

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

302.01 RETIREMENT FUNDS

Retirement funds are annuities or work-related plans that are designed to provide income when employment ends. These funds can be held with a company or held privately at a bank or other financial institution. Listed below are some examples:

- Pensions, disability, or retirement plans administered by an employer or union
- 401K
- Individual Retirement Account (IRA)
- Keogh plans (plans for self-employed individuals)
- Some profit sharing plans

Procedure
<u>Treatment of Retirement Funds Under SSI and Liberalized Resource Policy</u> <u>IRAs and KEOGH Plans</u> • The terms IRA and Keogh refer only to the type of retirement account and do not identify the underlying investment vehicle for the account, which may be a bank account, Certificate of Deposit, mutual fund, etc. If retirement benefits are being received out of such accounts, the principal is not considered a resource. Otherwise, develop IRAs and Keogh accounts according to the resource policy applicable to the underlying investment vehicle. <u>Eligible for Periodic Payments</u> • Retirement benefits are payments made at some regular interval (i.e., monthly) and result from entitlement to a retirement fund. Periodic payments must be of uniform rate, principal and interest (principal must equal or exceed amount of interest) and are counted as unearned income. • If an individual owns a retirement fund, determine whether he is eligible for periodic payments. If so, he must apply for those benefits under the utilization of other benefits provision. If he has a choice of periodic payments or a lump sum, he must take the retirement benefit payments. <u>Not Eligible for Periodic Payments</u> • If an individual owns a retirement fund and is not eligible for periodic payments, determine whether he can make a lump sum withdrawal. If he can withdraw any of the retirement fund, the value of the fund is a resource in the month the funds become available for withdrawal.

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Retirement Funds (Continued)

Procedure
<u>Determining the Value of a Retirement Fund</u> • The value of the retirement fund is the amount that can currently be withdrawn. If there is a penalty for early withdrawal, the fund's value is the amount available after the penalty is deducted. However, any taxes which may be due are not deductible in determining the fund's value. <u>When to Treat a Retirement Fund as a Resource</u> A retirement fund is a resource when the individual has the option of withdrawing a lump sum, even if he is not eligible for periodic payments. When this is the case, • If the individual applies for periodic payments and is denied, the value of the fund becomes a countable resource the month after the month periodic payments are denied. • A delay in payment beyond the individual's control (e.g., an organization's processing time) does not mean the fund is not a resource since the individual is legally able to obtain the money. <u>When Not to Treat a Retirement Fund as a Resource</u> A retirement fund is not a resource • When a person must terminate employment to obtain payment. • When a person is eligible for and receiving periodic payments. <u>NOTES:</u> • Deeming Exclusion Retirement funds owned by an ineligible spouse or parent are excluded from resources for deeming purposes. • Previously Unavailable Funds A previously unavailable retirement fund is subject to resource rules in the month after the month the funds first become available.

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302.02 LOANS, PROMISSORY NOTES & PROPERTY AGREEMENTS

This section provides resource policies that primarily apply when the client or spouse is the creditor (lender or seller) and is, therefore, the owner of a loan agreement, promissory note or a property agreement. The principal amounts of these items are evaluated under appropriate SSI or liberalized resource policy.

302.02.01 GENERAL

TERM	DEFINITION
Bona Fide Agreement	An agreement which is legally valid and made in good faith.
Negotiable Agreement	A type of agreement where legal title or the amount of the agreement can be transferred (sold) to another party. Generally, promissory notes, loan agreements and personal and real property agreements can be sold to a third party. An agreement may be assumed to be non-negotiable if there is a legal bar to its sale.
Loan	A transaction in which 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 must be enforceable under state law and be in writing. A written loan agreement is a form of promissory note.
Informal Loan	With formal loans (e.g., commercial), there is rarely a question about whether the loan agreement is bona fide. An informal loan is a loan between individuals who are not in the business of lending money or providing credit. An informal loan must be written and is bona fide if: • It is legally binding under state law • It was in effect at the time of the transaction (money given with no obligation to repay cannot become a loan at a later date) • There is an acknowledgement of an obligation to repay, with or without interest, by the lender and the borrower • There is a plan or schedule for repayment and the borrower's express intent to repay by pledging real or anticipated future income. • The repayment plan is feasible.

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General (Continued)

TERM	DEFINITION
Promissory Note	Written, unconditional agreement where one person promises to pay another party a specific amount at a specific time (or on demand). It can be repayment for goods, money loaned or services rendered.
Property Agreement	A piece of property is used to secure payment of a debt or performance of services within a specified period of time. Other names for property agreements include: • Mortgages • Real estate or land contracts • Contracts for deed • Deeds of trust • Personal property agreements, e.g., pledges of crops, fixtures, inventory, etc., are known as chattel mortgages

Property Agreements Prior to Settlement

A person holding a contract for sale of real estate (seller or creditor) owns **two** items until the settlement of the sale is completed:

1. The real estate, which is not a resource since it cannot be sold while encumbered by the contract, and.
2. The value of the contractual agreement.

Determining the Value of a Contract

The status and value of a contract, i.e., loan agreement, promissory note or property agreement, must be evaluated to determine if it is a resource under appropriate SSI or liberalized resource policy.

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302.02.02 TREATMENT OF LOANS, PROMISSORY NOTES & PROPERTY AGREEMENTS

Procedure
<u>SSI RESOURCE POLICY</u> Follow these procedures when the individual is the <u>seller or creditor</u>: • Obtain a copy of the agreement for the file. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable. - o A bona fide, negotiable agreement is a resource. The goods or money represented in the agreement are not a resource because they are not accessible. - o The debtor's payments against the principal are a conversion of a resource, not income. The interest portion received by the lender is unearned income. If retained, principal and interest are counted as the lender's resource the month following the month of receipt. Example: Debtor pays \$500 per month - \$350 toward principal and \$150 in interest. The \$350 is a converted resource. The \$150 is unearned income. • If including the original principal balance (the amount owed to the creditor when the agreement was established) causes ineligibility on resources, obtain verification of the outstanding principal balance, i.e., the balance in the month for which a determination is being made. • If including the outstanding principal balance causes ineligibility on resources, inform the individual that we will use the outstanding principal balance in determining resources unless he submits: - o Evidence of a legal bar to the sale of the agreement ; or - o An estimate from a knowledgeable source (in the business of making estimates, such as banks, other financial institutions, private investors, real estate brokers, etc.) showing that the CMV of the agreement is less than its outstanding principal balance. The estimate must show name, title, and address of the source. <u>For agreements determined to be Non-Bona Fide or Non-Negotiable</u> • A non-bona fide or non-negotiable agreement is not a resource under SSI policy • The principal and interest paid to the lender are income, not a resource • The goods or money represented in the agreement may be a resource to the seller if the seller/creditor has access for his own use

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Treatment Of Loans, Promissory Notes & Property Agreements (Continued)

Procedure

LIBERALIZED RESOURCE POLICY

Follow these procedures when the individual is the seller or creditor:

- Obtain a copy of the agreement for the file. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
- Determine if the bona fide, negotiable note or agreement produces at least 6% net annual return of the principal balance.
 - o Loans, promissory notes and property agreements can be excluded as a resource if the note, loan or agreement produces at least a 6% net annual return of the principal balance.
 - o The income must be received by the client/spouse and counted as income in order for the exclusion to apply.
 - o If the above criteria are not met, the note or agreement cannot be excluded as a resource.
- Even though the 6% rule is in effect and establishes a minimum acceptable payment when compared to the principal balance, the following conditions must also be met for a resource exclusion:
 - o For all institutionalized individuals in SSI or liberalized programs, the repayment terms of the agreement must be actuarially sound.
 - o The payments must be of uniform rate, principal and interest, during the term of the agreement, with no deferred or balloon payments; and
 - o The agreement must prohibit cancellation of the debt upon the death of the lender.

The institutional client or spouse must reasonably expect to receive full payoff of the note or loan during his/her lifetime. As with annuities, the average number of years of life expectancy remaining based on the Annuity Life Expectancy Charts must coincide with the payout of the promissory note or loan.

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Treatment of Loans, Promissory Notes & Property Agreements (Continued)

Procedure

LIBERALIZED RESOURCE POLICY

Handling Agreements that Do Not Meet Requirements

- For **non-institutional** cases assessed under liberalized resource policy, a non-bona fide or non-negotiable agreement is not a resource.
 - Principal and interest payments are income to the seller/creditor.
 - The goods or money represented in the agreement may be a resource if the seller/creditor has access for his own use.
- For **institutional** cases, funds used to purchase promissory notes, loans or mortgages that do not meet the 6% rule, are not actuarially sound or are not bona fide or negotiable will be considered a transfer of assets valued as the entire outstanding balance due as of the date of the application for long term care for contracts dated on or after February 8, 2006.

Documenting Loans

- A loan to a relative that is immediately declared "uncollectable" is not a loan at all. It is a transfer of assets for less than fair market value.
 - o A financial institution that has no direct interest in the original transaction cannot verify that the "loan" is uncollectable. An uncollectible loan must be documented in the form of a legally binding and enforceable contract with the rate of interest specified and a repayment schedule.
- Documentation is required on a regular basis to verify that the loan is being repaid as required by the contract. If the loan is not being repaid, the lender is required to take legal action against the borrower to enforce the contract requirements. If no action is taken by the lender, he may be subject to a transfer penalty.

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Treatment of Loans, Promissory Notes & Property Agreements (Continued)

Treatment for the Borrower

For the borrower under SSI and liberalized resource policy:

- If the agreement is bona fide and negotiable, cash paid by the lender to the borrower is not income; however, cash retained (or property received) may be a resource to the borrower the month following the month of receipt.
- If the agreement is non-bona fide or non-negotiable, cash paid by the lender to the borrower is income in the month received by the borrower and retained cash (or property received) may be a resource to the borrower the following month.

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302.03 INHERITANCES AND UNPROBATED ESTATES

302.03.01 TREATMENT UNDER SSI RESOURCE POLICY

UNPROBATED ESTATES

Under SSI resource policy, an ownership interest in an unprobated estate may be a resource if an individual:

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

An ownership interest in an unprobated estate exists if:

- Documents such as a will or court records indicate an individual is an heir; or
- An individual has the use of, or income from, a deceased person's property; or
- Documents verify, or the individual alleges, a relationship to the deceased that awards him a share under the state's intestacy laws; or
- The inheritance, use of income and distributions are not contested.

INHERITANCES

An inheritance is cash, a right, or a noncash item(s), received as the result of a person's death. An inheritance is not a resource until the month following the month it meets the definition of income, i.e., it has a value and can be used, either directly or by sale or conversion, to meet basic needs. Thereafter, if retained, the property is evaluated as a resource.

302.03.02 TREATMENT UNDER LIBERALIZED RESOURCE POLICY

UNPROBATED ESTATES

Estates in the process of probate are excluded from the resource determination.

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Treatment Under Liberalized Resource Policy (Continued)

INHERITANCES

An inheritance is cash, a right, or a noncash item(s), received as the result of a person's death. An inheritance is not a resource until the month following the month it meets the definition of income, i.e., it has a value and can be used, either directly or by sale or conversion, to meet basic needs. Thereafter, if retained, the property is evaluated as a resource.

If an applicant or recipient in a long term care program refuses or transfers an inheritance, the individual may be subject to penalty under the transfer of assets provisions.

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302.04 REAL PROPERTY EXCLUSIONS

The value of the resources in this section may be excluded, in part or in whole, when determining eligibility.

302.04.01 HOME PROPERTY

An individual's home is property he has ownership interest in and is his principal place of residence. It may include:

- The shelter he lives in.
- The land on which the shelter is located.
- All buildings on the land.

Procedure
<u>Principal Place of Residence</u> • A principal place of residence is the dwelling that an individual considers his/her principal home. It may be: - o Real or personal property - o Fixed or mobile - o Located on land or water Example: If a person owns and resides in a houseboat on a lake, the boat may qualify as home property. • If a person owns land and intends to reside on it, it may be considered home property if there is no other principal place of residence. • If a person owns the land, but not the shelter, the land is considered the residence. Example: A person owns the land he lives on, but lives in a mobile home owned by his parents. • If a person owns the shelter, but not the land, the shelter is the residence. Example: A person owns the mobile home, but rents the lot on which it is located.

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Home Property (Continued)

Procedure
<u>Home Exclusion</u> • The home exclusion applies to: - o The shelter in which the individual lives - o All buildings on the property - o The land on which the shelter is located <u>and</u> any land adjoining it as long as it is not separated by land that neither the individual or spouse has an ownership interest in. ▪ Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot. <u>Home Out-Of- State</u> If an applicant's home property is located out-of-state, policy governing state residency applies. It is not permissible for the individual to intend to return to his principal place of residence out-of-state and at the same time intend to reside in Mississippi. If the applicant intends to return home to another state, he cannot be considered a Mississippi resident for Medicaid eligibility purposes. If the applicant intends to reside in Mississippi, a home out-of-state cannot be excluded as his principal place of residence. <u>Evidence of Home Property Ownership</u> Ownership of home property can be verified by one or more items of evidence such as: • Tax assessment notice • Recent tax bill • Current mortgage statement • Deed • Report of title search • Evidence of heirship in an unprobated estate such as 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 • Title and current registration for mobile homes

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Home Property (Continued)

Procedure
<u>Treatment of Home Property Under SSI Resource Policy</u> An individual's home, regardless of value, is an excluded resource if the individual: • Resides in the home or • Is absent and intends to return to the home Example: An individual is residing with her children due to an illness, but intends to go home when health permits. <u>The intent is based on the person's desire to return home.</u> No Intent to Return to Home If the individual leaves the home and does not intend to return home to it, it is no longer considered the person's principal place of residence. The home exclusion no longer applies as of the date the individual leaves with the intent not to return or the date the individual no longer intends to return. The month after there is no intent to return, the property will be considered a countable resource unless another exclusion develops. A home can be excluded without an intent to return, if: • A spouse or dependent relative of an institutionalized individual continues to reside in the home while the individual is institutionalized; - o Dependency may be financial or medical - o Relatives may include child, step-child, grandchild, parent, step-parent, grandparent, sibling, step-sibling, half sibling, aunt, uncle, cousin niece, nephew, in-laws; <u>or</u> • Sale of the home would cause an undue hardship to a co-owner due to loss of housing. Obtain a statement from the dependent relative or the co-owner to apply either of the above exclusions. <u>Multiple Residences</u> Only one residence can be excluded as home property. If there are multiple residences, determine the principal place of residence, considering such points as how much time is spent at each residence; where the individual is registered to vote; and which address the individual uses for mail and tax purposes.

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Home Property (Continued)

Procedure
<u>Treatment of Home Property Under Liberalized Resource Policy</u>
Under liberalized resource policy: • Home property can be excluded regardless of intent to return home or whether a dependent relative lives on the property. • Each client is allowed one home that can be excluded regardless of its use. • If more than one residence is owned, exclude the property that would be most advantageous to the client.
Equity Interest Disqualification
For long term care applications filed on or after January 1, 2006, there is a disqualification for individuals with equity interest in their home of greater than \$500,000. Beginning in 2011, this home equity limit is subject to increase. Refer to the Chart of ABD Need Standards for the Limit in effect after 2011. This provision will not prevent an individual from using a reverse mortgage or home equity loan to reduce the total equity interest in the home. This disqualification period means that the homeowner who is in long term care can qualify for all Medicaid services except vendor payment of nursing facility services as long as equity interest exceeds the \$500,000 limit. If Medicaid eligibility is dependent upon participation in the HCBS waiver, the individual is ineligible for full Medicaid services as long as equity in the home exceeds the limit; however, a Medicare Savings Program can be approved if criteria are met. Undue hardship can be found to exist if a lien or legal impediment exists causing the individual to be unable to access the equity. The disqualification period will not apply to an individual who has a spouse, child under age 21 or adult disabled child living in the home.
Reverse Mortgages
A reverse mortgage is an agreement in which a lending company makes a lump sum (subject to being counted as a resource the month following month of receipt); available line of credit (subject to being counted as a resource the month following month of receipt); or regular payments (treated as loan proceeds) to a homeowner during a specific period of time. The amount of payment is determined by the amount of equity the homeowner has in the home. The homeowner is allowed to remain in the home until his/her death. At that time, the home is sold and/or the lender is repaid. Reverse mortgages are available to homeowners age 62 or older who own a debt-free or nearly debt-free home. Funds received from a reverse mortgage in any form that are transferred, either in the month of receipt or subsequent months, are subject to a transfer penalty unless an allowable exception applies (such as spousal transfers).

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302.04.02 HOME REPLACEMENT FUNDS

If an individual sells an excluded home, the proceeds may be an excluded resource if he:

- Plans to buy another excluded home and
- Buys the home within 3 full calendar months following the month the proceeds are received.

302.04.02A INSTALLMENT SALES CONTRACT

If the proceeds from the sale of an excluded home are received under an installment sales contract, the contract is excluded if the individual:

- Plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home and
- Purchases the new home within 3 full calendar months following the month the down payment or installment payment is received.

Procedure
<u>Treatment of Home Replacement Funds Under SSI and Liberalized Resource Policy</u> The case record must contain a signed statement from the individual/authorized representative of the intent to purchase a new home. Proceeds From the Sale The proceeds of the sale include the following: • Lump sum – The net amount the seller receives at closing/settlement • Installments – Down payment and principal portion of any installment payment Verification may include copy of closing/settlement papers, contract for sale, copy of installment contract and amortization schedule or other evidence that shows the new proceeds and how paid or payable. Use of Proceeds Use of the proceeds to buy another excluded home includes payment of any costs that stem from the purchase. These include, but are not limited to: • Down payment • Closing/settlement costs

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Installment Sales Contract (Continued)

Procedure
Use of Proceeds (continued) • Moving expenses • Loan processing fees and points • Necessary repairs and replacement of the new home's structures and fixtures costs, if identified and documented before the new home is occupied and stem directly from the purchase or occupancy of the new home. This may include: roof, heating and cooling, plumbing, built-in appliances, etc. • Mortgage payments • Use of proceeds to pay other costs will warrant their exclusion if such costs are identified and documented prior to occupancy and stem directly from the purchase or occupancy of the new home. Verification may include copy of closing statement, copy of loan application, copy of home inspection reports, receipts for moving and repairs. Proceeds Not Re-Invested in a Timely Manner If the home is not replaced within the allowable 3-month period, the unused proceeds are a countable resource retroactive to the month following the month of receipt as follows: • Lump sum – the exclusion of the unused funds is revoked retroactively to the date of receipt • Installment contract – the exclusion of the contract itself and the unused portion of any installments received are revoked retroactively to the date the unused proceeds were received. - o The exclusion of an installment contract, once revoked, will be reinstated if the individual intends to and does use the entire principal portion of a subsequent installment payment toward the purchase of another excluded home within 3 full calendar months of receiving such installment payment. The exclusion does not apply to that portion of the proceeds of the sale of the original home that is in excess of the costs of the purchase and occupancy of the new home. NOTE: If replacement funds have been received for a damaged or destroyed home, refer to Section 302.09.03, "Cash or In-Kind Items Received for the Repair or Replacement of Lost, Damaged or Stolen Excluded Resources" and when applicable, Section 302.09.05, "Presidentially-Declared Major Disasters".

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302.04.03 JOINTLY OWNED PROPERTY WHOSE-SALE WOULD CAUSE UNDUE HARDSHIP

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

Procedure
<u>Treatment Under SSI and Liberalized Resource Policy</u> Undue hardship would result if the co-owner: • Uses the property as his principal place of residence • Would have to move if the property were sold • Has no other readily available housing Verify joint ownership and obtain a signed statement from the client and joint owner which documents the undue hardship. Hardship must be updated at every review. The exclusion ends when any one of the above conditions no longer exists. Example: Mr. Allen and his son jointly own a piece of land. The son and his family live on the property and have no other place to live. Mr. Allen applies for Medicaid. The property is excluded because the sale would cause an undue hardship to his son. However, if the son owned another house nearby which was vacant and habitable, there would be other available housing. Under these circumstances, undue hardship would not exist and the value of Mr. Allen's interest would be countable.

302.04.04 EXCLUSION OF REAL PROPERTY DUE TO REASONABLE EFFORTS TO SELL

Real property may be excluded from resources if the owner is making reasonable efforts to sell it and those efforts have been unsuccessful. The individual must maintain their efforts to sell unless good cause, i.e., circumstances beyond the individual's control prevent his taking the required actions to accomplish reasonable efforts to sell, exists. In addition, the individual must accept a reasonable offer for the property.

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Exclusion of Real Property Due to Reasonable Efforts to Sell (Continued)

Procedure
<u>Treatment Under SSI and Liberalized Resource Policy</u> The specific requirements listed below must be met in order for this exclusion to apply: Reasonable Efforts To Sell • Reasonable efforts to sell real property consist of taking all necessary steps to sell it through media serving the geographic area in which the property is located. Reasonable efforts specifically mean that: - o Within 30 days of signing Form-320A, Agreement to Sell Property, the owner(s) must: ▪ List the property with an agent; or ▪ Begin to advertise in at least one of the appropriate local 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 and attempt any other appropriate methods of sale; and • Except for gaps of no more than 1 week, the owner must maintain efforts of the type listed above; and • The owner does not reject any reasonable offer to buy the property and accepts the burden of demonstrating to Medicaid's satisfaction that an offer was rejected because it was not reasonable. Reasonable Offer To Buy • Assume that an offer to buy the property at a particular price is reasonable if it is at least two-thirds of the estimated current market value (CMV), as evidenced by the tax receipt. If the owner disagrees with CMV as evidenced by the tax receipt, he must provide convincing evidence of a different CMV. Verification presented by the owner to support a CMV other than that evidenced by the tax receipt must be submitted to state office for review.

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Exclusion of Real Property Due to Reasonable Efforts to Sell (Continued)

Procedure
Good Cause Good cause exists when circumstances beyond an individual's control prevent the required action to accomplish reasonable efforts to sell. If good cause exists for failure to meet any of the criteria specified above, the exclusion can continue provided action is taken to resume efforts to sell. Examples of good cause include: • No offer to buy is received • A legitimate offer does not result in a sale • Escrow begins, but closing does not take place within the disposal period • Incapacitating illness or injury, such as the individual becomes homebound or hospitalized for a prolonged period due to illness or injury and cannot take steps necessary to sell the property or to arrange for someone to sell it on his behalf Example: Sandy Patterson is a Medicaid recipient whose property has been excluded due to a bona fide effort to sell. She accepted a reasonable offer for the property; however, the buyer backed out of the deal at closing. Ms. Patterson immediately started sales efforts again. Good cause exists. Failure To Make Reasonable Efforts Unless there is good cause, failure to meet any of the criteria specified under "Reasonable Efforts to Sell" and "Reasonable Offer to Buy" means that: • An individual is not making reasonable efforts to sell the property and is not accepting a reasonable offer to buy; • The individual's countable resources include the value of the property beginning with the month following the month in which reasonable efforts to sell stop or the month following the month the owner failed to accept a reasonable offer to buy; and • The individual will be charged with an improper payment, if applicable.

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Exclusion of Real Property Due to Reasonable Efforts to Sell (Continued)

Procedure

Initial Verification of Efforts To Sell

The effort to sell must be documented in the case record within the 30-day time period for applying the exclusion by requiring all proof such as:

- Copy of the listing agreement with the real estate agent in current use;
- Dated advertisement(s) indicating the property is for sale;
- Contracts with local media to advertise the property;
- A photograph of the "For Sale" sign on the property, in conjunction with other efforts;
- Any other relevant items.

Effective Date Of Exclusion

If the appropriate proof is submitted, the exclusion is applied back to the first of the month in which the effort to sell was initiated.

If a reasonable effort to sell was in existence prior to the date of application, the exclusion can be applied retroactively provided the effort is documented and DOM-320A is signed.

If the effort to sell is just beginning, the exclusion applies effective with the first month DOM-320A is signed (provided it is signed within 30 days). If not signed within 30 days, the exclusion applies as of the first month a reasonable effort to sell is initiated.

Follow-Up Contacts

Contacts must be scheduled at 90-day intervals until the property is sold or the exclusion ends. Follow-up contacts may be by telephone to determine efforts being made to accomplish the sale and to document whether there has been any offer to buy since the prior contact. If an offer to buy has been refused, a statement must be submitted explaining the refusal.

NOTE: The refusal of an offer to buy must be evaluated under the "Reasonable Offer to Buy" guidelines. If the refusal is unacceptable, the exclusion ends beginning with or retroactive to the month after the month of the refusal to sell.

If the reasonable efforts to sell are not continuing at each follow-up contact, determine if good cause exists. If good cause does not exist, the exclusion ends beginning with or retroactive to the month after the month the reasonable efforts stopped.

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302.05 INTERESTS OF INDIVIDUAL INDIANS IN TRUST OR RESTRICTED LANDS

Certain types of Indian-specific property are excluded from being considered as resources in determining Medicaid eligibility for an individual who is an Indian. These excluded resources include the following:

Property Connected to the Political Relationship between Indian Tribes and the Federal Government

- Any Indian trust or restricted land, or any other property under the supervision of the Secretary of the Interior located on a reservation, including any federally-recognized Indian Tribe's reservation, pueblo or colony, and including Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior. This exclusion includes Individual Indian Monies (IIM) accounts, which are under the supervision of the Secretary of the Interior, and considered to be inaccessible.
- Property located within the most recent boundaries of a prior Federal reservation, including former reservations in Oklahoma and Alaska Native regions established by the Alaska Native Claims Settlement Act. The Tribe, through the Department of the Interior, can provide verification to identify such property.
- Ownership interest in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally-protected rights. Monies received from the lease or sale of these natural resources remain excluded while in an IIM account.

Property with Unique Indian Significance

- Property with unique Indian significance such as ownership interest in or usage rights to items not covered under the above provisions that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or traditional lifestyle according to Tribal law or custom.

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Interests of Individual Indians in Trust or Restricted Lands (Continued)

While the above identified assets are excluded in determining eligibility, if the assets are converted to a non-excluded asset, they become countable. For instance money in an IIM account is excluded; however, once the money is removed from the IIM account it becomes a countable asset.

NOTE: Money received by Indians from the lease or sale of natural resources, and rent or lease income, resulting from the exercise of federally-protected rights on excluded Indian property, is considered an asset conversion. Therefore, this money is not considered income, but is an excluded resource in the month the money is received (This is true even if the money is taken out of the IIM account in the same month it was deposited into the account). If some or all of the money is retained at the end of the month in which received, it is either counted or excluded based on the type of resource in which the money is retained after month of receipt.

This exclusion includes distributions of per capita judgment funds or property earnings held in trust for a Tribe by the Secretary of the Interior. However, this does not include local Tribal funds that a Tribe distributes to individuals on a per capita basis, but which have not been held in trust by the Secretary of the Interior (e.g., tribally managed gaming revenues, which are countable income).

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302.06 PERSONAL PROPERTY

Personal property, discussed in this section, includes automobiles, life insurance, household goods and personal effects and burial funds.

302.06.01 AUTOMOBILES

An automobile is any registered or unregistered vehicle used for transportation. Vehicles used for transportation can be motorized, animal drawn or even an animal. A vehicle not used for transportation is not an automobile, but may be a countable resource. A temporarily inoperable vehicle normally used for transportation meets the definition of an automobile.

If an exclusion cannot be developed for a vehicle, verify the current market value. The CMV is the average price an automobile of that particular year, make and model and condition would sell for on the open market (to a private individual) in the particular geographic area involved. Use the most recent NADA Official Car Guide or Older Car Guide to determine the average trade-in value. If there is debt on the vehicle, determine the equity value.

If the client states the CMV is not representative of the value of the vehicle, he must be given the opportunity to provide a value rebuttal from another knowledgeable source, such as a used car/truck dealer, automobile insurance company, classic car appraiser, etc.

Examples of Automobiles

- Car or truck
- Boat
- Motorcycle
- All terrain vehicle
- Horse-drawn carriage
- Horse

The following are not vehicles for purposes of this exclusion:

- Permanently inoperable (junk) vehicle
- Vehicle used exclusively for recreation, such as boats, motorcycles, RVs, dirt bikes, golf carts, etc.

Leased vehicles are not considered in the resource determination, as the individual does not own the vehicle.

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Automobiles (Continued)

Procedure
<u>Treatment of Vehicles Under SSI Resource Policy</u> Effective April 2005, one automobile may be excluded, regardless of value, if is used for transportation of the individual, spouse and/or a household member. Unless there is evidence to the contrary, assume the vehicle is used for transportation. If multiple vehicles are involved: • Apply the exclusion in a way that is most advantageous to the applicant/recipient. That is, apply the exclusion to the vehicle with the greater equity value. • For any vehicle that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit. The equity value of junk cars and vehicles used only for recreation is a resource. The personal effects exclusion does not apply to such vehicles. <u>Treatment of Vehicles Under Liberalized Resource Policy</u> Two vehicles may be excluded, regardless of value, if used for transportation of the individual, spouse and/or a household member. Unless there is evidence to the contrary, assume the vehicles are used for transportation. If multiple vehicles are involved: • Apply the exclusions in a way that is most advantageous to the applicant or recipient. That is, apply the exclusions to the vehicles with the greater equity value. • For any vehicle that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit. Any car that is permanently inoperable (junk car) can be totally excluded as a resource. Recreational vehicles are treated as personal property. The personal effects exclusion does not apply to such vehicles.

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Automobiles (Continued)

AUTOMOBILE CHART	
SSI POLICY	LIBERALIZED POLICY
Exclude one vehicle regardless of value that is used for transportation	Exclude two vehicles regardless of value that are used for transportation
Additional Vehicles - count the equity value of other vehicles which do not meet a resource exclusion	Additional Vehicles - count the equity value of other vehicles which do not meet a resource exclusion

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302.06.02 LIFE INSURANCE

A life insurance policy is a contract. The purchaser (owner) pays premiums to the company (insurer). In return, the insurer agrees to pay a specified sum to a designated person(s), known as a beneficiary, upon the death of the insured individual. The owner and the insured may or may not be the same person. The policy should state the owner's name, if different from the insured. Below are some common terms associated with life insurance:

TERM	DEFINITION
Face Value	Face value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. The face page of the policy may show it as such or as the "amount of insurance", "the amount of this policy", "the sum insured", etc. A policy's FV does <u>not</u> 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 others.
Cash Surrender Value	An insurance policy's cash surrender value (CSV) is a form of equity value that it acquires over time. The owner of the policy can obtain its CSV only by turning the policy in for cancellation before it matures or the insured dies. A loan against a policy reduces its CSV.
Dividends	Dividends are shares of any surplus insurance company earnings, which can be applied to premiums due or paid by check or by an addition or accumulation to an existing policy.
Dividend Additions	Dividend additions are the amount of insurance purchased with dividends added to the policy, increasing its death benefit and CSV. The table of CSVs that comes with a policy does not reflect the added CSV of any dividends.

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Life Insurance (Continued)

TERM	DEFINITION
Dividend Accumulations	Dividend accumulations are dividends that the policy owner has constructively received, but left in the custody of the insurer to accumulate at interest. They are not a value of the policy; the policy owner can obtain them without affecting FV or CSV. Dividend accumulations cannot be excluded from resources under the life insurance exclusion, even if the policy that pays the accumulations is excluded from resources. Unless they can be excluded under another provision(e.g., as set aside for burial), they are a countable resource.

Verification of Life Insurance

Obtain documentary evidence to verify the value of life insurance when the client/spouse reports ownership of whole life insurance(s) on any individual with a total FV exceeding the appropriate program exclusion limit: \$1500 (SSI) or \$10,000 (Liberalized). The individual or authorized representative must provide a copy of all the life insurance policies and the most recent dividend statement for each one. The items should verify the following:

- Face Value
- Owner
- Insured
- Beneficiary(ies)
- Whether any dividends are paid, whether they are accumulations, additions, applied to premiums or paid to the owner
- Current amount of accumulations, if any
- Whether the policy generates cash surrender value and if so, the current CSV (including the CSV of any dividend additions and any loans on the policy which reduce the CSV.)

If the policy does not reveal all needed information, use DOM-331, Request for Information Concerning Insurance, signed by the applicant to obtain information from the insurance company. After exclusions are developed, any remaining cash value must be considered in the eligibility determination. The cash surrender value of any policy that cannot be excluded is countable toward the resource limit.

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Life Insurance (Continued)

Types of Life Insurance

Generally, the types of life insurance policies are:

Term Life Insurance	Usually in effect for a specific length of time such as 20 years or length of employment; Does not accrue cash value
Whole Life Insurance	Remains in effect unless the premiums are not paid or the policy matures; Accrues cash value
Burial Insurance	The terms of the contract prevent the proceeds from being used for anything other than the burial expenses of the insured

302.06.02A OWNER VS BENEFICIARY OF LIFE INSURANCE

There is a distinct difference between being the owner of the policy and the beneficiary:

Owner	The owner is the one who has control of the policy. An individual may own life insurance on himself or another person. The owner may take such actions as: • Cash in a policy • Take a loan against the cash value • Change ownership to another person • Change the beneficiary The value of life insurance policies <u>owned</u> by an individual must be considered in the eligibility determination process.
Beneficiary	The beneficiary is the individual(s) who receive the proceeds of the policy at the insured individual's death. One person may be both the owner and the beneficiary. Example: Jim Jones purchases a \$10,000 life insurance policy on his mother, Jane Williams, and is the beneficiary upon her death.

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Life Insurance (Continued)

302.06.02B TREATMENT OF LIFE INSURANCE UNDER SSI RESOURCE POLICY

Procedure
<u>Under SSI Resource Policy:</u> • Term life insurance policies do not have cash value and are excluded • Burial policies are excluded • For all other policies determine the total Face Value (FV) of the policies owned by the individual NOTE: Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource. • A life insurance policy is excluded if its Face Value <u>and</u> the FV of any other life insurance policies the individual owns on the <u>same insured person</u> total 1,500.00 or less. ○ Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial • If the policy is a countable resource, the cash surrender values (CSV, dividend additions, dividend accumulations, outstanding loan amounts reducing the CSV) of the policies must be verified and considered in the eligibility determination. ○ The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as burial assets. • Refer to the income section for treatment of life insurance policy dividends. Example: Lyn Reno is the owner of four life insurance policies. Two have Face Values of \$500 and two have Face Values of \$250. The total of all FVs is \$1500 so the policies are excluded. Example: Jerry Mann is the owner of three life insurance policies insuring his spouse. The Face Value of each one is \$750. The total Face Value is \$2,250. The specialist must determine the cash values of the policies and count them toward the resource limit unless a burial exclusion is developed. Example: Roger West is the owner of two life insurance policies on his spouse. One is whole life with a Face Value of \$1,200 and the other is term life with a Face Value of \$10,000. The term life policy has no cash value and is excluded. The whole life policy is excluded because the Face Value is less than \$1,500.

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Life Insurance (Continued)

302.06.02C TREATMENT OF LIFE INSURANCE UNDER LIBERALIZED RESOURCE POLICY

Procedure
<u>Under Liberalized Resource Policy:</u> • Term life insurance policies do not have cash value and are excluded • Burial policies are excluded • For all other policies determine the total Face Value (FV) of the policies owned by the individual NOTE: Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource. • A life insurance policy is excluded if its Face Value <u>and</u> the FV of any other life insurance policies the individual owns on the same insured person total \$10,000 or less. - o Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial. • If the policy is a countable resource, the cash surrender values (CSV, dividend additions, dividend accumulations, outstanding loan amounts reducing the CSV) of the policies must be verified and considered in the eligibility determination. - o The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as a burial asset. • Refer to the income section for treatment of life insurance policy dividends. Example: Lane Ryan is the owner of four life insurance policies. Two have Face Values of \$1,500 and two have Face Values of \$750. The total Face Value is \$4,500 so the policies are excluded. Example: Jennifer Madison is the owner of three life insurance policies on her spouse, with Face Values of \$750, \$2,500 and \$12,000. The total Face Values are \$15,250. The specialist must determine the cash surrender values of the policies and count them toward the resource limit unless a burial exclusion is developed.

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Treatment of Life Insurance under Liberalized Resource Policy (Continued)

Procedure
Example: Roberta Warren is the owner of two life insurance policies on her spouse. One is whole life with a Face Value of \$8,500 and the other is term life with a Face Value of \$25,000. The term life policy has no cash surrender value and is excluded. The whole life policy is excluded because the Face Value is less than \$10,000.

302.06.02D ACCELERATED LIFE INSURANCE PAYMENTS

Accelerated life insurance payments are proceeds paid to a policyholder before death. Plans vary from company to company; however, all involve early payout of some or all of the proceeds of the policy. Most of the plans fall into three basic types depending on the circumstances that cause the payments to be accelerated:

Long Term Care Model	Allows payments if the policyholder requires an extended stay in a care facility or, in some instances, healthcare services at home.
Dread Disease or Catastrophic Illness Model	Allows payments if the policyholder suffers from a specified covered disease or illness such as cancer or AIDS.
Terminal Illness Model	Allows payments following the diagnosis of a terminal illness where death is likely to occur within a specified timeframe.

Some companies call these payments “living needs” or “accelerated death” payments. Depending on the plan, the receipt of payments may reduce the FV of the policy by the amount of the payments and may reduce the CSV in a proportionate manner. In other cases, a lien may be attached to the policy in the amount of the payments that results in a proportionate reduction in the CSV.

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Life Insurance (Continued)

Procedure
<u>Treatment of Accelerated Life Insurance Payments Under SSI and Liberalized Policy</u> If an individual has a life insurance policy that allows them to receive their death benefit while living and the individual meets the requirements set by the insurance company to receive such proceeds, they are <u>not</u> required to file for the proceeds. If the individual does file and receives the benefits, the payment will be considered as follows: • Month of receipt – consider as income • Following Month - Any money remaining the following month is considered a resource.

302.06.02E LIFE INSURANCE ENDOWMENT POLICIES

A life insurance policy's primary function is to pay out upon the death of the insured. A life insurance endowment policy does not do that; rather it serves as an investment medium with a maturity date or date certain payout, i.e., 5 years from purchase, at which time a benefit is paid to a designated beneficiary. The possible death of the "insured" individual before the maturity date is a secondary consideration. These policies should be treated as annuities.

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302.06.03 HOUSEHOLD GOODS AND PERSONAL EFFECTS

Household goods are personal property found in the home and used in connection with normal maintenance, use and residency of a home. They include:

- Furniture
- Appliances
- Television sets
- Carpets
- Cooking and eating utensils
- Dishes

Personal effects are personal property that is worn or carried by an individual or that have an intimate relation to him or her. They include:

- Clothing
- Jewelry
- Personal care items
- Prosthetic devices
- Educational or recreational items
 - o Books
 - o Musical instruments

302.06.03A OTHER PERSONAL PROPERTY

Personal property which cannot be excluded as household goods or personal effects must be considered as a resource under either SSI or liberalized resource policy, as discussed in the following sections.

302.06.03B TREATMENT UNDER SSI RESOURCE POLICY

Household Goods and Personal Effects

Household goods and personal effects, as defined above, are excluded in resource determinations, regardless of their dollar value.

Prior to April 2005, a general exclusion of up to \$2,000 applies to the total equity value of household goods and personal effects, other than those excluded regardless of value: one wedding ring, one engagement ring and prosthetic devices, wheelchairs, hospital beds, dialysis machines and other items required by a person's physical condition.

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Treatment Under SSI Resource Policy (Continued)

Property Acquired for its Value or as an Investment

Personal property that an individual acquires or holds because of its value or as an investment:

- Is a countable resource;
- Is not considered as household goods or personal effects for purposes of exclusion

Other Personal Property

When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects:

- Verify the Current Market Value (CMV) of the item using any reliable evidence such as a recent sales slip, an appraisal of the item or an estimate from a knowledgeable source. Be aware that insurance appraisals and amounts of insurance often reflect replacement value rather than CMV.
- Determine the Equity Value (CMV less payoff) when there is an encumbrance on the item to arrive at the amount of countable resources.

Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. The RV does not meet criteria to be an automobile, nor does it meet the definition of household goods or personal effects for exclusion. If the CMV of the RV is \$10,000 and the payoff is \$5,000, under SSI resource policy the equity value of \$5,000 is counted as a resource.

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302.06.03C TREATMENT UNDER LIBERALIZED RESOURCE POLICY

Household Goods and Personal Effects

Under liberalized policy, household goods and personal effects, as defined above, are excluded in resource determinations regardless of their dollar value.

Property Acquired for its Value or as an Investment

Personal property that an individual acquires or holds because of its value or as an investment:

- Is a countable resource when its equity value exceeds \$5,000;
- Is not considered to be household goods or personal effects for purposes of exclusion.

Other Personal Property

When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects, under liberalized resource policy:

- Up to \$5,000 in EV is excluded for other personal property.
 - o Verify the Current Market Value (CMV) of the item using any reliable evidence such as a recent sales slip, an appraisal of the item or an estimate from a knowledgeable source. Be aware that insurance appraisals and amounts of insurance often reflect replacement value rather than CMV.
 - o Determine the Equity Value (CMV less payoff) if there is an encumbrance on the item
 - o Exclude the item if the EV is \$5,000 or less.

Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. The RV does not meet criteria to be an automobile, nor does it meet the definition of household goods or personal effects for exclusion. If the CMV of the RV is \$12,000 and the payoff is \$7,500, the RV can be excluded as a resource under liberalized policy since its equity value is \$5,000 or less.

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302.06.04 **DEATH BENEFITS FOR LAST ILLNESS AND BURIAL EXPENSES**

Death benefits are received because of another person's death. Examples include:

- Life insurance proceeds
- Social Security death benefits
- Burial benefits from the Railroad or Veterans Administration
- Inheritances
- Gifts from relatives, friends or the community to help with expenses

NOTE: Recurring survivor benefits from a pension or retirement plan or the Social Security Administration are not death benefits.

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

Death benefits provided to an individual are income to the extent that the total amount exceeds the expenses of the deceased's last illness and burial expenses paid by the individual. Death benefits which are not income are also not a resource for one month following the month of receipt. If retained, the second month following receipt, death benefits are resources.

302.06.04A **TREATMENT UNDER SSI AND LIBERALIZED RESOURCE POLICY**

Procedure
Death Benefits If death benefits are not considered income, then: • Month of receipt – excluded • Month after receipt – excluded • Second Month following receipt – countable resource, if retained Exception: If the death benefits are repayment for expenses already paid, they are considered resources the month after receipt, if retained.

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Death Benefits for Last Illness and Burial Expenses(Continued)

Procedure	
<u>Treatment Under SSI and Liberalized Resource Policy</u>	
Example:	When her uncle passed away, Beth Smith received \$4,000 as beneficiary of his life insurance policy. She received it in July and anticipates spending the entire amount on his last illness and burial expenses. She has already received bills totaling \$900 that she paid. On August 1, she received a funeral bill for \$2,900 and a few days later received a cash gift of \$500 which she also intends to apply toward last illness and burial expenses. She pays the \$2,900 funeral bill in August and intends to use the remainder of the life insurance to pay some hospital expenses.
Treatment:	Neither the \$4,000 received in July nor the \$500 received in August is unearned income since it is all expected to be used for burial or last illness expenses. She used \$900 of the \$4,000 in July. As of August 1, she had \$3,100 that is not a resource for August. During August she paid the \$2,900 bill and then had \$200 left. However, the \$500 she receives in August gives her \$700 to use for hospital expenses. She must spend \$200 in August for burial or last illness expenses; otherwise, the \$200 will count as a resource September 1. Any portion of the \$500 remaining as of October 1 will be counted as a resource.
Example:	Jane Smith has total countable resources of \$1,980 consisting of a \$1,000 savings account and \$980 in checking. Her brother died in late October. In November she receives \$3,000 as beneficiary of her brother's life insurance. She has last illness and burial expenses of \$2,750 to pay. There are no other bills.
Treatment:	Of the \$3,000 Ms. Smith received, \$250 is unearned income in November because the last illness and burial expenses are only \$2,750. The \$2,750 is not considered unearned income and will not be a resource until January 1, if she still has it at that time. Any of the \$250 remaining will be a resource for December.

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302.06.05 **BURIAL-RELATED RESOURCES**

There are two different types of burial-related resources: burial spaces and burial funds. This section will discuss the distinction between the two and treatment under SSI and liberalized resource policy.

302.06.05A **BURIAL SPACES**

Burial spaces are spaces or items that are use to contain the remains of a deceased person. These include:

- Cemetery plots, crypts, mausoleums, cremation niches
- Caskets, urns
- Headstones or other grave markers
- Burial containers (burial vaults or grave liners)
- Expenses related to the opening and closing of the grave site
- Perpetual care expenses

302.06.05A1 **TREATMENT OF BURIAL SPACES UNDER SSI AND LIBERALIZED RESOURCE POLICY**

Procedure
<u>Burial Spaces – SSI And Liberalized Resource Policy</u> A burial space or an agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or a member of his or her immediate family is an excluded resource, regardless of value. The burial space exclusion is in addition to, and has no effect on, the burial funds exclusion. <u>SSI Exclusion:</u> Burial spaces may be excluded if intended for use of : • Individual • Spouse • Immediate family - o Parents – biological or adoptive - o Children – biological, adoptive or step - o Siblings – biological, half or step - o Spouses of the above, if currently married. Divorce negates the relationship.

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Treatment of Burial Spaces under SSI and Liberalized Resource Policy (Continued)

Procedure
<u>Liberalized Exclusion:</u> Liberalized policy includes all of the relatives in the SSI definition above and extends to family members of any degree of relationship. Notes: • To be "held for" the burial of an individual , the item must be paid for in full - if not paid for in full, the amount paid is considered a burial fund rather than a burial space • Only one item serving the same purpose may be excluded per person. For example, exclude a casket and vault for the same person, but not a casket and an urn • No limit exists on the value that may be excluded • Taxes paid on burial spaces are also excluded • If a burial space is being held by a funeral provider in accordance with a burial agreement, whether revocable or irrevocable, then the value of the burial space(s) is excluded under the burial space exclusion

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302.06.05B **BURIALFUNDS**

Burial funds are items clearly designated for an individual's burial. They include:

- Revocable burial contracts
- Revocable burial trusts
- Other revocable burial arrangements (Including installment sales contracts for burial spaces)
- Cash
- Financial accounts such as checking, saving or CDs
- Stocks or bonds
- Life insurance cash value

Burial funds must be clearly designated for the eligible individual's burial, cremation or other burial-related expenses, i.e., flowers, clothing, transportation, etc.

Property other than that listed above 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.

Designation of Burial Funds

Burial funds may be designated by:

- An indication on the burial funds document, such as a revocable burial contract or the title on a bank account. Whenever burial funds are already clearly set aside as burial funds, no separate signed statement or further designation is required.
- Completion of DOM-321B, Designation of Burial Funds, provides the information required to document a burial fund, i.e., owner, value and form of funds, date set aside for burial, etc.

Once a fund is designated, it remains a burial fund until eligibility terminates or the individual uses the funds for another purpose, in which case a penalty may apply. See discussion of Misuse of Burial Funds later in this section.

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Documentation of Burial Exclusion

DOM-321A, Burial Assets Exclusion Worksheet, is used to document the case record when the burial asset exclusion is applied. A separate worksheet is required for each person eligible to receive an exclusion, which includes:

- Eligible individual,
- Eligible or ineligible spouse,
- Eligible child
- Eligible or ineligible parent(s)

Effective Date

The burial fund may be excluded retroactively to the date the individual originally designated the funds for burial. Accept the individual's allegation of the date the funds were first considered set aside for burial (even prior to application) unless there is evidence the funds were used and replaced after that date.

Example: Mr. Hoover applies on May 1 and signs DOM-321B designating a CD for burial. He set the account up two years ago for his burial. He is seeking coverage for February, March and April. The exclusion may be given for those months.

Commingled Funds

Burial funds cannot be commingled with other resources which are not intended for burial. The burial fund exclusion applies only if funds set aside for burial expenses are kept separate from non-burial funds. If excluded burial funds are mixed with resources not intended for burial, the exclusion will not apply to any portion of the funds.

It is possible to have excluded and non-excluded funds commingled provided all funds are intended for burial. It is not permissible, however, to have burial and non-burial funds commingled.

Example: Mr. Brennan has a bank account with a balance of \$2,000. He plans to use \$1,500 for burial and the remaining \$500 for other non-burial expenses. The burial exclusion may not be applied to this bank account. Mr. Brennan may want to consider opening another account for the \$500. If he does so, he must provide verification and DOM-321B must be completed to document the burial exclusion.

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Burial Funds (Continued)

Designated Burial Funds vs Excluded Funds

Any amount may be designated for burial; however, only the amount up to the applicable maximum exclusion may be excluded. Once the amount of the designated burial funds equals the applicable maximum, the only additions to it that can be excluded are appreciation and interest.

However, until the maximum has been reached, additional amounts can be excluded if the individual designates them for burial expenses. Interest is not included in determining if the maximum has been reached.

302.06.05B1 EXCLUSION OF BURIAL FUNDS UNDER SSI POLICY

SSI policy allows up to \$1,500 in funds set aside for the burial of the individual and up to an additional \$1,500 in funds set aside for burial of the individual's eligible or ineligible spouse.

Example: Mr. Brown designates \$1,500 in a bank account for burial. The entire amount may be excluded.

Example: Mr. Brown designates an account with a \$2,000 balance for burial. Since \$1,500 is the maximum exclusion, the remaining designated funds are not excluded and count toward the resource limit.

302.06.05B2 EXCLUSION OF BURIAL FUNDS UNDER LIBERALIZED POLICY

Under liberalized policy, the maximum that can be excluded for burial of the individual is \$6,000. In addition, up to \$6,000 is allowed for burial of the eligible or ineligible spouse.

302.06.05B3 TREATMENT OF BURIAL FUNDS UNDER SSI AND LIBERALIZED POLICY

Reductions in Maximum Exclusions

The \$1,500 or \$6,000 maximum exclusion is reduced by:

- Any amount held in an irrevocable trust or burial contract or other revocable arrangement for the individual or spouse, if applicable, except to the extent it represents excludable burial spaces.

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Treatment of Burial Funds under SSI and Liberalized Policy(Continued)

- Face Value of any excluded life insurance policy on the individual or spouse, if applicable

Example (SSI): Greta Mann has a savings account designated for burial. It has a balance of \$2,000. She also has an irrevocable burial contract with Hartfield Funeral Home that represents burial space items worth \$2,500 and burial funds of \$1,500. The burial fund portion of the burial contract totally offsets the \$1,500 SSI burial exclusion: $\$1,500 - \$1,500 = 0$; therefore, the entire \$2,000 balance in the savings account is not excluded and counts toward the resource limit.

Example (Liberalized)

Greta Mann has an excluded life insurance policy with a Face Value of \$5,000. She also has a savings account with a balance of \$4,000 that she designates for burial. The \$6,000 burial exclusion is partially offset by the Face Value of her policy: $\$6,000 - \$5,000 = \$1,000$. Therefore, \$1,000 of her savings may be excluded and the remaining \$3,000 in non-excluded burial funds is a countable resource.

Irrevocable Burial Arrangements

Irrevocable burial arrangements are not resources and are not subject to the \$1,500 or \$6,000 maximums; however, as indicated above, they do reduce the amount of the burial fund exclusion allowed. Burial insurance is considered an irrevocable arrangement.

Value of Burial Arrangements Equal to Value of Pre-Payment

The value of the irrevocable burial arrangements purchased by the individual must be equal to the value of the funding source used to make the purchase, e.g., cash prepayment, life insurance or annuity irrevocably assigned to the funeral home.

If the value of the burial arrangement is not equal to the value of the prepayment, a penalty may be assessed under the transfer of assets provision for institutionalized clients.

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Treatment of Burial Funds under SSI and Liberalized Policy (Continued)

Changes in Burial Exclusion Amounts

The maximum amount that can be excluded when a burial fund is initially designated is \$1,500 under SSI resource rules or \$6,000 under liberalized policy. Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded as income and resources if left to accumulate and become part of the separate burial fund.

Changes in the individual's circumstances may raise or lower the amount that can be excluded for burial, such as:

- The purchase of additional life insurance with cash surrender value may change the allowable exclusion. In addition, cashing in life insurance may raise or lower the allowable exclusion.
- The face amount of life insurance may change, thereby changing the allowable exclusion.
- An irrevocable burial contract may be purchased, thereby reducing the allowable burial exclusion.
- Deposits made to bank accounts designated for burial will change the allowable exclusion.
- If the amount designated is less than the maximum exclusion, the individual may add additional funds to the burial fund to bring up the original amount to the maximum exclusion amount.

NOTE: A decrease in the value of any excluded burial funds will be subject to a penalty for misuse, which is discussed later in this section.

Reevaluation of Burial Funds

The burial fund exclusion once applied must be reevaluated whenever a change becomes known that would affect the exclusion amount or at each redetermination. It is not necessary for the client to sign a new DOM-321B unless there is a new or revised designation of funds. If there is a change in the amount of the exclusion, a new DOM-321A, Burial Assets Exclusion Worksheet, must be prepared. Otherwise, the most recent DOM-321A should be updated.

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Treatment of Burial Funds under SSI and Liberalized Policy (Continued)

At each redetermination:

- Verify the requirements for exclusion are still being met
- Verify the current value of the fund
- Determine if increased value is interest or another type of addition
- If the fund contains both excluded and non-excluded amounts, use the formula below to determine the excludable portion:

Original exclusion amount ÷ Original fund amount x Present fund amount = Excluded Portion

Example: An individual, subject to SSI rules, designated \$2000 (original fund amount) as a burial fund, \$1500 (original exclusion amount) was excluded and \$500 is non-excluded. At the most recent review, the account had grown to \$2200 (present fund amount) due to accumulated interest.

The excluded amount is \$1650. $(1500 \div 2000 \times 2200 = 1650)$

Misuse of Burial Funds

If funds, including interest, that were excluded under the burial fund exclusion are used for any purpose other than burial expenses for the designated individual, a penalty for misuse is imposed only if the client would have excess resources without the burial exclusion.

Upon discovery of the misuse of excluded burial funds, the specialist will obtain verification (which may be in the form of a statement from the client or representative) that all or a portion of the funds have been used for another purpose other than burial. The specialist will then determine the effect the misuse will have on eligibility.

Penalty for Misuse

If the client would have excess resources without the burial fund exclusion, the amount used inappropriately is counted as income the next possible month after the month in which the misuse is discovered. The misused funds will be included as income in the eligibility computation; however, misused burial funds are not counted as income in the Medicaid Income computation for the institutionalized individual unless the funds are available to the recipient.

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Treatment of Burial Funds under SSI and Liberalized Policy (Continued)

If the misused funds include non-excluded burial funds, assume the funds were used in this order:

- Non-excluded interest
- Non-excluded designated amount
- Excluded interest
- Excluded designated amount

The penalty only applies to excluded interest and designated amounts.

If ineligibility results, the case will be closed in accordance with ongoing policy, i.e., advance notice issued, etc. If the misuse of burial funds does not result in excess income because the client's resources would not exceed limit even if the burial funds were not excluded or if applicable, the funds are not available to the client to include in the Medicaid Income computation, no action is required other than documenting the case record.

DOM-321B is required to redesignate funds when there is a change in the amount of funds originally designated, not including accumulated interest or appreciation. If eligibility is lost, the burial fund exclusion must be developed if the individual reapplies later.

Example: Jennifer Shows originally designated \$1,500 as a burial fund. Interest accumulated and the account grew to \$1,750. In May, she withdrew \$500 to repair her car. If her other resources plus the \$1750 burial fund, which is now non-excluded, exceed the program resource limit, the penalty applies.

In addition, she must redesignate the amount of funds for burial because the amount in the account (\$1,250) is now below the original amount designated. In the alternative, she could add \$250 to the account and the original designation would be accurate; however, any penalty would still apply.

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302.06.05C PRE-NEED BURIAL CONTRACTS

A pre-need burial contract is an agreement between an individual and a funeral home where the buyer pays in advance for his or another person's burial arrangements. If an applicant's resources exceed the allowable limit, he is allowed to establish a pre-need contract to reduce his resources below the limit.

Pre-Need Burial Contracts Including Burial Spaces and Burial Funds

Many pre-need contracts include both burial space and burial fund items. Expenses related to the burial space include: casket, vault, opening/closing costs at the cemetery. Expenses related to the burial fund include: embalming, clothing, visitation room, transportation, flowers.

There are two types of pre-need burial contracts: revocable and irrevocable. Each is described below, as well as, how they are treated in the eligibility determination. Payment for a contract has taken place when an applicant/recipient transfers a liquid resource to the funeral provider or when specific life insurance policies have been designated on the pre-need burial contract.

A liquid resource designated, but not transferred to the funeral provider as payment for a contract, is counted as an available resource. A resource cannot be designated for future payment of a pre-need contract and that resource be excluded as a resource.

302.06.05C1 REVOCABLE PRE-NEED BURIAL CONTRACTS

Revocable contracts may be sold or the money may be refunded. They are considered resources; however, a full or partial exclusion may be developed:

Revocable Contracts That Are Paid in Full

If the value of all the items is provided, both the burial space and the burial fund exclusion may be developed. If the value of the burial space items is not provided, only the burial fund exclusion may be developed.

Revocable Contracts That Are Not Paid in Full

Only the burial fund exclusion may be developed unless the contract verifies the burial space items are paid for and the burial funds items are being paid on.

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Revocable Pre-Need Burial Contracts (Continued)

Procedure

Revocable Pre-Need Contracts - SSI and Liberalized Resource Policy

Verification

- Copy of contract
- Statement from provider of service

Treatment

- Revocable pre-need burial contracts are considered a resource. A burial exclusion may be developed. DOM-321B must be completed and signed
- **If the contract is paid in full:**
 - o Any portion of the contract clearly representing burial spaces may be excluded entirely, regardless of value
 - o Up to \$1,500 (SSI) or \$6,000 (Liberalized) of the remaining portion of the contract may be excluded as a burial fund
- If the contract is not paid in full, it should be treated as a burial fund unless it is verified that the burial spaces themselves are paid in full and considered "held for" the individual

Example: Mr. Allen applies for Medicaid. He has just purchased a revocable contract at Land of Lakes Funeral Home. The contract verifies it is paid in full and includes the following:

\$1,500	Casket
\$1,000	Vault
\$1,000	Headstone
\$500	Opening/closing costs
\$200	Embalming
\$300	Visitation Room
\$1,000	Funeral service

Because the contract is paid in full, the first four items, which are burial space items, may be excluded under the burial space exclusion. The remaining \$1,500 may be excluded under the burial fund exclusion.

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302.06.05C2 IRREVOCABLE PRE-NEED BURIAL CONTRACTS

Procedure
<u>Irrevocable Pre-Need Contracts - SSI and Liberalized Resource Policy</u> Irrevocable contracts are not a resource since the money cannot be refunded or the contract sold without significant hardship. <u>Verification</u> • Copy of contract • Contact with service provider <u>Treatment</u> If the contract is irrevocable: • It is not a resource to the individual • It is not considered a resource retroactive to the date it was purchased • The portion that represents burial funds offsets the burial fund exclusion amount (\$1,500 SSI/ \$6,000 liberalized) • If the contract is not paid in full, the portion paid represents burial funds and is excluded up to the maximum Example: Mrs. Appleton applies for Medicaid. She has a savings account worth \$5,500 and a life insurance policy with a Face Value of \$20,000 and Cash Surrender Value of \$800 that she had designated for her burial. Since her resources exceed the limit, she uses \$4,500 of her savings to purchase an irrevocable pre-need burial contract. A copy of the contract verifies she paid \$1,500 for the casket, \$1,000 for the vault, \$500 for the opening/closing of the grave and \$1,500 for the funeral. Since the contract is irrevocable, it is not a resource and not countable. Treatment of Example under SSI Rules The \$1,500 in the contract for the funeral totally offsets the \$1,500 burial fund maximum. The \$800 CSV of life insurance the client designated for burial becomes a countable resource. Her countable resources are: savings - \$1,000, CSV of life insurance - \$800 = \$1,800 countable resources. Treatment of Example under Liberalized Rules The \$1,500 in the contract for the funeral plus \$800 CSV from the life insurance policy the client designated for burial totals \$2,300 in designated burial funds. Her countable resources are: savings - \$1,000.

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302.06.05D LIFE INSURANCE FUNDED BURIAL CONTRACTS

A life insurance funded burial contract involves an individual purchasing a life insurance policy on his own and then assigning, revocably or irrevocably, either the proceeds or ownership of the policy to a funeral provider. The purpose of the assignment is to fund a burial contract. Life insurance funded burial contracts are not considered burial insurance.

Effect of the Assignment of Ownership on Burial Exclusion

- **Revocable Assignment**
 - o The burial space exclusion does not apply because the items are not paid for until the death of the individual and therefore are not being “held for” the individual
 - o The burial fund exclusion may apply. The resource value of the burial contract is equal to the Cash Surrender Value of the life insurance, subject to the maximum burial funds exclusion amount.
- **Irrevocable Assignment**
 - o The burial space exclusion may apply if the values of the items are provided.
 - o The life insurance policy is not a resource because the individual no longer owns it
 - o The contract is not a resource because the individual no longer owns it
 - o The value of the burial fund items offsets the value of any other burial funds items up to the allowable maximum

Effect of the Assignment of Proceeds on Burial Exclusion

When life insurance proceeds are assigned, the burial space exclusion does not apply because the provider will not be paid until the death of the individual and spaces are not being “held for” the individual. The resource value of the contract is the cash surrender value of the life insurance policy.

If the Face Value of all life insurance policies for the individual total \$1,500/\$6,000 or less, exclude the CSV under the life insurance exclusion. If the FVs total more the \$1,500/\$6,000, verify and count the CSV toward the resource limit. The burial fund exclusion may apply.

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302.07 EXCLUSION OF PROPERTY ESSENTIAL FOR SELF-SUPPORT

The exclusion of property essential to self support may apply to real or personal property. All property must be in current use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume. Resources excluded under this provision generally fall into four categories:

1. Property Essential to Self Support - Exclude Regardless of Value or Rate of Return (SSI and Liberalized)
2. Property Used to Produce Goods and Services - Exclude Up to \$6000 Equity Regardless of Rate of Return (SSI)
3. Non-Business, Income-Producing Property - Exclude Up to \$6000 Equity if it Produces a 6% Rate of Return (SSI)
4. Essential Property Exclusion - Liberalized Policy

NOTE: The income generated by income-producing property is not excluded under this provision. Income is either earned or unearned, depending on the type of income-producing property involved.

302.07.01 CURRENT USE REQUIREMENT

The property must be in current use in the type of activity that qualifies it for exclusion under this provision. Current use is evaluated on a monthly basis. Property not in current use may be excluded only if:

- o It has been in use and
- o There is expectation that the use will resume

Resumption of use must be expected within 12 months of last use. This 12-month period can be extended for an additional 12 months if non-use is due to a disabling condition. Explain to the client that the property can be excluded for up to 12 months if resumption of the self-support activity can reasonably be expected to occur within that time.

No Intent or Change of Intent to Resume Self Support 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.

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Current Use Requirement (Continued)

If there is a change of intent after the exclusion has been applied, the exclusion no longer applies as of the date of the change of intent. The property becomes a resource for the following month unless a different exclusion is met.

Procedure
<u>Not in Current Use - General</u> If property is not in current use, obtain a statement in regard 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 <u>Not in Current Use - Disability</u> If an individual alleges that self support property is not in current use because of a disabling condition, obtain a statement in regard to: • The nature of the condition • The date the self support activity ceased and • When the individual intends to resume the activity, if at all Prepare a special determination on whether up to an additional 12 months will be allowed for resuming use of the property.

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302.07.02 PROPERTY ESSENTIAL FOR SELF-SUPPORT - EXCLUDED REGARDLESS OF VALUE OR RATE OF RETURN

The properties essential to self support described in this section include necessary capital and operating assets of a business, e.g., real property, buildings, inventory, equipment, machinery, livestock, motor vehicles, etc. They must be in current use or if not in current use due to circumstances beyond the individual's control, there must be a reasonable expectation that the required use will resume. The following types of properties essential to self support are excluded regardless of value or rate of return:

- Property used in a trade or business
- Government permits which represent authority to engage in an income-producing activity
- Personal property used by an employee in his work

302.07.02A PROPERTY USED IN A TRADE OR BUSINESS

Property essential to self support used in a trade or business is excluded from resources, regardless of the value or rate of return. This is applicable to programs subject to both SSI and liberalized resource policy.

Procedure - SSI and Liberalized Resource Policy
When the individual alleges owning a trade or business property, obtain a statement in regard to: • Description of the trade or business • Description of the assets of the trade or business • The number of years the business has been operated • Names of any co-owners • Estimated gross and net earnings of the trade or business for the current tax year Verification: Obtain a copy of the current year tax return (Form 1040 with schedules and attachments). Use the return to determine the net self employment earnings and validity of the trade or business. If the current year return is not available, obtain the latest return available

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302.07.02B GOVERNMENT PERMITS

Government permits represent authority granted by a government agency to engage in an income-producing activity. Examples are commercial fishing permits or tobacco crop allotments.

Procedure - SSI and Liberalized Resource Policy

When the individual alleges owning a government license, permit or other property which represents government authority to engage in an income producing activity, and which has value as a resource, obtain a statement regarding the information below:

- Type of license, permit or other property
- Name of the issuing agency, if appropriate
- If license is required for engaging in this activity
- How the license, permit or property is being used or
- If not being used, why not

Verification: Obtain a copy of the license, permit and/or other documents

302.07.02C PERSONAL PROPERTY USED BY AN EMPLOYEE FOR WORK

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

Procedure – SSI and Liberalized Resource Policy

If the individual alleges owning items that are used in his work as an employee, obtain a statement regarding the following:

- Name, address and telephone number of employer
- General description of the job duties and the items
- Whether the items are currently in use

Verification: Absent evidence to the contrary, accept the individual's statement

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302.07.03 **PROPERTY USED TO PRODUCE GOODS OR SERVICES – UP TO \$6000 EQUITY EXCLUDED REGARDLESS OF RATE OF RETURN (SSI)**

- This exclusion applies to non-business property, real or personal property (but not cash or bank accounts), used to produce goods or services essential to daily living
- No specified rate of return is required
- Property must be in use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will return
- If the equity value of the property exceeds \$6000, the excess is not excluded; it is countable toward the resource limit

Example: If the resource is valued at \$7000, then \$6000 is excluded and \$1000 is counted.

Procedure – SSI Resource Policy

Examples of Non-Business Property – Real or Personal

- Property used to grow produce or livestock raised solely for personal consumption in the individual's household
- Property used in activities essential to the production of food for home consumption – such as a tractor used for plowing or a boat for subsistence fishing

NOTE: This does not include any vehicle that qualifies as an automobile

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

- A description of the property
- How it is used
- Estimate of the CMV and any legal encumbrances

Verification:

Absent evidence to the contrary, accept the client's statement

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302.07.04 **NON-BUSINESS, INCOME-PRODUCING PROPERTY – UP TO \$6000 EQUITY EXCLUDED IF RATE OF RETURN IS 6% (SSI)**

Non-business, income-producing property is defined as property which includes land that produces rents or other land-use fees (e.g., non-liquid notes or mortgages, ownership or timber rights, mineral or oil exploration) or other non-liquid property which provides rental or other income, but is not used as part of a trade or business.

Procedure – SSI Resource Policy

When an individual alleges owning non-business real property that produces income, document the following:

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

Verification:

- Establish that the property is producing income:
 - If available, obtain a copy of the tax return for the year prior to filing the application or redetermination.
 - When no tax returns are available, obtain other evidence, e.g., a person leasing land for mineral or oil exploration should have a copy of the lease agreement for the period in question.
- Verify the equity value of the property

Treatment

- This exclusion applies to non-business, income-producing property
- Up to \$6000 of the equity value can be excluded from resources if the property produces a net annual return equal to at least 6% of the excluded equity value
- Any equity that exceeds \$6000 counts toward the resource limit
- If the net annual return is less than 6%, the entire equity value is counted

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Non-Business, Income Producing Property (Continued)

Procedure – SSI Resource Policy

Example: At review, Mr. Cameron reports that he lives in an apartment and is renting out his formerly excluded home, which has an equity value of \$13,000. Even if the property produces a 6% net annual return, \$7000 of his equity cannot be excluded and counts as a resource under SSI policy..

Exceptions

If the property produces less than a 6% net annual return, the exclusion may be allowed only if the following apply; otherwise, none of the EV is excluded under this provision:

- Lower return that is beyond the individual's control, such as
 - Crop failure
 - Fire
 - Illness
- There is a reasonable expectation that the property will again produce a 6% return

Development When Rate of Return is Less than 6%

- If earnings decline for reasons beyond the client's control, up to 24 months is allowed for resumption of a 6% net annual rate of return. This 24-month period begins with the first day of the tax year following the one in which the rate dropped below 6%.
- Set a 12-month tickler to check on the individual's progress with the business. The individual can have the additional 12 months to achieve the 6% net annual rate of return if he is actively pursuing the activity.
- If the individual has stopped actively pursuing the activity, the value of the property counts as a resource the month following the review.
- If the property is still not producing at least a 6 percent net annual return at the end of the 24-month period, discontinue the exclusion. The value of the property counts as a resource the month following the month the 24-month period ends.

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Non-Business, Income Producing Property (Continued)

Procedure – SSI Resource Policy

Multiple Properties

If an individual owns more than one piece of property:

- The 6% return rule applies individually to each piece
- The \$6000 equity value limit applies to the combined equity values of properties meeting the 6% return rule

If all the properties meet the 6% test, but total EV exceeds \$6000, that portion of the total in excess of \$6000 is not excluded under this provision.

Example: Mr. Green has a piece of land on which he grows corn for sale at market. The equity value of the land is \$7000.

1. He nets \$500 per year in sales. $\$500 \div \$7000 = 7.14\%$; therefore, \$6000 of the EV is excluded and \$1000 counts as a resource.
2. Last year his crop was struck by lightning and caught on fire. He made no money, but expects to plant and sell again next year at the regular rate. The \$6000 may still be excluded because Mr. Green had no control over the fire. His 24-month period begins January 1 of the tax year following the year in which the loss occurred. A tickler is set to check on his progress in 12 months.

Example: Mr. Green owns three non-connected acres of pastureland. He rents them to different horse and cattle owners for \$500 per year each. The land has equity values of \$2000, \$3500 and \$1200 for a total of \$6700.

- 6% rule: $\$500 \div \$2000 = 25\%$ return
 $\$500 \div \$3500 = 14\%$ return
 $\$500 \div \$1200 = 42\%$ return
- Since the 6% rule is met, \$6000 is excluded and \$700 is countable

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302.07.05 **ESSENTIAL PROPERTY EXCLUSION - LIBERALIZED POLICY**

Under liberalized resource policy, the essential property exclusion is applied as follows:

Property Essential to Self Support Under Liberalized Policy

As previously indicated, property essential to self support, defined as property used in a trade or business, government permits and personal property used by an employee for his job, is excluded regardless of value or rate of return. The procedures for documentation and verification for each type are discussed in Section 302.07.02 above.

Property Used to Produce Goods or Services Under Liberalized Policy

The \$6000 exclusion cap is lifted under liberalized policy; therefore, property used to produce goods or services essential to daily living is also excluded regardless of value or rate of return. The procedures for documentation and verification of this type of property are discussed in Section 302.07.03.

Non-Business, Income-Producing Property Under Liberalized Policy

With the \$6000 exclusion cap lifted under liberalized policy, non-business, income-producing property must produce a net annual return of 6% of the EV of each property. If multiple properties are involved, each must be evaluated under the 6% rule. The procedures for documentation and verification of this type of property are discussed in Section 302.07.04.

NOTE: Property that a client sells via a property settlement agreement must meet the 6% net annual return criteria and the agreement must be actuarially sound in order to avoid a possible transfer of resources penalty for the institutional client as discussed in Section 302.02.02.

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302.08 **RESOURCES SET ASIDE AS PART OF A PLAN TO ACHIEVE SELF- SUPPORT (PASS)**

The Social Security Act authorizes the exclusion of income and resources of an individual who has a disability or is blind (but not aged) when the individual needs the income and resources to fulfill a Plan to Achieve Self-Support (PASS) approved by the Social Security Administration. Resources set aside as part of an approved PASS are excluded.

302.09 **RETAINED CASH PAYMENTS**

The treatments of retained cash payments are discussed below:

302.09.01 **RETROACTIVE SUPPLEMENTAL SECURITY INCOME (SSI) AND RETIREMENT, SURVIVORS AND DISABILITY INSURANCE (RSDI)**

The unspent portion of retroactive SSI benefits and RSDI benefits is excluded from resources for nine (9) calendar months following the month in which the individual receives the benefits.

- **Retroactive SSI**
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.
- **Retroactive Social Security Benefits (RSDI)**
Retroactive RSDI benefits are those issued in any month that is at least two calendar months 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.

302.09.02 **DEDICATED ACCOUNTS FOR PAST-DUE BENEFITS DUE TO INDIVIDUALS UNDER AGE 18 WHO HAVE A REPRESENTATIVE PAYEE**

Exclude past due SSI, underpayments, accrued interest or other earnings in a dedicated financial institution account set up for an individual under age 18 who has a representative payee. This exclusion does not apply if funds are co-mingled. If the past due benefits are not deposited into a dedicated account, the exclusion is time-limited and is the lesser of 9 months or until the funds are deposited into the dedicated account.

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302.09.03 **CASH OR IN-KIND ITEMS RECEIVED FOR THE REPAIR OR REPLACEMENT OF LOST, DAMAGED OR STOLEN EXCLUDED RESOURCES**

Cash receipts or in-kind items from any source for the replacement or repair of lost, damaged or stolen excluded resources are not treated as resources for a certain amount of time.

Procedure – SSI and Liberalized Resource Policy

Exclusion Period

Cash receipts are not considered resources for 9 months from the date of receipt. This may be extended up to 9 more months if the individual verifies good cause for the repair or replacement not being completed within the first 9-month period.

Source of Funds

There are no restrictions on where the cash receipts come from for purposes of this policy, e.g., they may come from an insurance company, a federal or state agency, a public or private organization or an individual.

- **Temporary Housing** - This policy applies to funds received for the purchase of temporary housing.
- **Personal Injury Payments** - This policy does not apply to funds received on account of personal injury.
- **Disaster Assistance Payments** - Refer to Section 302.09.04 for the discussion on Disaster Assistance Payments. These payments must be handled in accordance with income/resource policy applicable to them.

Good Cause

Good cause exists if circumstances beyond the individual's control:

- Prevent the repair or replacement of the lost, damaged or stolen property
- Keep the individual from contracting for such repair or replacement

An individual cannot qualify for an extension of the initial 9-month period unless he intends to use the funds for their designated purpose, i.e., repair or replacement of the excluded resource. The good cause extension will terminate as of the date of any change in intent. The funds then become a resource for the following month.

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Cash or In-Kind Items Received For the Repair or Replacement of Lost, Damaged or Stolen Excluded Resources (Continued)

Procedure – SSI and Liberalized Resource Policy

NOTE: When the damage or loss is the result of a presidentially-declared major disaster, the exclusion may be extended for an additional 12-months. Refer to Section 302.09.05 for further information.

Interest on Funds Not Treated as Resources

Interest earned by funds not treated as a resource under this provision is not treated as income or resources for the period during which the funds themselves are not considered a resource.

Evidence

Obtain a copy of any evidence the individual has. If the individual cannot obtain sufficient evidence to make a determination about exclusion of the funds, obtain the necessary information from the payment source. Do so by telephone, if possible, and record the facts in the case record.

Make sure the evidence documents:

- The source of the items or funds
- The value
- The date(s) received
- The intended purpose of the funds or items received, including
 - o Whether any cash received is for a purpose other than replacement or repair of the lost, damaged, or stolen (and excluded) resource.

If good cause is alleged, obtain a statement from the individual describing the circumstances and any corroborating evidence that may be available.

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302.09.04 **DISASTER ASSISTANCE**

Disaster Assistance includes assistance received from the following sources:

- The Disaster Relief and Emergency Act (PL 100-707)
- Another federal statute because of a presidentially-declared major disaster
- A state or local government's comparable assistance
- A disaster assistance organization

If the disaster assistance funds are excluded from income, the unspent amount is also excluded from resources. Interest earned on funds excluded in this provision is excluded from income and resources.

302.09.05 **PRESIDENTIALLY-DECLARED MAJOR DISASTERS**

Some catastrophes (such as hurricanes) cause such wide-spread destruction that the President of the United States declares them major disasters. Effective 2/25/96, the exclusion period may be extended for individuals who incurred damage or loss of excluded resources under certain circumstances.

The 18-month period (9-month initial period plus the 9-month good cause extension) may be extended up to an additional 12 months. Such an extension may be granted if:

- The excluded resource is located within the geographical area of the disaster area (this area is defined in the presidential order)
- The individual intends to repair or replace the excluded resource
- The individual presents evidence of good cause

302.09.06 **NETHERLAND WUV PAYMENTS TO VICTIMS OF PERSECUTION**

The Netherlands Act on Benefits for Victims of Persecution 1940 – 1945, WUV (Wet Uitkering Vervolgingslachtoffers) provides payments to individuals who were victims of persecution during World War I during German and Japanese occupation of the Netherlands and the Netherlands East Indies (now the Republic of Indonesia). The unspent WUV payments made by the Dutch government are excluded from resources and the interest earned on unspent WUV payments is excluded from income.

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302.09.07 **GERMAN REPARATIONS PAYMENTS**

German reparations payments are made to:

- Certain survivors of the Holocaust under the Federal Republic of Germany's laws for compensation of National Socialist Persecution (German Restitution Act) or the German Reunification Act of 1990

These payments may be made periodically or in a lump sum. Unspent German reparations payments are excluded from income and resources. Interest earned on unspent payments is excluded from income.

302.09.08 **AUSTRIAN SOCIAL INSURANCE PAYMENTS**

The nationwide class action law suit, Bondy v. Sullivan, involved Austrian social insurance payments that were based on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act. These paragraphs grant credits to individuals who suffered a loss; that is, were imprisoned, unemployed or forced to flee Austria, during the period of March 1933 to May 1945 for political, religious or ethnic reasons.

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 and the interest earned on unspent Austrian social insurance payments is excluded from income. Austrian social insurance payments not based on wage credits granted under these paragraphs are not excluded from resources under this provision.

302.09.09 **BENEFITS EXCLUDED FROM BOTH INCOME AND RESOURCES BY A FEDERAL STATUTE OTHER THAN TITLE XVI**

Federal statutes other than Title XVI specify many income and resources exclusions. Examples of these are discussed below:

302.09.09A **AGENT ORANGE SETTLEMENT PAYMENTS**

There is no limit to the length of time unspent Agent Orange settlement funds are excluded from resources. Interest earned on conserved payments is excluded as income.

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302.09.09B VICTIMS COMPENSATION

Some states establish funds to assist victims of crimes. Unspent payments received from such a fund are excluded for 9 months if received for expenses incurred or losses suffered because of crime, e.g., lost wages, medical expenses incurred due to injuries, etc. Interest earned on unspent victims' compensation payments is not excluded from income or resources.

302.09.09C RELOCATON ASSISTANCE PAYMENTS

Relocation assistance is sometimes provided to persons displaced by projects which acquire real property. Relocation assistance may be provided under local, state or federal programs. Such payments may be excluded for certain lengths of time. The length of the exclusion depends on the source:

- **State and Local Program Assistance** – unspent funds are excluded from resources for 9 months
- **Federal Assistance** – There is no time limit on the exclusion for assistance provided under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970

Interest earned on unspent payments is not excluded from income or resources.

302.09.09D TAX ADVANCES AND REFUNDS RELATED TO EARNED INCOME TAX CREDITS (EITC) AND CHILD TAX CREDITS (CTC)

Unspent federal tax refunds or payments related to the Earned Income Tax Credits (EITC) or Child Tax Credits (CTC) are excluded from resources for nine (9) calendar months following the month the refund or payment is received. Interest earned on any unspent tax funds related to EITC or CTC is not excluded as income or a resource.

302.09.09E RADIATION EXPOSURE COMPENSATON TRUST FUND PAYMENTS

The Radiation Exposure Compensation Trust Fund (RECTF) authorized the Department of Justice 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. Unspent payments are excluded from resources. Interest earned on unspent payments is excluded income.

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302.09.09F GIFTS OF DOMESTIC AIRLINE 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, i.e., cashed in, sold, etc.
- Excluded from income

302.09.10 IDENTIFYING EXCLUDED FUNDS THAT HAVE BEEN CO-MINGLED WITH NON-EXCLUDED FUNDS

Otherwise excludable funds must be identifiable in order to be excluded. This does not require them to be separate from other funds (such as in a separate bank account).

When withdrawals are made from co-mingled funds, always assume non-excludable 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 only be added to by:

- Deposits of subsequent funds excluded under the same provision
- Excluded interest

One-Time Receipt and Deposit of Excluded Funds

Example: An individual deposits an \$800 retroactive RSDI check in a checking account. The account already contains \$300 in non-excluded funds.

- Of the new \$1,100 balance, \$800 is an excluded retroactive RSDI payment
- The individual withdraws \$300. The remaining \$800 is still excluded
- The individual withdraws another \$300, leaving the \$500 balance excluded
- The individual deposits \$500, creating a new \$1000 balance. Only \$500 of the new balance is excluded.

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IDENTIFYING EXCLUDED FUNDS THAT HAVE BEEN CO-MINGLED WITH NON-EXCLUDED FUNDS (Continued)

Periodic Receipt and Deposit of Excluded Funds

Example: 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 remains excluded
- The individual next deposits \$100 in excludable funds. Of the resulting \$300 balance, \$200 is now excluded