.1. BONA FIDE AGREEMENT 48
42.2. INCOME TREATMENT 49
42.2.1. Bona Fide Loan 49
42.2.2. Loan Not Bona Fide 49
42.2.3. Interest On A Loan 49
42.3. BUYING ON CREDIT 49
42.4. VERIFICATION 49
42.4.1. Forms 49

43. LOW INCOME ENERGY ASSISTANCE 50

43.1. INCOME TREATMENT 50
43.1.1. Exclusion 50
43.2. VERIFICATION 50

44. MEDICAL AND SOCIAL SERVICES RELATED CASH 50

44.1. CASH RECEIVED FROM A GOVERNMENTAL PROGRAM 50
44.1.1. Verification 51
44.2. CASH RECEIVED FROM A NON-GOVERNMENTAL PROGRAM 51
44.2.1. Verification 51

45. MILITARY PENSIONS 52

45.1. CATEGORIES OF BENEFICIARIES 52
45.2. TYPES OF ANNUITANTS 52
45.3. INCOME TREATMENT 53
45.3.1. Exception 53
45.4. VERIFICATION 53
45.4.1. Contacting the Military Finance Centers 53

46. OTHER IN-KIND INCOME 54

47. OVERPAYMENTS OF ANNUITIES, RETIREMENT, AND DISABILITY BENEFITS 54

47.1. TYPES OF INCOME AFFECTED 55
47.2. INCOME TREATMENT 55
47.2.1. Exception - Double Counting 55
47.2.2. Unable To Determine If Exception Applies 58
47.2.3. Multiple Overpayments 58

48. PROGRAMS FOR OLDER AMERICANS 59

48.1. INCOME TREATMENT 59
48.1.1. Wage or Salary 59
48.1.2. Not a Wage or Salary 60

49. RAILROAD RETIREMENT (RR) PAYMENTS 60

49.1. IDENTIFYING RECEIPT 61
49.2. INCOME TREATMENT 61
49.3. LIFE AND SURVIVOR ANNUITIES 61
49.3.1. Verification 61
49.4. SOCIAL SECURITY BENEFITS CERTIFIED BY RRB 62

TABLE OF CONTENTS

49.4.1. Verification 62
49.5. UNEMPLOYMENT, SICKNESS, AND STRIKE BENEFITS 62
49.5.1. Verification 62

50. REAL OR PERSONAL PROPERTY (OTHER IN KIND INCOME) 62

50.1. INCOME TREATMENT 63
50.1.1. Exception - Items That Will Be An Excluded Resource 63
50.1.2. Value 63

51. REBATES AND REFUNDS 64

51.1. INCOME TREATMENT 64
51.2. VERIFICATION 64
51.2.1. Questionable Situation 64

52. REFUGEE AND CUBAN AND HAITIAN ENTRANT CASH ASSISTANCE 64

52.1. INCOME TREATMENT 65
52.1.1. Exclusions 65
52.1.2. Payment To Family Unit Or Group 65
52.2. VERIFICATION 65

53. RENTAL INCOME 65

53.1. INCOME TREATMENT 66
53.1.1. Rental Deposits 66
53.1.2. Computation 66
53.1.3. Deductible Expenses 67
53.1.4. Nondeductible Expenses 68
53.1.5. Proration Of Expenses 68
53.1.6. Joint Owners 69
53.2. VERIFICATION 69
53.3. REFUNDS ON PAID EXPENSES 70

54. REPAIR/REPLACEMENT PAYMENTS FOR LOST, DAMAGED OR STOLEN RESOURCES 70

54.1. VERIFICATION 70

55. REPLACEMENT OF INCOME ALREADY RECEIVED 70

55.1. VERIFICATION 70

56. RETIREMENT FUNDS 71

56.1. RESOURCE OR INCOME 71
56.1.1. Periodic Payments 71
56.1.2. Lump Sum Payments 72
56.2. VERIFICATION 72

57. ROYALTIES 72

57.1. INCOME TREATMENT 72
57.1.1. When Royalties Are Earned Income 72
57.1.2. When Royalties Are Unearned Income 73
57.1.3. Gross vs. Net Income 73
57.2. VERIFICATION 73

58. SELF-EMPLOYMENT (NESE) 74

58.1. INCOME TREATMENT 74

TABLE OF CONTENTS

59. SHELTERED WORKSHOP WAGES 74

59.1. INCOME TREATMENT 75

60. SICK PAY/SICK LEAVE 75

60.1. ANNUAL AND SICK LEAVE PAYMENTS 75
60.1.1. Income Treatment 75
60.2. SICK PAY (OTHER THAN ANNUAL/SICK LEAVE) 75
60.2.1. Income Treatment 75
60.2.2. Verification 77

61. SOCIAL SECURITY ADMINISTRATION (SSA) BENEFITS 78

61.1. INCOME TREATMENT 78
61.1.1. Worker's Compensation Offset 78
61.1.2. Prior Overpayment 78
61.1.3. Supplementary Medical Insurance (SMI) Premiums 78
61.1.4. Garnishment of Title II Benefits 78
61.2. VERIFICATION 79
61.3. WHEN TO COUNT RETROACTIVE RSDI BENEFITS 79

62. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) 79

62.1. INCOME TREATMENT 79
62.1.1. Exclusions 79
62.2. VERIFICATION 79

63. TIPS 80

63.1. INCOME TREATMENT 80
63.2. VERIFICATION 80

64. TRUST DISBURSEMENTS 80

64.1. TRUST PRINCIPAL IS NOT A RESOURCE 80
64.1.1. Disbursements Which Are Income 80
64.1.2. Disbursements Which Are Not Income 81
64.2. TRUST PRINCIPAL IS A RESOURCE 81

65. TRUST EARNINGS AND ADDITIONS 81

65.1. TRUST PRINCIPAL IS NOT A RESOURCE 81
65.1.1. Trust Earnings 81
65.1.2. Additions to Principal 82
65.2. TRUST PRINCIPAL IS A RESOURCE 82
65.2.1. Trust Earnings 82
65.2.2. Additions to Principal 83

66. VA AID AND ATTENDANCE AND HOUSEBOUND ALLOWANCES 83

66.1. INCOME TREATMENT 83
66.2. VERIFICATION 83

67. VA APPORTIONED BENEFITS 83

67.1. INCOME TREATMENT 84
67.2. CHILD 84
67.3. DEPENDENT 84
67.4. VERIFICATION 84

TABLE OF CONTENTS

68. VA AUGMENTED BENEFITS 84

68.1. INCOME TREATMENT 85
68.1.1. Portion Given To Absent Dependent 85
68.2. VERIFICATION 85

69. VA CLOTHING ALLOWANCE 86

69.1. INCOME TREATMENT 86
69.2. VERIFICATION 86

70. VA COMPENSATION AND PENSION PAYMENTS 86

70.1. COMPENSATION PAYMENTS 86
70.2. PENSIONS PAYMENTS 86
70.3. INCLUSION OF OTHER PAYMENTS 87
70.3.1. Verification Of Other Payments 87
70.4. FREQUENCY OF RECEIPT 87
70.5. INCOME TREATMENT 87
70.5.2. Payments Not Based On Need 88
70.6. RECOUPMENT OF SEVERANCE PAY DEDUCTION 88
70.7. VERIFICATION 89
70.8. PROCEDURE 89

71. VA EDUCATIONAL BENEFITS 93

71.1. INCOME TREATMENT 93
71.2. WHAT IS NOT INCOME 94
71.2.1. Vocational Rehabilitation 94
71.2.2. Withdrawal of Contributions 94
71.2.3. Augmented Benefits 94
71.3. CONTRIBUTORY/NON-CONTRIBUTORY PROGRAMS 94
71.3.1. "Contributory" Programs 94
71.3.2. "Non-Contributory" Programs 95
71.4. FREQUENCY OF PAYMENT 95
71.5. EXCLUSIONS 95
71.5.1. Tuition, Fees, and Other Necessary Educational Expenses 95
71.5.2. Other Exclusions 96

72. VA UNUSUAL MEDICAL EXPENSES PAYMENT 96

72.1. INCOME TREATMENT 96
72.2. RESOURCES 97
72.3. VERIFICATION 97

73. VETERANS' CHILDREN WITH CERTAIN BIRTH DEFECTS PAYMENTS 97

73.1. CHILD 97
73.2. EXCLUSION 97
73.3. VERIFICATION 97

74. VICTIMS' COMPENSATION PAYMENTS 98

74.1. EXCLUSION 98
74.2. VERIFICATION 98

75. WAGES 98

75.1. WAGES MAY TAKE THE FORM OF: 98
75.2. INCOME TREATMENT 99

TABLE OF CONTENTS

75.2.1. Wage-Related Payments 99
75.3. WHEN TO COUNT 100
75.3.1. Wage Advances And Deferred Wages 100
75.4. VERIFICATION 101
75.4.1. Verification Not Required 101
75.4.2. Verification Required 101
75.4.3. Verification Periods - Applications and Redeterminations 102
75.4.4. Primary Verification of Wages 102
75.4.5. Secondary Evidence of Wages 103
75.4.6. Verification Is Questionable 103
75.4.7. Verification Of Termination Of Wages 103
75.4.8. No Acceptable Evidence of Wages Or Termination Of Wages 103

76. WORKER'S COMPENSATION (WC) 104

76.1. INCOME TREATMENT 104
76.2. EXPENSES OF OBTAINING WC 104
76.2.1. Amounts Designated for Expenses by Authorizing or Paying Agency 104
76.2.2. Other Amounts Claimed for Expenses 104
76.3. VERIFICATION 105
76.3.1. Verifying Amounts Designated as Expenses by Authorizing or Paying Agency 105
76.3.2. Verifying Other Amounts Claimed for Expenses 105

Non-SSI Income Sources - Introduction

An individual's monthly income is one of the factors which determine his/her eligibility for AG and the amount of AG benefits he/she will receive. Income eligibility is determined by totaling an individual's income, subtracting permitted exclusions and comparing the result to the appropriate AG rate for the area in which the ALF/AFCH is located. Income eligibility and the grant payment amount are determined in the same step. See Grant Computation Chapter J.

This chapter addresses the types of earned income and unearned income that a **non-SSI** individual may receive and how each of those types are evaluated and counted in determining the individual's AG eligibility. This chapter is organized to present general information regarding income first and detailed instructions on specific income types second. **General** information is presented in **Sections 1 through 9** and specific income types are presented in **alphabetical order** in **Sections 10 through 70**. Exclusions that apply to specific income types are addressed in the sections that apply to the specific income type. General exclusions that apply to multiple types of earned or unearned income are addressed in Chapter H.

Note: This chapter DOES NOT apply when evaluating an SSI recipient's income eligibility or payment. See Chapter D.

Note: If an identified source of income is not addressed in this chapter, contact the AG consultant for guidance. The consultant will review the SSI manual and provide clarification.

http://policy.ssa.gov/poms.nsf/subchapterlist!openview&restricttocategory=05008

1. What Is Income

Income is **any item** an individual receives in **cash or in real or personal property** that can be used to meet his or her need for food or shelter. This includes the receipt of any item which can be applied, either directly or by sale or conversion, to meet basic needs of food or shelter.

Income may be received in either of two forms:

- **Cash**—Currency, checks, money orders, or electronic funds transfers (EFT), such as:
  - Social security checks
  - Unemployment compensation checks
  - Payroll checks or currency

- **Property (Other In-Kind Income)**

  Non-cash items such as:

  - Real property
  - Personal property

2. Relationship of Income to Resources

An item received in the current month is income for the current month only. If held by the individual until the following month, that item is subject to resource counting rules.

Example

Mr. Jones receives a dividend check for $300 at the end of May. He spends $150 immediately and deposits the remaining $150 in his savings account. His income for May is $300. The June 1 evaluation of Mr. Jones' resources includes (for the first time) the $150 he saved.

2.1. Conversion Or Sale Of A Resource

Not Income

When a resource is sold, exchanged, or replaced, one resource has been exchanged for another. The item received is evaluated as a resource.

Receipts from the sale, exchange, or replacement of a resource are **not income** but are resources that have changed their form. This includes any cash, real property or personal property that is provided to replace or repair a resource that has been lost, damaged, or stolen.

Example

Jerry Wallace sells his 1974 Plymouth Satellite for $300. The money he receives is not income but a resource which has been converted from one form (a car) to another form (cash).

2.1.1. Verification

Verification of the conversion and the new resource is required for resource evaluation. See the chapter that addresses the new resource type.

3. What Is Not Income

Some items received by an individual are **not income** because they do not meet the definition of income. An item received is not income if it cannot be used or sold to obtain food or shelter. The following items are **not income**.

Bills Paid By a Third Party – Exception: Payments made to an ALF/AFCH

Conversion or Sale of a Resource

Credit Life or Credit Disability Insurance Payments

Food or Shelter

Income Tax Refunds

Medical and Social Services Related Cash

Personal Services

Proceeds of a Loan

Rebates and Refunds

Replacement of Income Already Received

Return of Erroneous Payments

Weatherization Assistance

Each of these types is addressed in a section within this chapter.

4. Types of Income

Income is either **earned or unearned**, and different rules apply to each.

4.1. Earned Income

Earned income consists of the following types of payments:

- **Wages**

- Wages are what an individual receives (before any deductions) for working as someone else's employee.

- **Net Earnings From Self-Employment**
- **Payments For Services Performed In A Sheltered Workshop Or Work Activities Center**
- **Royalties** earned by an individual in connection with any publication of his/her work and
- **Honoraria** received for services rendered.

4.2. Unearned Income

Unearned income is all income that is not earned income. Some types of unearned income are:

- Annuities, Pensions, And Other Periodic Payments
- Alimony And Support Payments
- Dividends, Interest, And Royalties (Except For Royalties Mentioned Above)
- Rents
- Benefits Received As The Result Of Another's Death
- Prizes And Awards
- Real And Personal Property

4.3. Stable Vs. Fluctuating Income

Stable income is income that does not vary in amount from month to month. Fluctuating income is income that varies in amounts or frequency of receipt from month to month. This distinction impacts how often income is verified and reconciled and the methods used for anticipating future income.

- Unearned income may be stable or fluctuating. It is stable if the amount and frequency of receipt is the same each month.
- Earned income is always evaluated as fluctuating income.

5. Value Of Income

5.1. Cash

The value of cash income is generally the amount of the currency or the face value of checks, money orders or electronic fund transfers (EFT) the individual receives.

5.2. Real Or Personal Property

Any item of real or personal property an individual receives which he can sell or convert is called "other in-kind income." The value of other in-kind income is generally equal to its current market value. See the resource chapter that addresses the type of property received to determine the current market value of the item.

6. When Income Is Counted

Income is counted at the **earliest** of the following points:

- When it is received; or,
- When it is credited to an individual's account; or
- When it is set aside for his or her use.

Determine countable income monthly and count it in the month it is received.

6.1. Mailing Time/ Date Of Receipt

When a payment is mailed, assume that the payment is received 5 days after the mailing date unless the individual alleges a different date, in which case accept any credible allegation.

6.1.1. Exceptions

Occasionally, a regular periodic payment (e.g., wages, title II, or VA benefits) is received in a month other than the month of normal receipt. As long as there is no intent to interrupt the regular payment schedule, consider the funds to be income in the normal month of receipt.

The most common situations where this applies appear below.

6.1.1.1. Advance Dated Checks

When a payer advance dates a check because the regular payment date falls on a weekend or holiday, there is no intent to change the normal delivery date or to disrupt the existing relationship between check receipt and AG benefits.

Whenever such an advance dated check is received, consider it income to the recipient in the month of normal receipt.

6.1.1.2. Electronic Funds Transfer (EFT)

When an individual's money goes to a bank by direct deposit, the funds may be posted to the account before or after the month they are payable.

Whenever this occurs, treat the electronically transferred funds as income in the month of normal receipt.

6.1.1.3. Documentation

When income is counted in a month other than the month that evidence in the file shows the income was actually received, document the file with the reason.

Example: A company sends out its retirement pension checks so that they arrive on the first day of each month. However, because January 1, 2006 is a holiday, the checks are delivered on December 30, 2005. The AG claimant brings in his pension check as evidence of his income, and explains that he also received a pension check on December 1.

The worker determines that the amount of the December 30 check is income in the normal month of receipt (January 2006) and documents that the check is counted as income for January rather than December because the normal delivery date was a holiday.

7. Countable Income (CI)

Countable income is the total amount of earned and unearned income remaining after:

- Eliminating all amounts that are **not income**; and
- Applying all appropriate **exclusions** to the individual's gross income.

7.1. Determining Countable Income

Use this procedure to determine the individual's total countable income.

STEPS	Determining Countable Income ACTIONS
Step 1	**Does the individual have unearned income?** **Yes** – Go to Step 2 **No** – Go to Step 9
	Calculate The Countable Unearned Income. **The Unearned Income Exclusions Must be Applied In The Following Order**
Step 2	Exclude unearned income items that are defined as **Not Income**. These are identified in the section that addresses the specific income.
Step 3	Apply the exclusions that are specific to each income type. These are identified in the section that addresses the specific income. (Example – Exclude the portion of educational grants that are used for educational expenses.)
Step 4	Apply the **Infrequent Or Irregular Exclusion**. (A max of $60 of unearned income may be excluded in a quarter)

STEPS	Determining Countable Income ACTIONS
	Do not apply the infrequent or irregular exclusion to an amount remaining after another exclusion has been applied to a particular type of income (e.g., the remaining amount of educational grants after the educational expenses have been excluded).
Step 5	Deduct the **Expenses Of Obtaining Unearned Income** from the related income
Step 6	Total the unearned income.
Step 7	Apply the **$20 General Income Exclusion**.
Step 8	The result is the **countable unearned income**. Does the individual have earned income? **Yes** – Go to Step 9 **No** – Go to Step 19
	Calculate The Countable Earned Income. **The Earned Income Exclusions Must be Applied In The Following Order**
Step 9	Apply the exclusions that are specific to the type of income being received. These exclusions are in the section that addresses each income type.
Step 10	Apply the **Infrequent Or Irregular Exclusion**. (A max of $30 earned income may be excluded in a quarter)
Step 11	Total the earned income.

STEPS	Determining Countable Income ACTIONS
Step 12	Deduct any portion of the **$20 Monthly General Income Exclusion** which was not used to exclude unearned income in the same month
Step 13	Deduct **$65 of Earned Income** in a month
Step 14	Deduct the **Impairment-Related Work Expenses (IRWE) Of Disabled Individuals**
Step 15	Deduct **One-half** of remaining earned income in a month
Step 16	Deduct the **Blind Individuals (BWE) Work Expenses**
Step 17	The result is the **total earned income.**
Step 18	Total the countable earned and unearned income.
	The Combined Income Exclusions Must be Applied In The Following Order
Step 19	Deduct the **Community Expenses Exclusion**
Step 20	Does the individual have a spouse and a minor child or a minor child at home? **Yes -** Deduct the **Spouse and Child/Child At Home Exclusion.** Go to Step 22. **No** – If the individual has a spouse but no child at home go to Step 21. If the individual does not have either a spouse or child at home, go to Step 22.
Step 21	Deduct the **Spouse At Home Exclusion**

STEPS	Determining Countable Income ACTIONS
Step 22	Deduct the **Guardianship Fee Exclusion**
Step 23	**Total the countable earned and unearned income.** **The result is the total countable income to be used in determining AG eligibility and the payment amount.**

8. Income Verification

Income must be verified at initial application, when changes occur, at redetermination, and periodically throughout the life of the case.

8.1. Applicant's/Recipient's Responsibility

Applicants and recipients (or their representative payees) are responsible for providing the worker with proof of income and for reporting any changes in income. The worker will help individuals to obtain any needed documents they do not have. However, if neither the individual nor the worker can obtain the verifications, the application will be denied/closed.

8.1.1. Exception - Alleged Excess Income

If the applicant declares total income in excess of the ALF/AFCH Limit (the ALF/AFCH rate plus the personal needs allowance), use the declaration to complete an income computation allowing all appropriate disregards. If income ineligibility exists, no further verification is needed. Deny the case due to excess income. If the computation shows that income eligibility may possibly exist, request all needed verifications, and process as normal.

8.2. Verification Periods

The individual must verify the actual amount of income he/she received within the verification period. The verification period is determined by the stability of the amount of income received.

8.2.1. Stable Income

To meet the definition of stable income, the source and amount received must be the same each month.

The verification period for stable income is the month prior to the month of application/redetermination or the month the income is reported.

8.2.2. Fluctuating Income

To meet the definition of fluctuating income, the source or amount received must vary from month to month.

The verification period for fluctuating income will be the three months prior to the month of application/redetermination/change and every three months throughout the period the fluctuating income is received.

The total monthly countable income received in the verification period is averaged and used to project future months' income.

If the income received in the three month verification period is not representative of the income expected to be received, the worker will work with the client to determine the period that will give the best reflection. That period will be the verification period. Documentation in the case record must include how the verification period was determined.

Note: All earned income is considered fluctuating income.

8.3. Verification Sources

See the instructions for the particular type of income involved for additional verification requirements and appropriate verification sources.

9. Projection Of Income

Ongoing AG payments are issued at the first of the month to cover the individual's needs for the issuance month. This early issuance cycle requires that the payment be based on projected income. Income received in a prior period is used to predict what the individual will receive in the future. The prior period is the verification period.

Income is projected for future months beginning with the month of application or the month the income is reported. If a change occurs and is verified during the projection period, the projected income must be recomputed.

This information is applicable to both earned and unearned income.

Note: All payments that are issued based on projected income must be reconciled periodically. Reconciliation of prior payments is using the actual income received to recalculate the payment amount for each month for which a projected amount of income was used and correcting any over or underpayments that occurred. Reconciliation guidelines are in Chapter J – Grant Computation and Issuance.

9.1. Stable Income

The total monthly countable income received in the verification period will be used as the amount projected to be received for each month until the next redetermination or until a change is reported. If a change occurs and is verified during the projection period, the projected income must be recomputed.

Note: The actual income is **not** converted to a monthly figure based on 4.3 weeks.

9.2. Fluctuating Income

Actual income received in the verification period is used to project future fluctuating income by averaging the income received and converting it to a monthly figure. That figure is the monthly countable income and will be used as the amount projected to be received for each of the next four months. If a change occurs and is verified during the projection period, the projected income must be recomputed.

9.2.1. Averaging Income

- Determine the frequency of payments.
- Total the verified income and divide it by the number of payment periods in the verification period.
- The result is the average income per payment period.

- Convert the average payment period amount to a monthly average by multiplying it by the conversion factor that corresponds to the frequency of the payment period (weekly, bi-weekly, etc). The average monthly payment is the amount that will be used as the projected income.

9.2.1.1. Conversion Factors

For projection purposes, an average month is 4.3 weeks. To convert to monthly income:

- Multiply weekly income by 4.3; or
- Multiply biweekly income by 2.15, or
- Multiply semi-monthly income by 2.

10. Alimony And Spousal Support

Unearned Income

Alimony or spousal support (sometimes called "maintenance") is an allowance for support made by a court from the funds of one spouse to the other spouse in connection with a suit for separation or divorce or support may be made voluntarily.

Alimony and spousal support payments are cash or certain in-kind contributions to meet some or all of a person's needs for food, clothing, or shelter.

10.1. Income Treatment

Alimony and spousal support payments made in cash or real or personal property are **unearned income** to the individual and are subject to the unearned and general income exclusions.

10.2. Verification

Verify the amount and frequency of alimony or spousal support payments. Accept the individual's allegation of relationship of the payer to the payee unless you doubt the allegation.

Verification may include:

- Court records;
- Records of the agency through which the payments are made;
- Official documents in the individual's possession (e.g., legal documents) that establish the amount and frequency of the support;
- A statement from the source of the payment containing the amount and frequency of the alimony or spousal support.

10.2.1. Verification Not Available

If none of the above verifications is available, accept the individual's signed allegation over a penalty clause.

11. Annuity Payments

Unearned Income

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. An annuity is a contract reflecting payment to an insurance company, bank or other registered or licensed entity by which one receives fixed, non variable payments on an investment for a lifetime or a specified number of years.

11.1. Income Treatment

See Chapter I – 56, Retirement Funds to determine the countability of annuities.

12. Assistance Based On Need (ABON)

Excluded Income

ABON is assistance:

- Provided under a program which uses income as a factor of **eligibility;** and
- Funded **wholly** by a State (including the District of Columbia, Indian tribes and the Northern Mariana Islands), a political subdivision of a State, or a combination of such jurisdictions
  - Example - General Relief **Note:** If a program uses income to determine payment amount but not eligibility, it is not ABON (e.g., some crime victims' compensation programs).

12.1. Income Treatment

Assistance based on need is totally excluded from income.

12.2. Verification

- Use **documents** in the individual's possession or contact the administering agency to **determine** the program under which the assistance is provided.
- **Verify** with agency personnel and/or program descriptions that no Federal or private funds are involved and that the program uses income in arriving at eligibility determinations.

  Note: If evidence establishes that the assistance is excludable under this provision, it is not necessary to verify the amount of assistance and when it was received.

13. Awards

Unearned Income

An award is usually something received as the result of a decision by a court, board of arbitration, or the like.

13.1. Income Treatment

An award received in cash or in real or personal property is unearned income and is subject to the unearned and general income exclusions.

13.2. Verification

Use documents in the individual's possession or contact with the court, board, source, etc. to verify:

- The amount of the award;
- The payment date; and,
- The purpose(s) of the payment (e.g., part of the payment is reimbursement for medical expenses).

13.2.1. Value Of Award

Accept an individual's signed estimate of the value of the award (or actual value if cash) unless you have reason to doubt the estimate. If you doubt the estimate, determine the item's current market value (CMV) with an independent source.

14. Bills Paid By A Third Party

Not Income/Unearned Income

A third party payment is payment of an individual's bills (including supplementary medical insurance under title XVIII or other medical insurance premiums) by a third party with the third party's funds when the payment is made directly to the supplier.

14.1. Income Treatment

With one exception, payment of an individual's bills by a third party directly to the supplier is **not income**.

Example

Joshua Hall, an AG recipient, is unable to pay his phone bill so his sister pays the phone company with her own money. The payment to the phone company is not income.

14.1.1. Exception - Third Party Payment To ALF/AFCH

Any money paid to the ALF/AFCH home to cover any of the individual's needs is counted as unearned income to the individual. As such, the income is subject to the unearned and general income exclusions.

14.2. Verification

14.2.1. Third Party Payment To ALF/AFCH

Use documentation in the individual's possession or contact the source of the payment to verify the type, source, frequency, and amount of payment.

14.2.2. Other Third Party Payments

Verification is not required, unless questionable. If questionable, use documentation in the individual's possession or contact the source of the payment to verify the type and source of payment.

15. Black Lung Benefits

Unearned Income

Black Lung (BL) benefits are paid to miners and their survivors under the provisions of the Federal Mine Safety and Health Act (FMSHA). Benefits under **Part B** of the FMSHA are paid by the **Social Security Administration** (SSA) and benefits under **Part C** of the FMSHA are paid by the **Department of Labor** (DOL).

15.1. Income Treatment

BL benefit payments are unearned income and are subject to the unearned and general income exclusions.

15.1.1. Countable BL Income

The amount of the BL benefit to count as income is the amount paid after application of an offset (i.e., workers' compensation offset or work deductions) but before the collection of any obligations of the individual (unless the overpayment related double counting exception applies. See Overpayments – Section 37 of this chapter).

15.2. Payment Dates

In general, Part B benefits are paid on the third of the month while Part C benefits are paid on the fifteenth of the month.

15.3. Verification

Verify the receipt of Part B or Part C BL benefits with the individual's own records (such as an award notice or check).

16. Cafeteria Benefit Plans

Not Income/Earned Income

A cafeteria plan is a written benefit plan offered by an employer in which participants can choose cafeteria-style, from a menu of two or more cash or qualified benefits.

Income Treatment

16.1.1. Qualified Benefits

A qualified benefit is **not income**. Qualified benefits include, but are not limited to:

- Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);
- Group term life insurance plans;
- Dependent care assistance plans; and
- Certain stock bonus plans under section 401(k)(2) of the IRC (but not 401(k)(1) plans).

16.1.1.1. Verification

Verification is not required.

16.1.2. Cash Received Under A Cafeteria Plan

Cash received under a cafeteria plan **in lieu of benefits** is **wages** and is subject to the earned and general income exclusions. Evaluate as wages. See Chapter I – 75.

Cash received as **reimbursement** for qualified-benefit expenses, such as child care, is **not income.**

16.1.2.1. Verification

The cash paid will be reflected in the total gross income. See Wages Chapter I – 75 for verification methods.

17. Child Support Payments

Unearned Income

A child support payment is a payment from a parent to or for a child to meet the child's needs for food, clothing, and shelter. Child support can be in cash or in-kind. It can be voluntary or court-ordered.

17.1. Minor Child

A child is an individual's son or daughter who is neither married nor head of a household and:

- Under age 18; or
- Under age 22 and a student regularly attending school or college or training that is designed to prepare him/her for a paying job.

17.1.1. Income Treatment

Child support payments (including arrearage payments) made on behalf of a child (as defined above) are unearned income to the **child** and are subject to the unearned and general income exclusions. They are not income to the parent.

17.2. Adult Child

An adult child is an individual's son or daughter who no longer meets the definition of a child.

17.2.1. Current Adult Child Support

Current child support is support paid for the adult child's current needs. It is unearned income and is subject to the unearned and general income exclusions.

17.2.1.1. Income Treatment

Child support payments (excluding arrearages) received for an adult child by a parent after an adult child stops meeting the definition of a child are **income to the adult child**. The support payments are income to the adult child **whether or not** the adult child lives with the parent or **receives** any of the child support payment from the parent.

17.2.2. Adult Child Support Arrearages

A child support arrearage payment is a payment that was due but not paid in a timely manner for the appropriate period. It is being paid to comply with an unfulfilled past obligation to support the child.

17.2.2.1. Income Treatment

When a parent receives a child support **arrearage** payment on behalf of an adult child:

- Any amount of that payment that the parent receives and does not give to the adult child is income to the **parent**. The portion of the arrearage payment retained by the parent is not income to the adult child, and would not affect the adult child's AG eligibility.

- Any amount of the payment that the parent gives to the adult child is income to the **adult child** in the month given, not income to the parent.

- When an adult child receives a child support arrearage payment directly from the absent parent, the arrearage payment is income to the **adult child**.

Example:

A non-custodial father pays child support on behalf of his 19 year old disabled son who lives in an ALF. The son is considered an adult child. The former custodial mother receives a $100 child support payment. The $100 child support payment consists of both a current payment of $75 and $25 to pay for an arrearage. The mother keeps the child support arrearage payment of $25, and gives her son his current $75 child support payment. The arrearage payment is unearned income to the mother. The current child support payment is unearned income to the adult child.

17.3. One Payment Is Made For Two or More Individuals

Apply the following procedures when a single support payment (e.g., one check) is made for two or more persons.

- Review the legal document that describes the support payments. If the legal document states the amount of each person's share, divide the payment according to the terms of the document. If the legal document does not indicate the amount of each person's share, divide the payment equally.

- If no legal document exists, contact the source of the payment to establish intent and allocate the support payment according to that intent.

- If contact with the source is not successful, accept the individual's signed allegation about who the support is for and how the support should be allocated. If the individual cannot tell you how the support payment should be allocated, divide the payment equally among the intended recipients.

17.4. Verification

Verify the amount and frequency of child support payments.

Evidence includes:

- Court records;
- Records of the agency through which the payments are made;
- Official documents in the individual's possession (e.g., legal documents) that establish the amount and frequency of the support;
- Report of contact with the source of the payment containing the amount and frequency of the support.

  If none of the above evidence is available, accept the individual's signed allegation over a penalty clause.

18. Civil Service And Federal Employee Retirement Payments

Unearned Income

The Office of Personnel Management (OPM) makes U.S. Civil Service and Federal Employee Retirement System (FERS) payments because of disability, retirement, or death.

18.1. Income Treatment

In general, U.S. Civil Service and FERS payments are **unearned income** to the entitled retiree or individual survivor and are subject to the unearned and general income exclusions.

Note: These payments are unearned income to the individual who is entitled to the payment, even when additional monies for other family members are included in the payment.

18.1.1. Certain Disability Benefits

Certain disability benefits paid within the first 6 months after an employee last worked are **earned income**. See Sick Pay Chapter I – 60 for an explanation of benefits falling under this exception.

18.1.2. Countable Civil Service and FERS Income

The amount of the Civil Service and FERS payments to count as income is the amount before the collection of any obligations of the individual (unless the overpayment related double counting exception applies. See Overpayments Chapter I – 47)

18.2. Verification

To verify the **gross** amount of the OPM payment, use notices or other documents in the individual's possession (other than a check). Do not use a check alone to verify the amount of the OPM payment because a check is not reliable evidence of the gross amount.

If the individual has no acceptable documents, instruct him/her to write or telephone OPM. The individual must provide his/her name and annuity claim identification number (a seven-digit number with a “CSA” or “CSF” prefix). If the claim number is not available, provide the individual's date of birth and Social Security number.

The OPM telephone number is (724) 794-2005 or, toll-free, (888) 767-6738. Send written inquiries to:

Office of Personnel Management
Retirement Operations Center
P.O. Box 45
Boyers, PA 16017

19. Credit Life Or Credit Disability Insurance Payments

Not Income

Credit life and credit disability insurance policies are issued to or on behalf of borrowers, to cover payments on loans, mortgages, etc. in the event of death or disability. These insurance payments are made directly to loan or mortgage companies, etc. and are not available to the individual.

19.1. Income Treatment

Payments made under a credit life or credit disability insurance policy on behalf of an individual are **not income**.

19.2. Verification

Verification is not required, unless questionable. If questionable, use documentation in the individual's possession or contact the source of the payment to verify the type and source of payment.

20. Death Benefits

Unearned Income

A death benefit is something received as the result of another's death. The AG application and redetermination forms do not ask specifically about death benefits. Be alert for situations where further questioning about death benefits is advisable.

Examples of death benefits include:

- Proceeds of life insurance policies received due to the death of the insured;
  - Life insurance proceeds received as a result of the death are not a converted resource
- Lump sum death benefits from SSA;
- RR burial benefits;
- VA burial benefits;
- Inheritances in cash or in kind;
- Cash or gifts of real or personal property given by relatives, friends, or a community group to “help out” with expenses related to the death.

Note: Recurring survivor benefits such as those received under Title II, private pension programs, etc., are not death benefits.

20.1. Income Treatment

Death benefits provided to an individual are **unearned** income to such individual to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the individual. They are subject to the unearned and general income exclusions.

To determine the income derived from death benefits, subtract the total expenses from the total death benefits.

20.1.1. Value

Determine the value of the benefit based on the section that is specific to the type of item that was received.

20.1.2. When To Count

Count the income in the month the death benefit(s) is received. If death benefits are received in more than one month, assume that the funds first received are the first spent. For example, if the death benefits are $1,000 received in January and $1,000 in February and the allowable expenses are $1,500, charge the remaining $500 as income in February.

See Inheritances Chapter I - 36 to determine when inheritances are considered available.

20.2. Verification Of Death Benefits

Use documentation in the individual's possession or contact the source of the payment to verify the type, source, and amount of payment.

20.3. Last Illness And Burial Expenses

Last illness and burial expenses include related hospital and medical expenses; funeral, burial plot, and interment expenses; and other related expenses.

20.3.1. Verification Of Expenses

Verify all last illness and burial expenses. If verification (e.g., bills, receipts, contact with provider, etc.) cannot be obtained, accept the individual's signed allegation. If an expense has been incurred but not paid, assume the individual will pay the expense unless you have reason to question the situation. No follow-up is required if the assumption is applied.

Use your judgment to determine whether an expense is reasonably related to the last illness and burial. It is expected that related expenses may include such items as: new clothing to wear to the funeral; food for visiting relatives; taxi fare to and from the hospital and funeral home; etc.

21. Disability Payments

Disability benefits are payments made because of injury or other disability. Certain accident disability benefits paid within the first 6 months after the month an employee last worked are earned income. For a further explanation of sickness and accident disability payments see the section addressing the source of the payment. See:

Sick Pay – Chapter I – 60

SSA - Chapter I – 61

VA Compensation and Pensions – Chapter I – 70

Workman's Compensation – Chapter I – 76

Disability Insurance is addressed under Retirement Funds – Chapter I – 56

22. Disaster Assistance

Unearned Income

This section addresses presidential-declared disasters. There are no specific instructions or exclusions addressing other disasters.

22.1. Declaration

At the request of a State governor, the President may declare a major disaster when the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and local governments, and Federal assistance is needed. Disasters include such things as hurricanes, tornadoes, floods, earthquakes, volcano eruptions, landslides, snowstorms, drought, etc.

22.2. Source

Assistance provided to victims of a presidential-declared disaster includes assistance from:

- Federal programs and agencies;

- Joint Federal and State programs;
- State or local government programs;
- Private organizations (e.g., the Red Cross).

22.2.1. Income Treatment

All assistance provided based on a presidential-declared disaster is **exempt from income and resources.**

22.3. Verification

Accept the individual's signed allegation of the source and type of the payment.

23. Dividends And Interest

Unearned Income

Dividends and interest are returns on capital investments such as stocks, bonds, or savings accounts.

Note: Account service fees or penalties for early withdrawal do not reduce the amount of interest or dividend income.

23.1. Income Treatment

23.1.1. Interest Earned On Countable Resources

Dividends or interest earned on countable resources are **not income**.

23.1.2. Interest Earned On Excluded Resources

Consult the resource guidelines that address the type of resource on which the interest/dividend is earned to determine if the interest is or is not counted as income.

23.1.2.1. Exclusions

If it is countable as unearned income, it is subject to the general income disregards.

23.2. Verification

Verify amount and frequency of interest or dividend income with a check or notice issued by the source or an amortization table.

When it has been determined the dividend or interest income is excluded from income counting, it is not necessary to verify the dividend or interest income.

Note: The interest or dividends may be countable resources if retained into the following month. If retained the interest or dividends would need to be verified for resource eligibility.

24. Duplicate Or Erroneous Payments

Not Income

A duplicate or erroneous payment is one made to an individual due to an error on the part of the source of the payment.

24.1. Income Treatment

A payment is **not income** when the individual is aware that he/she is not due the money and returns the uncashed check or otherwise refunds all of the erroneously received money.

24.1.1. Timely Return

If the individual returns or refunds an erroneous payment in the month of receipt or the following month, accept the allegation that the money was returned and do not count the erroneous payment as income.

24.1.2. Delayed Return

If there is a delay in the return of an erroneous payment beyond the month following the month of receipt:

- Verify return of the payment;
- Document the reason for the delay (e.g., lengthy hospital stay) and any other relevant facts; and
- Record your determination in the file.

Example

In August, Bob Brown states that he received his regular January VA pension check of $290. However, during the latter part of January, he received another $290 VA check along with a letter explaining that his January check had been delayed due to a computer error. Mr. Brown explains that he knew the second check was a duplicate and says he had not been able to return it sooner due to illness. The worker verifies the return of the $290 check in July as well as Mr. Brown's illness. The worker then makes a determination that the additional check is not income as Mr. Brown returned the check and had good cause for the delay in doing so.

24.1.3. Not Returned

If the duplicate or erroneous payment is not returned, the payment is counted as income in the month received.

25. Gambling Winnings, Lottery Winnings and Other Prizes

Unearned Income

Gambling winnings, **lottery winnings** and **prizes** are generally things won in a game of chance, lottery or contest.

25.1. Income Treatment

Gambling winnings, lottery winnings and prizes are unearned income and are subject to the unearned and general income exclusions.

Note: Do not subtract gambling losses from gambling winnings in determining an individual's countable income.

25.1.1. Choice Between Cash and In-Kind Item

If an individual is offered a choice between an in-kind item and cash, the cash offered is counted as unearned income. This is true even if the individual chooses the in-kind item and regardless of the value, if any, of the in-kind item.

25.1.2. Exclusions

Possible exclusions that may be applied are the $20 General Income Exclusion, the Infrequent or Irregular Exclusion, the Spouse At Home Exclusion, or the Minor Child At Home Exclusion.

25.2. Verification

Use documentation in the individual's possession to verify the income. If the individual does not have sufficient documentation to verify the income, then do the following:

Obtain the individual's signed statement regarding:

- Date the item was received;
- Type of item received;
- Individual's estimate of the value of the item if not cash; and
- Source of the item.

25.2.1. Value

Accept an individual's signed estimate of the value of the item (or actual value, if cash) unless you have reason to doubt the estimate. If you doubt the estimate, determine the item's current market value with an independent source.

26. Gifts

Unearned Income

A gift is something a person receives which is not repayment for goods or services the person provided and is not given because of a legal obligation on the giver's part. To be a gift, something must be given **irrevocably** (i.e., the donor relinquishes all control).

"Donations" and **"contributions"** may meet the definition of a gift. A gift received as the result of a death is a **death benefit,** see Chapter I – 20.

26.1. Income Treatment

A gift received in cash or in real or personal property is unearned income and is subject to the unearned and general income exclusions.

26.1.1. Exception

The value of any non-cash item is not income if the item would become a partially or totally excluded non-liquid resource if retained in the month after the month of receipt. See Chapter I – 50.1.1.

Example - Gift of Jewelry

If a gift of jewelry retained into the month after the month of receipt would be excluded from resources as part of an individual's personal effects, it would not count as income. See Chapter E – 37 for the exclusion for household goods and personal effects. If the jewelry would not be an excluded resource, it is counted as unearned income at its CMV.

26.2. Value Of Gift

Accept an individual's signed estimate of the value of the gift (or actual value if cash) unless you have reason to doubt the estimate. If you doubt the estimate, determine the item's current market value (CMV) with an independent source.

The first $60 received from gifts of cash in a calendar quarter might be excludable as infrequent or irregular income.

26.3. Exclusions

26.3.1. Gifts Used To Pay Tuition, Fees, Or Other Necessary Educational Expenses

Gifts (or a portion of a gift) used to pay for tuition, fees, or other necessary educational expenses at any educational institution, including vocational and technical education, are excluded from income.

If gifts are used to pay for tuition, fees, or other necessary educational expenses at any educational institution, including vocational and technical education, follow instructions in Chapter I – 29 for income and Chapter E – 32 for resources guidelines and procedure.

26.3.2. Other Exclusions

As unearned income, the remaining balance is subject to the general income disregards.

27. Gifts Of Domestic Travel Tickets

Unearned Income/Not Income

Domestic travel is travel in or between the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

27.1. Income Treatment

27.1.1. Gift of Domestic Travel Ticket Not Converted To Cash

The value of a ticket for domestic travel received by an individual, or his/her spouse, is not income if:

- The ticket is received as a gift; and
- The ticket is not converted to cash (e.g., cashed in, sold, etc.).

27.1.2. Gift of Domestic Travel Ticket Converted to Cash

A domestic ticket received as a gift is treated as unearned income in the month the ticket was converted to cash. It is subject to the unearned and general income exclusions.

27.2. Verification

Obtain the individual's signed statement as to whether the ticket has been retained, used, or converted to cash. If the ticket has been converted to cash, specify in the statement the amount of cash received. In the absence of evidence to the contrary, accept the statement as fact.

28. Gift of Non-Domestic Travel Ticket

Unearned Income/Not Income

Non-domestic travel is travel to any place other than those listed in Chapter I – 27.

28.1. Income Treatment

28.1.1. Cannot Be Converted To Cash

The gift of a **non-domestic** travel ticket that cannot be converted to cash (i.e., it is not refundable) is **not income**, even if the ticket was used for transportation.

28.1.2. Can Be Converted To Cash

Travel tickets that can be converted are income and are counted as unearned income at the current market value (CMV) in the month of receipt, whether or not the ticket was sold or used for transportation. The income is subject to the unearned and general income exclusions.

28.2. Verification

Obtain the individual's signed statement as to whether the ticket (whether used or not) was or could be converted to cash:

- If the answer is yes, count the CMV of the ticket as unearned income in the month received.
- If the answer is no, verify the allegation by examining the ticket or by contact with the travel carrier or travel agent. If the allegation is verified, don't count the CMV of the ticket as income; otherwise count it as income.

29. Grants, Scholarships, Fellowships, And Gifts

Unearned Income

Grants, scholarships, and fellowships are amounts paid by private nonprofit agencies, the U.S. Government, instrumentalities or agencies of the U.S., State and local governments, foreign governments, and private concerns to enable qualified individuals to further their education and training by scholastic or research work, etc.

29.1. Income Treatment

The source of the grants, scholarships, and fellowships determine how the funds are evaluated. Title IV of Higher Education Act of 1965 (HEA) or Bureau of Indian Affairs (BIA) grants are **fully excluded regardless of use** and the portion of Other Grants, Scholarships, Fellowships, and Gifts used or intended to be **used to pay the cost of necessary educational expenses are excluded**. The portion of Other Grants, Scholarships, Fellowships, and Gifts **not used** or not intended to be used to pay the cost of necessary educational expenses is **unearned income**.

29.2. Assistance Under Title IV Of The Higher Education Act Of 1965 (HEA) Or Bureau Of Indian Affairs (BIA)

All student financial assistance received under HEA or under BIA student assistance programs is excluded from income and resources, regardless of use.

Examples of HEA Title IV Programs:

- PELL grants
- State Student Incentives
- Academic Achievement Incentive Scholarships
- Byrd Scholars
- Federal Supplemental Educational Opportunities Grants (FSEOG)
- Federal Educational Loans (Federal PLUS Loans, Perkins Loans, Stafford Loans, Ford Loans, etc.)
- Upward Bound
- GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs)
- LEAP (Leveraging Educational Assistance Partnership)
- SLEAP (Special Leveraging Educational Assistance Partnership)
- Work-Study Programs.

29.2.1. Interest And Dividends Earned On Title IV Of HEA Or BIA Educational Assistance

Interest and dividends earned on unspent educational assistance under Title IV of HEA or under BIA are excluded from income.

29.3. Other Grants, Scholarships, Fellowships, And Gifts

29.3.1. Used For Paying Educational Expenses

Any portion of a grant, scholarship, fellowship, or gift used for paying tuition, fees, or other necessary educational expenses at any educational institution, including vocational or technical education, is **excluded from income**. Any portion of such educational assistance that is **not used** to pay current tuition, fees or other necessary educational expenses but will be used for paying this type of educational expense at a future date is **excluded from income in the month of receipt**. This exclusion does not apply to any portion set aside or actually used for food, clothing, or shelter.

29.3.1.1. Tuition, Fees, And Other Necessary Educational Expenses

Educational expenses include laboratory fees, student activity fees, transportation, stationery supplies, books, technology fees, and impairment-related expenses necessary to attend school or perform schoolwork (e.g., special transportation to and from classes, special prosthetic devices necessary to operate school machines or equipment, etc.).

29.3.2. Not Used Or Set Aside For Paying Educational Expenses

Any portion of grants, scholarships, fellowships, or gifts that is not used or set aside for paying tuition, fees, or other necessary educational expenses is unearned income in the month received and a resource the month after the month of receipt, if retained. The portion countable as income is subject to the unearned and general income exclusions.

29.3.3. Set Aside Funds Used For Another Purpose

If any portion of grants, scholarships, fellowships, or gifts that is excluded from resource because it is set aside to pay for tuition, fees, or other necessary educational expenses is used for some other purpose, the funds are income at the earliest of the following points: in the month that it is spent, or the month the individual no longer intends to use the funds to pay tuition, fees, or other necessary educational expenses.

29.4. Interest And Dividends Earned On Educational Assistance

Interest and dividends earned on excluded grants, scholarships, fellowships, or gifts **are counted** as income. Interest and dividends earned on countable educational assistance are excluded from income.

29.5. Determine Countable And Excludable Amounts Of Educational Assistance

STEPS	ACTIONS
Step 1	Verify that the assistance is a grant, scholarship, fellowship, or gift using documents in the individual's possession or contact with the institution or provider to verify the nature of the assistance (e.g., scholarship, grant, etc.). If not totally excluded under another provision, verify the amount, date(s) of payment, payee, source of payment/payer, etc.
Step 2	• If Title IV of HEA or BIA is involved, exclude the assistance. STOP. • If Title IV of HEA or BIA is not involved, go to Step 3.
Step 3	Determine the amount of tuition, fees, and other necessary educational expenses. • Use receipts, bills with cancelled checks, contact with the provider, etc., to verify expenses paid. If an expense is verified as incurred but not paid, assume the individual will pay the expense unless you have reason to question the situation. No follow-up is required if the assumption is applied. • Use your judgment to determine whether payment of an expense was a necessary part of obtaining an education. • A signed allegation is acceptable evidence of expenses when it is unreasonable to obtain other evidence (e.g., daily bus-fare, small expendable items, etc.). Do not apply this tolerance to major expenses such as tuition, fees, and books.

STEPS	ACTIONS
Step 4	Deduct the amount of tuition, fees, and other necessary educational expenses from the gross amount of the assistance. • Exclude the remainder from income if the individual alleges that it will be used for tuition, fees, or other necessary educational expenses. • Count the remainder as unearned income. • Count any portion of previously excluded grants, scholarships, fellowships, or gifts as income the earliest of the either the month that it is spent for something other than tuition, fees, or other necessary educational expenses, or the month the individual no longer intends to use the funds to pay tuition, fees, or other necessary educational expenses.

Example 1

An AG beneficiary who attends an educational institution receives a $1,000 scholarship and a $1,000 grant in September 2005. The educational assistance is **not** under Title IV of HEA or BIA. The student uses $1,500 to pay for tuition, fees, and other necessary educational expenses in September 2005. The student plans to use the remaining $500 to help pay tuition, fees, and other educational expenses in February 2005.

The worker verifies the type and amount of assistance and expenses and excludes $2,000 from income in September 2005 because this assistance is or will be used to pay tuition, fees or other necessary educational expenses. The unused $500 is an excluded resource for October 2005 through June 2006, 9 months after the month of receipt. Any interest or dividends earned on the excluded resource are counted as income during the 9-month exclusion period.

Example 2

In January 2006, the AG beneficiary in example 1 decides to postpone attendance at an educational institution until September 2006. The AG beneficiary intends to use the $500 in September 2006 to help pay for books and other necessary educational supplies.

The remaining $500 remains excluded from income in September 2005 and from resources from October 2005 through June 2006 because the educational assistance will be used to pay for tuition, fees, or other necessary educational expenses. Since the 9-month exclusion period ends in June 2006, the worker determines the $500 is a countable resource beginning July 2006, the month after the end of the 9-month period.

Example 3

In January 2006, the AG beneficiary in example 1 decides to postpone attendance at an educational institution until September 2006 and uses the $200 to pay credit card bills and save $300 in case of an emergency.

The $500 is income in January 2006, the month the assistance is spent and is no longer to be used for paying tuition, fees, or other necessary educational expenses. Beginning February 2006, the remaining $300 is a countable resource.

30. Emergency Assistance (EA)

Unearned Income

Emergency Assistance is the term for a program offered by Virginia that provides payments to families to meet emergency needs. The program is funded with Federal Temporary Assistance for Needy Families (TANF) money and is income based on need.

30.1. Income Treatment

EA payments are unearned income and are subject to the unearned and general income exclusions.

30.1.1. Exclusions

- The $20 General Income Exclusion does not apply to this income because it is income based on need.

- Possible exclusions that may be applied are the Infrequent or Irregular Exclusion, the Spouse At Home Exclusion, or the Minor Child At Home Exclusion.

30.2. Verification

Verify the individual's portion of the emergency assistance by contact with the TANF eligibility worker.

31. Garnishment Or Other Withholding

Earned/Unearned Income

A **garnishment** or **seizure** is a withholding of an amount from earned or unearned income in order to satisfy a debt or legal obligation. Other amounts may be withheld for other reasons. Amounts withheld from income to satisfy a debt or legal obligation or to make certain other payments (such as payment of Medicare premiums) are income.

31.1. Kinds Of Withholdings

Some items for which amounts may be withheld but considered received are:

- Federal, State, or local income taxes;
- Health or life insurance premiums;
- SMI premiums;
- Union dues;
- Penalty deductions for failure to report changes;
- Loan payments;
- Garnishments;
- Child support payments (court ordered or voluntary (see SI 01320.145 for an exception for deemors));
- Service fees charged on interest-bearing checking accounts;
- Inheritance taxes; and
- Guardianship fees if presence of a guardian is not a requirement for receiving the income.

31.2. Income Treatment

Amounts withheld from earned income are countable as earned income. Amounts withheld from unearned income are countable as unearned income. Income includes amounts withheld from income whether the withholding is:

- Purely voluntary;
- To repay a debt; or
- To meet a legal obligation.

Note: This information does not apply to amounts withheld to pay the expenses of obtaining the income since such amounts are not income.

31.2.1. Exclusions

Apply the exclusions that are applicable to the type of income from which the income was withheld.

31.3. Verification

Use the verification methods for the type of income from which the income was withheld.

32. Health Insurance Payments

Unearned Income

Cash from any health insurance policy which pays a flat rate benefit to the recipient without regard to the actual charges or expenses incurred is unearned income. Examples of these types of insurance policies are per diem hospitalization or disability insurance, or cancer or dismemberment policies.

Note: Reimbursements for medical costs are not income and do not need to be verified.

32.1. Income Treatment

Cash from a flat rate benefit insurance policy is unearned income and is subject to the unearned and general income exclusions.

32.2. Verification

Verify the source, amount and frequency of the benefits by documents in the individual's possession.

33. Honoraria

Earned Income/Unearned Income

An honorarium is an honorary or free gift, reward, or donation usually provided gratuitously for services rendered (e.g., guest speaker), for which no compensation can be collected by law. An honorarium may include a free gift of lodging, or payment of an individual's expenses.

33.1. Income Treatment

Payment received for a service rendered is earned income and is subject to the earned and general income exclusions. Any other payment received in excess of the individual's expenses is unearned income.

Note: Absent evidence to the contrary, assume that the amount of any honorarium received is in consideration of the actual services provided by the individual.

33.1.1. Possible Exclusions

33.1.1.1. Earned Income

Possible exclusions that may be applied to earned income are the Spouse at Home Exclusion, the Child at Home Exclusion, the $20 General Income Exclusion, the Infrequent or Irregular Exclusion, the $65 and ½ Exclusion, the Impairment Related Work Expenses (IRWE), and the Blind Individuals (BWE) Work Expenses

33.1.1.2. Unearned Income

Possible exclusions that may be applied to unearned income are the general income exclusions including the expenses of obtaining the income.

33.2. Verification

Verify these payments by examining documents in the individual's possession which reflect:

- The nature of the payment;
- The amount;

- The date(s) received; and
- The frequency of payment, if appropriate.

If the individual has no such evidence in his/her possession, contact the source of the payment.

34. Income Based on Need (IBON)

Unearned Income

Income based on need (IBON) is assistance:

- Provided under a program which uses income as a factor of eligibility; and
- Funded wholly or partially by the **federal** government or a **nongovernmental** agency (e.g., Catholic Charities or the Salvation Army) for the purpose of meeting basic needs (i.e., the funds are provided specifically for a formalized program whose general purpose is similar to that of the AG program).

34.1. Income Treatment

Income based on need is **counted** as income dollar for dollar, unless it is totally excluded by statute (e.g., food stamps).

34.1.1. Exclusions

- The $20 general income exclusion does not apply to IBON.
- Possible exclusions that may be applied are the Infrequent or Irregular Exclusion, the Spouse At Home Exclusion, or the Minor Child At Home Exclusion.

34.2. Verification

These instructions apply when there are no separate instructions pertaining specifically to the program in question.

- Verify with the administering agency personnel and/or program descriptions that the assistance meets the definition of income based on need.
- Verify the amount of the assistance for each month with the administering agency or through documents in the individual's possession.

35. Income Tax Refunds

Not Income

Any amount refunded on income taxes already paid is **not income**. Income tax refunds are not income, even if the income from which the tax was withheld was received in a period prior to application for AG benefits.

35.1. Verification

Verification is not required.

36. Inheritances

Unearned Income

An **inheritance** is cash, a right, or non-cash items received as the result of someone's death. An inheritance is a **death benefit**.

Until an item or right has a value (i.e., can be used to meet the heir's need for food, clothing, or shelter), it is neither income nor a resource. The inheritance is income in the first month it has a value and can be used to meet the individual's needs.

36.1. Inheritance Already A Resource

An inheritance is **not** income to an individual if the inheritance is something which was considered that individual's resource as a member of an eligible couple immediately before the death.

Note: The **proceeds** of a life insurance policy are **not** a resource before death. Even though a life insurance policy may have been a resource in the past (i.e., the cash surrender value was a resource), at the time of the insured's death that particular resource ceases to exist. The insurance **proceeds** received as a result of the death are not a converted resource but are income. The **proceeds** represent the death benefit payable not a return of the cash surrender value.

36.2. Income Treatment

At the point it is determined the inheritance is income to the individual, use the Death Benefits guidelines in Chapter I – 20 to determine the amount of countable income.

36.2.1. Date of Receipt

In Virginia, it takes a minimum one year for an estate to be probated. This period is allowed for the filing of a will, claims by creditors, and claims to contest a will. If there is no will to be probated, there are estate administration requirements that have to be followed. These, too, may take a long period to complete. Because these timeframes prohibit the individual from using the inheritance to meet his/her needs, the inheritance is not income until **earliest** of:

- The date the individual alleges receiving the inheritance (using a signed statement from the individual or documents in the individual's possession); or
- The date the estate is closed (which may be determined by contacting the court or an attorney involved in the closing of the estate); or
- 12 months after the death.

36.2.2. Value

Determine the value of the inheritance based on guidelines specific to the type of item that was received.

36.3. Verification

Verify the amount or value of the inheritance using:

- **Documents** in the individual's possession;
- A **court order** closing the estate;
- A copy of the **will**; or
- An **estimate** from a knowledgeable source, if real property is involved.

37. In-Kind Support And Maintenance

Not Income

Receipt of free food and shelter is in-kind support and maintenance. In-kind support and maintenance is not income.

38. Joint Bank Accounts - Income Derived from

Unearned Income

This section explains how to charge income in different situations involving the joint bank account of an AG recipient/applicant. See Chapter E – 24 for resource determinations involving bank accounts.

38.1. Income Treatment

38.1.1. Joint Bank Account Is Held By An AG Recipient And An Ineligible Individual

- When a joint bank account is held by **an AG recipient and an ineligible individual**, income to the AG recipient includes:
  - The full amount of any interest posted to the account and
  - The full amount of any deposit made by a third party or by the ineligible bank account holder unless the AG recipient is acting as an agent.

38.1.1.1. Rebuttal Situations

- If an AG recipient successfully **rebuts ownership of a portion of funds in a joint account**, deposits made by the other account holder are not income to the AG recipient. Interest is charged to the AG recipient in proportion to the percentage of funds that are a resource to the recipient.
- If an AG recipient successfully **rebuts ownership of all the funds** held in a joint bank account, deposits by the other account holders or interest posted to the account are not income to the recipient. See Chapter I – 38.3. below.

38.1.2. Joint Bank Account Is Held By Multiple AG Recipients

When **two or more AG recipients are joint account holders**, deposits made by one individual are not income to the other. Allocate interest equally among the joint holders.

38.2. Exclusions

Possible exclusions that may be applied are the unearned and general income exclusions.

38.3. Ownership Rebuttal

If an individual wishes to rebut the applicable ownership assumption, obtain his/her statement regarding:

- Who owns the funds;
- Why there is a joint account; and
- Who has made deposits to and withdrawals from the account; and how withdrawals have been spent.

38.3.1. Rebuttal Verification

In addition, inform the individual that he/she must submit the following evidence within 10 days:

- A corroborating statement from each other account holder (if the only other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account);
- Account records showing deposits, withdrawals and interest in the months for which ownership is at issue;
- If the individual owns none of the funds, evidence showing that he/she can no longer withdraw funds from the account;
- If the individual owns only a portion of the funds, evidence showing removal from the account of such funds, or removal of the funds owned by the other account holder(s), and redesignation of the account.

38.3.2. Rebuttal Results

Any funds that the evidence establishes were owned by the other account holder(s), and that the individual can no longer withdraw from the account, were not and are not the individual's resources. That is, rebuttal is both retrospective and prospective.

38.4. Verification

Obtain verification that shows

- The balance in the account as of the first moment of the month being evaluated
  - Verification of account balances can be obtained from:
    - Bank statements and passbooks
    - Internet printouts from the financial institution's web site
    - ATM transaction receipts and/or deposit/withdrawal slips
- The name and address of the financial institution;
- The account number(s); and
- The exact account designation (the names on the account)

39. Jury Fees

Unearned Income

Jury fees are fees paid to jurors for their period of services. Expense money given to jurors is not jury fees.

39.1. Income Treatment

Jury fees are unearned income and are subject to the unearned and general income exclusions. Monies received as payment for an essential expense incurred while serving as a juror is not income.

39.2. Verification

Use documents in the individual's possession to verify the amount of jury fees. If the individual does not have verification documents, verify jury fees by contacting the court clerk or jury commissioner.

40. Life Insurance – Accelerated Payments

Accelerated life insurance payments are proceeds paid to a policyholder prior to death. Although accelerated payment plans vary from company to company, all of the plans involve early payout of some or all of the proceeds of the policy.

Some companies refer to these types of payments as "living needs" or "accelerated death" payments.

40.1. Resource Value

Since accelerated payments can be used to meet food, or shelter needs, the payments are income in the month received and a resource if retained into the following month and not otherwise excludable.

41. Life Insurance Proceeds

Unearned Income

Life insurance proceeds received as a result of a death are death benefits and are unearned income. Use the section Death Benefits to evaluate the proceeds. See Chapter I – 20.

Note: The proceeds are not a converted resource. The proceeds are the payable death benefit, not a return of the cash surrender value. Even though a life insurance policy may have been a resource in the past (i.e., the cash surrender value was a resource), at the time of the insured's death that particular resource ceased to exist.

42. Loan Proceeds

Unearned Income/Not Income

A loan is a transaction whereby one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest. The loan agreement may be written or oral, and must be enforceable under Virginia law.

Proceeds of a loan are the moneys the borrower receives or are the principal payments received by the lender. A loan may be a bona fide loan or not bona fide. Whether the loan is bona fide or not determines if it is unearned income or is not income.

42.1. Bona Fide Agreement

A bona fide agreement is an agreement that is legally valid and made in good faith.

A loan (oral or written) is bona fide if it meets all of the following requirements.

- **Enforceable Under State Law**

  A bona fide loan is a contract that is enforceable under Virginia law.

- **Loan Agreement In Effect At Time Of Transaction**

  The loan agreement must be established and in effect at the time that the cash proceeds are provided to the borrower. Money given to an individual with no obligation to repay cannot become a loan at a later date.

- **Acknowledgement Of An Obligation To Repay**

  The obligation to repay must be acknowledged by both the lender and the borrower for a bona fide loan to exist. When money or property is given and accepted based on any understanding other than it is to be repaid by the receiver, there is no loan for AG purposes.

  A statement by the individual that he or she feels personally responsible to pay back the friend or relative does not create a legal obligation to repay the individual who provided the cash. Similarly, a statement by the lender that the eligible individual is only required to repay the cash if he or she becomes financially able to do so does not create a legal obligation to repay.

- **Plan For Repayment**

  The loan must include a plan or schedule for repayment, and the borrower's express intent to repay by pledging real or personal property or anticipated future income (such as AG benefits).

- **Repayment Plan Must Be Feasible**

  The plan or schedule must be feasible. In determining the plan's feasibility, consider the amount of the loan, the individual's resources and income (including anticipated AG benefits), and the individual's living expenses.

42.2. Income Treatment

42.2.1. Bona Fide Loan

Proceeds of **a bona fide** loan are **not income** to the borrower because of the borrower's obligation to repay.

42.2.2. Loan Not Bona Fide

If a loan is not bona fide, the proceeds are unearned income in the month received and are subject to the unearned and general income exclusions.

42.2.3. Interest On A Loan

Interest received on money loaned is income whether the loan is bona fide or not and is subject to the general income disregards.

42.3. Buying on Credit

Items bought on credit are not income because they are treated as though the individual were borrowing money to pay for the item.

42.4. Verification

If there is a written agreement between the parties, obtain a copy of the agreement. If there is no written agreement, obtain signed statements from the borrower and the lender.

42.4.1. Forms

To document informal loans, you may use two locally reproducible forms.

- The Statement of Funds You Provided to Another form is a questionnaire that the lender completes. Send the form and a cover letter that explains why the information is needed to the lender for completion.

- The Statement of Funds You Received form is a form that the borrower completes. Send a cover letter and the form to the borrower for completion.

Use the back of the forms if you need more room to record information.

43. Low Income Energy Assistance

Unearned Income

Through a block grant, the Federal Government provides funds to States for energy assistance (including weatherization) to low income households. It is most often provided in a medium other than cash (e.g., voucher, two-party check, direct payment to vendor, etc.) but may be in cash.

43.1. Income Treatment

Energy assistance is unearned income.

43.1.1. Exclusion

Home energy or support and maintenance assistance is excluded from income if it is certified in writing by the appropriate agency to be both based on need and:

- Provided **in kind** by a private nonprofit agency; or
- Provided **in cash or in kind** by a supplier of home heating oil or gas, a rate-of-return entity providing home energy, or a municipal utility providing home energy.

43.2. Verification

Use documents in the individual's possession, contact with the provider or agency involved, or LDSS knowledge to verify that assistance from a particular program is provided under the Federal Low-Income Home Energy Assistance Program. Once this is verified, no further documentation is necessary.

44. Medical and Social Services Related Cash

Not Income

44.1. Cash Received From A Governmental Program

Any cash (other than remuneration for sheltered employment and incentive payments) provided by a governmental medical or social services program is **not income**.

To be considered “governmental”, the program must be authorized by Federal, State or local law to make payments for medical or social service purposes.

Payment from a governmental program, which is disbursed by a nongovernmental agency, is considered a payment from a governmental program for purposes of this section.

44.1.1. Verification

Document the file that the source of the cash is a governmental medical or social services program. Obtain evidence from the individual that the source of the cash is a governmental medical or social services program (e.g., program identification card, notice, or award letter). If the individual has no evidence available, contact the agency.

Note: Housing and Urban Development (HUD) Housing Choice Voucher Program (Section 8) is not income for purposes of determining an individual's eligibility for AG. However, an AG payment cannot be issued to individuals who received a voucher or will be receiving a voucher. Housing Vouchers provide rental assistance and therefore would constitute a double payment to the ALF provider or AFCH.

Discharge Assistance Program (DAP) funds issued from the Department of Behavioral Health and Developmental Services (DBHDS) through the CSBs/BHAs is not income for purposes of determining an individual's eligibility for AG. However, an AG payment cannot be issued to individuals who are receiving DAP funds or will be receiving DAP funds if the DAP funds will be used to pay room and board. Use of DAP funds for room and board in additional to an AG payment would constitute a double payment to the ALF provider or AFCH.

44.2. Cash Received From A Non-Governmental Program

Any cash from a nongovernmental medical or social services organization is **not income** when:

- The cash is for medical or social services already received by the individual and approved by the organization; or
- The cash is a payment restricted to the future purchase of a medical or social service.

44.2.1. Verification

Document the file that the source of cash is a nongovernmental medical or social services organization. If verification of the agencies non-profit status is needed, look at the fundamental purpose of the organization in its articles of incorporation or its certification as a nonprofit organization under section 501(c) of the Internal Revenue Code.

45. Military Pensions

Unearned Income

The Air Force, Army, Marine Corps, Navy, and Coast Guard pay military pensions to military retirees and survivors normally on the first day of the month.

45.1. Categories Of Beneficiaries

There are three categories of beneficiaries who may be entitled to military payments:

- **Retiree** - A person with 20 years of service who meets the requirements for entitlement;
- **Annuitant** - A survivor who is designated by the retiree to receive benefits upon the death of the retiree under the Retired Serviceman's Family Protection Plan (**RSFPP**), Survivor's Benefit Plan (**SBP**), or both;
- **Allottee** - Anyone other than an annuitant of the RSFPP or SBP who is designated to receive money out of the service member's or retiree's check. Entitlement as an allottee terminates upon the death of the retiree. However, an allottee can become an annuitant when the retiree dies.

45.2. Types of Annuitants

The RSFPP and SBP annuitant programs pay money to surviving spouse(s) and children.

The SBP program also pays:

- "Insurable interest" persons: i.e., someone other than a surviving spouse or child that a service member designated to receive survivor benefits based on monies withheld from his/her retirement payment under the provisions of the SBP program; and,

- Minimum Income Level Widows (MIW) who are certified by the VA as having low income and are referred by the Department of Defense (DOD).

45.3. Income Treatment

Military pensions (before deductions) are unearned income and are subject to the unearned and general income exclusions.

45.3.1. Exception

Payments to Minimum Income Level Widows (MIW) are income based on need not subject to the $20 general income exclusion.

45.4. Verification

Obtain evidence from the individual's own records, if available. If the individual does not have sufficient evidence, he/she may contact the appropriate military finance center.

45.4.1. Contacting the Military Finance Centers

Send the request directly to the appropriate address listed below:

- **For Retirees Of The Army, Navy, Air Force And Marine Corps**

  Defense Finance Accounting Service

  Retired Pay Operations

  Anthony J. Celebrezze Building

  1240 E. 9th Street

  Cleveland, OH 44199

- **For Annuitants Of The Army, Navy, Air Force, And Marine Corps**

  Defense Finance Accounting Service

  Annuity Pay Operations

  6760 Irvington Place

Denver, CO 80279

- **For Retirees/Annuitants Of The Coast Guard**

  United States Coast Guard Pay

  And Personnel Center RPD

  444 SE Quincy Street

  Topeka, KS 66683-3591

45.4.1.1. Information To Be Included

- The service member's given name, middle initial and surname;
- The service member's service identification number (if available);
- The service member's SSN;
- The annuitant's or allottee's name; and
- The annuitant's or allottee's SSN.

Specify the period for which payment information is needed and identify the pay plan (e.g., RSFPP, SBP).

46. Other In-Kind Income

Unearned Income

Any item of real or personal property an individual receives which he can sell or convert is called "other in-kind income." See Real or Personal Property (Other In-Kind Income), Chapter I – 50.

47. Overpayments of Annuities, Retirement, And Disability Benefits

Unearned/Not Income

An overpayment is the total amount an individual received for any period that exceeds the total amount that should have been paid to the individual for that period. An overpayment is defined by the entity paying the benefit. This section addresses how to evaluate income when an amount is being withheld from current benefits to repay a prior overpayment.

Note: This section applies only when a benefit such as those listed below is being reduced for an overpayment. It does not apply to any other benefit reductions or deductions. For example, if a Title II benefit is being reduced for any other reason (i.e. worker's compensation or work deductions), this section does not apply.

47.1. Types Of Income Affected

The types of unearned income affected by this section are annuities, pensions, retirement, and disability benefits including:

- Title II Payments
- Civil Service Payments (Office of Personnel Management) (CSRS/FERS)
- Railroad Retirement Payments
- Unemployment Benefits Payments
- Worker's Compensation Payments
- Military Pensions
- VA Pension
- VA Compensation

47.2. Income Treatment

Unearned income includes any part of a benefit that has been withheld to recover a previous overpayment.

47.2.1. Exception - Double Counting

The amount withheld to reduce a previous overpayment is not included when determining the amount of unearned income if double counting would result.

Double counting (i.e. counting unearned income twice) would result if:

- The individual **received** both AG and the other benefit at the time the overpayment of the other benefit occurred; **and**
- The overpaid amount was included in figuring the AG payment.

Note: Do not apply the exception if:

- The individual was determined ineligible for AG based on countable income that included the overpayment amount; and
- No AG payment was received for the months the overpayment occurred.

STEPS	DOUBLE COUNTING PROCEDURES ACTIONS
Step 1	Does the individual allege receiving an annuity, pension, retirement, or disability benefit such as those listed in 47.1? **Yes,** go to step 2. **No,** stop.
Step 2	Is any of the benefit being withheld to recover an overpayment? **Yes**, go to step 3. **No**, stop.
Step 3	Review the case history to determine AG benefit payment dates. Did the individual **receive** AG when the alleged overpayment occurred? **Yes**, go to step 4. **No**, include the amount being withheld to recover the overpayment when determining the amount of

STEPS	DOUBLE COUNTING PROCEDURES ACTIONS
	unearned income.
Step 4	Verify when the overpayment occurred, the rate of recovery and the period of time of recovery by using documents in the individual's possession or by contacting the appropriate office or agency. Go to step 5.
Step 5	Was the overpayment amount counted in determining the AG payment? **Yes**, **exclude** the amount being withheld to recover the overpayment when determining the current amount of unearned income. **No**, **include** the amount being withheld to recover the overpayment when determining the current amount of unearned income.

Examples

1. Exception Applies

Joe Jones started receiving Title II benefits and AG benefits in 1/05. In 11/05, Mr. Jones received a notice explaining that he was overpaid $150 in Title II benefits from 4/05 through 8/05, and $30 would be withheld from his Title II benefit to recover the overpayment from 1/06 through 5/06.

Since the overpaid amount was already included in determining countable unearned income for the period 4/05 through 8/05, the $30 a month being withheld is not included in determining the

amount of unearned income when computing Mr. Jones' AG benefit amount for 1/06 through 5/06.

2. Exception Does Not Apply

Alex Martin started receiving AG benefits and VA benefits in 5/05. His monthly VA benefit increased to $360 in 8/05. The VA benefit increase when combined with other income caused Mr. Martin to become ineligible for AG benefits beginning in 9/05. He continued to be ineligible until 1/06 when the VA determined his benefit should have been $240 since 8/05. Therefore, Mr. Martin was overpaid a total of $600 by VA from 8/05 through 12/05.

Mr. Martin once again started receiving AG benefits in 1/06. To recover the VA overpayment, his VA benefit is reduced by $120 a month from 3/06 through 7/06. Since Mr. Martin did not receive AG benefits during the time he was overpaid, the $120 a month withheld to recover the overpayment is included in determining the amount of Mr. Martin's current unearned income.

47.2.2. Unable To Determine If Exception Applies

If, after completing all development, you are unable to determine if the exception applies, do **not** include the amount being withheld to recover an overpayment when determining the amount of unearned income.

47.2.3. Multiple Overpayments

When two or more overpayments are being recovered at the same time, assume the overpayment recovery amount is first withheld to repay any overpayments not subject to the exception. Apply this assumption regardless of the chronological order in which the overpayments occurred.

For example, an individual receiving Title II was overpaid in 1999 and 2000. For purposes of collecting the overpayment, recovery is allocated in chronological order, i.e., the 1999 overpayment is satisfied first and then collection begins for the 2000 overpayment.

However, for the purposes of this section, if the Double Counting Exception applies only to the 1999 overpayment, assume the 2000 overpayment is satisfied first. Apply the exception to the 1999 overpayment but only after the 2000 overpayment collection has been satisfied.

Example

Mr. Smith was overpaid $300 in VA benefits in 2004 and $500 in 2005. VA began withholding $100 a month in August 2005. The withholding will continue until the full $800 is recovered, August 2005 through March 2006. Mr. Smith reapplied and was approved for AG in July 2005.

The worker determined that Mr. Smith did not receive AG during the 2005 overpayment period but did receive AG during the 2004 period and that the overpaid amount was used in determining his AG. Therefore, the double counting exception applies to the 2004 overpayment but does not apply to the 2005 overpayment. The worker must consider that the withheld amount is being used to pay the 2005 overpayment first as the double counting exception does not apply to it. This means the $100 being withheld for the first five months, August through November 2005, will be counted as income in determining the AG payment. The $100 withheld for December 2005 through March 2006 will not be counted as income.

48. Programs for Older Americans

Earned/Unearned Income

The Federal Government through the Administration on Aging is involved in a variety of programs for older Americans. The programs may be operated by State or local governments or community organizations. Some types of programs are:

- Health services;
- Nutrition services;
- Legal assistance; and
- Community service employment.

48.1. Income Treatment

48.1.1. Wage or Salary

A wage or salary paid under chapter 35 of title 42 of the U.S. Code, Programs for Older Americans, is earned income subject to the general AG policies on earned income. See Chapter I – 75.

48.1.2. Not a Wage or Salary

Anything provided under chapter 35 of title 42 of the U.S. Code, Programs for Older Americans, other than a wage or salary is excluded from income.

Example:

Income from the Green Thumb Program is excluded unearned income.

48.1.2.1. Verification

48.1.2.1.1. Program

Use documents in the individual's possession, contact with the provider or a local council on aging, or a precedent to verify that the program is funded by the Federal Government under chapter 35 of "**The Older Americans Act**" and whether a wage or salary is paid.

48.1.2.1.2. Not a Wage Or Salary-Accept Allegation

Accept the individual's allegation of receipt of anything other than a wage or salary and exclude it without further development unless you have reason to question the allegation.

49. Railroad Retirement (RR) Payments

Unearned Income

There are three basic categories of payments made by the Railroad Retirement Board (RRB):

- Life and survivor annuities;
- Title II benefits certified by RRB; and

- Unemployment, sickness, and strike benefits.

  Note: RR checks bear beneficiary symbols that identify the type of RR benefit involved.

49.1. Identifying Receipt

Be alert to the possibility of the receipt of, or potential entitlement to, RR benefits in every case where:

- The individual's social security number begins with a "7"; or
- The individual alleges or other evidence indicates railroad employment by the individual or his/her spouse.

49.2. Income Treatment

Payments made by Railroad Retirement Board (RRB) are **unearned income** and are subject to the unearned and general income exclusions. The amount of the RR payment to count as income is the gross amount (unless the overpayment related double counting exception applies. See Chapter I – 47).

49.3. Life and Survivor Annuities

- **Life annuities** for retirement and disability are paid under the Railroad Retirement (RR) Act to the railroad employee and his/her spouse. Children of a living annuitant are not entitled to benefits.

  Note: An increase in a beneficiary's check because of a dependent child is unearned income to the designated RR beneficiary.

- **Survivor annuities** are payable to widows, widowers, children, and dependent parents of railroad employees. A small number of widows receive two annuities, a regular widow's check and a check payable to them as designated survivors of retired railroad employees who elected to receive reduced benefits during their lifetimes.

- **RR annuity payments** are similar to Title II benefits in that a check for one month is paid the next month. Also, cost-of-living adjustments (COLA) for RR annuities are effective the same month as Title II COLA's.

49.3.1. Verification

Verify receipt of RR annuities by obtaining a copy of the individual's most recent award notice. If the notice is unavailable, record in the file the information from the individual's next check.

49.4. Social Security Benefits Certified By RRB

SSA may authorize the payment of Title II benefits for RR employees through RRB. Although RRB has responsibility for certifying Title II benefits in these situations, they remain Title II benefits.

Individuals entitled to this type of benefit receive two award notices. The first notice, from SSA, informs the beneficiary that RRB has responsibility for making Title II payments. The final notice, from RRB, specifies the amount of the first check.

RR annuity payments and Title II benefits certified by RRB may be paid as a single check.

49.4.1. Verification

Verify the benefits through documents in the individual's possession or by contact with the source. The notice issued by RRB which specifies the amount of the first check is one form of evidence.

49.5. Unemployment, Sickness, And Strike Benefits

Unemployment, sickness, and strike benefits are computed on a daily basis with each check covering a period of up to 2 weeks. These claims are usually filed through the railroad employer or directly with RRB in Chicago.

49.5.1. Verification

Obtain evidence of unemployment, sickness, and strike benefits from the individual's own records, such as an award letter or actual check. If this evidence is unavailable, contact RRB headquarters in Chicago at:

Railroad Retirement Board
844 Rush Street
Chicago, IL 60611

Local RRB offices do not maintain this information.

50. Real Or Personal Property (Other In Kind Income)

Unearned Income

Any item of real or personal property an individual receives which he can sell or convert is unearned income called "other in-kind income."

Note: If in-kind income is food, or shelter, it is called "in-kind support and maintenance" and is not counted as income.

50.1. Income Treatment

Receipt of real or personal property is **unearned income** and is subject to the unearned and general income exclusions.

50.1.1. Exception - Items That Will Be An Excluded Resource

The value of any non-cash item is not income if the item would become a partially or totally excluded **non-liquid** resource if retained into the month after the month of receipt.

Example: Receipt of a Specially Equipped Van

Eddie Glyndon is disabled and is confined to a wheelchair. A local church accepts donations from the community and purchases a van specially equipped with a wheelchair lift to transport Eddie. The church gives the van to Eddie. Since the van is his only vehicle and will become an excluded non-liquid resource in the month after he receives it, the value of the van is not income to Eddie.

50.1.2. Value

Other in-kind income is valued at its current market value. See the resource section that addresses the type of property received for the method to be used to establish and verify the current market value.

If the item received is not fully paid for and the individual is responsible for the balance, the paid-up value (i.e., the equity value) corresponding to the percentage of his/her ownership interest is other in-kind income. If the individual is not responsible for the balance, he/she receives other in-kind income equal to the amount of cash he/she could obtain upon sale of the item regardless of any indebtedness on the part of some other person.

Example - In-Kind Item that is Not Income

Mr. William Hurd's son purchased a furnace for his father's home when his old furnace stopped working. His son bought the furnace from the local utility company, and will pay for it in monthly

installments on his utility bill. The utility company confirms that Mr. Hurd may not return the furnace for cash nor sell it since his son made the purchase, and it was purchased on credit. Therefore, the gift of the furnace is not income to Mr. Hurd.

51. Rebates and Refunds

Not Income

Rebates and refunds are the return of monies already paid, to the individual who paid it. Rebates and refunds may be received on items purchased and taxes paid.

51.1. Income Treatment

When an individual receives a rebate, refund, or other return of money he or she has already paid, the money returned is **not income**. The key idea in applying this guideline is that rebates and refunds are the **return of** an individual's own money.

Example:

Rose Woods, an elderly AG recipient, pays property taxes on the home she lives in. Because of her low income, the city government returns part of Mrs. Woods' property taxes in the form of a check. This return of money already paid by Mrs. Woods is not income.

51.2. Verification

Unless you have reason to question the situation, accept an individual's signed allegation that a rebate or refund of money is a return of money already paid and do not count it as income.

51.2.1. Questionable Situation

In questionable situations, make copies for the file of any documents in the individual's possession, and contact the source of the payment, etc., to verify that the payment is a return of money already paid.

52. Refugee And Cuban And Haitian Entrant Cash Assistance

Unearned Income

Refugee Cash Assistance and Cuban and Haitian Entrant Cash Assistance are federally funded programs which make ongoing needs-based payments to refugees during their first 18 months in the United States.

52.1. Income Treatment

Refugee Cash Assistance, Cuban and Haitian Entrant Cash Assistance and federally reimbursed general assistance payments to refugees are federally funded **unearned income** based on need and are counted dollar for dollar as income.

A payment under one of these programs is always considered to be a cash payment.

52.1.1. Exclusions

- The $20 general income exclusion does not apply to this income. It is income based on need.
- Possible exclusions that may be applied are the Infrequent or Irregular Exclusion, the Spouse At Home Exclusion, or the Minor Child At Home Exclusion.

52.1.2. Payment To Family Unit Or Group

If a payment is made under one of these programs to a family unit or a group of people, the amount of the grant attributable to one individual in the family is determined by the incremental method (i.e., the income is the difference between the amount paid and the amount which would have been paid had the individual not been included).

52.2. Verification

Verify the amount of the assistance by contacting the individual's eligibility worker.

53. Rental Income

Earned or Unearned Income

Rent is a payment which an individual receives for the use of real or personal property, such as land, housing or machinery.

53.1. Income Treatment

Net rental income, gross income minus expenses, is unearned income unless the individual is someone who is in the business of renting properties. If the individual is someone who is in the business of renting properties, the income is earned income from self-employment. If it is determined the rental income is self employment, use the section under Self-employment in Chapter I – 58 to evaluate it. This section applies to **unearned** rental income. Unearned rental income is subject to the unearned and general income exclusions.

53.1.1. Rental Deposits

Rental deposits are not income to the landlord while subject to return to the tenant. Rental deposits used to pay rental expenses become income to the landlord at the point of use.

53.1.2. Computation

Unearned net rental income is determined by subtracting the ordinary and necessary expenses of doing business from the gross rental income.

- **Determine** gross rent received and deductible expenses month - by - month.

- **Subtract** deductible expenses paid in a month from gross rent received in the same month.

- If deductible expenses exceed gross rent in a month, subtract the **excess expenses** from the next month's gross rent and continue doing this as necessary until the end of the tax year in which the expense is paid.

- If there are **still excess expenses**, subtract them from the gross rent received in the month prior to the month the expenses were paid and continue doing this as necessary to the beginning of the tax year involved.

  Note: Do not carry excess expenses over to other tax years nor use them to offset other income.

53.1.3. Deductible Expenses

Ordinary and necessary expenses are those necessary for the production or collection of rental income. Deductible expenses include:

- Interest on debts;
- State and local taxes on real and personal property and on motor fuel;
- General sales taxes;
- Expenses of managing or maintaining property;
- Interest and escrow portions of a mortgage payment (at the point the payment is made to the mortgage holder);
- Real estate insurance;
- Repairs (i.e., minor correction to an existing structure);
- Property taxes;
- Lawn care;
- Snow removal;
- Advertising for tenants; and
- Utilities.

53.1.3.1. When to Deduct Expenses

Deduct expenses when paid, not when incurred.

53.1.3.2. Interest

- Use an individual's amortization schedule to determine interest expenses.

- If a schedule is not available, divide the yearly interest by twelve to determine monthly interest.

53.1.4. Nondeductible Expenses

Nondeductible expenses include:

- Principle portion of a mortgage payment;
- Capital expenditures (i.e., an expense for an addition or increase in the value of property which is subject to depreciation for income tax purposes); and
- Depreciation or depletion of property.

53.1.5. Proration Of Expenses

When only a portion of a property is rented out, it is necessary to determine the portion of the expenses that apply to the rented property. This is done by prorating the expenses as follows.

Note: Any expenses strictly related to a particular rental unit are deducted in total from the rent for that unit. Such expenses are not prorated.

53.1.5.1. Multiple Family Residence

In a multiple family residence:

- If the units in the building are of approximately **equal size,** prorate allowable expenses based on the number of units designated for rent compared to the total number of units.
- If the units are **not** of approximately **equal size,** prorate allowable expenses based on the number of rooms in the rental units compared to the total number of rooms in the building. (The rooms do not have to be occupied.)

53.1.5.2. Rooms in Single Residence

For rooms in a single residence:

- Prorate allowable expenses based on the number of rooms designated for rent compared to the number of rooms in the house.
- Do not count bathrooms as rooms in the house.
- Count basements and attics only if they have been converted to living spaces (e.g., recreation rooms).

Example - Proration of Room Rental Expenses

Mr. Joshua Steele, an AG recipient, rents out a room in his house to a cousin. The house has six rooms excluding the bathroom. Since Mr. Steele's expenses (interest on a mortgage, utilities, etc.) are for the whole house, only one-sixth of the expenses is deducted from the gross rent.

53.1.5.3. Land

Prorate expenses based on the percentage of total acres that is for rent.

53.1.6. Joint Owners

Absent evidence to the contrary, apportion net rental income equally among owners. (A signed statement can be acceptable evidence if it reasonably explains why apportionment is not equal.)

If the gross rent is split between two joint owners before expenses are paid, deduct expenses paid by the SSI recipient from his/her portion of the gross rent.

53.2. Verification

- **Use documents** in the individual's possession (e.g., bills, receipts, etc.) to verify the gross rent and the dates received, and the expenses and the dates paid.
- **If no documents are available,** obtain a signed statement explaining why no documents are available and providing an allegation of the gross rent and expenses paid for the period involved. **Do not** contact the tenants to verify the allegation.
- If you are **uncertain** whether an expense is allowable (e.g., whether it is an incidental repair or a capital expenditure), contact the local Internal Revenue

Service (IRS) or refer to IRS Publication 527. Document the file with the information obtained from IRS.

http://www.irs.gov/formspubs/lists/0,,id=97819,00.html

53.3. Refunds on Paid Expenses

If the AG recipient receives a refund for an expense already paid (e.g., a property tax refund), recalculate his/her net rental income for the period involved.

54. Repair/Replacement Payments for Lost, Damaged or Stolen Resources

Income/Not Income

Individuals may receive payments to repair or replace items damaged or lost as the result of a catastrophe. Funds received to repair or replace **non-excluded** resources or personal injury is unearned income in the month received and, if retained, a resource the month following the month of receipt. Funds received to repair or replace **excluded** resources are not income.

54.1. Verification

Obtain a copy of any evidence the individual has that shows the source, value, date(s), and intended purpose of the items received, including whether any cash received is for a purpose other than the replacement or repair of the lost, damaged, or stolen (and excluded) resource.

55. Replacement of Income Already Received

Not Income

If an individual's income is lost, stolen, or destroyed and the individual receives a replacement, the replacement is **not income**. Once a payment has been issued and treated as income in determining an individual's eligibility for AG, the reissuance of that same payment is **not income**.

55.1. Verification

Accept an allegation that the payment is a replacement and exclude the income without further development unless you have reason to question the allegation. If

questionable, verify the type and source of the payment through documents in the individual's possession or by contact with the source of the payment.

56. Retirement Funds

Retirement funds are annuities or work- related plans for providing income later in life or when employment ends (e.g., pension, disability, or retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans. Also, depending on the requirements established by the employer, some profit sharing plans may qualify as retirement funds.

This section applies to all items that meet the above definition of retirement funds. Retirement funds may be evaluated as a resource or as income.

56.1. Resource Or Income

The treatment of retirement funds is based on the availability of the funds and if available, the payout options. The funds may not be available, may be paid out in periodic payments or may be available in a lump sum payment.

Unavailable funds are neither income nor a resource. If the funds are distributed in periodic payments, the payments are income in the month received. If the funds can be distributed as a lumps sum, the value of the fund is a resource.

56.1.1. Periodic Payments

Periodic retirement benefits are payments made to an individual at some regular interval (e.g., monthly). If the individual receives periodic payments, the payments are evaluated as unearned income in the month received. The balance of the retirement funds is not a resource.

If the individual has a choice between periodic benefits and a lump sum, he/she must choose the periodic benefits.

56.1.1.1. Requirement To Apply

If an individual is eligible for periodic retirement benefits, he/she must apply for those benefits. If he/she fails to apply, he/she does not meet the non-financial requirement

to apply for other benefits and will be ineligible for AG. (Application for Other Benefits, Chapter C - 10)

Note: The individual does not have to pursue withdrawal if the funds are only available in a lump sum payment.

56.1.2. Lump Sum Payments

A lump sum payment is a payment that is issued once and includes the full amount of money that an individual can withdraw from the fund.

A retirement fund owned by an eligible individual is a resource if periodic payments have been denied and he/she has the option of withdrawing a lump sum. Withdrawal of the lump sum is not income but is a conversion of a resource.

56.2. Verification

Verify the source of the benefits, the availability of funds, the payment options, the approval/denial of a request for periodic payments, and the amount of available funds.

57. Royalties

Earned Income/Unearned Income

Royalties include compensation paid to the owner for the use of property, usually copyrighted material (e.g., books, music, or art) or natural resources (e.g., minerals, oil, gravel or timber). Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced.

To be considered royalties, payments for the use of natural resources also must be received:

- Under a formal or informal agreement whereby the owner authorizes another individual to manage and extract a product (e.g., timber or oil), and
- In an amount that is dependent on the amount of the product actually extracted.

57.1. Income Treatment

57.1.1. When Royalties Are Earned Income

Royalties are earned income when they are:

- Received as part of a trade or business; or

- Received by an individual in connection with any publication of his/ her work (e.g., publication of a manuscript, magazine article, or artwork)

Evaluate royalties that are earned income as wages. See Wages Chapter I – 75.

57.1.2. When Royalties Are Unearned Income

Royalties that are not earned income are unearned income and are subject to the unearned and general income exclusions.

57.1.3. Gross vs. Net Income

When documents concerning royalty payments provide both a gross and a net payment amount, you must determine which figure to use.

- When the difference between the gross and the net figures is due to income taxes withheld or windfall profit tax deductions, use the gross figure when determining income.

- When the difference between the gross and net figures represents a production or severance tax, use the net figure when determining income. The production or severance tax is a cost of producing the income and, therefore, is deducted from the gross income. (e.g., most oil royalties will be reduced by this tax.)

57.2. Verification

- Verify that payments received meet the definition of royalty by obtaining a copy of the agreement between the parties involved. If the agreement is unclear, unavailable, or informal, contact the company or source of the payment.

- Verify the amounts and frequency of royalty payments by examining documents in the individual's possession. If documents are unclear or unavailable, contact the company or source of the royalty.

58. Self-Employment (NESE)

Earned Income

Net earnings from self-employment (NESE) are the **gross income** from any trade or business **less allowable deductions** for that trade or business. NESE also includes any profit or loss in a partnership.

58.1. Income Treatment

When a self-employment situation is identified, contact your AG consultant for instructions.

SSI policy reference –

http://policy.ssa.gov/poms.nsf/lnx/0500820200!opendocument

59. Sheltered Workshop Wages

Earned Income

Payments for services performed in a sheltered workshop or work activities center are what an individual receives for participating in a program designed to help him/her become self-supporting. Payments for such services are a type of **earned income**.

An individual may receive cash or other items which are not remuneration for services and therefore are not earned income. Those items must be evaluated to determine if they are unearned income.

A sheltered workshop is a nonprofit organization or institution whose purpose is:

- To carry out a recognized program of rehabilitation for handicapped workers; and/or
- To provide such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

A work activities center is:

- A sheltered workshop, or
- A physically separated department of a sheltered workshop having an identifiable program, and separate supervision and records.

59.1. Income Treatment

Evaluate the income as wages using procedures under Wages Chapter I – 75.

60. Sick Pay/Sick Leave

Earned/Unearned Income

When an individual is out of work due to illness or disability, he/she may receive compensation for his/her period of absence. Two methods may be used to compensate the individual. The individual may use his/her sick leave or annual leave to assure his/her income continues or he/she may receive sick pay. The type of compensation received and when it is received determines how the compensation is counted.

Note: This section does not apply to Worker's Compensation Benefits. See Chapter I – 76.

60.1. Annual and Sick Leave Payments

Annual and sick leave payments are considered a continuation of salary. Annual and sick leave that is donated to an individual is treated the same as if it were the individual's own leave.

60.1.1. Income Treatment

The gross wages are counted as income to the individual. No additional income results from sick leave or donated leave. See Wages Chapter I – 75.

60.2. Sick Pay (Other Than Annual/Sick Leave)

Sick pay is a payment made to or on behalf of an employee by an employer or a private third party (such as a union or an insurance company) for sickness or accident disability.

60.2.1. Income Treatment

Sick pay is either wages or unearned income.

The following chart shows how to treat sick pay.

WHEN RECEIVED	ATTRIBUTABLE TO EMPLOYEE'S OWN CONTRIBUTION?	TYPE OF INCOME
More than 6 full calendar months after stopping work	N/A	Unearned Income
Within 6 full calendar months after stopping work	No	Wages
Within 6 full calendar months after stopping work	Yes	Unearned Income

60.2.1.1. Worker's Contribution

When sick pay is alleged within 6 full calendar months after stopping work, it must be determined whether or not the employee contributed by payroll deduction toward a sick pay plan by reviewing the pay slips or contact with the employer. Any sick payment, or portion thereof, received by an employee during the first 6 full calendar months after stopping work, which, according to the employer, are attributable to the employee's own contribution, is **not** wages.

Example: John is still within 6 months of stopping work and receives sick pay of $400 per month. John's employer advises that 40% of sick pay is attributable to John's own contribution. John should be charged with $240 earned income ($400 x 60%) and $160 unearned income ($400 x 40%).

60.2.1.1.1. Six Month Period

To determine the 6-month period after stopping work:

- Begin with the first day of non-work.
- Include the remainder of the calendar month in which work stops.
- Include the next 6 full calendar months.

Example: If an individual stops work on May 5, the 6-month period begins on May 6 and runs through November 30.

60.2.1.2. Possible Exclusions

60.2.1.2.1. Unearned Income

Possible exclusions that may be applied to unearned income are the unearned and general income exclusions.

60.2.1.2.2. Earned Income

Possible exclusions that may be applied to earned income are the general and the earned income exclusions.

60.2.2. Verification

- **Earned Income**
  - Verify sick pay which is wages by using the wage verification procedure in Wages Chapter I – 75.
  - Verify the last day (or month) worked with the employer or knowledgeable third party.
- **Unearned Income**

  Verify sick pay that is unearned income through documents in the individual's possession or by contact with the source.

61. Social Security Administration (SSA) Benefits

Unearned Income

Retirement, Survivors, and Disability Insurance (RSDI) monthly benefits are benefits paid under Title II of the Social Security Act.

61.1. Income Treatment

Generally, the gross amount of Title II benefits is **unearned income** and is subject to the unearned and general income exclusions. (See Death Benefits Chapter I – 20 for treatment of lump-sum death payments.)

61.1.1. Worker's Compensation Offset

If a monthly benefit payment has been reduced because of a worker's compensation offset, the **net** amount of the benefit received (plus any SMI premium withheld) is unearned income.

61.1.2. Prior Overpayment

If all or part of a Title II benefit is being withheld to recover an overpayment, the amount of Title II before deduction for the overpayment (the gross amount) is unearned income (unless the overpayment related double counting exception applies. See Chapter I – 47).

If the exception applies (i.e., the overpayment occurred when the individual was receiving AG and the overpaid amount was included in unearned income at that time), the amount deducted for an overpayment is **not included** in calculating countable Title II income.

61.1.3. Supplementary Medical Insurance (SMI) Premiums

The amount of premiums deducted from RSDI benefits for SMI under Medicare is unearned income. Refunded SMI premiums are **not** income. See Rebates and Refunds Chapter I – 51.

61.1.4. Garnishment of Title II Benefits

If a monthly Title II benefit payment has been reduced because of a garnishment, the **gross** amount of the benefit received is unearned income.

61.2. Verification

Use SVES to verify RSDI benefits.

61.3. When To Count Retroactive RSDI Benefits

Other than the following exceptions below, retroactive RSDI benefits, whether paid in one lump sum or by installment, are counted as unearned income in **the month payment is received.**

Note: Reissued conserved funds, whether paid in a lump sum or in installments, are not considered unearned income in the month of reissuance since such funds were previously considered in the month of original receipt. (Conserved funds are SSA payments for a prior period that were held by SSA.)

62. Temporary Assistance For Needy Families (TANF)

Unearned Income

TANF programs use income as a factor of eligibility, and are considered income based on need (IBON).

62.1. Income Treatment

The AG claimant's share of a TANF grant is counted dollar for dollar as income.

62.1.1. Exclusions

The $20 General Income Exclusion does not apply to this income. TANF is subject to the other unearned and general income exclusions.

62.2. Verification

Verify the individual’s portion of the TANF grant through ADAPT or by contact with the TANF eligibility worker.

63. Tips

Earned/Unearned Income

Tips are a gift or a sum of money tendered for a service performed or anticipated. Cash tips may be received in two ways directly, from an individual or indirectly, i.e., a customer designates a tip amount on a credit card.

63.1. Income Treatment

Cash tips received by an employee in the course of employment by any one employer are **wages** if the tips **total $20 or more** in a calendar month. Tips **under $20** per month are **unearned income** and are subject to the unearned and general income exclusions. Tips are deemed to have been paid at the time such income was received by the employee.

Tips that total $20 or more in a calendar month are wages even if the employee receives no regular salary. See Wages Chapter I – 75.

63.2. Verification

Accept the individual's written record of dates and amounts of tips received.

64. Trust Disbursements

Unearned Income/Not Income

Disbursements from the trust principal to or for the AG individual must be evaluated to determine if they are income to the individual.

64.1. Trust Principal Is Not a Resource

If the trust principal is not a resource, disbursements from the trust may be income to the AG recipient beneficiary, depending on the nature of the disbursements. Apply regular income rules to determine when income is available.

64.1.1. Disbursements Which Are Income

Cash paid directly from the trust to the individual is unearned income.

64.1.2. Disbursements Which Are Not Income

Disbursements from the trust by the trustee to a third party that result in the individual receiving goods and services 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 AG purposes.

Exception:

If disbursements are paid to the ALF/AFCH provider, the amount paid is income to the individual.

64.2. Trust Principal Is a Resource

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.

65. Trust Earnings And Additions

Unearned Income/Not Income

This section addresses how to determine if income generated by a trust and additions to the trust principal are income to the AG individual.

Trust earnings or income are **amounts earned by the trust principal**. They may take such forms as interest, dividends, royalties, rents, etc. These amounts are unearned income to the person (if any) legally able to use them for personal support and maintenance.

65.1. Trust Principal Is Not a Resource

65.1.1. Trust Earnings

Trust earnings are not income to the AG who is 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 AG applicant or recipient who is a trust beneficiary **unless** the trust directs, or the trustee makes, payment to the beneficiary.

65.1.2. Additions to Principal

Additions to trust principal made directly to the trust are not income to the grantor, trustee or beneficiary.

65.1.2.1. 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 include:

- 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)).

65.1.2.2. Assignment of Income

A legally assignable payment that is assigned to a trust is income for AG purposes **unless** the assignment is irrevocable. If the assignment is revocable, the payment is income to the individual legally entitled to receive it.

65.2. Trust Principal Is a Resource

65.2.1. Trust Earnings

Trust earnings are income to the individual for whom trust principal is a resource, unless the terms of the trust make the earnings the property of another.

65.2.2. 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.

66. VA Aid and Attendance and Housebound Allowances

Not Income

VA pays an allowance to veterans, spouses of disabled veterans, and surviving spouses who are in regular need of the aid and attendance of another person or who are housebound. This allowance is combined with the individual's pension or compensation payment.

66.1. Income Treatment

VA aid and attendance and housebound allowances are **not income** for AG purposes.

66.2. Verification

It is necessary to determine if the individual's payment includes an additional amount for aid and attendance. It is not necessary to verify the actual amount of them. It is necessary to verify the amount of compensation or pension that is received for her/him self. See VA Compensation and Pension Payments Chapter I – 70.

67. VA Apportioned Benefits

Unearned Income

Apportionment is direct payment of the dependent's portion of VA benefits to a dependent spouse or child. The VA decides whether and how much to pay by apportionment on a case-by-case basis. Apportionment reduces the amount of the augmented benefit payable to the veteran or veteran's surviving spouse.

67.1. Income Treatment

A portion of a VA benefit paid by apportionment to a dependent spouse or child is **unearned income** to the dependent spouse or child and is subject to the unearned and general income exclusions.

67.2. Child

For purposes of this section, a **child** is a son or daughter (biological, adoptive, or by marriage) who is:

- Under age 18, **or**
- Age 18-22 (inclusive) and a student, **or**
- Age 18 or older, and disabled since before age 18.

67.3. Dependent

For purposes of this section, a **dependent** is a veteran's child or spouse (other than a surviving spouse) who is or was dependent on the veteran for financial support, as determined by the VA.

67.4. Verification

Use the following verification methods.

- A VA award letter or comparable document in the individual's possession;
- A benefit check in combination with a signed statement from the individual that provides the frequency of payment and affirms that VA makes no deductions (such as insurance premiums, loan payments, and overpayment deductions).

68. VA Augmented Benefits

Unearned Income

The Department of Veterans Affairs (VA) often considers the existence of dependents when determining a veteran's or a veteran's surviving spouse's eligibility for pension, compensation, and educational benefits. If dependents are involved, the amount of the benefit payable may be larger; it may be augmented.

An **augmented benefit** is an increase in benefit payment to a veteran or a veteran's surviving spouse or the use of a higher VA income eligibility limits, because of a dependent. An augmented VA benefit usually is issued as a single payment to the veteran or the veteran's surviving spouse.

68.1. Income Treatment

An absent dependent's portion of an augmented VA benefit, received by the designated beneficiary is **not income** to **either** the dependent or the individual receiving it. This is true even if the designated beneficiary continues to receive the absent dependent's portion.

Note: If the absent dependent is the AG applicant/recipient, he/she will be required to file for apportionment of the augmented VA benefit. Apportionment would have the absent dependent's portion of the benefit issued directly to the dependent. See Chapter C – 10.

68.1.1. Portion Given To Absent Dependent

A payment from a designated beneficiary to an absent dependent is not VA income to the absent dependent. It is **unearned income** in the form of a gift, a support payment, or other income.

Example:

Robert Jones, age 27, and his father Raymond Jones are both AG recipients. Mr. Jones' VA pension is $450 per month, which includes a portion for Robert as his only dependent. Mr. Jones sends Robert a money order for $25 per month. The worker counts $25 as income from a contribution for Robert. The worker verified that Mr. Jones' portion of the VA benefit is $400. The worker counts $400 as VA pension income for Mr. Jones.

68.2. Verification

It is necessary to determine if the individual's payment includes an additional amount for dependents but it is not necessary to verify the actual amount of them. It is necessary to verify the amount of compensation or pension that the individual receives for her/him self.

Use the following verification methods.

- A VA award letter or comparable document in the individual's possession;

- A benefit check in combination with a signed statement from the individual that provides the frequency of payment and affirms that VA makes no deductions (such as insurance premiums, loan payments, and overpayment deductions); or

- To verify certain current benefit information for veterans and surviving spouses, you may call the VA at 1-800-827-1000.

69. VA Clothing Allowance

Not Income

A lump sum clothing allowance is payable in August of each year to a veteran with a service-connected disability for which a prosthetic or orthopedic appliance (including a wheelchair) is used. The allowance is intended to help defray the increased cost of clothing due to wear and tear caused by the use of such appliances.

69.1. Income Treatment

A VA clothing allowance is **not income**.

69.2. Verification

Accept the individual's allegation concerning a VA clothing allowance. No further verification is required.

70. VA Compensation And Pension Payments

Unearned Income

70.1. Compensation Payments

Compensation payments are based on service-connected disability or death. With one exception noted below VA compensation payments are not based on need.

70.2. Pensions Payments

Pension payments are based on a combination of service and a non-service-connected disability or death. With two rare exceptions noted below, VA pension payments are based on need.

70.3. Inclusion Of Other Payments

The VA payment an individual receives will include the amount he/she is due as compensation or pension and may include other types of payments as well. **Only the amount of the actual compensation or pension is countable as income.** The total amount received may include:

- Payment for the individual's unusual medical expenses
- A payment for the individual's dependent (An augmented payment)
- An aid and attendance or housebound allowance

Each of these types of payments is not income for AG and must be excluded when determining countable income.

70.3.1. Verification Of Other Payments

It is necessary to determine if the individual's payment includes an additional amount for either of these other payments but it is not necessary to verify the actual amount of them. It is necessary to verify the amount of compensation or pension that is received.

70.4. Frequency Of Receipt

Payments are usually paid monthly; however, when the monthly payment due is less than $19, VA will pay quarterly, biannually, or annually. VA may also make an extra payment if an underpayment is due.

70.5. Income Treatment

VA pensions and compensation payments are **unearned** income and are subject to the unearned and general income exclusions. It is necessary to know if the VA compensation or pension is needs based or not in order to determine if the $20 General Exclusion can be applied.

70.5.1 Needs-Based Payments

70.5.1.1. Pension Payments

Assume that a VA pension is partly or entirely needs based unless there is evidence to the contrary. All VA pension payments except those based on a Medal of Honor status or those granted by a special act of congress are federally funded income based on need.

70.5.1.2. Surviving Parent Compensation

Payments to a surviving parent of a veteran are the only needs based compensation payments.

70.5.1.3. $20 General Exclusion

These payments are federally funded income based on need. As such, these payments are unearned income to which the $20 general income exclusion **does not** apply.

70.5.2. Payments Not Based On Need

70.5.2.1. Compensation Payments

Compensation payments to a veteran, spouse, child, or widow/widower are **unearned** income.

70.5.2.2. Certain Pensions Payments

Certain pensions paid to veterans or their dependents are not needs based. They are pensions paid on the basis of:

- A Medal of Honor; or
- A special act of Congress.

70.5.2.3. $20 General Exclusion

These payments are not income based on need. As such, these payments are unearned income to which the $20 general income exclusion **does** apply.

70.6. Recoupment Of Severance Pay Deduction

A "recoupment of severance pay" may be deducted from VA compensation payments. This recoupment is a benefit offset and is not an overpayment recovery. It is not income.

- To verify these deductions, use documents in the individual's possession (e.g., statement showing the deduction), or contact the VA for verification.

70.7. Verification

Use the following verification methods.

- A VA award letter or comparable document in the individual's possession.
- A benefit check in combination with a signed statement from the individual that provides the frequency of payment and affirms that VA makes no deductions (such as insurance premiums, loan payments, and overpayment deductions).
- To verify certain current benefit information for veterans and surviving spouses, you may call the VA at 1-800-827-1000.

70.8. Procedure

Follow the procedure in the table below for verifying and counting VA compensation and pensions.

STEPS	VA COMPENSATION AND PENSION PROCEDURES ACTIONS
Step 1	Is the VA compensation or pension payment a needs based payment? • **Yes -** go to Step 2. • **No -** go to Step 6.
Step 2	The payment is needs based. Screen for unusual medical expenses. Did the individual or any member of his/her family report any income (other than AG) to VA? • **Yes or unknown -** continue in this step. • **No -** go to Step 3. No payment for unusual medical expenses are included

STEPS	VA COMPENSATION AND PENSION PROCEDURES ACTIONS
	Did VA ever notify the individual (or the VA claimant) that medical expenses were considered in the VA payment? • **Yes or unknown** - continue in this step. • **No -** go to Step 3. No payment for unusual medical expenses are included Has the individual (or the VA claimant) ever reported medical expenses to VA? • **Yes or unknown** - the payment may include payment for unusual medical expenses. Go to Step 3. • **No -** no payment for unusual medical expenses is included. Go to Step 3.
Step 3	Develop for augmentation if dependents may be involved. Does the VA benefit include money for any dependents? • **Yes or unknown** - continue in this step. • **No -** go to step 4. Does the veteran or veteran's surviving spouse have a living spouse or child (including an adult child disabled since childhood)? • **Yes -** the payment may include an augmented portion for a dependent. Go to step 4. • **No -** no augmented payment is included. Go to step 4.

STEPS	VA COMPENSATION AND PENSION PROCEDURES ACTIONS
Step 4	Screen for an aid and attendance or housebound allowance. Is the individual: • Alleging an aid and attendance or housebound allowance; or • Is housebound; or • Is blind; or • Is unable to dress or care for him/herself; or • Is single and severely and permanently disabled or otherwise appears to require the assistance of someone else on a day-to-day basis o **Yes -** continue in this step. o **No -** no payment for aid and attendance or housebound allowance is included. Go to Step 5. Ask the individual if he receives an aid and attendance or housebound allowance. o **Yes -** the payment may include an aid and attendance or housebound allowance. Go to step 5. o **No -** no payment for aid and attendance or housebound allowance is included. Go to Step 5.

STEPS	VA COMPENSATION AND PENSION PROCEDURES ACTIONS

Step 5	Are unusual medical expenses, augmentation, or an aid and attendance or housebound allowance at issue in the case?
	
	• **Yes -** these payments must be excluded as they are not income for AG purposes.
	
	  o Request that VA verify the amount of the compensation/pension received exclusive of any payment for augmentation, unusual medical expenses, and aid and attendance or housebound allowances. There is no need to verify the amounts received for those payments as they are not income for AG purposes. Continue in this step.
	
	• **No -** verify the gross amount and frequency of payment using (in order of priority):
	
	  o A VA award letter or comparable document in the individual's possession;
	
	  o A benefit check in combination with a signed statement from the individual that provides the frequency of payment and affirms that VA makes no deductions (such as insurance premiums, loan payments, and overpayment deductions)
	
	  o **Note:** To verify certain **current** benefit information for veterans and surviving spouses, you may call the VA at 1-800-827-1000.
	
	Count the verified compensation/pension payment as unearned income. The $20 General Exclusion **does not** apply. STOP

STEPS	VA COMPENSATION AND PENSION PROCEDURES ACTIONS
Step 6	The payment is not needs based. Verify the gross amount and frequency of payment using (in order of priority): • A VA award letter or comparable document in the individual's possession; • A benefit check in combination with a signed statement from the individual that provides the frequency of payment and affirms that VA makes no deductions (such as insurance premiums, loan payments, and overpayment deductions) **Note:** To verify certain **current** benefit information for veterans and surviving spouses, you may call the VA at 1-800-827-1000. Count the verified payment as unearned income. The $20 General Exclusion **does apply**.

71. VA Educational Benefits

Unearned Income

VA provides educational assistance under a number of different programs including vocational rehabilitation. Veterans and dependents and survivors of veterans may be eligible for educational benefits.

71.1. Income Treatment

VA educational benefits other than those listed below are unearned income and are subject to the unearned and general income exclusions.

71.2. What Is Not Income

71.2.1. Vocational Rehabilitation

Payments made as part of a VA program of vocational rehabilitation are not income. This includes any augmentation for dependents.

71.2.2. Withdrawal of Contributions

Any portion of a VA educational benefit which is a withdrawal of the veteran's own contribution is conversion of a resource and is not income.

71.2.3. Augmented Benefits

Benefits issued under Chapter 31 (Training and Rehabilitation for Veterans with Service Connected Disabilities) or a VA program of vocational rehabilitation may be augmented. The augmented portion of the payment is not income to the individual.

71.3. Contributory/Non-Contributory Programs

Some VA educational benefits are based on contributions by the veteran and some are not. A “contributory” VA educational program is one in which the veteran contributed to the educational fund while in the service and VA matches the money when the veteran withdraws it to pursue an education. A “non-contributory” VA educational program is one in which the veteran did not contribute to the educational fund.

71.3.1. “Contributory” Programs

Only one of the VA educational benefits programs is contributory, Chapter 32 (Veterans Educational Assistance Program (VEAP). Payments from this program may include funds the individual contributed and VA funds. Any portion of a VA educational benefit which is a withdrawal of the veteran's own contribution is conversion of a resource and is not income. The remaining portion of the benefits is **unearned income** subject to the exclusion for educational expenses.

71.3.1.1. Verification

Verify this information with the VARO. Ask them to verify the dollar amount of the periodic payments and the amount of the payment that represents a return of the veteran's own contribution.

71.3.2. "Non-Contributory" Programs

The following VA educational programs are non-contributory. All benefits received under these programs are unearned income subject to the exclusion for educational expenses.

- Chapter 30 (Active Duty Educational Assistance Program ("new" GI Bill)) —
- Chapter 31 (Training and Rehabilitation for Veterans with Service Connected Disabilities)
- Chapter 35 (Survivors and Dependents Educational Assistance Program)
- Chapter 106 (Selected Reserve Program)

71.4. Frequency Of Payment

Payments are usually made monthly only for those months the veteran is in school. If school attendance is less than full time, the payments may be made less frequently.

71.5. Exclusions

Any portion of a grant, scholarship, or fellowship used for paying tuition, fees, or other necessary educational expenses is excluded from income.

Only that portion of an educational payment which is income to the individual obtaining the education is subject to the exclusion for educational expenses. The augmented portion which is income to the **dependent of the student** is not subject to this exclusion.

71.5.1. Tuition, Fees, and Other Necessary Educational Expenses

Educational expenses include laboratory fees, student activity fees, transportation, stationery supplies, books, technology fees, and impairment-related expenses necessary to attend school or perform schoolwork (e.g., special transportation to and from classes, special prosthetic devices necessary to operate school machines or equipment, etc.).

Deduct the amount of tuition, fees, and other necessary educational expenses from the gross amount of the assistance. Use any **reasonable method** for deducting educational expenses from income.

71.5.1.1. Verification of Expenses

Determine the amount of tuition, fees, and other necessary educational expenses.

- Use receipts, bills with cancelled checks, contact with the provider, etc., to verify expenses paid. If an expense is verified as incurred but not paid, assume the individual will pay the expense unless you have reason to question the situation. No follow-up is required if the assumption is applied.
- Use your judgment to determine whether payment of an expense was a necessary part of obtaining an education.
- A signed allegation is acceptable evidence of expenses when it is unreasonable to obtain other evidence (e.g., daily bus-fare, small expendable items, etc.). Do not apply this tolerance to major expenses such as tuition, fees, and books.

71.5.2. Other Exclusions

The unearned general income exclusions may be applied to VA educational assistance. They are applied to the balance remaining after the exclusion of necessary educational expenses.

72. VA Unusual Medical Expenses Payment

Not Income

VA considers unusual medical expenses when determining some needs-based pension and compensation payments. Expenses which exceed 5 percent of the maximum annual VA payment rate are considered unusual. The amount of the unusual medical expenses is deducted from countable income when computing the VA payment. As a result, the veteran, survivor, or dependent may receive a higher monthly VA payment, an extra payment, or an increase in an extra payment.

72.1. Income Treatment

VA payments resulting from unusual medical expenses are **not income.**

72.2. Resources

Any unspent VA payments resulting from unusual medical expenses are resources if retained into the calendar month following the month of receipt.

72.3. Verification

It is necessary to determine if the individual's payment includes an additional amount for unusual medical expenses but it is not necessary to verify the actual amount of them. It is necessary to verify the amount of compensation or pension that is received.

73. Veterans' Children with Certain Birth Defects Payments

Unearned Income

The Department of Veterans Affairs (VA) provides three types of benefits to natural children of veterans:

- Benefits for Vietnam veterans' children born with spina bifida,
- Benefits for Korea service veterans' children born with spina bifida, and
- Benefits for women Vietnam veterans' children born with certain birth defects.

Children do not receive benefits under more than one of these programs. VA determines eligibility for VA benefits.

73.1. Child

For purposes of this VA benefit, the **child status is not changed by age or marital status**.

73.2. Exclusion

These types of VA benefits are excluded from income and resources for AG purposes.

Note: Interest and dividends earned on unspent payments are also excluded from income.

73.3. Verification

Use documents such as letters or notices from VA to verify the type of payment.

- If documents from VA show the type of the payment, use the documents as proof of the type of payment.
- If documents from VA do not show the type of the payment or no documents are available to verify the type of payment, contact VA.

74. Victims' Compensation Payments

Unearned Income

Some states have established funds to compensate victims of crime. Payments issued from such a state-established fund are excluded unearned income.

74.1. Exclusion

Any payment received from a fund established by a State to aid victims of crime is excluded from income.

74.2. Verification

Verify that the compensation came from a state-established fund to aid victims of crime. This can be done by using documents in the individual's possession, contacting the provider or using a precedent. Once verified accept the individual's allegation of amounts and date of receipt and exclude the payment without further development.

75. Wages

Earned Income

Wages are what an individual receives (before deductions) for working as someone else's employee. Absent evidence to the contrary, if FICA taxes have been deducted from an item assume it meets the definition of wages.

Note: Under certain conditions, services performed as an employee are deemed to be self-employment rather than wages (e.g., ministers, real estate agents, newspaper vendors, statutory employees, etc.). See Self-Employment Chapter I – 58.

75.1. Wages May Take The Form Of:

- **Salaries** — These are payments (fixed or hourly rate) received for work performed for an employer.
- **Commissions** — These are fees paid to an employee for performing a service (e.g., a percentage of sales).

- **Bonuses** — These are amounts paid by employers as extra pay for past employment. (e.g., for outstanding work, length of service, holidays, etc.)

- **Severance pay** — This is payment made by an employer to an employee whose employment is terminated independently of his wishes or payment is made due to voluntary early retirement.

- **Special payments received because of employment —**These are items such as vacation pay, advanced/deferred wages, etc.

- **Sick pay** received within 6 months after stopping work, which is not attributable to the employee's contribution.

- **AmeriCorps and National Civilian Community Corps Payments**

- **Tips –** Tips are earned income when they equal or exceed $20 per month.

75.2. Income Treatment

Wages are **earned income** and are subject to the earned and general income exclusions.

75.2.1. Wage-Related Payments

Employers make various payments on behalf of their employees that are **not** earnings.

The following payments by an employer are not income unless the funds for them are deducted from the employee's salary:

- Funds the **employer** uses to purchase qualified benefits under a cafeteria plan;

- Employer contributions to a health- insurance or retirement fund;

- The employer's share of FICA taxes or unemployment compensation taxes, in all cases;

- The employee's share of FICA taxes or unemployment compensation taxes paid by the employer on wages for domestic service in the private home of the employer or for agricultural labor only, to the extent that the employee does not reimburse the employer.

75.3. When To Count

Wages for each month count at the earliest of the following points:

- when they are received, or
- when they are credited to the individual's account, or
- when they are set aside for the individual's use (i.e., the employer sets aside the wages for payment at a future date as requested by the employee.

75.3.1. Wage Advances And Deferred Wages

Advances are payments by an employer to an individual for work to be done in the future. Wages are considered "deferred" if they are received later than their normal payment date. Types of wage payments which may be deferred include vacation pay, dismissal and severance pay, back pay, bonuses, etc.

75.3.1.1. Wage Advances

An advance is wages in the month received.

75.3.1.1.1. Verification Of Advance

Assume that an advance on wages meets the definition of wages (as opposed to being a loan), absent evidence to the contrary. Count such advances on wages as income when received.

75.3.1.2. Deferred Wages

- Wages that are deferred **due to circumstances beyond the control of the employee** are considered earned income when actually received.
- Wages that are deferred **at the employee's request or by mutual agreement with the employer** are considered earned income when they would have been received had they not been deferred.

75.3.1.2.1. Verification of Deferment

If the individual alleges or other evidence shows that wages were deferred, request from the employer an explanation of the reason for the deferment. If the employer:

- **Provides an explanation**, document the file with the employer's explanation.
- **Is uncooperative but the individual satisfactorily explains**, document the file with the individual's signed statement.
- **Is uncooperative and the individual cannot satisfactorily explain**, document the file with a statement to that effect and assume that the wages were available to the employee when they would have been received had they not been deferred.

75.4. Verification

75.4.1. Verification Not Required

Verification of wages is not required for an individual who:

- Alleges he has not worked or received earnings (e.g., wages/sick pay) in any month from three months prior to the month of application through the current month and you have no reason to question the allegation, or
- Alleges earnings (alone, or in combination with other income) that make him clearly ineligible for AG after consideration of all applicable exclusions, or
- Is being denied AG for reasons other than earnings.

75.4.2. Verification Required

Verification of wage amounts, source, and frequency of receipt is required whenever an individual alleges (or you believe) he received wages, sick pay, or temporary disability payments unless verification is not required as noted above.

75.4.3. Verification Periods - Applications and Redeterminations

Verify income received in the three calendar months prior to the month of application/redetermination.

75.4.4. Primary Verification of Wages

The following proofs, in order of priority, are acceptable evidence of wages:

- **Pay slips** (original or issued by the employer) — must show the individual's name or SSN, gross wages, and period covered by the earnings.
  - Accept the individual's signed allegation of when earnings were received if it is not shown on the pay slip.
  - If not all pay slips are available, but the wages attributable to the missing pay slip(s) can be determined by other evidence (e.g., year-to-date totals), it is not necessary to obtain the missing pay slip(s).
  - Pay slips that do not contain all the required information may be used in conjunction with other evidence; however, any discrepancies must be resolved.
  - When original pay slips are requested but the individual provides photocopies or faxed pay slips instead, accept the photocopies as secondary evidence of wages.
- **Oral statement from employer**
  - The case documentation must reflect the date, method, and all relevant details of the contact.
- **Written statement from employer**
  - Pay slips individuals print from a company/government sponsored website may be accepted as primary evidence of wages provided they contain all required information. If the information supplied on the pay slips is questionable (e.g. appears altered or is difficult to read) obtain further evidence of wages from additional sources.

75.4.5. Secondary Evidence of Wages

Seek primary evidence before secondary evidence.

- **W-2's/Tax Forms**

  Annual wage information obtained from W-2's or Federal/State tax forms is acceptable secondary evidence of wages, but may be used only after appropriate attempts to obtain primary evidence have been unsuccessful.

  - If the evidence that can be obtained reflects only an **annual** or **quarterly** wage amount, ask the individual the period covered by the annual/quarterly wage amount, and divide the amount by the number of months for which work is alleged to get monthly wage amounts for those months.

- **Photocopies or Faxed Copies**

  When original pay slips are requested but the individual provides photocopies or faxed pay slips instead, accept the photocopies as secondary evidence of wages.

75.4.6. Verification Is Questionable

If you have serious reason to question the credibility of pay slips or an oral or written statement from an employer, use other acceptable evidence of wages and document the file to reflect your decision.

75.4.7. Verification Of Termination Of Wages

Verify termination of wages whenever an individual alleges wages have terminated. The following proofs, in order of priority, are acceptable evidence of termination of wages:

- Written statement from employer.
- Oral statement from employer, documented on the evaluation of eligibility.

75.4.8. No Acceptable Evidence of Wages Or Termination Of Wages

If acceptable evidence (primary or secondary) is not available, the following signed allegations are used as verification of wages or termination of wages:

- **For evidence of wages**, the individual's signed allegation of amount and frequency of wages.
- **For evidence of termination of wages**, the individual's signed allegation of termination of wages (including termination date and date last paid).

75.4.8.1. Documentation

When a signed allegation is used as the sole evidence of wages or termination of wages, the case documentation must reflect what steps were taken to obtain acceptable evidence and why they were unsuccessful.

76. Worker's Compensation (WC)

Unearned Income

Worker's compensation (WC) payments are awarded to an injured employee or his /her survivor(s) under Federal and State WC laws, such as the Longshoremen and Harbor Workers' Compensation Act. The payments may be made by a Federal or State agency, an insurance company, or an employer.

76.1. Income Treatment

The WC payment less any expenses incurred in getting the payment is unearned income and is subject to the unearned and general income exclusions.

76.2. Expenses of Obtaining WC

76.2.1. Amounts Designated for Expenses by Authorizing or Paying Agency

Any portion of a WC award or payment **that the authorizing or paying agency designates** for medical expenses, legal or other expenses attributable to obtaining the WC award is not income. The expenses may be **past, current,** or **future.** The WC payments designated for such expenses may be received in a lump sum or as a continuing payment.

76.2.2. Other Amounts Claimed for Expenses

If an individual alleges having incurred expenses that exceed amounts designated for expenses above, or for which no amount was designated, the normal rules pertaining to the expenses of obtaining income apply. See Chapter H – 7.

76.3. Verification

Use an award notice to verify WC payments. If such a notice is not available, obtain information from the Federal or State agency, insurance company, or employer. (The address of the local Federal Employee's Compensation agency or the State Worker's Compensation Office should be in the local phone directory.)

76.3.1. Verifying Amounts Designated as Expenses by Authorizing or Paying Agency

If the WC award notice includes monies designated for expenses listed above, but does not specify the amount designated, contact the paying agency (i.e., the Federal or State agency, insurance company, or employer) to verify the amount of the WC award that is designated for such expenses.

76.3.2. Verifying Other Amounts Claimed for Expenses

Follow the instructions in Chapter H – 7 to verify expenses that exceed the designated amounts or for which no amounts are designated.

TABLE OF CONTENTS

GRANT COMPUTATION AND ISSUANCE - INTRODUCTION **1**

1. NON-SSI INDIVIDUAL'S INCOME ELIGIBILITY **1**

2. AG LIMIT **2**

3. ALF/AFCH RATE **2**

3.1. COVERED SERVICES 2
3.2. VERIFICATION OF ESTABLISHED RATE 3
3.3. PRORATION OF RATE 4

4. PERSONAL NEEDS ALLOWANCE (PNA) **5**

4.1. PROVIDER REQUIREMENTS 6

5. GRANT COMPUTATION **6**

5.1. ROUNDING 6

6. CHANGES **7**

6.1. INDIVIDUAL MOVES TO ANOTHER ALF/AFCH 7
6.1.1. New Rate Is Lower *7*
6.1.2. New Rate Is Higher *7*
6.2. THE APPROVED RATE INCREASES 8

7. RECONCILING PAYMENTS **8**

7.1. RECONCILIATION PERIODS 9
7.1.1. Stable Income *9*
7.1.2. Fluctuating Income *9*
7.2. RECONCILIATION COMPUTATION 11
7.2.1. Offset Overpayments With Underpayments *11*

8. PAYMENT ISSUANCE **12**

8.1. ISSUANCE METHOD 12
8.2. ISSUANCE TIMEFRAMES 12

Grant Computation and Issuance - Introduction

Once non-financial requirements are met and the individual's net countable income is determined, financial eligibility must be determined for non-SSI individuals and the grant amount must be computed for all. This chapter addresses the non-SSI individual's financial eligibility, the computation of the payment and information about issuing AG payments.

The AG payment is computed by deducting the individual's net countable income from the AG Limit for the locality in which the ALF or AFCH is located. The result is the amount of the AG payment. The limit is computed by adding the Personal Needs Allowance to the rate the ALFs and AFCHs are permitted to charge AG recipients.

AG payments are issued in the name of the individual recipient and are mailed to the recipients address.

STEPS	GRANT DETERMINATION PROCEDURE ACTIONS
Step 1	Determine the individual's net countable income. For SSI recipients, see Chapter D For non-SSI individuals, see Chapters H and I
Step 2	Determine the individual's AG Limit by adding the appropriate rate for his/her locality to the Personal Needs Allowance. The result is the AG Limit.
Step 3	Subtract the individual's net countable income from the AG Limit.
Step 4	Round the remainder to the nearest dollar. The result is the AG payment amount.

Couples

Procedure:
Determine the couple's total countable income, divide the countable income in half, use each spouse's half to determine his/her income eligibility/grant amount based on the rate for the ALF in which he/she is living.

1. Non-SSI Individual's Income Eligibility

The process to determine a non-SSI individual's income eligibility is the same as the grant calculation procedure, subtracting the net countable income from the AG Limit. If the result is $.01 or higher, the individual is income eligible. If the result is zero the individual is ineligible for AG due to excess income.

2. AG Limit

The AG Limit is the amount an individual needs to assure he has enough income to pay the ALF/AFCH rate and to retain money to meet his/her personal needs. The limit is computed by adding the VDSS established ALF/AFCH rate to the amount an individual is allowed to keep for his/her personal needs, the personal needs allowance (PNA). The individual's net countable income is subtracted from the AG Limit to determine the additional amount of income the individual needs, this is the AG payment amount.

3. ALF/AFCH Rate

The Virginia Department of Social Services (VDSS) establishes the maximum rate an ALF/AFCH can charge an AG recipient. Two rates are set, one for ALFs and AFCHs that are located in Planning District 8 and another for all other areas of the state. The rate established for Planning District 8 is higher than that for other areas due to the high cost of living there. The established rates are adjusted at least annually. Most adjustments occur in January to coincide with the increase in SSI benefit levels.

3.1. Covered Services

The Virginia Administrative Code identifies the services that are to be provided for the established rate. The established rate must be accepted as full payment for those services. The Auxiliary Grants payment covers the following services:

- Room and Board.
  - Provision of a furnished room;
  - Housekeeping services based on the needs of the recipient;
  - Meals and snacks required by licensing regulations, including extra portions of food at mealtime and special diets; and
  - Clean bed linens and towels as needed by the recipient and at least once a week.
- Maintenance and Care.

- Minimal assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;

- Medication administration as required by licensing regulations including insulin injections;
- Provision of generic personal toiletries including soap and toilet paper;
- Minimal assistance with the following:
  - Care of personal possessions;
  - Care of funds if requested by the recipient and residence provider guidelines allow this practice,
    - The deposit of the recipient's Auxiliary Grant payment into the provider's financial account is prohibited. The recipient or his personal representative is responsible for cashing or depositing the recipient's check;
  - Use of the telephone (not to include long-distance calls);
  - Arranging transportation;
  - Obtaining necessary personal items and clothing;
  - Making and keeping appointments;
  - Assisting with correspondence;
- Securing health care and transportation when needed for medical treatment;
- Providing appropriate social and recreational activities as required by licensing regulations; and
- General supervision for safety.

3.2. Verification of Established Rate

Updates to the current rate are published by means of the Broadcast system that is part of the Local Agency Website. The most current Broadcast will be displayed

under the Adult Services section in the Broadcast Archives. The published rates apply to both ALF and AFCH residents.

http://spark.dss.virginia.gov/broadcasts/most_recent.cgi.

ALF rates are to be verified by accessing the **AG Facilities and Rates** page on SPARK. All facilities that are both licensed and approved to accept AG recipients are listed there. If the ALF is not listed there, the residents of the ALF are not eligible for AG.

http://spark.dss.virginia.gov/divisions/dfs/as/documents.cgi

3.3. Proration Of Rate

If an individual enters an ALF or AFCH after the first of the month or the individual enters and leaves the ALF/AFCH in the same month, the rate must be prorated based on the number of days the individual is in the facility/home.

Note: The rate is not prorated for the month of discharge when the month of discharge is later than the month of entry.

STEPS	PRORATION OF RATE PROCEDURE ACTIONS
Step 1	Divide the full monthly rate by 30 to obtain the daily rate **Note:** 30 is the number of days used regardless of the actual number of days within the month of entry.
Step 2	Multiply the daily rate by the number of days the client resided in the home **Note:** The number of days includes the day of entry but not discharge The result is the prorated rate for the month of entry.
Step 3	Add the result to the full personal needs allowance The result is the AG limit for the month of entry.

Example 1:

Mrs. Apple, an aged SSI recipient, enters ABC Home for Adults, an assisted living facility, on October 20 and applies for AG on October 24. The daily rate of $32.73 is computed by dividing the monthly rate of $ 982 by 30 days. Since Mrs.

Apple was there 12 days in October, the prorated rate is $392.79 (12 x $32.73). $392.79 plus $70 personal needs allowance = $462.79, the AG limit for the month of October.

Example 2:

Mr. Banana applied for AG on July 16 after being admitted to the DEF Assisted Living Facility on July 12. On July 31, he left the home. The daily rate $32.73 is computed by dividing the monthly rate of $ 982 by 30 days. Since Mr. Banana was in the home 19 days prior to his departure, the prorated rate for the period is $621.87 (19 X $32.73). $621.87 plus $70 personal needs allowance = $691.87, the AG limit for the month of July.

4. Personal Needs Allowance (PNA)

The Personal Needs Allowance is a portion of the AG payment that is reserved for meeting the individual's personal needs. The PNA is the same amount for all recipients. The PNA is not adjusted annually.

The personal needs allowance is expected to cover the cost of the following categories of items and services:

- Clothing;
- Personal toiletries not included in those to be provided by the assisted living facility or adult foster care provider or if the recipient requests a specific type or brand of toiletries;
- Personal items including tobacco products, sodas, and snacks;
- Hair salon services;
- Over-the-counter medication, medical co-payments and deductibles, insurance premiums;
- Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long-distance telephone calls;
- Personal telephone, television, or radio;
- Social events and entertainment offered outside the scope of the activities program; and
- Other items agreed upon by both parties except those listed below. The personal needs allowance **shall not** be encumbered by the following:

- Recreational activities required by licensing regulations (including any transportation costs of those activities);
- Administration of accounts (bookkeeping, account statements);
- Debts owed the assisted living facility or adult foster care provider for basic services that are not required to be covered by the AG rate; or
- Assisted living facility or adult foster care provider laundry charges in excess of $10 per month.

4.1. Provider Requirements

- These funds shall not be co-mingled with the funds of the assisted living facility or adult foster care provider.
- The personal needs allowance for the recipient shall not be charged by the assisted living facility or adult foster care provider for any item or service not requested by the individual.
- The assisted living facility or adult foster care provider shall not require an Auxiliary Grants recipient or his representative to request any item or service as a condition of admission or continued stay.
- The assisted living facility or adult foster care provider must inform the individual or his representative of a charge for any requested item or service and the amount of the charge.

5. Grant Computation

The AG payment amount is computed by subtracting the individual's net countable income from the appropriate AG Limit, as computed above. The result is rounded to the nearest dollar and the payment is issued to the client.

5.1. Rounding

When the payment amount is less than a full dollar amount, the amount must be rounded to the nearest dollar. Amounts ending in $.01 through $.49 are to be rounded down to the next lowest dollar; from $.50 through $.99 to the next higher dollar. When the budgetary deficiency is $.49 or less, no payment is to be made. A payment of less than $1.00 may not be issued.

Examples:

If amount = $64.45, then the payment = $64.00

If amount = $64.56, then the payment = $65.00

If amount = $.45, then the payment = $0

Note: When an otherwise eligible individual is not entitled to a payment because the grant amount does not equal or exceed $1, due to rounding, the individual is AG eligible and is enrolled as such. He/she is also Medicaid eligible based on his/her AG eligibility.

6. Changes

6.1. Individual Moves To Another ALF/AFCH

When an individual moves from one ALF/AFCH to another, the payment amount is not adjusted for the month of change unless the rate in the second home is higher.

6.1.1. New Rate Is Lower

If the rate in the second home is lower, no adjustment will be made. The individual is entitled to the amount he received based on the rate in the first home.

6.1.2. New Rate Is Higher

If the new home's rate is higher, the grant for the month of change must be recomputed using the second home's rate. Any difference between the old grant amount and the new grant amount is prorated to determine the supplemental amount payable to the recipient. The proration is based on the number of days the individual was in the new home.

Note: rate will only differ when a person leaves one area and enters or leaves planning District 8. District 8 consists of Alexandria, Arlington, Fairfax City, Fairfax Co., Falls Church, Loudon, Manassas City, Manassas Park, and Prince William.

STEPS	COMPUTATION OF SUPPLEMENT ACTIONS
Step 1	Determine the rate for the new home.
Step 2	Add the result to the full personal needs allowance

	The result is the AG Limit for the month of change.
Step 3	Subtract the individual's net countable income. The result is the new payment amount.
Step 4	Subtract the initial payment amount from the new payment amount.
Step 5	Divide the difference by 30 to determine the daily amount. **Note:** 30 is the number of days used regardless of the actual number of days within the month of entry.
Step 6	Multiply the daily amount by the number of days in the new home. The result is the amount of supplement to be issued to the individual.

Example:

Ms. Cranberry leaves GHI on May 22 and enters JKL. The approved rate at GHI is $982, while at JKL it is $1129. (It is in Planning District 8.) Since Ms. Cranberry's net countable income is $700 a month, her grant at GHI was **$352** a month. At JKL she will be eligible for **$499** a month. **$499** minus **$352** is $147. Therefore, she will receive a supplemental check of $**49** ($147 divided by 30 = $4.90 times 10 days in the new facility).

6.2. The Approved Rate Increases

When VDSS publishes an increase the ALF/AFCH rates, the increase must be reflected in the payment for the month in which the rate increased. If action is not taken in time to impact the monthly issuance a supplement must be issued.

7. Reconciling Payments

AG is a needs based program and the amount of the assistance issued to eligible individuals must be based on their actual income.

This presents a problem as ongoing AG payments are issued at the first of the month to cover the individual's needs for that month. This early issuance cycle requires that the payment be based on projected income. Projection of income may result in the counting

of more or less income than the individual will actually receive. To meet the federal mandate of basing the monthly payment on the income actually received within the month, it is necessary to periodically reconcile all payments issued based on projected income. Reconciliation requires the verification of the income actually received, the recomputation of prior months' payment amounts and the correction of any over or underpayments.

The reconciliation frequency is determined by the stability of the amount of income received. If the amount of income is stable, payments are reconciled annually. If the income amount fluctuates, the payments are reconciled every three months.

7.1. Reconciliation Periods

The period that is to be reviewed and reconciled is called the reconciliation period. The frequency of the required reconciliation and the reconciliation period is determined by whether the individual's income is stable or fluctuates.

7.1.1. Stable Income

To meet the definition of stable income, the source and amount received must be the same each month. Stable income must be reconciled annually at redetermination. The reconciliation period is the 12 months prior to the redetermination date. At redetermination the worker will review the actual income received in the last 12 months and recompute the payment amount for any month in which the actual income differed from the projected income.

Note: The income received in the reconciliation period is also used to project the income to be received through the month of the next scheduled redetermination.

7.1.1.1. Verification

Verify the actual income received within the last 12 months. If the verification is available online, it is not necessary to request the verification from the individual. Use the verification methods specified in the manual for the appropriate income type.

7.1.2. Fluctuating Income

To meet the definition of fluctuating income, the amount received must vary from month to month.

Fluctuating income must be reconciled every three months. The worker will review the actual income received and recompute the payment amount for each month in the reconciliation period.

Note: All earned income is treated as fluctuating income.

7.1.2.1. Reconciliation Cycle

The reconciliation cycle for fluctuating income begins with the application month. Income is projected for the month of application and the three following months. The individual is instructed to save his/her income verification for the first three months and submit it in the fourth month. In the fourth month the worker will use the actual income to reconcile the payments that were issued for the prior three months and to project the amount of income to be received for the next four months. The four month cycle will continue as long as the individual receives fluctuating income. (Three months of projected income followed by the income reporting month, the fourth month)

Example:

January = Month of Application

Income Is Projected January – April

April = Income Reporting Month for January – March Reconciliation Period

Reconciliation Completed

Income Is Projected for May – July

July = Income Reporting Month for April - June Reconciliation Period

Reconciliation Completed

Income Is Projected for August – October

Repeat Every Three Months

7.1.2.2. Verification

7.1.2.2.1. Non-SSI Individuals

Instruct the individual to retain all of his/her pay stubs or other acceptable income verification and submit them either monthly or

at the end of the three month income reconciliation period.

Verification of the actual amount of income received within the reconciliation period must be submitted to the worker by the 5th day of the month following the last month of the review period. Use the verification methods specified for the appropriate income type.

Note: If income verification is submitted monthly, the worker may hold the verification until the end of the reconciliation period and reconcile all three months at once.

7.1.2.2.2. SSI Recipients

An SSI recipient's income is to be verified through SVES. Use the gross SSI amount and the net earned and unearned income amounts shown there.

7.2. Reconciliation Computation

On receipt of the verification of the actual income received during the reconciliation period, recompute the individual's countable income for each month in that period. Use the actual income received within the month to determine the correct grant amount. Do not convert the income to a 4.3 weeks month. Determine if the individual received the right amount or was over or underpaid.

Note: The overpayment policy in Volume II, Part 1 does not apply to overpayments that occur due to projected income.

7.2.1. Offset Overpayments With Underpayments

If the individual was overpaid in one or more months and underpaid in another, reduce the amount of the overpayment by the underpayment.

7.2.1.1. Overpayment

If an overpayment balance remains after offsetting, deduct one-third of the overpayment amount from each of the following three months' payments.

If the recoupment alone reduces the grant to zero, the individual remains eligible for AG and Medicaid. No payment is issued.

An advance notice of action is required.

7.2.1.2. Underpayment

If an underpayment balance remains after offsetting, issue the balance in the next payment.

Use the Notice of Action to notify the individual of the temporary increase and the reason for it.

8. Payment Issuance

AG payments are issued by check directly to the individual unless an authorized payee has been appointed by the court. The court designated payee may be the individual's conservator, guardian or personal representative. It is the individual's or the individual's payee's responsibility to use the money to pay the ALF/AFCH. The check cannot be issued in the name of the facility or home.

Exception: A vendor payment may be made directly to the ALF/AFCH when an eligible individual leaves the home while his Auxiliary Grant application is pending. A vendor payment is not made in any other situation.

8.1. Issuance Method

All checks, including the initial payment, are to be mailed to the individual at the individual's address.

Exception: If the individual has a justifiable reason, he/she may be permitted to pick up the check at the LDSS office or may ask that the check be delivered to his/her home. Such reason should be stated by the recipient in writing and the written request should be filed in the case record. Approval to deliver a check to a home must be approved by the agency director or his or her designated representative.

A receipt should be secured for any checks delivered personally in the office or in the home.

8.2. Issuance Timeframes

Initial payments should be issued as soon as administratively possible after official agency action is taken to approve the case. Regardless of the date of agency action, the initial payment will include the payment amounts due for the

month of entitlement through the processing month. See Entitlement Begins Chapter B – 7.4.3.1.

Ongoing AG payments are to be mailed to be received on the first of each month and will cover the individual's needs for that month.

AFFIDAVIT OF UNITED STATES CITIZENSHIP OR LEGAL PRESENCE IN THE UNITED STATES ...2
AGREEMENT TO SELL NON-LIQUID RESOURCES 3
CONDITIONAL BENEFITS NOTICE....5
ELIGIBILITY COMMUNICATION DOCUMENT 10
ELIGIBILITY WORKER REFERRAL 12
NOTICE OF ACTION (FOR AG)....13
PROVIDER/DSS COMMUNICATION FORM....16
TRANSFER OF RESOURCES NOTICE 19
STATEMENT OF FUNDS YOU RECEIVED....24
STATEMENT OF FUNDS YOU PROVIDED TO ANOTHER....26
BURIAL RESOURCE STATEMENT....27

COMMONWEALTH of VIRGINIA

AFFIDAVIT OF UNITED STATES CITIZENSHIP OR LEGAL PRESENCE IN THE UNITED STATES

I understand that providing proof of my United States citizenship or legal presence in the United States is a requirement for receipt of Virginia Medicaid benefits. I declare, under penalty of perjury, that I am a United States citizen or am legally present in the United States.

I understand that if I give false information regarding my United States citizenship or legal presence in the United States, my Virginia Medicaid coverage may be denied or ended and I could be prosecuted for perjury, larceny and/or fraud.

Print Name _____

Signature _____ Date_____

Residence Address _____ Telephone _____

City _____ State ____ ZIP _____

AGREEMENT TO SELL NON-LIQUID RESOURCES	APPLICANT CASE NUMBER
APPLICANT	

CONDITIONS OF AGREEMENT: My resources exceed the amount which an eligible individual may have and still qualify for Auxiliary Grant payments. I hereby request that conditional payments be made to me until I can sell the below described resources at their current market value. Once the local department of social services notifies me that this agreement has been approved, I agree to sell the resources described below for the highest price I can get and to do so within 3 months (for personal property) or 9 months (for real property) of being notified that the agreement is approved.

I also agree to notify the LDSS within 5 working days after I complete the sale. I further agree to repay immediately all payments I have received that would not have been paid if I had sold the resources described below the day I filed application for benefits.

I further understand that if I fail to comply with the terms of this agreement, I will be required to make immediate refund of all Conditional Benefits payments I received. (***Read the information on the back of this form.***)

DESCRIPTION OF EACH RESOURCE IF REAL PROPERTY, SHOW ADDRESS OR LOCATION	NAMES OF OWNERS	TYPE AND PERCENTAGE OF OWNERSHIP OF EACH	ESTIMATED CURRENT MARKET VALUE	AMOUNT OWED ON RESOURCE IF ANY	NUMBER OF MONTHS IN DISPOSAL PERIOD
1.					
2.					
3.					
4.					

SIGNATURE	ADDRESS (STREET & NO.)	CITY, STATE AND ZIP CODE	DATE

AGREEMENT TO SELL NON-LIQUID RESOURCES
IMPORTANT INFORMATION ABOUT THIS AGREEMENT

I. TIME LIMITS FOR SELLING PROPERTY

The time limit during which you must sell the property is:

Real Property (Houses, Land, etc.) – 9 months from the date this agreement is approved.

All Other Property - 3 months from the date this agreement is approved.

Notify your Local Department of Social Services (LDSS) immediately if you find you are unable to sell the property within this time limit.

II. CURRENT MARKET VALUE

When you sign the other side of this form, you agree to sell the resources described there for their current market value. This means the highest amount you can get by offering it on the open market.

If you knowingly dispose of an agreed-upon resource for less than its current market value, the LDSS will determine what the current market value was at the time of disposition and determine the amount of your overpayment accordingly.

III. NOTIFYING YOUR LOCAL DEPARTMENT OF SOCIAL SERVICES

Notify your LDSS office within five days after you sell the property. Also notify your LDSS immediately if you encounter difficulty in selling the property or if you decide not to sell the property.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
AUXILIARY GRANT PROGRAM

County/City: _____
_____

Case Number: _____

Date Mailed: _____

CONDITIONAL BENEFITS NOTICE

To:

This is to notify you of the action taken by the department of social services. Please look at the block or blocks checked below. The statements following the checked blocks apply to you.

A copy of this notice is being sent to: _____

☐ You have been found ineligible for regular Auxiliary Grant benefits solely due to excess non-liquid resources (real or personal property). However you may qualify for Auxiliary Grant Conditional Benefits for a period of time if you agree to dispose of your excess non-liquid resources and to repay any Conditional Benefits you receive. An "Auxiliary Grant Conditional Benefits Fact Sheet" is attached.

If you wish to receive Conditional Benefits, complete and return the attached "Agreement To Sell Non-Liquid Resources" form to this agency by _____. If you do not wish to receive the Conditional Benefits, please submit a written statement to that effect.

Failure to return the "Agreement To Sell Non-Liquid Resources" form or the written statement by the above date will be taken as your refusal to accept conditional benefits and your Auxiliary Grant application will be denied due to excess resources.

☐ Your signed "Agreement To Sell Non-Liquid Resources" has been received and accepted. You are eligible for Auxiliary Grant Conditional Benefits. You will be eligible for Conditional Benefits for a maximum of _____ months beginning _____.

You will receive _____ per month until your amount of income or resources change or you are no longer eligible for Conditional Benefits.

You have agreed to dispose of your excess non-liquid resources, receive Auxiliary Grant Conditional Benefits, and pay back an amount equal to the Conditional Benefits you will receive. You will be required to repay the Conditional Benefits at the point you sell your non-liquid resources or are no longer eligible for Conditional Benefits.

☐ ***You must take action to put your property on the market and provide verification of how you are advertising it to the local department of social services by _____.*** Your asking price cannot exceed the current market value of the property. You may:

- 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.

☐ ***You must maintain your efforts to sell your property throughout your disposal period.*** You will be contacted every 30 to 60 days to confirm that you maintaining your efforts to sell.

☐ ***You MUST ACCEPT any reasonable offer to buy your property.*** If you reject an offer, you must demonstrate to the local department of social services that the offer was not reasonable.

☐ ***You must report the sale of your real or personal property within five days after the property has been sold.*** Working days are Monday through Friday and do not include Federal holidays.

☐ **You have a set period of time to dispose of your excess real or personal property** and to thereby reduce your total countable resources to $2000 or less. Your disposal periods are noted below.

Non-Liquid Resources	Current Market Value	Disposal Period

☐ As a recipient of Conditional Benefits, you are required to use your income and the Auxiliary Grant to pay the assisted living facility or adult foster care home in which you live for your basic care. The amount you are to pay for your basic care is $.

In addition, the assisted living facility or adult foster care home may charge you up to $10 a month for laundry and other amounts for personal expenses such as long distance phone calls. The facility/home is required to notify you in advance of any additional charges.

Any money that remains after you have paid the facility/home is yours to use to meet any other expenses you may have.

☐ Your eligibility for Conditional Benefits has ended and your case will be closed effective _____.

☐ Your disposal period ended and you continue to have excess resources. You will be evaluated for regular Auxiliary Grant eligibility. Manual Reference - _____

☐ The proceeds from the sale of your non-liquid resources plus your other countable resources exceed the resource limit. Manual Reference - _____

☐ You withdrew your agreement to sell your excess non-liquid resources. Manual Reference - _____

☐ You failed to maintain reasonable effort to sell your excess non-liquid resources. Manual Reference - _____

☐ The amount of your Conditional Benefits overpayment will be computed based on the current market value of your resources. If the value of any of your resources differs from the CMV, you may submit proof of that value to the local department of social services.

Your Non-Liquid Resources Include:	Current Market Value

☐ The amount of your Conditional Benefits overpayment is _____. This amount is due and payable now.
Please contact the local department of social services for instructions on the repayment process.

If you disagree with the action taken, you may ask for a conference with your worker whose name, address, and telephone number appear on the bottom of the page or ask for a fair hearing before the Virginia Department of Social Services. The information attached explains your right to appeal and **explains how to ask for a fair hearing.**

If you are eligible for assistance, the law requires you to notify this department timely of any change in your income, resources, support, living arrangements, or other circumstances which would affect your eligibility or the amount of assistance. **The sale of resources must be reported within five days. Other changes must be reported within 10 days after the change occurs**.

ELIGIBILITY WORKER	TELEPHONE NUMBER	DATE OF MAILING	IF YOU WANT FREE LEGAL ADVICE CALL _____
MAILING ADDRESS:			(This number is a local legal services agency, not the department of social services.)

APPEALS AND FAIR HEARINGS

A fair hearing provides you the opportunity to review the way a local department of social services has handled your situation concerning your stated need for financial assistance. The fair hearing process is a private, informal meeting at the local department of social services with you and anyone you wish to bring as a witness or to help you tell your story, such as a lawyer. A representative of the local agency will be present as well as a hearing officer. The hearing officer is the official representative of the State Department of Social Services.

If you disagree with the action taken, you may request in writing, to appeal the decision and receive a fair hearing. At the hearing you will have a chance to explain why you think we made a mistake and a hearing officer or appropriate authority will decide if you are right. Appeals should be sent to:

Manager, Appeals and Fair Hearings
Virginia Department of Social Services
7 North Eighth Street
Richmond, Virginia 23219-1849

The person who conducts the hearing is someone from the State Department of Social Services, not someone from your local social services agency. The hearing officer makes a decision on your appeal.

You will be notified of the date and time for your hearing at the local department of social services or at a location agreeable to you and the agency. If you cannot be there on that day, call your service or eligibility worker immediately. If you need transportation, the local department of social services will provide it. You may bring a representative and/or witness to the hearing to help you tell your story. Your service or eligibility worker, a local agency supervisor, and possibly other agency staff who know about your case may also be at the hearing to tell how the agency's decision was reached.

At the hearing, you and/or your representative will have the opportunity to:

(1) examine all documents and records which are used at the hearing;

(2) present your case or have it presented by a lawyer or by another authorized representative;

(3) bring witnesses;

(4) establish pertinent facts and advance arguments; and

(5) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The decision or recommendation of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing, except when medical information is requested or other essential information is needed. In such an event, you and the local department of social services would be given the opportunity to question or refute this additional information.

You will be notified in writing of the hearing officer's decision on your appeal within 60 days of the date your appeal request is received by the local or State Department of Social Services.

Virginia Department of Social Services
Auxiliary Grant Program

Conditional Benefits Fact Sheet

An individual who is ineligible for a regular Auxiliary Grant (AG) payment due to excess **non-liquid resources** may qualify for AG Conditional Benefits if the individual meets all other eligibility requirements and agrees to sell the excess resources.

Non-Liquid Resources

Non-liquid resources are resources which are not in the form of cash and cannot be converted to cash within 20 workdays. Both real property and personal property may be classified as non-liquid resources.

Workdays are any days other than Saturdays, Sundays, and Federal holidays.

Exclusion of Non-Liquid Resources

AG policy provides for an exclusion of excess non-liquid resources for a set period of time if the individual agrees to take action to dispose of the excess non-liquid resources and to repay the amount of the AG Conditional Benefits he/she will receive during the disposal period. The AG benefits paid during the period the exclusion is applied are Conditional Benefits, benefits paid on the condition they be repaid.

Conditional Benefits are basically an "advance" to the individual, one that must be repaid from the proceeds of the sale of the excess resources. In this manner, the individual is permitted to use his/her own resources to meet his/her needs. Conditional Benefits differ from regular AG benefits only in that they must be repaid.

Individual's Choice

An individual must choose whether to accept Conditional Benefits. Refundable AG benefits are possible for a limited number of months if the individual agrees in writing to:

- Sell certain property within a specified disposal period;
- Sell the property for as much as he/she can within the disposal period, while asking no more than the current market value (CMV) as estimated by a knowledgeable and disinterested third party;
- Notify the local department of social services worker within 5 days of the sale of the resource; and
- Repay the Conditional Benefits paid during the disposal period at the point the property is sold or the disposal period ends.

The agreement becomes effective on the date the individual receives written notice that the agreement has been approved.

AG Payment

The first AG Conditional Benefit payment will be issued for the month after the month the agreement becomes effective. Payment cannot be made for any month before the agreement takes effect or in the month the agreement takes effect.

Disposal/Exclusion Period

The individual that chooses to accept Conditional Benefits is allowed a set period of time to dispose of his/her excess non-liquid resources. The disposal period and the exclusion period are one and the same. The length of the disposal period is determined by the type of non-liquid resource that must be disposed.

The periods for the disposal of excess non-liquid resources are:

- 9 months for real property;
  - There is no extension of the disposal period for real property.
- 3 months for personal property.
  - One 3-month extension for disposition of personal property is permitted if good cause exists.

The disposal/exclusion period begins on the date the worker "accepts" the individual's signed written agreement, the Agreement to Sell Non-Liquid Resources. The date of acceptance is the date the notice is handed to the individual or 5 days from the date the notice is mailed.

Reasonable Effort to Sell

The individual must make a reasonable effort to sell his excess non-liquid resources throughout the disposal period. Within 30 days of signing a Conditional Benefits 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.

Except for gaps of no more than 1 week, the owner must maintain efforts of the type listed above.

The owner must not reject any reasonable offer to buy the property. An offer to buy real property is reasonable if it is at least two-thirds of the estimated CMV unless the owner proves otherwise.

VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES/
VIRGINIA DEPARTMENT OF SOCIAL SERVICES/
ASSISTED LIVING FACILITY

ELIGIBILITY COMMUNICATION DOCUMENT

To/From: Dept. of Social Services Eligibility Worker in _____
(City/County Responsible for Auxiliary Grant)

Address: _____

To/From: _____
(*ALF Assessor/Case Manager)*

Address: _____

Assessor's provider #: _____

RESIDENT: _____ **SSN:** _____

ALF and Location: _____

Medicaid #: _____

PURPOSE OF COMMUNICATION (check 1, 2, or 3):

☐ **1.** ***ANNUAL REASSESSMENT COMPLETED;*** **Date of Reassessment**: __/__/____
- **a.** ☐ ***Resident Continues to Meet Criteria for ALF Placement at the following level of care:***
  ☐ Residential Living ☐ Assisted Living
- **b.** ☐ ***Resident Does Not Meet Criteria for Residential or Assisted Living***

☐ **2.** ***RESIDENT NO LONGER RESIDES IN ALF ON RECORD***. Resident has been discharged to:
- **a.** ☐ ***Another ALF.*** Last Date of Service in the ALF on Record: __/__/____
  Name of New ALF : _____
  Provider #: _____ Start of Care Date in New ALF: __/__/____
  Address of New ALF:_____
- **b.** ☐ ***Home.*** Last Date of Service in the ALF: __/__/____
  New Address: _____
- **c.** ☐ ***Other*** (please specify): _____
  Last Date of Service in the ALF: __/__/____
  New address: _____

☐ **3.** ***AUXILIARY GRANT ELIGIBILITY TERMINATED*** Effective Date: __/__/____
Reason: _____

(Name of Assessor/Case Manager Completing Form)		*(Name of Eligibility Worker Completing Form)*	
(Signature of Assessor/Case Manager Completing Form)		*(Signature of Eligibility Worker Completing Form)*	
(Date)	*(Telephone No.)*	*(Date)*	*(Telephone No.)*

ALF ELIGIBILITY COMMUNICATION DOCUMENT INSTRUCTIONS

WHEN TO USE THIS FORM

This form is a communication tool between the local department of social services (LDSS) eligibility worker, the assessor/case manager responsible for the 12-month reassessment of the assisted living facility (ALF) resident, and DMAS. This form is completed by:

1. The assessor to the eligibility worker and to DMAS at the time of a 12-month reassessment (a finding that the resident continues to meet either residential or assisted living is required in order for the eligibility worker to redetermine eligibility for an Auxiliary Grant (AG) payment);
2. Either the assessor or eligibility worker to the other and to DMAS whenever either becomes aware of a change in address; and
3. The eligibility worker to the ALF assessor and to DMAS whenever the AG is terminated.

TO/FROM SECTION

Both TO/FROM sections must be completed. Completely fill in the locality of the DSS eligibility worker with address and indicate whether document is to be sent to or from the eligibility worker by circling "TO" or "FROM." In the second TO/FROM section, completely fill in the assessor's name, address and provider number and indicate whether the document is to be sent to or from the assessor or case manager by circling "TO" or "FROM."

RESIDENT IDENTIFICATION SECTION

1. RESIDENT: Legibly print name of ALF resident who is being assessed, who has moved, or whose AG has been terminated.
2. SSN: Write in the resident's social security number.
3. ALF: Legibly print the name of the ALF in which the resident resides.
4. ALF location: List the city/town in which the ALF is located.
5. Medicaid Number: Write in the resident's Medicaid number.

PURPOSE OF COMMUNICATION SECTION*:* Check either 1, 2, or 3.

If 1 is checked: (Annual Reassessment Completed), fill in the date of the reassessment. Check either a. (Resident continues to meet criteria for ALF placement at the following level of care) or b. (Resident does not meet criteria for residential or assisted living. If a. is checked, indicate which level of care the individual meets. If intensive assisted living is checked, respond to the two questions "continues to need intensive assisted living services" and "based on the UAI, continues to meet criteria for intensive assisted living." Usually, both will be checked "yes." When 1. is checked, the assessor sends a copy of the Uniform Assessment Instrument (UAI), the ALF Eligibility Communication Document (ECD), and the HCFA-1500 to DMAS. In addition, the assessor sends a copy of the ECD to the LDSS eligibility worker; copies of the UAI and ECD to the ALF; and a decision letter to the individual being assessed. The assessor should keep a copy of each of these documents.

NOTE: If a reassessment indicates a change in level of care, treat the assessment as a change in level of care. That is, send a copy of the UAI and the DMAS-96 to DMAS. In addition, send the eligibility worker a copy of the DMAS-96; send to the ALF copies of the UAI, DMAS-96, and decision letter; and send a decision letter to the individual being assessed. The assessor should keep a copy of each.

If 2 is checked: (Resident no longer resides in ALF on record), indicate to where the resident moved (i.e., another ACR, home, or other). For each, indicate the last date of service in the ALF on record. Complete other information such as new address, etc., if known. When 2 is checked, the assessor/case manager or eligibility worker completing the ECD should send a copy to the other and a copy to DMAS and keep a copy for him- or herself.

If 3 is checked: (Auxiliary Grant Eligibility Terminated), the eligibility worker indicates the effective date of termination and the reason. Then the eligibility worker sends a copy of the ECD to the assessor/case manager and to DMAS.

SIGNATURES SECTION

For each form completed, only one signature section will be completed. For example, if an assessor is completing the form for a reassessment, the left-hand side with assessor information will be completed. If the eligibility worker is completing the form for notification of AG eligibility termination, then the right-hand side is completed. Please completely fill in the applicable section with printed name of individual completing the form, signature, complete date with month/day/year, and telephone number with area code.

Please photocopy this form as needed; plain paper copies are acceptable.

ELIGIBILITY WORKER REFERRAL
Medicaid Referral to APS to Request Assessment for Guardianship

Date _____

From _____ Worker #_____ Telephone #_____
(Eligibility Worker)

To_____
(Adult Protective Services Worker/Supervisor)

The adult listed below does not have a power of attorney, guardian, conservator, or family substitute member. This adult does not appear capable of understanding, completing and signing an application/redetermination form for Medicaid.

Name _____

SSN _____ Date of Birth _____

Medicaid ID Number _____

Home Address _____

Current Location _____

Is this adult currently in a hospital, nursing facility, or adult living facility?

Yes _____ No _____

If yes, name of the facility _____

Contact Person_____

Address of the facility _____

Telephone number of the facility _____

***THIS FORM MAY BE DUPLICATED.**

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
AUXILIARY GRANT

County/City:

Case Number:

NOTICE OF ACTION (for AG)

To:

This is to notify you of the action taken by the department. Please review the block or blocks checked below. The statements following the checked blocks apply to you.

A copy of this notice is being sent to:

☐ Your application for an Auxiliary Grant was approved on effective .

You will receive one AG payment that will include your payment for the following prior months:
$ for the month of $ for the month of $ for the month of

$ Total Payment for Prior Months

☐ Beginning , you will receive a payment near the beginning of each month in the amount of $. This amount will be sent to you each month until you have a change in your income, resources, or your residence.

☐ As an Auxiliary Grant recipient you are required to use your income and the Auxiliary Grant to pay the assisted living facility or adult foster care home in which you live for your basic care. The amount you are to pay for your basic care is $.

In addition, the assisted living facility or adult foster care home may charge you up to $10 a month for laundry and other amounts for personal expenses such as long distance phone calls. The facility/home is required to notify you in advance of any additional charges.

Any money that remains after you have paid the facility/home is yours to use to meet any other expenses you may have.

☐ You were approved for Medicaid effective .

☐ Your application for an Auxiliary Grant was DENIED on .
Reason: Manual Reference:

☐ Action was not taken on your application for assistance within 45 days after it was made on

☐ Your grant was increased	From:	To:	Beginning date:
☐ Your grant was reinstated	Amount:	Beginning date:	

☐ Your annual redetermination was completed and you continue to be eligible.

☐ Other

Reason for action or failure to act:

☐ Your application was denied because you transferred a resource for less than its current market value. See the attached "TRANSFER OF RESOURCES" notice.

If you disagree with the action taken, you may ask for a conference with your worker whose name, address, and telephone number appear on the bottom of the page or ask for a fair hearing before the Virginia Department of Social Services. The information on the second page of this form explains your right to appeal and **explains how to ask for a fair hearing.**

If you are eligible for assistance, the law requires you to notify this department timely of any change in your income, resources, support, living arrangements, or other circumstances which would affect your eligibility or the amount of assistance. **Changes must be reported within 10 days after the change occurs**.

ELIGIBILITY WORKER	TELEPHONE NUMBER	DATE OF MAILING	IF YOU WANT FREE LEGAL ADVICE CALL
MAILING ADDRESS:			THIS NUMBER IS A LOCAL LEGAL SERVICES AGENCY, NOT THE DEPARTMENT OF SOCIAL SERVICES

APPEALS AND FAIR HEARINGS

A fair hearing provides you the opportunity to review the way a local social services agency has handled your situation concerning your stated need for financial assistance. The fair hearing process is a private, informal meeting at the local social services agency with you and anyone you wish to bring as a witness or to help you tell your story, such as a lawyer. A representative of the local agency will be present as well as a hearing officer. The hearing officer is the official representative of the State Department of Social Services.

If you disagree with the action taken, you may request in writing, to appeal the decision and receive a fair hearing. At the hearing you will have a chance to explain why you think we made a mistake and a hearing officer or appropriate authority will decide if you are right. Appeals should be sent to:

Manager, Appeals and Fair Hearings

Virginia Department of Social Services

7 North Eighth Street

Richmond, Virginia 23219-1849

The person who conducts the hearing is someone from the State Department of Social Services, not someone from your local social services agency. The hearing officer makes a decision on your appeal.

You will be notified of the date and time for your hearing at the local social services agency or at a location agreeable to you and the agency. If you cannot be there on that day, call your service or eligibility worker immediately. If you need transportation, the local agency will provide it. You may bring a representative and/or witness to the hearing to help you tell your story. Your service or eligibility worker, a local agency supervisor, and possibly other agency staff who know about your case may also be at the hearing to tell how the agency's decision was reached.

At the hearing, you and/or your representative will have the opportunity to:

(1) examine all documents and records which are used at the hearing;

(2) present your case or have it presented by a lawyer or by another authorized representative;

(3) bring witnesses;

(4) establish pertinent facts and advance arguments; and

(5) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The decision or recommendation of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing, except when medical information is requested or other essential information is needed. In such an event, you and the local social services agency would be given the opportunity to question or refute this additional information.

You will be notified in writing of the hearing officer's decision on your appeal within 60 days of the date your appeal request is received by the local or State Department of Social Services.

VIRGINIA DEPARTMENT OF SOCIAL SERVICES
AUXILIARY GRANT PROGRAM

PROVIDER/DSS COMMUNICATION FORM

AG Case Number:_____ Provider Name_____

Recipient Name:_____SSN:_____DOB:_____

Address:_____

Medicaid ID:_____

Section I - Provider Completes This Section

Patient Status (Complete Appropriate Blocks. (Report any admission, discharge, and/or change in patient status.)

Patient admitted to this assisted living facility/adult foster care home on _____(date)

Level of care: ☐ Residential ☐ Assisted Living

Patient discharged or expired on _____(date)

Discharged to: ☐ Home ☐ Hospital ☐ Other Facility ☐ Expired

☐ Case is in need of an assessment

☐ Patient's income or deductions have changed

☐ Other: Explain_____

Prepared by Name:_____ Title:_____

Telephone:_____ Date:_____

Section II - DSS Completes This Section

Eligibility Information:

☐ Auxiliary Grant approved beginning _____(date)

☐ Medicaid approved beginning _____(date)

☐ Auxiliary Grant denied effective _____(date)

☐ Ineligible for Auxiliary Grant from_____to_____due to a resource transfer.

Approved AG Rate

<u>NOTE</u>: ALF/AFCH providers cannot collect more than the AG rate from the patient. Any income received by the patient in excess of the AG rate is to be retained by the patient. The amount a patient will normally retain will exceed his/her personal needs allowance.

ALF/AFCH Rate: _____ for month of _____ .

ALF/AFCH Rate: _____ for month of _____ .

Worker Name:_____ Agency Name:_____

Agency Address: _____

Telephone:_____ **Date:**_____

PROVIDER/DSS COMMUNICATION FORM
Instructions

PURPOSE OF FORM--To allow the local DSS and the assisted living facility or adult foster care home provider to exchange information regarding:

1. The AG and Medicaid eligibility status of a patient;
2. The amount of income an eligible patient must pay to the provider toward the cost of care;
3. Admission or discharge of a patient to home, hospital, another ALF/AFCH, or an institution, or to report the death of a patient;
4. Other information known to the provider that might cause a change in the eligibility status.

USE OF FORM--Initiated by either the local DSS or the provider of care. The local DSS must complete the form for each applicant at the time initial eligibility is determined. A new form must be prepared by the local DSS whenever there is any change in the patient's circumstances that results in the patient's ineligibility.

The provider must use the form to show admission date, to request an AG or Medicaid eligibility status, to request a Medicaid recipient I.D., to notify the local DSS of changes in the patient's circumstances, of discharge or death.

NUMBER OF COPIES--Original and one copy.

DISTRIBUTION OF COPIES--Send the original to the facility and file the copy in the eligibility case folder.

INSTRUCTIONS FOR PREPARATION OF THE FORM -- Complete the heading with the name of the AG Case Number, Provider Name, Recipient Name, Social Security Number, Date of Birth, the address, and Medicaid I.D. Number.

Section I is for the provider to complete. Section II must be completed by the local DSS. Fill in the appropriate spaces.

Section II - Eligibility Information:

1. Check the first block on an initial form sent in conjunction with the approval of a new Medicaid application, showing the effective date of the Auxiliary Grant.
2. Check the second block if the individual is eligible for Medicaid.
3. Check the third block if the Auxiliary Grant was denied.
4. Check the fourth block if ineligible for AG due to transfer of resources. Dates of disqualification must be listed on the form.

AG Rate:

Enter the amount of the ALF/AFCH rate, and month and year in which the rate is effective.
Fill in Worker Name, Agency Name, Telephone Number and Date the form was completed.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
AUXILIARY GRANT

County/City: _____
Case Number: [_____]
Case Number: _____

TRANSFER OF RESOURCES NOTICE

To:

This is to notify you of the action taken by the department of social services. Please look at the block or blocks checked below. The statements following the checked blocks apply to you.

A copy of this notice is being sent to: _____

☐ You transferred a resource or resources for less than the current market value. Based on the value of the transferred items, it has been determined that you are ineligible for an Auxiliary Grant payment from through .

Item Transferred	Date Transferred	Current Market Value	Value Received	Uncompensated Value
			Total Uncompensated Value	
Your period of ineligibility was determined by dividing the total uncompensated value by the ALF/AFCH monthly rate for your area.			**ALF/AFCH Rate:**	**# Months in Period of Ineligibility:**

☐ If you will not be able to purchase food or shelter without the Auxiliary Grant, you may claim a hardship exemption. If it is found that not receiving AG would be a hardship to you in any month, that month will not be included in your period of ineligibility. To claim a hardship exemption, submit a written request that states that:

- Lack of AG payments will cause you a loss of food or shelter; you do not expect an increase in income or resources within the ineligibility period; you will promptly report any changes in income and resources; and that you may have to repay any AG benefits issued for any month where hardship did not exist.

☐ Your period of ineligibility due to your transfer of resources has been reevaluated and adjusted.
It has been determined that you are ineligible for an Auxiliary Grant payment from through .

Item Transferred:	Date Transferred	Market Value	Value Received	Uncompensated Value
			Total Uncompensated Value	
Your period of ineligibility was determined by dividing the total uncompensated value by the ALF/AFCH for your area.			**ALF/AFCH Rate:**	**# Months in Period of Ineligibility:**

☐ You filed a hardship claim stating that you would not be able to purchase food or shelter without the receipt of an Auxiliary Grant payment. Your claim has been evaluated. See the result below:

☐ Your hardship claim was denied. Your income and resources are sufficient to meet your food and shelter needs.	☐ Your hardship claim was approved for the following months:	☐ You will be contacted periodically to determine if hardship continues to exist.

If you disagree with the action taken, you may ask for a conference with your worker whose name, address, and telephone number appear on the bottom of the page or ask for a fair hearing before the Virginia Department of Social Services. The information below explains your right to appeal and **explains how to ask for a fair hearing.**

If you are eligible for assistance, the law requires you to notify this department timely of any change in your income, resources, support, living arrangements, or other circumstances which would affect your eligibility or the amount of assistance. **Changes must be reported within 10 days after the change occurs**.

ELIGIBILITY WORKER	TELEPHONE NUMBER:	DATE OF MAILING	IF YOU WANT FREE LEGAL ADVICE CALL : (THIS NUMBER IS NOT THE DEPARTMENT OF SOCIAL SERVICES.)
MAILING ADDRESS:			

APPEALS AND FAIR HEARINGS

A fair hearing provides you the opportunity to review the way a local social services agency has handled your situation concerning your stated need for financial assistance. The fair hearing process is a private, informal meeting at the local social services agency with you and anyone you wish to bring as a witness or to help you tell your story, such as a lawyer. A representative of the local agency will be present as well as a hearing officer. The hearing officer is the official representative of the State Department of Social Services.

If you disagree with the action taken, you may request in writing, to appeal the decision and receive a fair hearing. At the hearing you will have a chance to explain why you think we made a mistake and a hearing officer or appropriate authority will decide if you are right. Appeals should be sent to:

Manager, Appeals and Fair Hearings
Virginia Department of Social Services
7 North Eighth Street
Richmond, Virginia 23219-1849

The person who conducts the hearing is someone from the State Department of Social Services, not someone from your local social services agency. The hearing officer makes a decision on your appeal.

You will be notified of the date and time for your hearing at the local social services agency or at a location agreeable to you and the agency. If you cannot be there on that day, call your service or eligibility worker immediately. If you need transportation, the local agency will provide it. You may bring a representative and/or witness to the hearing to help you tell your story. Your service or eligibility worker, a local agency supervisor, and possibly other agency staff who know about your case may also be at the hearing to tell how the agency's decision was reached.

At the hearing, you and/or your representative will have the opportunity to:

(1) examine all documents and records which are used at the hearing;

(2) present your case or have it presented by a lawyer or by another authorized representative;

(3) bring witnesses;

(4) establish pertinent facts and advance arguments; and

(5) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The decision or recommendation of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing, except when medical information is requested or other essential information is needed. In such an event, you and the local social services agency would be given the opportunity to question or refute this additional information.

You will be notified in writing of the hearing officer's decision on your appeal within 60 days of the date your appeal request is received by the local or State Department of Social Services.

Virginia Department of Social Services

Auxiliary Grant (AG) Program

Transfer of Resources Fact Sheet

A resource transfer occurs when the ownership of a resource is transferred to another person, trust, or entity. The change of ownership may be accomplished by deed, selling, giving away, trading, or other methods. Resources include money in the bank, certificates of deposit, real property, automobiles, etc.

Impact On AG Eligibility

All transfers made by an AG applicant or recipient within 36 months prior to the date of application for AG, or while receiving AG, must be reported, verified, and evaluated.

If an individual receives adequate compensation for a transferred resource or if the transfer is a type permitted by AG policy, AG eligibility is not impacted. Adequate compensation is the full current market value of the resource.

Transfer for less than the current market value means giving a resource away or selling it to anyone, including family members, for less than it would bring on the open market.

The transfer of resources for less than the current market value could make an individual ineligible for an Auxiliary Grant (AG) payment for a period of time.

Period of Ineligibility

The period of time an individual will be ineligible to receive an AG payment will be based upon the uncompensated value of the transferred resource. Uncompensated value is the difference between the current market value of the resource and the amount the individual received for it.

The uncompensated value divided by the monthly AG rate for the area in which the individual lived at the time of the transfer and rounded down to the next whole number, is the number of months in the ineligibility period. The ineligibility period begins on the first day of the month following the month in which the resource was transferred.

The following chart shows the AG rates to be used to determine the ineligibility period for a transfer of resources.

MONTHLY MAXIMUM AUXILIARY GRANT RATE HISTORY 2004-2008								
ALF & AFCH Rates	**01/04**	**10/04**	**01/05**	**07/05**	**01/06**	**01/07**	**07/07**	**01/08**
Planning District 8	$996	$1,028	$1,045	$1,086	$1,129	$1,205	$1,220	$1,236
All Other Districts	$866	$894	$909	$944	$982	$1,048	$1,061	$1,075

Example: An individual living in Virginia Beach (not Planning District 8) transferred a resource for less than the current market value in July 2004. His uncompensated value was $22,400. The individual's period of ineligibility for AG is computed by dividing the uncompensated value by the AG rate effective in July 2004, $866.

$22,400 ÷ $866 = 25.86 months = An ineligibility period of 25 months beginning August 1, 2004.

Undue Hardship

If a resource has been transferred and the denial of AG would be an "undue hardship" for the individual, there may not be a penalty. The individual must request an undue hardship exemption and submit evidence to prove the undue hardship claim. "Undue hardship" is defined by AG regulations, as when an individual alleges that failure to receive AG payments would deprive them of food or shelter **and** the individual's total available income and resources do not equal or exceed the assisted living facility's or adult foster care home's rate for the month that undue hardship is alleged.

VIRGINIA DEPARTMENT OF SOCIAL SERVICES
AUXILIARY GRANT

STATEMENT OF FUNDS YOU RECEIVED

Case Name:	Case Number:
Person Completing Form:	Relationship to Applicant:

1. We need information from you about the money you received from:
_____

_____
(Name and address of person who gave you money)

2. How much money was given to you? $_____	3. When did you receive the money: _____ (month/year)

4. Do you intend to repay this money?

☐ Yes If 'yes', go to Question 5. ☐ No If 'no', stop here. Sign, date and return this questionnaire.

5. Have you started to repay the money?

☐ Yes When: _____ (month/year) ☐ No When will you start: _____ (month/year)

6. How much are your payments: $_____	7. How often do you make a payment? _____

8. Did you promise to give up any property if you do not keep up your payments?

☐ Yes If 'yes', what did you promise? _____

☐ No

9. What do you plan to use to repay this money? (For example, income from work, SSI, Social Security.)

10. Do you now pay interest or will you pay interest in the future?

☐ Yes If 'yes', answer questions 11 and 12. ☐ No If 'no', stop here. Sign, date and return this questionnaire.

11. How much interest do you pay? $_____	12. How often do you make interest payments? _____

I hereby certify that all information provided on this form is true and correct:		
Signature	Date	Telephone

TABLE OF CONTENTS

1. NONDISCRIMINATION IN ELIGIBILITY 1

1.1. DISCRIMINATION COMPLAINT PROCEDURES 1

2. CONFIDENTIALITY 2

2.1. GENERAL INFORMATION 2
2.2. CONSENT PROCESS 3
2.3. RELEASE OF RECORDS WITHOUT CONSENT 3
2.4. ACCURACY OF RECORDS 4

3. FAIR HEARINGS 4

3.1. LOCAL AGENCY CONFERENCE 4
3.2. RIGHT OF APPEAL 5
3.3. CONTINUATION OF ASSISTANCE 6
3.4. EXCEPTIONS TO CONTINUATION OF ASSISTANCE 6
3.5. PREPARATION FOR THE HEARING 7
3.6. THE HEARING 8
3.7. EVENTS OF THE HEARING 9
3.8. DUTIES OF THE HEARING OFFICER 9
3.9. HEARING DECISION 10

4. FRAUD 11

4.1. RESPONSIBILITY OF LOCAL DEPARTMENT 12
4.2. RECOUPMENT 13

5. IMPROPER PAYMENTS 13

5.1. UNDERPAYMENT 13
5.2. OVERPAYMENT 14
5.3. IDENTIFICATION OF IMPROPER PAYMENT BY STATE AGENCY 16

1. Nondiscrimination in Eligibility

The Virginia Department of Social Services requires that all individuals be assured of the uniform application of procedures in determining eligibility for services and financial assistance. There must be no discrimination against applicants or participants in any aspect of program administration for reasons of age, race, color, sex, disability, sexual orientation, marital/family status, religion, national origin, or political beliefs.

1.1. Discrimination Complaint Procedures

Discrimination complaints must be filed within 180 days of any incident. A person may file a discrimination complaint in writing to the local agency.

Whenever possible, the complaint should include the following:

- Name, address, and telephone number or other means of contacting the person alleging discrimination.
- The name and address of the agency that is accused of discriminatory practices.
- The nature of the incident, action, or the aspect of program administration that led the person to allege discrimination.
- The reason for the alleged discrimination (age, sex, race, religion, etc.).
- The names, addresses, and titles of persons who may have knowledge of the alleged discriminatory acts.
- The date or dates on which the alleged discriminatory actions occurred.

If the individual is not satisfied with the result of the agency investigation of discrimination, the individual may request a hearing by contacting:

Office of Civil Rights, Region III
U.S. Department of Health and Human Services
150 South Independence Mall West
Suite 372 Public Ledger Building
Philadelphia, PA 19106

Requests must be in writing and filed within 30 days after you receive the findings of the local agency.

2. Confidentiality

2.1. General Information

The Code of Virginia (§63.2-102) provides that all records, information and statistical registries of the Virginia Department of Social Services and of the local boards and other information that pertains to public assistance shall be confidential and shall not be disclosed except to persons authorized by state and federal law and regulation.

All client records, which could disclose the individual's identity, are confidential and must be protected in accordance with federal and state laws and regulations. Confidential information includes but is not limited to:

- Name, address and any type of identification numbers assigned to the individual
- Public assistance, child support enforcement services, or social services provided to the individual
- Information received for verifying income and eligibility
- Evaluation of the individual's confidential information
- Social and medical data about the individual

Except as provided by state or federal regulation, no record, information or statistical registries concerning applicants for and recipients of public assistance shall be made available except for purposes directly connected with the administration of such programs.

Purposes directly related to the administration of a public assistance program include but are not limited to:

- establishing eligibility
- determining the amount of public assistance
- providing services for public assistance individuals; and

- conducting or assisting in an investigation or prosecution of a civil or criminal proceeding related to the administration of the public assistance program.

If a request for a record or information concerning individuals applying for or receiving public assistance is made to the Virginia Department of Social Services or a local department for a purpose not directly connected to the administration of such programs, the Commissioner or local director shall not provide the record or any information unless permitted by state or federal law or regulation.

As part of the application process for public assistance, the individual or legally responsible person must be informed of the need to consent to third-party release of client information necessary for verifying his eligibility information or information provided.

2.2. Consent Process

Whenever an organization that is not performing one or more of the functions listed above or does not have a legitimate interest pursuant to 22 VAC40-910-100 requests information, the person or organization must obtain written permission for the individual or the legally responsible person for the release of the information. An authorization for release of information form obtained by the department, agency or provider also satisfies his requirement. The consent for release of information must contain the following:

- the name of the entity supplying the information and the name of the requesting party

- the consent must be signed and dated by the individual or legally responsible person. The individual or legally responsible person may add other information, which may include, but is not limited to, a statement specifying the date, event or condition upon which the consent expires.

A Uniform Authorization to Use and Exchange Information also known as the Consent to Exchange Information form is an approved document for obtaining consent to release information. This form is located at http://spark.dss.virginia.gov/divisions/dfs/as/forms.cgi.

2.3. Release of Records without Consent

Records may be release without the individual's written permission if:

- A court of competent jurisdiction has ordered the production of client records and the department, agency or provider does

not have sufficient time to notify the client or legally responsible person before responding to the order

If a court orders production of client records and consent is not obtained before the release of the client records, the department, agency or provider must make reasonable efforts to provide written notification to the client or legally responsible person within five business days after disclosure.

Records may also be released if:

- There is a request for research as provided in 22 VAC 40-910-50.

The Commissioner, the State Board of Social Services and their agents shall have the discretion to release non-identifying statistical information. A client's written permission is not required in order to release non-identifying statistical information.

The Commissioner, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records.

2.4. Accuracy of Records

The Government Data Collection and Dissemination Practices Act (§2.2-3800-3809) mandates that all LDSS agencies ensure that all personal information is accurate and current, and appropriate and relevant for the purposes for which it has been collected.

Each locality should establish an uncomplicated procedure to allow an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

3. Fair Hearings

3.1. Local Agency Conference

When an individual receives notice of an adverse action, the individual must be offered the opportunity to request an agency conference. At the conference the individual may be represented by an authorized representative, legal counsel, relative or friend. Upon receipt of a request for a conference, the local agency must schedule the conference within ten working days from the date of the request. The individual's failure to request a local agency conference has no effect upon the individual's right to appeal and have a fair hearing.

The local agency conference allows the individual to request and receive an explanation about the adverse action affecting assistance. The conference may be attended by the eligibility worker, but must be attended by an eligibility supervisor or the director, the individual or the individual's representative. The individual should be given the opportunity to verbalize reasons for disagreeing with the agency

action. The agency shall respond to each reason given by the individual. The conference should reveal that the proposed action is appropriate or that the proposed action is inappropriate because:

- the client is now able to immediately provide the information that had not been previously provided; or
- there has been a change in circumstances that affects some area of eligibility.

The local agency conference may or may not result in a change in the agency decision regarding the action. Regardless of the result of the conference, if an appeal has been filed, the client must be provided with a fair hearing unless the individual makes a written withdrawal of the request for a hearing. If the agency decision is to not take action or to take action different from the action indicated on the advance notice, the individual must be advised in writing and a notation to the same effect made on the agency copy of the advance notice. If the individual is not satisfied with the agency action following the conference and wishes a request for a fair hearing to stand, the fact that the conference was held will in no way affect the appeal or the required time limits for filing or implementing a decision.

3.2. Right of Appeal

The Code of Virginia (§63.2-517) provides for the opportunity for a Fair Hearing to individuals affected by the administration of any public assistance program.

Any individual has the right to appeal and receive a fair hearing because:

- an application for assistance is denied or is not acted upon with reasonable promptness; or
- the individual is aggrieved by any other agency action affecting entitlement to or receipt of assistance, or by agency policy as it affects the individual's situation.

The appeal period for Auxiliary Grant decisions is 30 days after the individual receives written notice of the local agency's decision. Appeals related to an Auxiliary Grant decision must be made in writing to:

Virginia Department of Social Services
Fair Hearings and Appeals Unit
Benefits and Services Section
801 E. Main Street, 3rd floor
Richmond, VA 23219-3301

When an appeal request is received, an administrative hearing is scheduled by a hearing officer. Administrative hearings are conducted by impartial hearing officers designated by the Commissioner of the Virginia Department of Social Services.

Information and referral services shall be provided to help individuals make use of any legal services available in the community. Contact information for Virginia Legal Aid Programs may be found at www.valegalaid.org.

Upon request, the local agency shall make available information from the case file for the individual to determine whether a hearing should be requested or to prepare for a hearing, provided that confidential information is protected from release.

3.3. Continuation of Assistance

The local agency must be aware that an appeal was made during the required time frame prior to authorizing continued participation. This means that the local agency must have:

- received the request directly from the individual, or
- written or verbal confirmation from the VDSS Department of Fair Hearings and Appeals that a timely request was received.

If a hearing request is not made within the period provided by the adverse action notice, benefits shall be reduced or terminated as provided in the notice. If the individual established that the failure to make the request within the advance notice period was for good cause, the hearing officer shall require that the local agency reinstate the benefits to the prior basis.

The agency shall inform the individual in writing that the assistance is being continued in the same amount pending the hearing decision.

3.4. Exceptions to Continuation of Assistance

In the following situations advance notice will be sent, but assistance will not be continued during the appeal process:

- the agency has factual information verifying the death of the recipient.
- the agency has verified that the recipient is in an institution where AG eligibility does not exist.

- the recipient no longer resides in an ALF authorized to operate or an approved AFC home or the individual has been admitted to an ALF or AFC with a lower rate.
- the individual's whereabouts is unknown and agency mail directed to the individual has been returned indicating no forwarding address. The recipient's check must, however, be made available if the individual's whereabouts becomes known during the payment period covered by the returned check.
- when the individual requests in writing that assistance not be continued.

3.5. Preparation for the Hearing

The appeal request, upon receipt by the Hearings Manager, must be assigned to a hearing officer who will validate the appeal and acknowledge the request by letter to the individual with a copy to the local agency and any other appropriate parties.

The local agency must prepare a Summary of Facts of the case to be forwarded to the hearing officer and the individual or the individual's representative no fewer than five days prior to the hearing.

The Summary of Facts should include the following:

- Identifying information including, name of local agency, name, address and case number of individual;
- Date of request and reason for appeal
- Statement of agency action
  - Give a brief, factual statement of the reason for agency action, or failure to act, and the nature and date of agency action. If the individual requested a local agency conference, include date and result of the conference.
  - Discuss how information from the Auxiliary Grant program manual influenced the agency action.
- Copies of all relevant documents - notices, checklists, letters, verifications, evaluation forms, worksheets, the letter offering the customer an informal conference and any other material - must be attached and submitted with the summary of facts.
- Statement as to whether assistance is continuing in the original amount during the appeal process.

The Summary of Facts must be signed and dated by the agency director or designee. The local agency will retain a copy of the Summary of Facts, which is the official document for presentation of its case at the hearing.

If documents pertinent to the hearing are received by the local agency or there are changes in the situation following transmittal of the Summary of Facts, copies of the documents and a written statement of the changes must be mailed in advance of the hearing to the hearing officer. Copies of such additional information must also be made available to the individual or the individual's representative.

3.6. The Hearing

The hearing must be conducted at a time, date, and place convenient to the individual. Preliminary written notice must be give at least 10 days prior to the hearing. The individual will be requested to advise the local agency immediately if the scheduled date or place is inconvenient. Without such notification, it is assumed the arrangements are convenient. The hearing may be conducted through teleconference.

The local agency is responsible for assuring that the individual has transportation to the hearing if the individual is unable to make arrangements.

When an individual, for good cause, indicates that the scheduled date is not convenient, the hearing date may be extended. The hearing officer will determine whether the provision of extension is being abused and reserves the right to set a date beyond which the hearing will not be delayed.

The hearing is to be conducted in an informal atmosphere and every effort will be made to arrive at the facts of the case in a way that will put the individual at ease. It is the hearing officer's responsibility to assure that this is done, and the hearing officer may designate those persons who may attend the hearing or the particular portion of the hearing they may attend. The hearing officer has full authority to recess the hearing or to continue to another date in the interest of fairness.

It is within the discretion of the hearing officer to designate what is pertinent to an issue on appeal and admissible as evidence during the hearing, including the entire case record, if appropriate.

If during the appeal process, the need for adjustment in eligibility or basis of issuance in favor of the individual becomes evident, reconsideration or modification of the former decision will be made by the local agency. For instance, new information may be presented, clarification of procedures may occur, or mathematical computations may need to be corrected. If such adjustment is

satisfactory to the individual, he or she has the choice either of withdrawing the appeal or of having a formal decision made by the hearing officer. If such reconsideration or modification requires corrective action for prior months, payments are to be made by the local agency retroactively to the effective date of the incorrect action being appealed.

3.7. Events of the Hearing

The hearing officer will coordinate the following activities at the hearing:

- Identification of those present for the record;
- Opening statements to explain the hearing purpose, procedure to be followed, how and by whom a decision may be made and to be communicated to the individual and the local agency and the option of either party if the decision is made by the hearing officer, to request review of the decision by the Commissioner.
- Provide the opportunity for the individual to examine all documents and records which are to be used at the hearing, present the case or have it presented by legal counsel or other person, bring witnesses, establish pertinent facts and advance arguments, and question or refute any testimony or evidence, including the opportunity to question adverse witnesses.
- Provide the local agency with the opportunity to clarify or modify statements contained in the Summary of Facts and to question the individual, his or her representative, or witnesses; and examine documents, bring witnesses, advance arguments, question evidence and submit evidence.

3.8. Duties of the Hearing Officer

The hearing officer must:

- Ensure that all relevant issues are considered
- Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;
- Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing;
- Render a decision.

- Prepare following the hearing, a written report of the substance of the hearing embodying the findings, conclusions, decision and appropriate recommendations.

3.9. Hearing Decision

The decision of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The official report of the substance of the hearing, together with all papers filed in the proceeding, and the findings and conclusions of the hearing officer shall constitute the exclusive record for the decision. Such record shall be available to the individual or representative at any reasonable time at the Regional Office serving the agency.

Except as follows, the decision of the hearing officer shall be rendered within 60 days following the date the appeal request is received in the Home Office. When the individual or representative requests an extension or otherwise causes a delay in the hearing, the time limit is extended by the number of days the hearing is delayed. The maximum period of delay is 30 days.

The decision of the hearing officer shall be final and binding when tendered in writing and shall be implemented regardless of whether a review of the hearing officer's decision by the Appeals Review Panel has been requested. Administrative action by the local agency to implement a decision must be taken no later that the 10th working day following the date of the hearing decision. If the individual is found eligible for corrective payments, these are to be made by the local agency retroactively to the effective date of the incorrect action being appealed.

The request for the Appeals Review Panel review by either party must be submitted in writing within 10 days following the date of the hearing officer's written decision with a written statement of the reasons for the objection to the decision. A copy of the review request by the local agency must be submitted to the individual.

The purpose of the Appeals Review Panel is to make recommendations to the Commissioner regarding whether changes are needed to the program manual or in the conduct of future hearings. THE APPEALS REVIEW PANEL CANNOT CHANGE THE DECISION OF THE HEARING OFFICER.

As provided in Section 63.2-519 of the Code of Virginia, a person aggrieved by the decision of the Hearing Officer make seek further review of the decision by the appropriate Circuit Court. An individual must appeal the decision in writing within thirty days from the date the decision was received or the date the decision was mailed to the individual. The request to appeal the hearing officer's decision should be sent to:

Martin D. Brown, Commissioner
Virginia Department of Social Services
801 E. Main Street
Richmond, Virginia 23219

Within thirty days after filing the notice of appeal with the Commissioner, the individual must file a petition for appeal with the appropriate Circuit Court. The individual must make sure that the petition for appeal is served on the Commissioner before the appeal can proceed in Circuit Court.

4. Fraud

Fraud is defined as a material representation relating to a past or an existing fact which is false, made with knowledge of its falsity, or in reckless disregard of the truth.

The Code of Virginia specifies that:

> Any person who knowingly makes any false application for public assistance or who knowingly swears or affirms falsely to any matter or thing required by the provisions of this title or as to any information required by the Commissioner, incidental to the administration of the provisions of this title, to be sworn to or affirmed, shall be guilty of perjury and upon conviction, therefore, shall be punished in accordance with the provisions of §18.2-434 (Code of Virginia §63.2-502).
>
> If at any time during the continuance of public assistance any change occurs, including but not limited to, the possession of any property or the receipt of regular income by the recipient that in the circumstances upon which current eligibility or amount of assistance were determined, would materially affect such determination, it shall be the duty of such recipient to notify as defined by regulation the local department of such change, and the local board may either cancel the public assistance, or alter the amount thereof. Any recipient who knows or reasonably should know that such change in circumstances will materially affect his eligibility for assistance or the amount thereof and willfully fails to comply with the provisions of this section, is guilty of a violation of §63.2-522 (Code of Virginia §63.2-513).
>
> Whoever obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a willful false statement or representation, or by impersonation, or other fraudulent device, public assistance or benefits from other programs to which he is not entitled or who fails to comply with the provisions of §63.2-513 is guilty of larceny. (Code of Virginia §63.2-522).

With respect to receipt of assistance, fraud may consist of withholding information which would affect eligibility or assistance or the amount thereof as well as giving

false information. In either case, the criterion is the intent of the action or failure to act. To determine that fraud exists, it must be established that the giving of false information was done with knowledge of its falsity or that the withholding of information which would affect eligibility for assistance or the amount thereof was deliberate with knowledge of its implications.

4.1. Responsibility of Local Department

In relation to fraud, the local department has the following specific responsibilities:

The agency must ensure that the individual receives a clear and full explanation of the eligibility requirements for the type of assistance being requested or received; of the responsibility to give complete and accurate information related to eligibility; and of the provisions of the law with respect to giving false information knowingly or deliberately withholding information which would affect eligibility for assistance or the amount thereof.

When an individual provides incorrect information or withholds information which would affect eligibility for assistance or the amount thereof, it is the responsibility of the LDSS director to determine whether or not there is deliberate misrepresentation with intent to defraud, and to assure the methods of investigation do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

A determination as to whether fraud occurred must be based on a careful consideration of the particular circumstances. Among the factors to be considered in deciding whether there is a deliberate misrepresentation on the part of the individual are:

- whether the incorrect or unreported information affected eligibility
- the correct information was, in fact, known to the individual, and
- the individual fully understood the eligibility requirements and responsibility for reporting information, or

The LDSS director or designee has responsibility to cause a warrant or summons to be issued for every violation of which the director has knowledge. In discharging this responsibility, the LDSS director many seek the advice of the local Commonwealth's Attorney to determine whether a violation occurred. The LDSS director or designee is to act upon the advice of the Commonwealth's Attorney as to whether a charge of fraud is or is not justified by the evidence, but in the absence of such advice, the LDSS director or designee must decide

whether the evidence requires a warrant or summons to be issued. The warrant or summons does not need to be signed by the LDSS director or designee personally but may be signed by the person having direct knowledge of the case and facts.

4.2. Recoupment

Section 63.2-512 of the Code of Virginia provides that any assistance or part thereof erroneously paid to an individual may be recovered as a debt. The amount erroneously paid may also be recovered from the income, assets or other property of the individual or from the public assistance payable to the individual.

5. Improper Payments

A payment made by a local department is improper when the following conditions exist:

- the payment is incorrect because:
  - the assistance unit does not meet eligibility requirements in the category
  - payment is in an amount greater than the amount to which entitled (overpayment)
  - payment is in an amount less than the amount to which entitled (underpayment);

AND

- the incorrect payment was made:
  - as an initial payment; or
  - later than the next possible month following the month in which the change affecting eligibility or the amount of payment occurred.

If there are both underpayments and overpayment, the agency must reconcile the amounts to determine if there is an underpayment or overpayment.

5.1. Underpayment

The State Board has ruled that when it is learned that an underpayment has been made as a result of client error, there shall be no correction of underpayments made

prior to the discovery of the error. When it is learned that an underpayment has been made as a result of agency error, including errors by other agencies, there must be correction of the prior underpayment by repayment to the individual as follows:

- the total allowable repayment to the individual shall be the amount of the underpayments.
- retroactive repayment of prior underpayments shall be made either in one lump sum payment or by monthly installment payments to the individual until the full allowable repayment is made. The method of payment is to be selected by the local agency.
- the retroactive corrective payment shall not be considered as income in determining need and the amount of the continuing assistance payment for which the individual is eligible. The corrective payment shall be disregarded in determining resources for the month the payment is made and the following month.

The above instructions are not applicable when a corrective payment is made as a result of an appeal or a court decision. In such cases, the terms of the hearing decision or court order apply.

At the time a grant is made or increased for the purpose of correcting a prior underpayment, the individual must be informed in writing of the purpose of this special allowance, the amount and the period for which it will be made, and that it will automatically terminate at the end of the specified periods. If this is done and the individual at the time the special allowance is terminated, appeals within the advance notice period, assistance need not be continued in the original amount.

5.2. Overpayment

As provided for by the Code of Virginia §63.2-512, the local department must recover overpayments when:

- the improper payment is the result of an error on the part of the individual receiving AG; or
- assistance is continued due to an appeal and the hearing decision supports the agency action.

The methods from recovering overpayments are:

- **Overpayments other than Fraud**

- when the individual receiving AG continues to be eligible, if the recipient has disregarded income, the monthly assistance payment is reduced by the amount of the monthly disregarded income until the full amount of the allowable recoupment is recovered.

If the individual has resources within the allowable reserves, the individual must be given the opportunity to repay by using such resources if so elected.

- When the individual is no longer eligible, arrangements for voluntary repayment of the full amount should be made. If the client fails to make voluntary repayment, the agency should initiate action under § 63.2-512 of the Code of Virginia, to collect the amount as debt, unless the administrative cost of such action would exceed the amount of overpayment.

- **Fraud**

  - When an individual is found guilty of fraud, repayment if ordered will be by the terms of the court order. If found not guilty the methods specified in the "Overpayments other than Fraud" section above are applicable.

In the operation of any program of public assistance in any locality, for which program appropriations are made to the Department of Social Services, it is provided that if a payment or overpayment is made to an ineligible individual therefore under State statutes and regulations, the amount of such payment or overpayment shall be returned to the Department of Social Services by the locality.

However, no such repayments may be required of the locality if the Department determines that such overpayment or payments to an individual resulted from the promulgation of vague or conflicting regulations by the Department's Home office or from the failure of either of the Home or Central offices to make timely distribution to the localities of the statutes, rules, regulations, and policy decisions causing the overpayment or payments to be made by the locality. Further no such repayment will be required from situations where a locality exercised due diligence, yet received incomplete or incorrect information which caused the overpayment or payments.

The criteria used for determining if a locality exercised due diligence are:

- a redetermination was not outstanding (overdue) in the case in question unless:

- the agency has received permission from the State to suspend reviews;
- it can be shown that the error was the result of the individual willfully withholding information which would not have been discovered by verifications required at the time of the review; or
- the error had not occurred at the time of scheduled review.

- the error was not the result of an anticipated change that was overlooked.
- the error was not the result of the client reporting a change that the agency failed to follow up on.
- the error was not the result of failure to use available management tools.
- the case record must be thoroughly documented regarding efforts to obtain information.

Overpayments and payments to ineligible individuals which shall be repaid to the State will begin with the month in which the change in money payment would have been effective if the individual had advised the agency of such change within the required time period and the agency had then taken appropriate action with the time limit specified.

Standards and procedures which were in effect at the time of the improper payment shall be used in determining the amount or repayment to be made. A standard or procedure is considered in effect in relation to a specific case after the date when:

- a standard or procedure has become effective by State Board action in all cases, or
- a standard or procedure has become effective in new and reviewed cases and the particular case is:
  - a new case,
  - a case in which a review is due, or
  - a case in which a change in circumstances has necessitate a partial review.

5.3. Identification of Improper Payment by State Agency

When an overpayment or payment to an ineligible individual has been identified by the State agency, a report is submitted promptly to the local department. Ten working days from the date the report was sent to the locality, is allowed for the agency to

concur or register its exception to the findings with the regional office utilizing the concurrence memo. The regional office will provide an opportunity for resolution of the differences and render decisions within 30 working days. The resulting decision is subject to appeal to Home Office. However, only appeals in which the final decision was not made in accordance with established policy will be accepted.

Upon receipt of notice that a repayment is required, the local department must refund the overpayment following the guidelines established by the locality's finance department or unit. Adjustments are typically entered in the LASER system.

Virginia Department of Social Services
Auxiliary Grant Program

STATEMENT OF FUNDS YOU PROVIDED TO ANOTHER

Name of Applicant:	Case Number:

1. How much money did you provide to the person named above? Amount $ _____

2. When did you provide the money? _____(month/year)

3. Do you expect him/her to pay this money back to you? ☐ Yes ☐ No

4. Has he/she begun to repay the money?

   ☐ Yes If 'yes', when did you receive the first payment? _____ (month/year)
   ☐ No If 'no', when will payments begin? _____ (month/year)

5. How much are the payments or will the payments be when repayment begins? $ _____

6. How often do/will you receive payments? _____

7. Did he/she promise to give up any property if he/she does not keep up the payments?

   ☐ Yes If 'yes' what? _____
   ☐ No

8. Are you charging interest?
   ☐ Yes If 'yes', go to Question # 9.
   ☐ No If 'no', sign and date this form and return to the worker.

9. How much is the interest payment? $ _____

   How often do you receive interest? _____

Remarks:

I hereby certify that all information provided on this form is true and correct:

Name (Print):	Signature:	Date:

Mailing Address	Phone Number (include area code):

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

AUXILIARY GRANT PROGRAM

BURIAL RESOURCE STATEMENT

CASE NAME:	CASE NUMBER:

List Resources Designated as Funds for Burial: _____

_____

Name of Individual Funds are Designated for: _____

Date Designated: _____

I understand that I must keep the designated funds separate from non-burial resources.

I also understand that use of any of the excluded burial funds for a purpose other than the burial for which they are intended may mean that future Auxiliary Grant payments will be withheld. If funds are misspent, and at the beginning of the month in which the funds are spent the total of countable resources and excluded burial funds exceed the AG resource limit, any future AG payments will be withheld until the Department of Social Services has recovered the amount of misspent burial funds.

I agree to report to the Department of Social Services:

- Any use of burial funds for a purpose not related to the burial of the individual for whom they were designated. (This includes withdrawals or borrowing from the funds);
- Any deposits to the burial funds except interest payments which are allowed to remain in the fund;
- Any interest paid to me or my spouse directly from the burial fund; or
- Any purchase or gift of life insurance, burial contracts, burial insurance, etc., to pay for burial.

SIGNATURE *(Individual):*	**DATE**:
SIGNATURE *(Spouse):*	**DATE**: