Supersedes: FMA 402-1, 07/01/05

►**References:** ARM 37.82.101, .102; 42 CFR 435.601; 42 U.S.C. 1396p; P.L. 109-171; P.L. 109-432

► GENERAL RULE--The equity value of all resources (real and personal property) owned by the filing/assistance unit are countable unless specifically excluded by regulation. Resources in which the filing/assistance unit has a beneficial interest are also countable. Certain resources may be excluded if found to be inaccessible.

► No exclusions listed in this section will be applied to property a filing or assistance unit does not own, nor to the use of such property except by owners who are members of the filing or assistance unit. This includes *but is not limited to* property which a filing or assistance unit does not own but is owned by or held in:

1. a trust of any kind (whether or not any member of the filing/assistance unit is a trust beneficiary or a trustor),
2. a corporation of any kind (whether or not any member of the filing/assistance unit is a corporate shareholder),
3. a partnership of any kind (whether or not any member of the filing/assistance unit is a partner),
4. a limited liability company of any kind (whether or not any member of the filing/assistance unit is a member of the company), or
5. any other legal entity, instrument, device or arrangement of any kind by which a filing or assistance unit does not own the property.

See FMA 402-3 for information regarding trust-owned resources.

ALIEN'S SPONSOR'S RESOURCES The income and resources of the alien's sponsor and sponsor's spouse are deemed to be available to the sponsored alien (refugees do not have sponsors) until such time as the alien:

1. Achieves U.S. citizenship through naturalization, or
2. Has worked 40 qualifying quarters.

See FMA 603-1 for more information about deeming.

►ANNUITIES

Annuities are contracts or agreements that, in exchange for lump sum payments, provide for the payment of annuitized income at regular intervals (i.e., monthly, quarterly, annually, etc.) Code in the system using the appropriate resource code based on the source of the annuity.

All annuities (other than Civil Service pensions and Railroad Retirement Benefit pensions, which use the term ‘annuity’ but which are not the type of annuities that must be reviewed under this policy) must be sent to Central Office and the RPS for review and determination of whether the annuity is countable or excluded and whether the annuity must be assigned to the State of Montana Medicaid program.

The value of an annuity is determined by multiplying the total annual payments by the period of the annuity remaining on the date for which value is being determined. If the period of the annuity is based on an annuitant’s lifetime, the annual payments are multiplied by the annuitant’s life expectancy per the table in MA 008. If the annuity is a “period certain” annuity, then annual payments are multiplied by the annuitant’s life expectancy or the period certain, whichever is less. A letter from the annuity company stating that the annuity has no value is simply a statement of the company’s contractual obligations regarding cash value and is irrelevant to the true market value of the annuity. There is a thriving secondary market for annuities; even non-assignable annuities can be sold. The calculated value of an annuity may be rebutted by providing verified purchase offers from sources in the legitimate business of buying annuities.

Annuities are countable resources when:

1. Owned by the Medicaid applicant/recipient or an eligible spouse but make payments to anyone else, or have not been annuitized, or any other requirement for exemption (1-6 below) is not met; or

   NOTE: An *eligible spouse* is the ABD spouse of a Medicaid applicant/recipient where neither spouse is institutionalized or waiver. If one member of a couple is institutionalized or waiver (or waiver eligibility is being determined), the applicant/recipient’s spouse (whether ABD or not) is a *community spouse*.

2. Owned by ineligible spouses, community spouses or deemed parents, even if periodic scheduled payments are being made, and regardless of to whom the payments are made.

If an annuity meeting the above criteria is shown to be legally inaccessible, then the annuity should be evaluated under the general uncompensated asset transfer policy.

Annuities owned by the Medicaid applicant/recipient or an eligible spouse are excluded resources if:

1. Periodic scheduled payments are being made to the Medicaid applicant/recipient or eligible spouse;
2. The periodic scheduled payments are being made on at least an annual basis;
3. Payment contract calls for equal payments; no balloon payments;
4. The payment schedule is actuarially sound (equal payments must be based on full payout of the contract within the annuitant's life expectancy---see "Actuarially Sound" in glossary).
5. The annuity is irrevocable; and
6. The annuity is non-assignable.

If all of the criteria above are not met and the annuity was purchased or converted on or after February 8, 2006, the annuity is a countable resource and must also be evaluated to determine if an uncompensated asset transfer occurred.

Annuities purchased or converted prior to February 8, 2006 that do not meet items 1 through 6 above are considered countable resources.

An annuity is converted if the annuity is changed. Examples of conversion include, but are not limited to, actions such as annuitizing a previously un-annuitized annuity or changing an annuity from one type of annuity to another. Automatic events such as the start of pre-arranged payments or other actions taken by the annuity company that are not voluntary on the part of the annuity owner are not considered conversions.

See MA 402-1 for additional annuity policy as related to nursing home and waiver, and MA 404-1 for uncompensated asset transfer rules, which may apply.

An individual retirement annuity [subsection (b) of section 408 of the IRS Code of 1986], a qualified employer plan annuity [subsection (q) of section 408 of the IRS Code of 1986], or purchase of an annuity with an IRA, employer or employee association account, or a qualified salary reduction arrangement [section 408(a), (c), or (p) of the IRS Code of 1986] or a simplified employee pension [within the meaning of section 408(k) of the IRS code if 1986] will not be considered an uncompensated asset transfer (provided the payments are made to the owner of the above-named account or arrangement) or require beneficiary assignment to the State of Montana Medicaid Program. If an individual alleges one of these situations, gather documentation and request assistance from the regional policy specialist in determining whether the criteria are met. Individual retirement annuities above may be countable or excluded resources, however, according to provisions earlier in this section (who owns them, actuarially sound, assignable, etc.).

Payments being received from an annuity may be countable unearned income. See 'Annuity Payments' in FMA 501-1.

BASIC MAINTENANCE ITEMS

Known as household goods and personal effects; these are items essential to day-to-day living such as clothes, jewelry, furniture and other similar items of value including a home computer or satellite TV dish; and are excluded.

BONDS

Bonds including United States savings bonds and Treasury bills, notes and bonds are countable.

To determine the value of government bonds, contact a securities dealer. If cashable, value can be provided. If not cashable, set a system alert for 30 days prior to maturity date.

If the bonds are physically held by a joint owner who refuses to surrender possession to the individual, the bonds are excluded as inaccessible because the bonds must be presented in order to cash them in.

BURIAL ACCTS/ CONTRACTS

Burial accounts (bona fide funeral agreements) that exceed $1,500 equity value <u>per individual</u> are countable in full, unless the agreement is irrevocable.

A funeral agreement is irrevocable if:

1. Both the recipients and funeral home representative have signed the agreement.

2. The price of all major services is specified.

3. The total dollar amount of the agreement is specified.

4. The recipient was neither a minor nor legally declared incompetent when the agreement was signed.

5. The funeral home representative indicates in writing that the money is not refundable under any circumstances.

Funeral agreements that are inaccessible to the household or irrevocable are excluded from resources.

BURIAL PLOT

Exclude the value of one burial plot for each family member (i.e., spouse, child, parent, sibling, etc.) whether living in the home or not.

BUSINESS CHECKING ACCOUNT

Funds held in a business account that represent necessary business capital, operating funds or funds prorated as income are excluded. This amount is entered on FIAC, code 'BC'. However, funds that have not already been prorated as income, that are diverted from this account to cover personal expenses must be counted as earned income to the recipients.

Funds in a business account that are **not** necessary for business operation or prorated as income are countable assets of the business owners. See 'Commingling' and 'Funds Prorated as Income' for more information.

NOTE: TEAMS code 'BC' totally excludes the business account for all programs. Use this code only for the portion of the funds that are excluded per above policy.

<u>EXAMPLE</u>: A farmer sells his crops in August for $12,000. The money from the sale is intended to support his family for a year. The $12,000 is prorated as income, $1,000 per month. The $12,000 (even if put in a bank account with other funds) is excluded as a <u>resource</u> for the one-year period.

If funds have not been prorated as income, see 'Property/Equipment Necessary for Employment'.

CAMPER

Campers which were not manufactured with the intent of providing transportation; camper trailer, pick-up topper etc., are countable unless otherwise excluded.

CASH ON HAND

Countable, unless it represents income received during the month, then it is excluded.

►CERTIFICATE OF DEPOSIT (CD)

CDs are countable. The value of a certificate of deposit is the net amount that could be received after penalties for early withdrawal, if applicable. Taxes are not deducted in determining net value.

Determine the net value of a CD via a detailed breakdown from the institution holding the deposit. The breakdown must include the gross deposit, and individually identify any/all deductions and penalties that would be deducted from the gross if the funds were withdrawn.

►CONTRACT FOR DEED

The value of a contract for deed is an excluded resource if:

1. The written terms of the contract include at least annual payments to the contract owner by the purchaser of the property;

2. The terms of the contract are being met;

3. The contract does not include provisions for the contract to end or for payments to be forgiven or terminated at any point other than for payment in full or foreclosure by the contract owner; and

4. The Medicaid recipient shall irrevocably assign and transfer to Montana Medicaid any interest the recipient has in the contract upon and after the Medicaid recipient's death.

   NOTE: Montana Medicaid will not retain payments that exceed the total amount of Medicaid benefits paid on behalf of the recipient(s).

If the written terms of the contract for deed are not being met, the applicant is required to exhaust all available legal recourse to enforce the terms of the contract in order to be found eligible for Medicaid.

If the written terms of the contract for deed do not include provisions for at least annual payments made to the contract owner by the purchaser, the unpaid balance of the contract or highest purchase offer from a knowledgeable source will be considered an available resource, unless the terms of the contract prohibit sale. If such a contract was entered into within the Medicaid transfer lookback period, evaluate the contract under the transfer of assets provisions in MA 404-1.

If the payer makes an unscheduled lump sum payment toward the contract principal, the unscheduled payment is considered income in the month received and a resource thereafter, to the extent retained.

Refer to FMA 501-1 for information regarding how contract for deed income is counted.

CREDIT UNION ACCOUNTS

Countable, unless otherwise excluded (i.e., account contains self-employment income that has already been prorated as income).

CRIME VICTIM COMPENSATION

Crime Victim Compensation Act payments (P.L. 103-322) are excluded.

DEDUCTIONS from MILITARY PAY

Mandatory deductions from military pay for educational purposes (to fund the GI Education Fund) while the recipient is enlisted are excluded. (P.L. 99-576)

DISASTER & EMERGENCY ASSISTANCE

Funds issued as a result of a Presidentially declared disaster (PL 100-707) or a result of a major disaster or emergency as per the Disaster Relief and Emergency Assistance Amendments of 1988 are excluded. See also ‘Fire or Casualty Insurance Proceeds’ in this section.

Exclude any governmental disaster payments designated for restoration of a home damaged in a disaster if the household is subject to legal sanction if funds are not used as intended. This includes some, but not all, Federal Emergency Management Agency (FEMA) payments.

EDUCATIONAL INCOME

All educational income is excluded as a resource, including Title IV, BIA, VA, Work Study for post-secondary education. The individual must be enrolled in school <u>and</u> attending classes to be considered a student. The eligibility case manager should verify this and document case notes. See 401-1, ‘Commingling’.

FAMILY SELF-SUFFICIENCY ESCROW ACCTS

Funds which are held in an escrow account during the household’s participation in a <u>HUD</u> (Department of Housing and Urban Development) Family Self-Sufficiency Program are excluded.

When the household is given the funds, the money is excluded from income.

FEDERAL, STATE or LOCAL ENERGY ASSISTANCE PAYMENTS

Energy assistance payments, such as LIEAP, which have been approved by Food and Nutrition Services (FNS) are excluded per Federal Statute.

FIRE or CASUALTY INSURANCE PROCEEDS

Cash benefits received as proceeds of fire or casualty insurance claims to make repairs to or dispose of damaged property are treated as follows:

►October 1, 2008

The settlement is only excluded when used within nine months of receipt. The funds must be signed over to the person or company who will do the repairs, or otherwise disposed of within this period of time. Set a system alert to verify funds have been used/signed over. Proceeds not used within nine months of receipt are countable. See also ‘Disaster and Emergency Assistance’ in this section.

HOME and SURROUNDING PROPERTY/LOT

The home and surrounding property that is not separated from the home by intervening property owned by others is excluded. Public rights of way, such as roads that run through the surrounding property, will not affect the exclusion of the property.

► <u>One</u> vehicle used as a home may be excluded. If a vehicle is being excluded as a home, no other property may also be excluded for this purpose. Document case notes.

Only one home that is the filing/assistance unit's usual residence is excluded.

► A home may continue to be the assistance unit's usual residence, even though they may be temporarily absent from it, so long as they plan to return to it. Examples include students, migrant workers and those away for medical treatment or in a nursing home. A home will also be excluded as the usual residence if it is newly purchased and the applicant/recipient has not yet moved in, but will move in within 30 days.

► Land on which the applicant/recipient is building on or intends to build on is countable.

INCOME PRODUCING PROPERTY

For property used in a trade or business (i.e., farming), see 'Property/Equipment necessary for Self-Employment.'

► Income producing property is only excluded if the property is necessary for self-employment. If the property is not used for self-employment, it cannot be coded as 'income producing'.

For rental property to be excluded, the individual must be in the business of renting property. For example, an individual has a house they rent while they live in another. This property is a countable resource unless the individual is "in the business" of renting, that is, materially participating in the operation and decision-making of the rental business for at least 20 hours per week. See section FMA 503-1 for more information on self-employment. The property is **not** excluded solely on the basis that it is being rented. The equity value of non self-employment income producing property is countable.

INDIVIDUAL DEVELOPMENT ACCOUNT (IDA)

IDAs may be established by or on behalf of an individual eligible for TANF assistance. IDAs are created and funded through periodic IDA contributions by an individual and matched by or through a not-for-profit organization or a State or Local government agency in cooperation with such organization. The purpose of the account is to enable an individual to accumulate funds for post-secondary education, first home purchase or business capitalization.

Montana has a TANF-funded IDA pilot program, and also has demonstration project IDAs, which are not funded by TANF.

Funds, including accrued interest, in the account are disregarded as a resource as long as the individual maintains or makes contributions to the account. The Montana TANF-funded IDA will continue to be excluded when an individual becomes ineligible for TANF as long as the individual is still maintaining or making contributions into the account. Contributions are only matched when withdrawn for an allowable purpose.

ITEMS of UNUSUAL VALUE

Countable. See also Basic Maintenance Items. Vehicles are not considered items of unusual value.

LAND

Only land that is contiguous to the property on which the permanent home is located can be excluded. Land on which the individual intends to build or is building is countable.

LAND IN CRP

Land in Conservation Reserve Program (CRP) may be either a countable or excluded resource depending on circumstances.

Exclude the CRP land as necessary to produce income if the individual is actively farming/ranching on land not in CRP.

If, however, the individual is not farming/ranching other land (i.e., retired), it is necessary to determine if the individual is in the business of renting property and how actively they are participating in the business.

1. Exclude the CRP land as a resource if the individual is in the property rental business or is actively participating in the business at least 20 hours per week. See FMA 503-1 for treatment self-employment policy.

2. The CRP land is a countable resource if the individual is not in the property rental business or is not actively participating at least 20 hours. See FMA 501-1 for policy on treatment of unearned rental income.

LIFE ESTATES

A life estate is property right with a duration limited to the life of the party holding it or to the life of some other party. The holder of a life estate does not have title to the property and cannot sell the property. However, the holder of a life estate can sell his/her interest in the property unless restricted by the terms of the contract (if sale is restricted, the value of a life estate is excluded), and is entitled to any income from the property. A simple property check will not reveal the presence of a life estate.

NOTE: Mineral or oil rights cannot be sold or leased without specific consent of the titleholder.

The life estate value is determined by multiplying the fair market value of the property by the percentage listed on the “Life Estate Interest Table” (MA 009) for the age of the individual on whose lifetime the life estate is based.

NOTE: If more than one person owns the life estate, the value is based on the owner with the longest life expectancy (i.e., the youngest owner).

A life estate will be excluded as the home while the property meets the definition of principal place of residence.

The value of a life estate may be excluded as a resource as long as the property is used to produce income consistent with the value of the property. This exclusion may be applied to

- a life estate on a private residence that is not occupied by the life estate owner or his/her dependents, and does not meet the definition of principal place of residence, or

- a life estate on a business property, such as a ranch or commercial property.

For purposes of this policy, income consistent with the value of the property will be an annual net income of 6% of the fair market value of the property.

NOTE: If the life estate property is business property (such as a ranch or other business property) and is excluded as a home, if ANYONE is using the property as part of a business, the life estate owner must be receiving income for the use of the property (rental or lease income).

LIFE INSURANCE

Term life insurance policies are excluded resources.

The cash and face value of ordinary (whole life) life insurance policies held by filing unit members are excluded.

►LIMITED LIABILITY COMPANIES (LLC)

A limited liability company (LLC) is basically a hybrid between a corporation and a partnership. LLCs have "members" rather than stockholders, and the LLC may only have one member. Whether the LLC has one or more than one member, the company is treated as a corporation for resource purposes. Each member's proportionate interest in the LLC is a countable resource, just like corporate stock. The net value of the assets (assets less liabilities) of the company is divided among the members, according to documented individual interests. Unless there is an enforceable no-sell agreement, or the LLC interest can otherwise be shown to be inaccessible, the interest is a countable asset.

LIVESTOCK

The value of livestock necessary for employment or raised for home consumption is an excluded resource. Income received is countable self-employment income (see 503-1). Livestock that are pets are also excluded.

Livestock that is used as non-business income-producing property is subject to the regulations listed under "Income Producing Property". Livestock owned in a non-business arrangement is often referred to as being "run on shares" by another individual.

LOANS GIVEN by the HOUSEHOLD/ PROMISSORY NOTE

A promissory note or other loan given by the household is considered personal property (usually a liquid asset), and is countable, unless the note/loan balance is inaccessible. The lender holds legal interest and has the legal ability to make available his/her share in the note/loan. The equity value of the note/loan (the principal reduced by any third party lien) is countable. See 'Jointly-Owned Resources', FMA 401-1.

LOANS RECEIVED by the HOUSEHOLD

A loan is excluded in the month received and the month following.

LUMP SUM PAYMENTS

Lump sum payments <u>that can be accurately prospected</u> are countable income in the month received and a resource to the extent that they are retained in the following months, unless otherwise excluded. Amount remaining in months following month of receipt is coded 'LS' on LIAS.

If the lump sum payment cannot be accurately prospected, it is not counted in the month of receipt; however, any funds remaining the following month will be added to all other available resources to determine ongoing resource eligibility.

A lump sum payment may be a resource that changes forms.

EXAMPLE: Recipients has a retirement account valued at $2000. The recipient's employment ends on July 7th. On October 17th, the recipient receives a check for $1875 (retirement less taxes). The retirement account would be considered a countable resource (see pension plans/retirement accounts later in this section) from August through October. On October 17th, the resource changes forms and the amount retained in November must be added to all other countable resources to determine ongoing resource eligibility. Because of prospective budgeting, ongoing case resource eligibility is always evaluated as of the first day of the month.

►MATCHED SAVINGS PROGRAM

Programs similar to IDAs (Individual Development Accounts) that provide incentives for savings and can be used to purchase a productive asset.

Because the funds can be directed to education or employment – related expenses and is not limited to deposits of earned income, these programs do not meet criteria necessary to be excluded. Matched Savings Accounts are countable resources.

►MILITARY REENLISTMENT BONUS

A military reenlistment bonus is a countable income in the month received, if it can be prospected and in subsequent months to the extent retained.

Military reenlistment bonuses can be paid in one of two ways: as a lump sum; or up to 50% of the bonus amount as an initial payment, with the remainder paid in equal annual payments. It is up to the military service to decide which military grades/series get the bonuses and how much they get. This means that the Navy, Marines, Army, and Air Force can each have their own policies regarding payment of reenlistment bonuses. Eligibility case managers must verify what the payment policy is, depending on the military service to determine when it should be prospected.

NON HOME REAL PROPERTY

Non-home real property, whether for sale or not, is countable. Land on which the individual intends to build or is building is countable.

► Encumbrances against the property are considered in determining equity value. Medicaid liens are considered encumbrances if Lien & Estate Recovery Unit confirms the liens are currently enforceable.

OIL and MINERAL RIGHTS

Oil and mineral rights may be included with land ownership or owned separately. If surface rights of the same property are excluded (for example, as a home) so are oil and mineral rights.

Obtain verification of oil and/or mineral rights. Acceptable verifications are deeds, lease agreements, titles, and homestead documents. If oil and/or mineral rights are producing income under a lease agreement, the owner may be constrained from selling or otherwise disposing of those rights. If the land is already excluded, e.g., home, or the terms of the lease agreement do not allow sale, the oil and/or mineral rights are excluded.

See 'Royalty' in 501-1, for oil and/or mineral right income.

Determine the equity value by obtaining the fair market value and subtracting encumbrances/liens (amount owed). The balance is the equity value. Enter countable oil and/or mineral rights information on the OTAS screen - Code: 'MR'. Document case notes and include a description of the property involved.

Fair market value may be obtained from a knowledgeable source (i.e., brokers in the geographical area, Bureau of Land Management, or companies who lease mineral rights).

PERSONAL CHECKING ACCOUNT

Countable. Income received in the current month is not counted as a resource. Therefore, if the income is deposited into a bank or credit account, it is disregarded as a resource in the current month, but countable in any future months.

There is a two-step process in determining how much money in a checking account should be attributed to resources.

1. Follow existing policy to not count money as income and a resource in the same month. Therefore, the worker should exclude any current month income that is in the checking account.

   If this step makes the individual resource eligible, no further action is needed. If, however, the individual remains resource ineligible, the worker should go to step two.

2. Look at the individual's outstanding checks. If a check has been written and sent to the payee, even if it has not yet been cashed, the money is not available for other purposes. Therefore, it should not be counted toward the resource limit. Verification should be obtained when necessary.

PLAN for ACHIEVING SELF-SUPPORT (PASS)

Any income an SSI recipient places in an approved PASS account is excluded as a resource. The PASS account itself is also excluded. This exclusion expires when the PASS contract expires or ends, or when the individual is no longer an SSI recipient.

PREPAYMENT of MORTGAGE or RENT

Prepayment of an individual's mortgage is not considered a resource. Prepayment of rent, however, will be a countable resource unless the individual cannot receive the money back **under any circumstances** (i.e., the lease agreement includes a no refund policy, or the landlord provides a statement that the funds will not be returned to the renter).

PROPERTY/ EQUIPMENT NECESSARY for EMPLOYMENT

Excluded as essential for the production of earned income, unless otherwise indicated below.

See also **'Income Producing Property'** in this section and **"Resources"** in the Self-Employment Income section, FMA 503-1.

► Resources that are required as a condition of employment other than self-employment may be excluded. An employer-employee relationship must exist between the owner of the resource and the employer that requires the individual to furnish a resource as a condition of employment. Resources fitting these criteria would be entered into the eligibility system as tools of a trade.

► **NOTE:** Although a LLC may report income using Schedule C or Schedule SE, a LLC is not self-employment for eligibility purposes, and property owned by the LLC is not treated as individually-owned property---the property is owned by the LLC and the LLC is owned by the members.

► Although income from other business structures may be reported on Schedule C, F or SE, LLCs and other business entities are not considered self-employment for purposes of exclusion of resources, and property owned by the LLC, partnership or other entity is not owned by the assistance/filing unit and therefore is not eligible for these exclusions.

Self-employment/farm resources **may** include:

- Tools/equipment such as those needed by a carpenter, mechanic, cosmetologist, etc.
- Stock (such as office supplies) or raw materials.
- Personal property essential for income production.
- Office equipment such as furniture, computers, calculators, etc.
- Business loans for the purchase of capital assets;
- Inventory;
- Machinery and equipment;
- Other items needed to produce income; and

- Business/commercial checking account.

    - Self-employment funds that have been prorated as income retain their exclusion for the time they have been prorated as <u>income</u> (even if the funds have been commingled).

    - Funds contained in a business/ commercial checking account that have not been prorated as income may also be excluded (i.e., business working capital, business loans, etc.)

    - Funds <u>that have not already been prorated as income,</u> which are diverted from a business account to cover personal expenses, must be counted as earned income to the recipients.

A ‘grace’ period can be established for excluding the resources due to <u>temporary inactivity</u> in the trade or self-employment business. The ‘grace’ period during which time the specific business equipment can be excluded is up to one year.

The recipients will have to actively return to the same trade or business within one year from the month he/she was no longer engaged in the trade/business. If the recipient does not return to the business, the excluded resource(s) must be counted toward the resource limitation.

► No exclusions will be applied to property a filing or assistance unit does not own, nor will any exclusion apply as to use of such property except by owners who are members of the filing or assistance unit. Therefore, property owned by a partnership, incorporated business, LLC or other business arrangements may not be excluded as necessary for self-support because the property is owned by the business, not the filing/assistance unit member(s).

PROPERTY in PROBATE

Excluded due to being inaccessible. Set an alert to determine ownership interest after probate. System case notes must be entered explaining why the property is considered inaccessible, including Institutionalized Medicaid where the deceased is the community spouse. See also MA 906-1.

RESOURCES USED AS COLLATERAL

If a liquid or non-liquid resource has been used as collateral for a loan, only the equity or accessible portion of the resource is countable toward the resource limitation. If the resource cannot be sold due to specific language in the lien or security agreement, it is considered to be an inaccessible resource.

EXAMPLE: Household has used a certificate of deposit (CD) valued at $4,000 as collateral for a personal loan of $3,000. The CD's countable value is its equity value (fair market less encumbrances). Therefore, the equity value of $1000 is counted toward the resource limit.

If, however, the CD had restrictions placed on it that prohibited the household from cashing it out, the total value of the CD is considered inaccessible and is excluded as a resource.

RETIREMENT ACCOUNTS/ PENSION PLANS

A retirement account or pension plan is an investment account that is intended to provide income at retirement. The equity value is the cash value minus any early withdrawal penalty.

Recipients are required to exercise the available option to receive periodic payments from all retirement accounts. If periodic payments are received, <u>and</u> the receipt of the periodic payments results in the account principal being unavailable as a lump sum, the account principal is excluded. If the receipt of periodic payments does not result in the account principal being unavailable as a lump sum, the payments do not count as income, and the entire balance of the account is a countable resource.

<u>**Employment-related retirement accounts**</u>: Most employment-related retirement accounts cannot be accessed until the employee is no longer employed with that particular business or entity. While the individual continues employment, the funds are inaccessible.

The funds are considered **accessible upon termination of employment,** and are therefore countable, even though the funds may not be issued for a length of time.

► October 1, 2008

<u>**401-K**</u>**:** Funds held in a 401-K retirement account are considered to be accessible to the applicant/recipient if the individual is no longer job attached and would be countable. If the individual is still employed by the employer through which the 401-K was established, the value of the 401-K is excluded.

Individual retirement account (IRA): Funds held in Individual Retirement Accounts (IRAs) are considered accessible to the applicant/ recipients. Count the equity value; cash value minus any early withdrawal penalty.

KEOGH Plans: KEOGH plans are considered accessible and counted as a resource even if the filing unit is not actually accessing the funds.

SAFETY DEPOSIT BOX

There is no requirement to view the contents of an individual's safety deposit box. It is appropriate to ask what the contents are and request necessary verification. The eligibility case manager should only view the contents if that is the applicant's/ recipient's preference over bringing the documents to the OPA office for verification. The contents are listed in the system using the appropriate codes.

SALE of a RESOURCE

If an excluded or countable resource is sold, the proceeds remain an excluded or countable resource in the month of sale. The resource has simply changed form. For example, if an excluded resource, i.e., the primary vehicle, is sold, the cash is considered an excluded resource for the month of sale. The following month, any proceeds remaining are considered a countable resource (i.e., cash-on-hand, savings account, etc.).

If a self-employment resource is sold, see 503-1, 'Capital Gain or Loss'.

SAVINGS ACCOUNT

Countable. If the current month's income has been deposited into the account it must be excluded when determining the current value of the account. See also joint accounts and commingled funds, 401-1.

SAVINGS OFFER SUCCESS (SOS)

Matching award payments made by Rural Opportunities Inc. (ROI) to individuals participating in an SOS program are excluded.

SECURITY DEPOSITS

Security deposits on rental property or utilities are excluded. This exclusion applies to both landlords and tenants.

SETTLEMENTS & RESTITUTION PAYMENTS

Agent Orange: Payments made under the Agent Orange Compensation Act (P.L. 101-201) are excluded. However, P.L. 102-4, Agent Orange Act of 1991, authorized veterans' benefits to some veterans with service-connected disabilities resulting from exposure to Agent Orange. These VA payments are NOT excluded by law.

Asbestos: Funds received from an asbestos settlement or lawsuit are countable the earlier of when available or when received.

<u>Factor VIII or IX Concentrate Blood Products Litigation, MDL 986</u> (No. 93-C-7452, Northern District of Illinois): Settlement payments as a result of the class action lawsuit to hemophilia patients infected with HIV (Human Immunodeficiency Virus) through blood plasma products are excluded.

<u>Nazi Persecution Victims</u>: Restitution made to individuals because of their status as victims of **Nazi Persecution** under P.L. 103-286 is excluded.

<u>Radiation Exposure</u>: Radiation Exposure Compensation Act payments are excluded. (P.L. 101-426)

<u>Spina Bifida</u>: Payments made to children of Vietnam veterans for disabilities resulting from spina bifida are excluded. (P.L. 104-204)

<u>Susan Walker V. Bayer Corporation, et al</u>, 96-C-5024 (Northern District of Illinois): Payments made from any fund established pursuant to this class settlement and payments made pursuant to a release of all claims in a case that was entered into in lieu of the class settlement and that was signed by all affected parties in such case on or before December 31, 1997 are excluded.

<u>Wartime Relocation of Civilians</u>: Payments of "Wartime Relocation of Civilians" made to certain U.S. citizens of Japanese ancestry, resident Japanese aliens, and certain eligible Aleuts under Title I of PL 100-383 or the Civil Liberties Act of 1988 are excluded**.**

STOCKS

Stocks and mutual fund shares are countable.

►TAX REFUND/ CREDIT

Tax refunds and credits are treated as follows by source:

<u>Child Tax Credit</u>: A child tax credit is a refundable tax credit that families may be eligible to receive. Any refund received as a result of taking the additional child tax credit is excluded as a resource in the month received and the month following receipt.

<u>Earned Income Tax Credit (EITC)</u>: EITC may be received either as an advance payment or as a refund, and is excluded as a resource in the month received and the month following receipt.

<u>Income Tax Refund - Federal/State</u>: Regular income tax refunds are treated as reimbursements--excluded as income when received, and countable as resources in the months following receipt.

Renters/Homeowners Credit: Tax refunds/credits received as a result of this tax provision are considered reimbursements, and are excluded as income, and are countable as a resource in the month following receipt.

TRAILERS

All trailers, including 5th wheels, are countable unless otherwise excluded (e.g., home, income producing, etc.).

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