

<b>1640.0000</b>	<b>SSI-Related Medicaid, State Funded Programs .....</b>	<b>1</b>
<b>1640.0100</b>	<b>ASSET DEFINITION (MSSI, SFP) .....</b>	<b>1</b>
<b>1640.0200</b>	<b>ASSET LIMITS (MSSI, SFP) .....</b>	<b>1</b>
1640.0204	Asset Limits Medically Needy (MSSI) .....	1
1640.0205	Asset Limits (MSSI, SFP) .....	1
1640.0206	Verification of Assets (MSSI, SFP) .....	2
1640.0207	General Verification Rule (MSSI, SFP) .....	2
<b>1640.0300</b>	<b>ASSET OWNERSHIP AND AVAILABILITY (MSSI, SFP) .....</b>	<b>2</b>
1640.0301	Joint Ownership (MSSI, SFP) .....	2
1640.0302.01	Joint Ownership of Bank Accounts (MSSI, SFP) .....	2
1640.0302.02	Joint Ownership of Bank Accounts (MSSI, SFP) .....	3
1640.0302.04	Proof Needed to Rebut Ownership (MSSI, SFP) .....	3
1640.0302.05	Evaluating Evidence for Rebuttal (MSSI, SFP) .....	3
1640.0303.01	Other Types of Joint Ownership of Assets (MSSI, SFP) .....	4
1640.0303.02	Joint Ownership by Husband and Wife (MSSI, SFP) .....	5
1640.0303.03	Trusts Ownership (MSSI, SFP) .....	5
1640.0304	Ownership of Real Property (MSSI, SFP) .....	5
1640.0305.01	Ownership of Real Property by Title (MSSI, SFP) .....	5
1640.0305.02	Shared Ownership of Real Property (MSSI, SFP) .....	5
1640.0305.03	Life Estate Ownership (MSSI, SFP) .....	6
1640.0305.04	Ownership Interest in Unprobated Estate (MSSI, SFP) .....	6
1640.0307.01	Home Ownership (MSSI, SFP) .....	7
1640.0307.02	Establishment of Home Ownership (MSSI, SFP) .....	7
1640.0307.03	Shared Home Ownership (MSSI, SFP) .....	7
1640.0307.04	Home Equity (MSSI, SFP) .....	8
1640.0307.05	Undue Hardship for Excess Home Equity Interest (MSSI) .....	8
1640.0307.06	Processing Undue Hardship Requests for Excess Home Equity (MSSI) .....	9
1640.0308	General Availability (MSSI, SFP) .....	9
1640.0311	Availability of Joint Bank Account (MSSI, SFP) .....	10
1640.0312.01	Availability of Trusts (MSSI, SFP) .....	10
1640.0312.02	Trust Availability to Trustee (MSSI, SFP) .....	10
1640.0312.03	Trust Availability to Beneficiary (MSSI, SFP) .....	10
1640.0313	Representative Payee or Legal Guardian (MSSI, SFP) .....	11
1640.0314.01	Assets Available to Spouse (MSSI) .....	11
1640.0314.02	Prenuptial Agreements (MSSI) .....	11
1640.0314.03	Assignment of Rights to Support (MSSI) .....	11
1640.0314.04	Undue Hardship (MSSI) .....	12
1640.0315	Assets Available to Spouse after Approval (MSSI) .....	12
1640.0316	Legal Restrictions to Availability (MSSI, SFP) .....	12
1640.0318	Legal Restrictions to Availability (MSSI, SFP) .....	13
1640.0319	Comatose Individual (MSSI, SFP) .....	13
1640.0320	Legally Incompetent Individuals (MSSI, SFP) .....	13
1640.0321	Assets Unavailable - Circumstances Beyond Control (MSSI, SFP) .....	13
<b>1640.0400</b>	<b>GENERAL DETERMINATION OF ASSET VALUE (MSSI, SFP) .....</b>	<b>13</b>
1640.0401	Time When Asset Value Affects Eligibility (MSSI, SFP) .....	13
1640.0402	Asset Eligibility (MSSI, SFP) .....	13
1640.0405	When Asset Value Affects Eligibility (MSSI, SFP) .....	13
1640.0406	Determining Asset Value (MSSI, SFP) .....	14
1640.0407	Definition of Actual Value (MSSI, SFP) .....	14
1640.0408	Determining Asset Value (MSSI, SFP) .....	14

1640.0409	Conversion of Assets (MSSI, SFP)	14
1640.0410.01	Excluded Assets Replacement (MSSI, SFP)	15
<b>1640.0500</b>	<b>ASSETS: DEFINITIONS AND VALUE DETERMINATIONS (MSSI, SFP)</b>	<b>15</b>
1640.0501	Bank Accounts (MSSI, SFP)	15
1640.0502	Checking and Savings Accounts (MSSI, SFP)	15
1640.0504	Time Deposits (MSSI, SFP)	16
1640.0505.04	Retirement Funds (MSSI, SFP)	16
1640.0505.05	Retirement Funds of Spouses (MSSI, SFP)	17
1640.0505.06	Special Accounts for Medical Services (MSSI, SFP)	17
1640.0505.07	Individual Development Accounts (MSSI)	17
1640.0506	Verification of Bank Accounts (MSSI, SFP)	18
1640.0507	Burial Contracts and Other Burial Assets (MSSI, SFP)	18
1640.0509	Prepaid Burial Contracts (MSSI, SFP)	18
1640.0510	State Law Regarding Prepaid Burial Contracts (MSSI, SFP)	18
1640.0511.01	Revocable Prepaid Burial Contract (MSSI, SFP)	19
1640.0511.02	Value of the Prepaid Burial Contract (MSSI, SFP)	19
1640.0512	Irrevocable Burial Trusts (MSSI, SFP)	19
1640.0513	Verification of Burial Contracts or Trust (MSSI, SFP)	19
1640.0514	Burial Exclusion Policy (MSSI, SFP)	19
1640.0515	Burial Spaces/Plots (MSSI, SFP)	20
1640.0516	Burial Spaces (MSSI, SFP)	20
1640.0517	Verification of Burial Spaces (MSSI, SFP)	21
1640.0518	Cash (MSSI, SFP)	21
1640.0519	Verification of Cash (MSSI, SFP)	21
1640.0523	Foreign Currency or Coins (MSSI, SFP)	21
1640.0526	Disaster Assistance (MSSI, SFP)	21
1640.0533	Foreign Property (MSSI, SFP)	22
1640.0534	Home (MSSI, SFP)	22
1640.0537	Good Faith Effort to Sell (MSSI, SFP)	22
1640.0538	Home as Means of Self-Support (MSSI, SFP)	23
1640.0542	Home Verification Requirements (MSSI, SFP)	23
1640.0543.01	Home as Principal Place of Residence (MSSI, SFP)	23
1640.0543.02	Individuals with Homes in Another State (MSSI)	24
1640.0543.03	Home Replacement Exclusion (MSSI, SFP)	24
1640.0543.04	Home Replacement Period (MSSI, SFP)	24
1640.0543.05	Verification (MSSI, SFP)	24
1640.0544	Income Producing Property (MSSI, SFP)	25
1640.0548	Income Producing Property (MSSI, SFP)	25
1640.0549	Rate of Return Less Than Reasonable (MSSI, SFP)	25
1640.0550	Indian Land (MSSI, SFP)	26
1640.0551	Life Estate Interest (MSSI, SFP)	26
1640.0554	Life Insurance (MSSI, SFP)	26
1640.0555	Verification of Life Insurance (MSSI, SFP)	26
1640.0556	Loans (MSSI, SFP)	27
1640.0560.01	Evaluating Loans (MSSI, SFP)	27
1640.0561.02	Promissory Notes Prior to 3/1/05 (MSSI, SFP)	28
1640.0561.03	Promissory Notes Signed On or After 03/1/05 (MSSI, SFP)	29
1640.0561.04	Home Equity Plans (MSSI, SFP)	29
1640.0562	Student Grants, Loans and Scholarships (MSSI, SFP)	29
1640.0563	Personal Property (MSSI, SFP)	29
1640.0565.01	Personal Property (MSSI, SFP)	30
1640.0565.03	Household Goods/Personal Effects Verification (MSSI, SFP)	31
1640.0565.04	Value of Household Goods/Personal Effects (MSSI, SFP)	31
1640.0566	Stocks and Bonds (MSSI, SFP)	31
1640.0567	Definition of Stocks (MSSI, SFP)	31

1640.0568	Stock in a Close Corporation (MSSI, SFP)	32
1640.0569	Alaskan Native Stock (MSSI, SFP)	32
1640.0570	Mutual Fund Shares (MSSI, SFP)	32
1640.0571	Bonds (MSSI, SFP)	32
1640.0572	Savings Bonds (MSSI, SFP)	33
1640.0576.01	Trusts (MSSI, SFP)	34
1640.0576.02	How to Analyze Trusts (MSSI, SFP)	34
1640.0576.03	Trusts Set Up By Others (MSSI, SFP)	34
1640.0576.04	Medicaid Qualifying Trusts before 10/1/93 (MSSI, SFP)	35
1640.0576.05	Exceptions for Trusts before 10/1/93 (MSSI, SFP)	35
1640.0576.06	Undue Hardship/Trusts Set Up before 10/1/93 (MSSI, SFP)	35
1640.0576.07	Trusts Established On or After 10/1/93 (MSSI, SFP)	35
1640.0576.08	Exceptions for Trusts Set Up 10/1/93 or Later (MSSI, SFP)	36
1640.0576.09	Treatment of Qualified Disabled Trusts (MSSI, SFP)	37
1640.0576.10	Undue Hardship/Trusts Set Up 10/1/93 or Later (MSSI, SFP)	38
1640.0576.11	Verification of Trusts (MSSI, SFP)	38
1640.0577	Real Property (MSSI, SFP)	38
1640.0578	Real Estate (MSSI, SFP)	38
1640.0581	Value of Real Property (MSSI, SFP)	38
1640.0582.01	Verification of Real Property Value (MSSI, SFP)	39
1640.0582.02	Knowledgeable Sources (MSSI, SFP)	39
1640.0582.03	Obtaining Correct Verification of FMV (MSSI, SFP)	39
1640.0583	Vehicles (MSSI, SFP)	40
1640.0591	Automobile (MSSI, SFP)	40
1640.0592	Verification of Vehicle Value (MSSI, SFP)	40
1640.0593	Assets Excluded by Federal Law (MSSI, SFP)	41
1640.0594	Long-Term Care Insurance Partnership Payments (MSSI)	42
1640.0595	Continuing Care Entrance Fee (MSSI)	42
<b>1640.0600</b>	<b>TRANSFER OF ASSETS (MSSI)</b>	<b>43</b>
1640.0606	Transfer of Assets and Income (MSSI)	43
1640.0607	How to Determine if a Transfer Penalty Applies (MSSI)	44
1640.0608	Transfer Look-Back Period (MSSI)	44
1640.0609.01	Identifying Potential Transfers of Assets or Income (MSSI)	44
1640.0609.02	Transfers to Annuities Prior to 11/1/07 (MSSI)	45
1640.0609.03	Transfers to Annuities on or After 11/1/07 (MSSI)	46
1640.0609.04	Allowable Transfers - Homestead Property (MSSI)	47
1640.0609.05	Allowable Transfers (MSSI)	48
1640.0609.06	Definition of Disability (MSSI)	49
1640.0609.07	Definition of "For the Sole Benefit of" (MSSI)	49
1640.0609.08	Promissory Notes Signed On or After 11/1/07 (MSSI, SFP)	49
1640.0610	Interspousal Transfers after Approval (MSSI)	50
1640.0611	Transfers by Community Spouse (MSSI)	50
1640.0612	Assets Transferred Due to Court Ordered Support (MSSI)	51
1640.0613	Processing Transfer Cases (MSSI)	51
1640.0613.01	Property Transferred and Life Estate Retained (MSSI)	52
1640.0613.02	Purchase of Life Estate (MSSI)	52
1640.0614.01	Value of Compensation Received (MSSI)	52
1640.0614.02	Compensation in Cash (MSSI)	53
1640.0614.04	Compensation in Support or Services (MSSI)	53
1640.0615	Uncompensated Value/Notifying the Individual (MSSI)	53
1640.0616	Rebuttal of Presumption (MSSI)	54
1640.0617	Undue Hardship (MSSI)	54
1640.0618	Period of Ineligibility (MSSI)	55
1640.0619	Uncompensated Value Months (MSSI)	55
1640.0620	Adjustments to Penalty Period (MSSI)	56

1640.0621	Case Recording of Transfers (MSSI) .....	56
1640.0622	Complete Eligibility Reviews (MSSI) .....	57
1640.0623	Denial of Nursing Facilities Services (MSSI).....	57

## 1640.0000 SSI-Related Medicaid, State Funded Programs

This chapter presents requirements for determining eligibility based on assets. The chapter discusses policy for the following topics:

1. Asset Definition,
2. Asset Limits,
3. Asset Ownership and Availability,
4. General Determination of Asset Value,
5. Types of Assets: Definitions and Value Determinations, and
6. Transfer of Assets.

### 1640.0100 ASSET DEFINITION (MSSI, SFP)

Assets, liquid or nonliquid, are assets or items of value that are owned (single or jointly) by an individual who has access to the cash value upon disposition.

Liquid assets are cash assets or assets that are payable in cash on demand. Nonliquid assets are assets that cannot be readily converted to cash.

Assets of each member of the SFU must be determined. A determination of whether each asset should be included or excluded must be made.

### 1640.0200 ASSET LIMITS (MSSI, SFP)

The asset limit is the maximum amount of liquid and/or nonliquid assets that an assistance group can retain and remain eligible for public assistance.

#### 1640.0204 Asset Limits Medically Needy (MSSI)

For Medically Needy, assets must be equal to or below program limits. SFU sizes and the corresponding Medically Needy asset limits are presented in Appendix A-9.

#### 1640.0205 Asset Limits (MSSI, SFP)

Total countable assets for an individual or a couple must not exceed the following limits:

1. For MEDS-AD and Medically Needy, the asset limit is \$5,000 for an individual and \$6,000 for a couple.
2. For the Working Disabled (WD), the asset limit is \$5,000 for an individual and \$6,000 for a couple.
3. For ICP, PACE, all HCBS Waivers, Modified PAC (MPAC) and Hospice, the asset limit is \$2,000 for an individual (\$3,000 for eligible couple) or \$5,000 if the individual's income is within the MEDS-AD limit (\$6,000 for eligible couple). For HCBS, Working People with Disabilities (WPwD) must meet the technical criteria, and have a higher asset limit. The asset limits are:
  - a. An individual up to \$13,000
  - b. A couple up to \$24,000
  - c. A retirement account recognized by the Internal Revenue Service (IRS) is excluded.
4. For QMB, SLMB, and QI1 the asset limit is three times the SSI resource limit with annual increases based on the yearly Consumer Price Index. Refer to Appendix A-9.

Community spouse resource allowance policy applies to ICP, Institutional Hospice, iBudget, SMMC-LTC and PACE. Applicants who have spouses residing in the community or spouses who are not enrolled in HCBS, have a Community Spouse Resource Allowance (CSRA) subtracted from the couple's total countable assets before comparing the institutionalized spouse's countable assets to the \$2,000 or \$5,000 asset limit. The CSRA is an established amount that increases annually.

**1640.0206 Verification of Assets (MSSI, SFP)**

Verification of all assets, except cash, is required when the total assets of the SFU are within \$100 of the asset limit. The individual's statement of the amount of cash is accepted. If it is clear from the individual's statement that total assets exceed the limitation or if the individual is ineligible on another factor, assets need not be verified.

A signed Financial Information Release Form (CF-ES 2613) or a written permission to release financial records to the Department is required in the determination of eligibility for individuals applying for or receiving Medicaid, including those individuals whose assets are deemed to evaluate eligibility on the basis of age (65 or older), blindness or disability.

The exceptions to this are:

1. persons requesting ICP, Hospice, or HCBS (you must always verify except for the value of the first vehicle and any vehicle over seven years old); and
2. cases that receive an IRS hit. Verification in these cases must be handled in accordance with current policy, which requires a review of these hits. If there is a discrepancy, verification must be secured through a third party.

**1640.0207 General Verification Rule (MSSI, SFP)**

On pending applications, if total assets are within \$100 of the program asset limit in the earliest month of the eligibility period requested, it is necessary to obtain verification for the interim months.

**1640.0300 ASSET OWNERSHIP AND AVAILABILITY (MSSI, SFP)**

Any individual who has the legal ability to dispose of an asset is considered the owner of the asset. The type of ownership (single or joint) of an asset determines to whom the asset is available and the value that is counted to the individual.

Individuals and their spouses must disclose their ownership interest in any annuity, including annuities that are not subject to the transfer of assets provision discussed in passage 1640.0609.03.

**1640.0301 Joint Ownership (MSSI, SFP)**

Joint ownership exists when the legal right to dispose of an asset is shared by more than one individual.

**1640.0302.01 Joint Ownership of Bank Accounts (MSSI, SFP)**

When an individual is a joint account holder who has unrestricted access to the funds in the account, you must presume all of the funds in the account are owned by the individual. This presumption is made regardless of the source of the funds.

If the individual alleges the funds in the account belong to someone else, you must allow the individual to submit evidence to challenge this presumption. If the challenge is successful, do not count the funds in the account as an asset to the individual for any month. If the challenge to the presumption of ownership is not successful, you must consider the funds as an asset to the

individual. This policy applies to checking accounts, savings accounts, certificates of deposit and other jointly owned financial accounts.

#### **1640.0302.02 Joint Ownership of Bank Accounts (MSSI, SFP)**

For SSI-Related coverage groups, if two or more Medicaid recipients or applicants hold a joint account, you must divide the funds equally among them.

For additional information, see rebuttal of ownership policy. See Chapter 1800 for how to count interest earned from the account.

#### **1640.0302.04 Proof Needed to Rebut Ownership (MSSI, SFP)**

When an individual has unrestricted access to the funds in a joint account but does not consider himself an owner of part or all of the account funds, you must advise the individual that:

1. the funds are presumed to be his; and
2. he may rebut the presumption of ownership by presenting proof the funds belong to someone else.

To rebut the presumption of ownership, the individual must provide the following information:

**First**, the individual must provide a written statement and corroborating evidence from the financial institution(s) and other sources to substantiate:

1. any claims about ownership of the funds or interest from the funds;
2. the reasons for establishing the joint account;
3. whose funds were deposited into the account;
4. who made withdrawals from the account; and
5. information on how withdrawals were spent.

**Second**, the individual must provide a written statement from the joint owner(s) explaining their understanding of the ownership of the account(s); that is, claims of ownership, why the account was set up, who deposited funds, withdrew funds and used the account.

When an individual is a co-owner of an account with someone who is incompetent or a minor, the corroborating co-owner statement is not necessary. You must obtain a corroborating statement from a third party who has knowledge of the circumstances.

If there is no third party or the individual is unable to provide all bank verification, you must make a rebuttal determination based on the evidence submitted. Enter an explanation on CLRC why no written corroborating statement was obtained from the joint owner.

To successfully rebut ownership of a joint account, the evidence must clearly support that the individual is not a joint owner of the funds.

#### **1640.0302.05 Evaluating Evidence for Rebuttal (MSSI, SFP)**

When all proof (per 1640.0302.03) is received, you must evaluate the evidence to determine if it supports the individual's claim that someone other than the individual owns the asset. The evidence must clearly corroborate that the funds deposited to the account did not belong to the individual and were not used to meet his needs.

If the rebuttal evidence proves that the account funds (all or partially) were deposited, withdrawn and used by the other joint owner(s) only, the individual has successfully proven that he does not own (all or part of) the funds.

If the individual successfully rebuts ownership of all the funds in the joint account, the individual's name must be removed from the account, so he no longer has access to the funds in the account. (This is not considered a transfer of assets.) Do not consider the funds in the account as an asset to the individual for any month (even for months prior to the month the individual's access to the account is removed). The individual must submit documentation of the original and revised (if any) account records showing his name has been removed. Photocopies are necessary for the case file.

If the individual successfully rebuts ownership of only a portion of the funds in the joint account, the individual must remove his access to the portion of the funds which does not belong to him. The individual must present evidence showing that either he has removed his funds from the account or the joint owner(s) has removed their funds from the joint account, and the account has been redesignated. Do not consider the portion of the funds owned by the joint owner(s) as an asset to the individual for any month, even for months prior to the month the individual's access to the funds is removed. The individual must submit documentation of the original and revised (if any) account records showing his access to the joint owner's funds has been removed. Photocopies are necessary for the case file.

If the individual does not successfully rebut ownership of the account, you must consider the total joint account balance as an asset to the individual.

#### **1640.0303.01 Other Types of Joint Ownership of Assets (MSSI, SFP)**

Liquid assets other than bank accounts may be subject to various types of ownership depending on the asset involved. Some of the more common terms used to indicate joint ownership of an asset include:

1. joint ownership;
2. ownership in common;
3. tenants by the entirety; and
4. equitable ownership of trust property (for example, where legal title is with a legal representative).

An individual will be considered a part owner of liquid assets even if the other owner(s) is a member of the same family. When assets are partially owned, it is immaterial whether the parties involved are related or non-related. Only that portion of a liquid asset that is designated as belonging to the individual can be attributed to that individual. Refer to passages 1640.0302.01 and 1640.0302.05 for rebuttal of ownership policies.

Where partial ownership exists, individuals' shares in the asset may not be equal. In order to determine the value of an individual's share it is important to determine:

1. the type of ownership;
2. the names of the owners;
3. the relationship of the owners if deeming is applicable; and
4. the extent of each individual's share.

Generally, an individual's ownership interest in a liquid asset can be disposed of without restrictions and is, therefore, an available asset. However, if consent to sell is required and such permission is withheld, the property cannot be included as the individual's asset. The determination that the property is not an asset must be based on a legal restriction and must be supported by documentary evidence such as a written agreement, contract, deed, or state law.



**1640.0303.02 Joint Ownership by Husband and Wife (MSSI, SFP)**

If a husband and wife own liquid assets as "tenants by the entirety," each owns the property as a whole, not as equal shareholders. Where state law recognizes tenancy by the entirety, one spouse cannot sell the property or his interest in the property without the consent of the other. Upon the death of one, the survivor owns the whole asset.

The tenancy by the entirety arrangement remains valid for any period when the husband and wife are separated. When the marriage is dissolved, the tenancy by the entirety usually becomes an ownership in which each divorced spouse owns 50 percent of the property. However, where state law or a divorce decree indicates another type of ownership, joint ownership is not applicable.

**1640.0303.03 Trusts Ownership (MSSI, SFP)**

A legally binding verbal or written trust is a right of property held by one party for the benefit of another (the beneficiary). The beneficiary of a trust does not hold legal title, but has an equitable ownership interest in the property. According to the terms of the particular trust involved, the beneficiary must be the individual designated to receive income from the trust either directly or through the trustee.

Generally, an individual who is appointed a trustee cannot use any of the funds in the trust for personal benefit. In this situation, the trust is not an asset to the individual acting as the trustee.

**1640.0304 Ownership of Real Property (MSSI, SFP)**

Ownership of real property can consist of an interest in the title or a right to the use of the property without title to the property. The owner of real property is generally the individual who has legal title and the right to control the property.

**1640.0305.01 Ownership of Real Property by Title (MSSI, SFP)**

An individual may have sole ownership or a shared ownership interest in the title to real property. When property is held in "fee simple", this means that the owner has the sole ownership interest. The owner alone (or if the owner is mentally incompetent, the owner's legal guardian) may sell or transfer the ownership interest without conditions imposed by others.

Shared ownership means that ownership interest in the property is vested in more than one individual. Shared ownership may be by "joint tenancy," "tenancy in common," or for a married couple only, "tenancy by the entirety".

In joint tenancy, each of the joint tenants has an equal interest in the whole property for the duration of the tenancy. Upon the death of one of two joint tenants, the survivor becomes the sole owner. Upon the death of one of three or more joint tenants, the survivors are joint tenants of the entire interest.

However, it is possible in most states for the joint tenants to take some action during their lifetime to convert the joint tenancy to a tenancy-in-common. In tenancy-in-common, two or more individuals have an undivided partial interest in the whole property for the duration of the tenancy. There is no right of survivorship to a tenancy-in-common.

"Tenancy by entirety" property ownership, which only applies to a husband and wife, is discussed in passage 1640.0303.02, Joint Ownership by Husband and Wife.

**1640.0305.02 Shared Ownership of Real Property (MSSI, SFP)**

When the individual shares ownership with another individual or other individuals, only the individual's ownership interest is included. If there is no documentation defining the portion owned by each individual owner, all owners are assumed to have equal shares in the property.

If the individual cannot sell his share of the property without the consent of the other owner and the other owner refuses to give his consent, the property cannot be considered a countable asset.

#### **1640.0305.03 Life Estate Ownership (MSSI, SFP)**

A life estate gives the individual certain lifetime rights to the property that generally cannot be inherited upon the individual's death.

Where an individual owner conveys property to another individual for life (life estate holder) and to a second individual (the remainderman) upon the death of the life estate holder, both a life estate interest and a remainder interest have been created in the property. Upon the death of the life estate holder, the remainderman receives ownership of the life estate. The property owner may designate several individuals as remaindermen who would hold ownership jointly or in common by will or agreement.

The duration of a life estate is measured by the lifetime of the tenant or of another individual, or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a regular life estate does not have title to the property but has the right of possession, the right to use and obtain profits from the property, and the right to sell his life estate interest.

The owner of an enhanced life estate (also known as a lady bird deed or life estate with powers) has the same rights as complete ownership, including the right to sell without the consent of the remainderman. Lady bird deeds and life estates with powers are counted the same as other real property an individual may own and it may be excluded if it qualifies as the individual's homestead, including under intent to return when absent from the home.

#### **1640.0305.04 Ownership Interest in Unprobated Estate (MSSI, SFP)**

An individual may have ownership in an unprobated estate if the individual:

1. is an heir or a relative of the deceased;
2. receives any income from the property; and
3. has acquired rights in the property due to the death of the deceased according to state law.

When the property must be included and this places the individual's assets over the limit, ownership must be determined according to the appropriate state laws. In such cases, the individual owns the asset if:

1. documents such as a will or court record indicate the individual is an heir to any of the deceased's property; or
2. the individual has use of or receives income from the property; or
3. documents establish a relationship between the individual and the deceased which, under state law, awards the individual a share of the deceased's property and the distribution and use of the inheritance is not legally contested or limited.

When evidence raises legal questions, the eligibility specialist must refer the case to the Circuit Legal Counsel for a legal opinion regarding whether the individual owns any of the property and, if so, the individual's share of the property.

**1640.0307.01 Home Ownership (MSSI, SFP)**

Home ownership interest is indicated by documentation such as titles, deeds, tax assessments, and mortgage statements. As long as a home is the individual's principal place of residence it is excluded from assets regardless of the type or degree of ownership.

If the home is not the individual's principal place of residence, the home or any portion of the home owned by the individual is included as an asset when determining the individual's eligibility.

Individuals filing an initial application or reapplication for ICP, institutionalized MEDS-AD, Institutionalized Hospice, Home and Community Based Services Programs or PACE on or after November 1, 2007, are subject to the home equity interest standard unless they meet an exception situation. Refer to Appendix A-9.

**1640.0307.02 Establishment of Home Ownership (MSSI, SFP)**

Home ownership interest exists if the individual's name or spouse's name is shown as an owner on one of the following documents:

1. an assessment notice;
2. a recent tax bill;
3. a current mortgage statement;
4. a deed; or
5. a report of title search, or evidence of legal inheritance from an estate whose distribution is not contested.

Ownership can be established for mobile homes by a current registration document or a title.

Ownership of life estate or similar home property rights for which no title exists can be established by a contract, will, deed, or other legal document.

An individual may also acquire an ownership interest in a home through various actions, such as payment of mortgage, construction of additions to a shelter, improvements, or personal considerations. Even though another person holds sole title to the home, an individual may allege ownership interest if he has contributed to the equity or value of the home.

In order to establish an individual's home ownership based on improving the property equity, the eligibility specialist must acquire relevant documents and statements, including written evidence of any mutual understanding or arrangements between the individual and the person holding the title to the home.

**1640.0307.03 Shared Home Ownership (MSSI, SFP)**

If an individual shares ownership interest in a home with other persons, the home is excluded regardless of the eligibility status of the other owners.

Where the home is personal property, such as a house trailer, and an individual shares ownership of the land on which it rests with other individuals, the land is also excluded. If the individual has no ownership interest in the land, any free use of the land must be excluded as well as the personal property home. Where the home is affixed to land owned solely by another, but the individual is shown to have an interest in the land, the policy in passage 1640.0307.02 applies.

An individual may also own the land but live in a personal property home owned by another. In such cases, the shelter remains the property of the other individual and the above policy applies although the land is excluded as the individual's place of residence.

Individuals filing an initial application or reapplication for ICP, institutionalized MEDS-AD, Institutionalized Hospice, Home and Community Based Services Programs or PACE on or after November 1, 2007, are subject to the home equity interest standard unless they meet an exception situation. Refer to Appendix A-9.

#### **1640.0307.04 Home Equity (MSSI, SFP)**

Apply the following policy to individuals who file an initial application or reapplication for ICP, institutionalized MEDS-AD, Institutional Hospice, Home and Community Based Services Programs or PACE on or after November 1, 2007. Do not apply the policy to individuals who were determined eligible for the above programs prior to November 1, 2007 and have had no break in eligibility.

Individuals with an equity interest in their home greater than the home equity interest standard in Appendix A-9 are ineligible for nursing facility or other long-term care services, unless one of the following relatives of the institutionalized individual is residing in the home:

1. spouse;
2. child under age 21; or
3. blind or disabled child, regardless of age or marital status.

Home equity is not an asset test. This does not change the policy that excludes a home of any value from countable assets.

Individuals ineligible solely due to their home equity will not qualify for nursing home care or other long term care services but will be eligible for general Medicaid benefits.

If an individual shares ownership interest in the home with other persons, only consider the equity value of the individual's shared fractional interest.

The equity value of the home is the current market value minus any indebtedness. Current market value is the price for which the home can reasonably be expected to sell on the open market in the particular geographic area involved.

Unless questionable, accept the individual or designated representative's statement as to equity value of a home that is less than \$450,000. For equity value of \$450,000 or more, the individual or designated representative must provide verification of current market value and indebtedness.

Verification of the current market value must be obtained from a knowledgeable source commonly involved in the housing industry such as a real estate broker, mortgage broker, property appraiser, or builder. The statement must include:

1. the current market value,
2. the name of the person providing the estimate, and
3. contact information of the business or agency for whom the person providing the estimate works. The home equity provision may be waived when denial of long term care services would result in demonstrated hardship to the individual.

The home equity provision may be waived when denial of long term care services would result in demonstrated hardship to the individual.

#### **1640.0307.05 Undue Hardship for Excess Home Equity Interest (MSSI)**

The home equity provision may be waived when denial of long-term care services would result in demonstrated hardship to the institutionalized individual.

To successfully establish undue hardship, the individual or their designated representative or legal representative must claim and demonstrate the Medicaid applicant/recipient would be deprived of medical care to such an extent that their life or health would be endangered or that the individual would be deprived of food, clothing, shelter or other necessities of life if determined ineligible for Medicaid long-term care services.

Endangerment exists when the absence of medical care will cause acute symptoms of such severity that will result in serious jeopardy to the health of the individual or serious impairment of bodily functions or serious dysfunction of a bodily organ or part. Endangerment must be documented by a medical doctor with knowledge of the applicant/recipient's medical condition at the time an application or reapplication for Medicaid long-term is filed.

A nursing facility may request an undue hardship waiver on an individual's behalf with the consent of the individual or their designated representative.

#### **1640.0307.06 Processing Undue Hardship Requests for Excess Home Equity (MSSI)**

When it is determined that an individual has equity interest in his/her home that exceeds the home equity interest standard in Appendix A-9, and the individual's spouse, minor child, or blind or disabled child does not reside in the home, the individual must be notified and offered an opportunity to waive the policy. Mail form CF-ES 2354, Notice of Excess Home Equity Interest, to the individual and designated representative, informing the individual to contact the eligibility specialist within fifteen days to discuss the matter. The eligibility specialist will include his/her office phone number, rather than the Customer Call Center number.

If contacted by the individual, designated representative, or legal representative, use the Waiver of Home Equity Interest Questionnaire (CF-ES 2345A) as a guide to interview the individual and record the individual's statement on the form.

Request from the individual any additional documentation (such as legal documents, realtor agreements, relevant correspondence, statements from other individuals) needed to substantiate the individual's statements during the interview.

Evaluate the Questionnaire and any supporting documentation presented using form CF-ES 2357, Rebuttal/Undue Hardship Evaluation, and form instructions. If the home equity limit is not waived because the individual's spouse, minor child, or blind or disabled child does not reside in the home, complete Part II (Undue Hardship Evaluation) of form CF-ES 2357 and forward the evaluation form and documentary evidence to the Region or Circuit Program Office for review and signature approving or denying hardship. All undue hardship claim decisions must be reviewed by the Region or Circuit Program Office.

The evaluation must be completed within 10 calendar days following the interview date, not considering individual delay days. The Region or Circuit Program Office will communicate the decision to the eligibility specialist and return all documents. The eligibility specialist will complete the case on FLORIDA based on the outcome of the evaluation.

#### **1640.0308 General Availability (MSSI, SFP)**

Once the individual's ownership interest of an asset(s) is established, the availability of that asset must be determined. Asset(s) determined not to be available are not considered in determining eligibility on the factor of assets.

Assets are considered available to an individual when the individual has unrestricted access to the funds.

Accessibility depends on the legal structure of the account or property. An asset is countable if the asset is available to a representative possessing the legal ability to make the asset available for the individual's support and maintenance, even though the individual may not choose to do so.

Assets not available due to legal restrictions or factors beyond an individual's control are not considered in determining total available assets. The only exception to this rule occurs when the legal restrictions were caused or requested by the individual.

#### **1640.0311 Availability of Joint Bank Account (MSSI, SFP)**

When an individual owns any portion of a joint bank account and is legally able to withdraw funds from that account, the funds are available to the individual. If it is shown that all funds in an account are legally accessible to the individual only in the event of the death of the co-owner, the funds are not included as the individual's asset.

#### **1640.0312.01 Availability of Trusts (MSSI, SFP)**

The availability of funds held in a trust depends on the conditions (wording) of the trust and whether the individual is the trustee or beneficiary of the trust.

#### **1640.0312.02 Trust Availability to Trustee (MSSI, SFP)**

The trust is not an asset to the trustee if the trustee cannot use any of the funds in the trust for his own benefit.

The trust is an asset to the trustee if the individual is the trustee and has the legal ability to revoke the trust and use the money for his own benefit, regardless of whose funds were originally deposited in the trust.

The trust is an asset to the individual if the individual or the individual's spouse created the trust and has the right to dissolve it and use the funds for his own benefit.

One type of revocable trust commonly established is a "totten trust". A totten trust is created with an individual's own funds and the individual is named as trustee for another person (the beneficiary). The trustee of a totten trust can revoke the trust at any time during the trustee's lifetime.

If the trustee dies without revoking the trust, the trust principal reverts to the beneficiary. These trusts are usually set up in the form of savings accounts and are not legally recognized in most states. Regardless of whether the totten trust is legally recognized or not, the trust principal is an asset of the trustee.

#### **1640.0312.03 Trust Availability to Beneficiary (MSSI, SFP)**

The trust is an asset to the beneficiary if the beneficiary can access the trust principal. If the trustee has access, refer to passages 1640.0576.02 and 1640.0576.11.

The individual who is the beneficiary of a totten trust does not have access to the trust principal unless the trustee dies; therefore, the funds are not defined as available to the individual.

If the trustee revokes a totten trust, determine whether the beneficiary has unrestricted access to the trust principal. If the beneficiary has unrestricted access to the principal of the trust, it is counted as an asset.

If the totten trust agreement does not clearly define the availability of funds to the individual who is the beneficiary, the agreement must be referred to the Circuit Legal Counsel.

**1640.0313 Representative Payee or Legal Guardian (MSSSI, SFP)**

Assets received or managed by an individual's representative payee or legal guardian must be included as assets to the individual.

If an individual is a legally designated representative who is managing the funds of another person on his behalf, none of the funds are included as the individual's asset. These funds must be held in a form that clearly shows that they belong to another.

**1640.0314.01 Assets Available to Spouse (MSSSI)**

The following policy applies to ICP, ICP-MEDS, and ICP-Hospice individuals admitted to institutions on or after September 30, 1989. This includes SSI recipients applying for institutional services. (If the individual was institutionalized prior to September 30, 1989, refer to Chapter 2200).

Although the assets of a Medicaid recipient's spouse may not have been considered available to the individual in the community (e.g., when the couple is separated), when the individual applies for institutional services, the assets of both spouses must be considered in determining the individual's eligibility for institutional services.

The portion of a couple's assets available to the institutional spouse is the amount remaining after the community spouse's asset allowance is subtracted from the couple's total included assets. If this figure is over the program's allowable asset limit, the individual is ineligible until the assets are reduced to within the program's standard.

If after declaring and verifying his assets, the community spouse refuses to make them available to the individual, the institutionalized spouse may assign his rights of support to the state and obtain institutional care benefits (refer to passages 1640.0314.03 and 1640.0314.04 for policy). Community spouses who refuse to make their assets available to the institutionalized spouse are not entitled to a community spouse income allowance.

If the couple has been separated for a long time and the community spouse cannot be located, there is no "community spouse" and the applicant must be considered an individual when applying income and asset standards.

If either spouse can verify that the community spouse asset allowance determined by the agency is inadequate to generate income to raise the community spouse's income to the minimum monthly maintenance needs allowance, the asset allowance may be revised through the fair hearing process.

A spouse for these purposes is defined in Chapter 2200.

**1640.0314.02 Prenuptial Agreements (MSSSI)**

Assets that are included in a prenuptial agreement are considered part of the couple's total assets when determining eligibility for institutional care services.

This policy applies regardless of when the prenuptial agreement was drawn up.

**1640.0314.03 Assignment of Rights to Support (MSSSI)**

If the community spouse refuses to make available assets attributed to the institutionalized spouse, the institutionalized spouse may assign his rights of support to the state and obtain institutional care benefits. This situation may arise when assets allocated to the individual actually solely belong to the community spouse who, in turn, refuses to make them available to the individual.

The institutionalized spouse may complete CF-ES Form 2504, Assignment of Rights to Support, which allows the state to pursue recovery from the community spouse. The form is to be scanned into the ACCESS Document Imaging (ADI) System, then noted on the CF-ES 2614, Assignment of Rights to Support Notification. The completed CF-ES-2614 is emailed to ESS Headquarters in Tallahassee. This form is not an option that an eligibility specialist suggests to an ineligible couple, but rather a solution to an existing situation which is brought to the eligibility specialist's attention.

When all conditions in passage 1640.0314.04 are met, the allocated assets being withheld by the community spouse will no longer be considered available to the institutionalized spouse.

If the institutionalized spouse does not assign the rights of support to the state, continue to consider the assets available to the institutionalized individual.

#### **1640.0314.04 Undue Hardship (MSSI)**

The institutionalized spouse will not be determined ineligible based on a community spouse's assets if all of the following conditions are found to exist:

1. The institutionalized individual is not eligible due to the community spouse's assets and the community spouse refuses to use the assets for the institutionalized spouse; and
2. The Assignment of Rights to Support (CF-ES Form 2504) is signed; and
3. The institutionalized spouse would be eligible if only those assets to which he has access were counted; and
4. The institutionalized spouse has no other means to pay for the nursing home care.

#### **1640.0315 Assets Available to Spouse after Approval (MSSI)**

The following policy applies to ICP, ICP/MEDS, PACE, Institutionalized Hospice Programs, iBudget and Statewide Medicaid Managed Care-Long Term Care.

Following approval, none of the assets solely owned by the community spouse are included as available to the institutional spouse. The amount of assets allocated to the community spouse which belong to the institutional spouse and are available to the institutional spouse must be transferred to the community spouse. The eligibility specialist must work with the individual to assure that the assets are transferred to the community spouse; however, the assets will not be counted as available to the institutional spouse until the first scheduled complete redetermination is conducted. In no instance should the failure to transfer the assets to the community spouse within the prescribed time limits result in overpayment.

Any assets received by the institutionalized spouse after approval, which cause the total assets to exceed the asset standard, will not affect the individual's eligibility if they are transferred to an allowable person (see Section 1640.0600) within the month of receipt or if the individual receives equitable value. If the assets are still available to the institutionalized spouse the month after receipt, the value of the new assets is considered a countable asset to the institutionalized spouse the month after the assets are received.

If the individual returns home and the case is closed, the couple's assets must be reevaluated if the individual reapplies after a 30-day absence from the institutional facility. This policy does not apply if the individual returns to the institutional facility within 30 days.

#### **1640.0316 Legal Restrictions to Availability (MSSI, SFP)**

In general, assets are considered available unless the applicant/recipient asserts otherwise. If the individual claims an asset is unavailable due to legal restrictions, the eligibility specialist will request supporting evidence and make an independent assessment of the availability based on the evidence presented. An individual may be restricted by law from disposing of owned assets. If an asset is unavailable due to legal restrictions, it is not considered an includable asset.



Additional guidance can be requested from the Region or Circuit Program Office, Circuit Legal Counsel or Headquarters through the Region or Circuit Program Office.

**1640.0318 Legal Restrictions to Availability (MSSI, SFP)**

When there is a need for legal interpretation to determine the legal availability of an asset, clearance must be made with the Circuit Legal Counsel.

**1640.0319 Comatose Individual (MSSI, SFP)**

Any asset owned by a comatose individual will be excluded when there is no known legal guardian or other individual who can access the asset.

**1640.0320 Legally Incompetent Individuals (MSSI, SFP)**

Under the Florida Guardianship Law, only a guardian of the property is authorized to dispose of assets on behalf of a legally incompetent individual. Until a legal guardian is assigned, real property owned by a legally incompetent individual is not available.

Liquid assets (for example, patient fund accounts and checking accounts) are included as available if the individual has free access to the funds.

If a legal guardian must petition the court in order to dispose of the individual's property, the asset is still included for the individual. The fact that the guardian must petition the court does not make the property an unavailable asset.

**1640.0321 Assets Unavailable - Circumstances Beyond Control (MSSI, SFP)**

Assets unavailable due to circumstances beyond the individual's control are not considered in the determination of eligibility.

The individual must present convincing evidence to prove the asset is unavailable to him due to circumstances beyond his control. The eligibility specialist will make an independent assessment of the availability based on the evidence presented. Additional guidance can be requested from the Region or Circuit Program Office, Circuit Legal Counsel, or Headquarters through the Region or Circuit Program Office.

**1640.0400 GENERAL DETERMINATION OF ASSET VALUE (MSSI, SFP)**

The value of an individual's assets is based on the total value of the assets at the time they become available. In order to be eligible, an individual's assets must be within the program limits at the time of application disposition.

**1640.0401 Time When Asset Value Affects Eligibility (MSSI, SFP)**

The point in time when an asset determination is made may depend on the program and whether the eligibility specialist is processing an application or conducting an eligibility review. Passages 1640.0402 through 1640.0405 describe program specific policy in this area.

**1640.0402 Asset Eligibility (MSSI, SFP)**

Assets must be equal to or below program limits as of the application disposition date to be eligible for ongoing assistance.

**1640.0405 When Asset Value Affects Eligibility (MSSI, SFP)**

Individuals who are eligible on any day of the month are eligible for the whole month.

**1640.0406 Determining Asset Value (MSSI, SFP)**

The amount of the asset included is the actual value of the asset minus indebtedness. Indebtedness is the amount needed to satisfy contract terms that must be met to establish ownership of the asset. Do not count income as an asset in the month received. This does not apply to SSI lump sums (see 2640.0421). Any income which is not spent in the month received becomes an asset the month following the month of receipt. Therefore, when determining asset value in a particular month, it may be necessary to deduct income added to the asset that same month.

Cash value and indebtedness determinations will be discussed for each type of asset.

**1640.0407 Definition of Actual Value (MSSI, SFP)**

For assets that are in cash, or payable in cash on demand, the actual value is the cash value. For other forms of assets, the actual value is the fair market value (the amount of cash that could be received by selling or converting the asset).

**1640.0408 Determining Asset Value (MSSI, SFP)**

The countable value of an asset is the equity an individual or couple has in the asset. In some cases, the asset value counted toward the applicable asset limit is first reduced by an allowable excluded amount.

Equity value is the amount that an asset can expect to sell for on the open market in the particular geographic area involved (that is the fair market value of the asset), less any legal debt on the asset.

Debts are any form of legal indebtedness against the asset in question, such as:

1. mortgages,
2. liens,
3. loans,
4. purchase contracts, or
5. security interests.

Only the amount of the principal owed and any prepayment penalty required by such a debt is deducted from the fair market value in establishing the equity value of the asset.

Any future interest owed as a result of the asset is not considered in establishing equity value.

Outstanding checks that have not cleared the bank yet are considered a form of legal indebtedness against the asset.

**1640.0409 Conversion of Assets (MSSI, SFP)**

Proceeds, including cash, from the sale of an asset or conversion of an asset from one form to another are considered assets rather than income. The proceeds of the item to which the asset is converted must be evaluated to determine if they affect eligibility, and if so, the value of the new asset.

Verification concerning the new asset must be obtained regardless of whether a liquid or nonliquid asset is involved. For example, an individual may have an automobile (nonliquid asset) which he sells for cash (liquid asset), or he may have cash, which he uses to purchase an automobile. In either case, the conversion or sale does not result in income to the individual. The newly acquired item is an asset subject to all asset valuation policy.

**1640.0410.01 Excluded Assets Replacement (MSSI, SFP)**

Exclude cash and in-kind replacements (including any interest) received from any source for the purpose of replacing or repairing a lost, damaged, or stolen excluded asset.

The replacement/repair amount of the item is excluded from assets for a period of nine months from the date it is received.

An individual is eligible for an extension of the replacement period of an excluded asset if factors beyond his control prevent the replacement/repair. The extension cannot exceed nine months or a total of 18 months from the date the cash or in-kind replacement was received.

Any of the replacement/repair funds not used after original or extended replacement period is included as an asset effective the month after the period ends.

**Exception:** The 18 month exclusionary time period (nine month initial period plus nine month good cause extension) may be extended for up to an additional twelve months for a maximum 30 month exclusion from assets when:

1. the president declares a disaster; and
2. the excluded resource is geographically within the disaster area; and
3. the individual intends to repair or replace the excluded asset; and
4. the individual was unable to repair or replace the excluded asset due to circumstances beyond his control.

**1640.0500 ASSETS: DEFINITIONS AND VALUE DETERMINATIONS (MSSI, SFP)**

The different types of liquid and nonliquid assets are discussed alphabetically in the following subsections. The policies assume that the assets are owned by and available to the individual unless noted otherwise. Refer to policy on asset ownership and availability described in Section 1640.0300. Refer also to Chapter 2200, Standard Filing Unit, which describes whose assets must be considered.

**1640.0501 Bank Accounts (MSSI, SFP)**

Bank accounts refer to funds in a bank, credit union, savings and loan association or any other financial institution that are usually payable on demand. Interest earned on bank accounts is excluded as unearned income in eligibility determination. Interest is counted as unearned income when calculating patient responsibility.

This section provides information on:

1. checking and savings accounts;
2. convenience bank accounts;
3. time deposits, including Individual Retirement Accounts and Keogh Plans; and
4. special accounts for medical services.

**1640.0502 Checking and Savings Accounts (MSSI, SFP)**

The asset value is the balance in the account on the date on which eligibility is established. If the total asset value of the account does not affect eligibility, it is not necessary to determine the amount of any transactions that have not cleared the account or the individual's portion of a joint bank account. However, the individual still may be given the opportunity to rebut full or partial ownership to ensure that future changes to the account will not affect his eligibility.

Passages 1640.0504 - 1640.0506 discuss policy for bank account assets. Refer to passages 1640.0300 - 1640.0303.03 and 1640.0308 - 1640.0321 for ownership and availability policies for bank accounts.

**1640.0504 Time Deposits (MSSI, SFP)**

The availability of funds is the deciding factor in determining if a time deposit is an asset. Time deposits such as a savings certificate or certificate of deposit usually are available to the individual and are included as assets.

Any interest penalties imposed for withdrawing the time deposit funds prior to maturity are deducted from the total amount when determining the value of the time deposit asset. Interest penalties may involve a reduction in the interest rate and/or loss of interest for a short period of time.

Some time deposits cannot be withdrawn prior to maturity under any circumstances. Funds in this type of account are not included as an asset until they reach maturity and become available.

Any interest retained after the month it is available is included as an asset.

**1640.0505.04 Retirement Funds (MSSI, SFP)**

This policy applies to MEDS-AD, Medically Needy, Protected Medicaid, EMA, Working Disabled, QMB, SLMB, QI 1, OSS and HCDA.

This policy also applies to ICP, institutionalized MEDS-AD, institutionalized Hospice, HCBS Programs and PACE for work-related retirement funds and pensions, including work-related annuities, such as Civil Service and Railroad Retirement annuities. This policy does not apply to ICP and the ICP-related Programs when an applicant/recipient uses a resource to purchase an annuity.

**Note:** Refer to the passages 1640.0609.02 and 1640.0609.03 for specific policy requirements for the purchase of an annuity prior to 11/01/2007 and on or after 11/01/2007.

Retirement funds are work-related annuities and plans for providing income when employment ends (for example, retirement plans administered by an employer or union, disability or pension). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans.

Retirement funds must be treated as an asset or as income, unless they are considered unavailable.

If an individual is eligible to receive regular payments from a retirement fund, the payments are considered unearned income and the fund is not considered a countable asset to the individual. (If the individual is eligible to receive payments but elects not to, he is ineligible due to failure to file for other benefits to which he is entitled.)

If the individual is not eligible to receive payments from the retirement fund, the value of funds currently available is considered a countable asset. Any penalty imposed due to early withdrawal can be deducted when computing the value of the retirement fund, but any taxes due are not deductible.

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

Retirement funds that are unavailable due to legal restrictions are not counted. The eligibility specialist must obtain a written opinion from Circuit Legal Counsel on availability.

In the month a previously unavailable retirement fund becomes available, it is neither an available asset nor income unless a payment is received. If a payment is received, it is considered unearned income. In the month following the month the fund becomes available, the fund must

be considered an available asset to the individual unless payments begin, in which case the payment is considered unearned income. The value of the retirement fund continues to be an excluded asset as long as regular payments continue.

Refer to Chapter 1800 for policy on how to consider interest earned on retirement funds.

#### **1640.0505.05 Retirement Funds of Spouses (MSSI, SFP)**

The following policy applies to the MEDS-AD, QMB, SLMB, QI1, EMA, Protected Medicaid, Medically Needy, and Working Disabled Programs: Pension funds owned by an ineligible spouse are excluded from assets for deeming purposes; however, any income received is deemed to the eligible spouse. Refer to Chapter 2200 for policy on deeming exclusions.

The following policy applies to ICP, institutionalized MEDS-AD, institutionalized Hospice, HCBS and PACE Programs when the applicant has a community spouse (refer to Glossary, Chapter 4600, for definition):

1. At the time of application, if the community spouse receives payments from their retirement funds, the funds are not considered an asset when computing the couple's total countable assets. The payment is considered unearned income to the community spouse when computing the community spouse income allowance.
2. At the time of application, if the community spouse does not receive payments from a retirement fund he owns, but he has the option of withdrawing a lump sum, the total value of the funds must be considered an asset when computing the couple's total assets and the community spouse's asset eligibility. Early withdrawal penalties are excluded from the value of the funds, but any imposed taxes cannot be deducted.

Refer to passage 1640.0606 and following passages on transfers to retirement funds within the application look-back period.

#### **1640.0505.06 Special Accounts for Medical Services (MSSI, SFP)**

Bank accounts established under the Consumer Directed Care (CDC) Project to receive funds for purchase of approved medical or social services are excluded as an asset as long as the funds are separate and clearly identifiable. In order to be excluded, CDC funds must not be commingled with other assets.

The account must be identified as a Consumer Directed Care Project budget account by the Department of Elder Affairs in order for the exclusion to apply.

#### **1640.0505.07 Individual Development Accounts (MSSI)**

Individual Development Accounts (IDAs) are dedicated savings accounts that can be used by eligible participants for purchasing a first home, paying for post-secondary education, transportation, assistive technology or capitalizing a business. These IDAs are comprised of participant's savings from earned income and may be matched by funds controlled by the Regional Workforce Board. Excluded IDAs must be funded in part with TANF or Assets for Independence Act (AFIA) dollars.

Funds in an IDA, including interest accruing in such accounts, shall be disregarded in determining eligibility for SSI-Related Medicaid.

**1640.0506 Verification of Bank Accounts (MSSI, SFP)**

Information required for verification of an individual's bank account assets includes the:

1. type of account;
2. name and location of the financial institution;
3. names of any joint owners; and
4. amount of the balance.

The current bank account statement or other statements from the facility are verification sources.

Verification of a time deposit certificate must include information on when the funds can be withdrawn and any penalties for early withdrawal. If the individual cannot provide this information, the eligibility specialist must request the information from the individual's financial institution.

**1640.0507 Burial Contracts and Other Burial Assets (MSSI, SFP)**

This section provides information on burial related assets such as:

1. funeral agreements,
2. prepaid burial contracts,
3. irrevocable burial trusts,
4. burial exclusion policy, and
5. burial spaces.

Passages 1640.0509 through 1640.0517 discuss program specific policy in this area.

**1640.0509 Prepaid Burial Contracts (MSSI, SFP)**

A prepaid burial contract (or special mortuary fund) is an agreement in which an individual prepays his burial expenses and the seller agrees to furnish the burial. Prepaid burial contracts should not be confused with burial insurance or burial trusts. The prepaid burial contract funds are not included as an asset if:

1. the contract cannot be liquidated without significant hardship to the individual; or
2. the contract seller refuses to revoke or liquidate the contract; or
3. the contract is irrevocable.

If the contract does not meet the above criteria, the amount the individual would receive by revoking or liquidating the contract, minus any penalties, is the amount included as an asset for the individual.

**1640.0510 State Law Regarding Prepaid Burial Contracts (MSSI, SFP)**

State laws may impose varying types of conditions on burial contracts. Depending on the state in which the contract was made, there may be unique provisions for:

1. the process for revoking or liquidating prepaid burial contracts;
2. the conditions required before a burial contract can be revoked or liquidated; and
3. the conditions necessary for a contract to be defined as irrevocable.

Any Medicaid applicant may make an irrevocable contract and exclude this asset. District Legal Counsel may be consulted when it is necessary to determine if a contract is revocable. If the burial contract was purchased in another state, contact Headquarters to determine whether the contract is irrevocable.

**1640.0511.01 Revocable Prepaid Burial Contract (MSSI, SFP)**

Contract provisions for a revocable prepaid burial contract may prohibit liquidation of the asset. The eligibility specialist must examine the contract and determine if it includes this type of provision.

The contract is not included as an asset if the individual would have to move out of state to liquidate the contract or if another person's consent is required and the person will not agree to liquidate the contract.

**1640.0511.02 Value of the Prepaid Burial Contract (MSSI, SFP)**

Unless the contract meets a condition for exclusion, the amount the individual would receive upon revoking or liquidating the contract is included as an asset. This amount is often different from the face value of the contract. Guidelines for determining the amount to be received are usually set by state law and differ from contract to contract.

The contract must be examined to determine the amount to be received from liquidating or revoking the contract. If the contract is unclear, the individual or eligibility specialist must contact the funeral director to determine the amount.

The value of prepaid burial contracts liquidated by means other than revocation such as sale or transfer is the amount the individual would receive if the contract was sold on the open market.

The individual can rebut the amount with appropriate verification and documents. For example, the State Funeral Directors Association or a local funeral director may provide information showing that sellers of prepaid burial contracts can only expect to receive a percentage of the face value, or the individual may provide proof that only a certain amount was offered or that the contract was advertised for sale and no offers were received.

**1640.0512 Irrevocable Burial Trusts (MSSI, SFP)**

If the irrevocable burial trust is created in connection with a funeral home or funeral director, it is treated like an irrevocable prepaid burial contract. As long as it is irrevocable, the trust is not considered an asset to the individual.

If the irrevocable burial trust is not created in connection with a funeral home or funeral director, it is considered a transfer of assets. Regular burial exclusion policy is applicable to the uncompensated value of the burial trust fund. Up to \$2,500 of the trust can be excluded as a burial asset. The remaining uncompensated value would count as an asset to the individual according to policies in Section 1640.0600.

**1640.0513 Verification of Burial Contracts or Trust (MSSI, SFP)**

A photocopy of the burial contract or trust should be obtained to document the value of the contract and whether or not it can be revoked. The case record must explain how the determination of revocability and value were made.

**1640.0514 Burial Exclusion Policy (MSSI, SFP)**

An individual and the individual's spouse may set aside funds of up to \$2,500 each for burial expenses. These funds are excluded as assets as long as the individual states they are set aside for burial. This is true even if the case has been closed as long as the funds continue to be designated for burial. The funds must be separately identifiable (not commingled with other funds that are not set aside for burial) unless the asset cannot be separated or it is unreasonable to require it. Accept the individual's verbal statement of all the following:

1. the amount of funds set aside,

2. for whose burial the funds are set aside, and
3. the form in which the funds are held.

The individual and the individual's spouse must be given the opportunity to designate funds for burial at the time of application and at review if the maximum amount is not already designated. These funds may be excluded regardless of whether the exclusion is needed to allow eligibility. Accept the individual statement that assets are intended for burial.

The \$2,500 limit is not reduced by the value of excluded life insurance policies or irrevocable burial contract.

If the funds are not clearly designated for burial at the time of the application, the funds may be excluded if the individual:

1. states that the funds are intended for the individual's burial or completes CF-ES 2302, Designation of Resources for Burial Funds
2. submits evidence that the funds have been separately identified and designated for burial within 10 days, if the funds are currently commingled with non-burial funds.

**Note:** If the evidence is not provided in 10 days, the funds cannot be excluded until the information is provided.

Example: The applicant/recipient has a savings account with \$3500 in it and states it is a burial fund, we will exclude \$2500 and count \$1000. This meets the requirement of not being comingled. If the applicant/recipient states that only \$2500 is for burial and the other \$1000 is for emergencies, then the \$2500 is comingled with non-burial funds and the client would have to open a separate account to receive the \$2500 burial exclusion.

Assets may be designated as burial funds for any month, including the three months prior to the month of application. (Burial fund accounts for prior months may be comingled with non-burial funds.)

Any increase in the value of excluded burial funds which was left to accumulate is excluded from assets. Refer to passages 1640.0593 and 1840.1000.

#### **1640.0515 Burial Spaces/Plots (MSSSI, SFP)**

The following are considered burial spaces or plots:

1. conventional grave sites,
2. crypts,
3. mausoleums, and
4. urns.

#### **1640.0516 Burial Spaces (MSSSI, SFP)**

Burial spaces owned by the individual are not considered assets as long as they are intended for the use of the individual, the individual's spouse, or any member of the individual's immediate family. For the purposes of this policy the immediate family includes the individual's:

1. minor and adult children,
2. stepchildren,
3. adopted children,
4. brothers,
5. sisters,
6. parents,
7. adoptive parents, and



8. the spouses of immediate family members.

Dependency and living in the same household are not factors.

Burial space items that are also excludable include:

1. caskets,
2. headstones, and
3. the opening and closing costs of the grave.

Burial spaces are included as an asset if:

1. they are intended for use by someone other than the immediate family; and
2. the deed for the burial space specifies that the individual can sell the property.

If any joint owner refuses to permit the sale of the space or the burial service provider requires a move from the state in order to sell the space, the space is not treated as an included asset to the individual. The eligibility specialist must document any restrictions on the sale of the space by obtaining a statement from the joint owner or a copy of the burial contract.

#### **1640.0517 Verification of Burial Spaces (MSSI, SFP)**

Sources of verification include documents such as deeds to cemetery lots or sales contracts for the purchase of cemetery lots.

There may be more than one gravesite per burial plot. If there is a question as to what constitutes a burial plot the case must be examined by the Circuit Legal Counsel.

For funeral agreements, verification includes copies of the funeral contract or agreement or a letter from the funeral services provider outlining the type and terms of the contract.

#### **1640.0518 Cash (MSSI, SFP)**

Cash includes money the individual owns no matter where it is located.

#### **1640.0519 Verification of Cash (MSSI, SFP)**

The individual must provide information on the amount of cash available. While an individual's statement of actual cash on hand is accepted without verification, the individual must be made aware that cash on hand includes:

1. amounts in the individual's personal possession;
2. amounts the individual may have at home; and
3. amounts being held for the individual elsewhere.

#### **1640.0523 Foreign Currency or Coins (MSSI, SFP)**

Foreign currency or coins are included as cash assets in the amount they can be exchanged for United States currency. While coin collections may be cash, they are not liquid assets based on their face value, but nonliquid personal effects based on their collector's value.

#### **1640.0526 Disaster Assistance (MSSI, SFP)**

Permanently exclude:

1. payments, including disaster unemployment assistance, received under the Disaster Relief Act of 1974 {P.L. 93-288, Section 312(d)}, as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 {P.L., 100-707, Section 105(i)} from assets.
2. National Flood Insurance Program (NFIP) payments made under the National Flood Insurance Act of 1968, as amended by Public Law 109-64, enacted on September 20, 2005.

Exclude interest earned on disaster assistance payments from assets.

Excluded funds must be identifiable. Encourage the individual to maintain a separate account for excluded funds if possible. When excluded funds are commingled in an account with other funds assume that non-excluded funds are withdrawn first.

Disaster assistance funds are not restricted to restoration of a home but are subject to legal sanction if misused.

Sources of verification of disaster assistance include official government notices, disaster loan or grant documents, and the individual's financial records of deposits, withdrawals and expenditures.

#### **1640.0533 Foreign Property (MSSI, SFP)**

Assets in a foreign country owned by an individual residing in the state are subject to the same eligibility rules and limits as domestic property. The individual must provide verification of the status, value, and ownership of foreign property.

Whenever possible, verification is provided through documents the individual possesses. If the individual does not possess the necessary documents, it may be necessary to write for them.

#### **1640.0534 Home (MSSI, SFP)**

Home property is excluded as an asset, regardless of its value, if it is the individual's principal place of residence. Only one residence can be excluded under this provision.

A home is any shelter in which the individual has an ownership interest and that is used by the individual (and spouse, if any) as the principal place of residence. The home may be either real or personal property, fixed or mobile, and located on land or water. The home includes all the land that appertains to it and the buildings located on such land. Houses, cooperative and condominium apartments, mobile homes, motor homes, and houseboats are examples of shelters which may qualify for exclusion.

Home ownership and property are discussed in passage 1640.0304, Ownership of Real Property. If the home property cannot be excluded under this home exclusion policy, refer to 1640.0544 if the property is income producing.

Home equity is not an asset test. Policy is discussed in 1640.0307.04.

#### **1640.0537 Good Faith Effort to Sell (MSSI, SFP)**

Property may be temporarily excluded if the individual is making a good faith effort to sell it at fair market value.

The eligibility specialist must verify that the property is for sale and that a reasonable offer has not been declined. Verification may be obtained through collateral contacts or documentation such as a listing in a newspaper or with a real estate broker.

For SSI-Related Medicaid Program, if the property is alleged to be unmarketable, the individual (or the designated representative) must obtain statements from two different types of

knowledgeable sources in the geographic area verifying that the property is not saleable due to a specific condition.

This policy applies if the home cannot be excluded as the individual's principal place of residence.

**1640.0538 Home as Means of Self-Support (MSSI, SFP)**

If the property is not excluded as a home but is used to produce income needed for personal maintenance, it is excluded regardless of value for MSSI, SFP. Refer to passage 1640.0544.

**1640.0542 Home Verification Requirements (MSSI, SFP)**

The individual must provide the following information:

1. the name of property owner;
2. property included as the home;
3. the legal description of home property; and
4. affirmation that home is currently occupied or the reason why it is not occupied.

Sources of information include documents such as tax statements, county property records, fire department records; and police records.

If there is any indication that a portion of the individual's property is not physically located in the home plot, the individual must provide evidence of the property's ownership status and that the property is part of the home property. This information is included in the record.

Sources of the evidence can include items such as a copy of the tax assessment, bill, title, deed, or other relevant documents the individual has in his possession.

If the individual cannot provide this evidence or the evidence is insufficient, contact the local source of property tax information regarding the property boundaries and record the information for the record.

**1640.0543.01 Home as Principal Place of Residence (MSSI, SFP)**

An individual's temporary absence from the home does not affect the exclusion of the home as an asset regardless of the length of absence, if:

1. a spouse or dependent relative continues to reside in the home, or
2. the sale of the home would cause undue hardship due to loss of primary residence to a co-owner of the property, or
3. the individual (or, on his behalf, a designated representative) states an intent to return home.

The individual's or designated representative's verbal statement regarding the above must be recorded in the record and is sufficient to establish this factor of eligibility. There is no limit on how long a home may be excluded.

In defining "dependent relative", dependency may be of any kind (financial, medical, etc.). For purposes of this section, a dependent relative may include a son, daughter, grandson, granddaughter, stepson, stepdaughter, half brother, half sister, niece, nephew, cousin, parents, in-laws, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister.

Intent to return policy applies only to the continued exclusion of property which met the definition of the individual's home prior to the time the individual left the property. The individual must have lived in the home prior to the temporary absence in order to have it excluded based on his intent to return.

**1640.0543.02 Individuals with Homes in Another State (MSSI)**

Individuals who meet Florida residency requirements who have a home in another state may have that home excluded as an asset if:

1. the individual's spouse or dependent relative resides in the home; or
2. the individual expresses an intent to return to that home (that is, the home continues to be the individual's principal place of residence).

Statements of intent to return or allegations of dependency are accepted without further development (unless questionable) from the individual, designated representative, or the dependent relative if the individual is incapable of providing such information.

**1640.0543.03 Home Replacement Exclusion (MSSI, SFP)**

The proceeds from sale of an excluded home and any other excluded property sold with the home can be excluded from assets for up to three months while the home is being replaced. Policy details on the three-month exclusion limit are provided in passage 1640.0543.04.

In order to qualify for the exclusion, the individual must replace the excluded home with another excluded home or property within the three month time limit. Otherwise, the proceeds from the sale will be an included asset beginning the month after the three-month period ends, allowing for ten days advance notice of adverse action.

If a home is being replaced due to loss or damage resulting from a disaster or accident, the in-kind replacement (temporary housing or support) is excluded for nine months from the date received.

This policy also applies if the individual applies for benefits after selling a home that would have been excluded as an asset under current policy. In this case the three-month exclusion period begins the day the individual applies.

**1640.0543.04 Home Replacement Period (MSSI, SFP)**

An excluded home that has been sold must be replaced within three months in order for the individual to continue excluding home property as an asset. Replacement occurs when the individual pays for the replacement home or signs a written contract to pay for the home.

The three month requirement starts on the date proceeds from the sale are received and ends three months later on the same day of the month that the proceeds were received. The three-month replacement period cannot be extended.

If the individual has already received proceeds of a home sale before he applies, the replacement period begins on the date of application.

If the replacement is not completed within the three-month limit, all proceeds of the sale are included as assets the day the three-month limit ends and becomes a countable asset the next month. Replacement can be verified by evidence such as a contract, canceled check and bill of sale.

If a replacement home is purchased within the time limit, any proceeds remaining after replacement costs are included as assets starting the month after the three-month period ends, allowing for ten days advance notice of adverse action. Replacement costs include moving expenses and other expenses such as the property taxes needed to complete the replacement.

**1640.0543.05 Verification (MSSI, SFP)**

Verification information is found in passages 1640.0537 and 1640.0542.

**1640.0544 Income Producing Property (MSSI, SFP)**

An individual can exclude the fair market value of any income producing property he owns that is essential to self-support.

**1640.0548 Income Producing Property (MSSI, SFP)**

Any income producing property (including equipment) may be excluded from assets if it annually produces income consistent with its fair market value. The individual's statement that the property produces a reasonable return may be accepted. If the rate of return is questionable, the eligibility specialist must require verification from a knowledgeable source. The following types of income producing property may be excluded:

1. Property that annually produces income consistent with its fair market value, even if used only on a seasonal basis. Such property shall include rental and vacation homes.
2. Property such as farmland, or work related equipment that is essential to the applicant/recipient's employment or self-employment.
3. Nonliquid assets against which a lien has been placed as a result of a business loan. The security or lien agreement must prohibit the applicant/recipient from selling the asset(s). This exclusion is limited to nonliquid assets such as land, crops, buildings, timber, farm equipment or machinery.
4. Real or personal property, directly related to the maintenance or use of an income producing vehicle. Only that portion of real property determined necessary for maintenance or use is excludable.

**Example:** An applicant/recipient who owns a produce truck to earn a livelihood may be prohibited from parking the truck in a residential area. The applicant/recipient may own a 100 acre field and use a quarter acre of the field to park and/or service the truck. Only the value of the quarter acre would be excludable, not the entire 100 acre field.

5. Nonliquid notes and mortgages owned by the applicant/recipient and signed on or before March 1, 2005 shall be excluded if the contract or agreement is producing income consistent with its fair market value. Nonliquid notes and mortgages are considered to be producing income consistent with their fair market value if the conditions of the contract are being met. The exclusion shall also apply to the value of the property sold under the contract, or held as security in exchange for a purchase price consistent with the fair market value of that property. Notes and mortgages signed on or after March 1, 2005 cannot be considered for exclusion under this policy.
6. Ownership of timber rights, mineral, or oil exploration rights shall be excluded if the income produced is consistent with the value of the property.

**1640.0549 Rate of Return Less Than Reasonable (MSSI, SFP)**

Income producing property that does not generate income consistent with its fair market value is counted as an asset in full. However, consideration must be given as to why certain properties generate less income than others in the same geographic area (e.g., run-down properties). The income received may be the fair market value for that particular property. In addition, a less than reasonable rate of return is considered acceptable when the following conditions are met:

1. The property is used in a business or non-business income producing operation; and
2. Unusual or untoward circumstances (e.g., a fire, street repairing in front of a store) cause a temporary reduction in the net return; and
3. The usual net rate of return is reasonable; and

4. The individual expects the property to again produce a reasonable return within 18 months of the end of the taxable year in which the unusual incident that caused the reduction in rate of return occurred.

Obtain the individual's explanation for the decline in earnings and documentation of prior earnings (e.g., tax returns). If a convincing explanation is furnished and there is a reasonable expectation that the property will again produce a reasonable rate of return, notify the individual that he has 18 months from the end of the taxable year in which the unusual incident that caused the reduction in net return occurred to again have a reasonable net rate of return.

If, at the end of the prescribed time period, the property is not producing a reasonable net return, the value of the property is considered an includable asset. If property does not generate income consistent with its fair market value, the property will count in full as an asset.

#### **1640.0550 Indian Land (MSSI, SFP)**

Land that is held by an enrolled member of an Indian tribe is excluded from assets if it cannot be sold or transferred without the permission of other individuals, the tribe, or a federal agency.

#### **1640.0551 Life Estate Interest (MSSI, SFP)**

Any life estate interest held by an individual, the individual's spouse, a child or specified relative is excluded as an asset to the individual. Also, transfers of life estates need not be examined for potential penalties.

Life estate received as a result of a transfer within 60 months of application for institutional care or HCBS must be evaluated under the transfer of assets policies.

Although individuals owning life estates have the right to obtain profits from the estate property they do not have exclusive rights to the benefits of the property. Therefore, only that portion of the income made available to the individual will be counted as income to the individual.

#### **1640.0554 Life Insurance (MSSI, SFP)**

A life insurance policy is considered only to the extent of its cash surrender value. However, if the face value of all life insurance policies on any one individual totals \$2,500 or less, no part of the cash surrender value of any such policy or policies will be taken into account. Life insurance having no cash surrender value (for example, term insurance or burial insurance) is not considered in determining the face value of insurance and is excluded from all computations.

The policy must be owned by the individual or the person whose assets are deemed to the individual to be considered a countable asset to the individual.

When the total face value of all life insurance policies on an eligible individual, or an eligible/ineligible spouse whose assets are deemed to the eligible individual exceed \$2,500, the cash surrender values of all such policies must be counted as assets. When the cash surrender values of such policies exceed the asset limitation, an individual may adjust his insurance holdings to policies of a reduced face value. If an adjustment is made, the life insurance policies (and any cash adjustments) are reconsidered in determining eligibility.

The exclusion of a \$2,500 face value insurance policy applies to each individual separately. One family member cannot be insured for the total of the amounts allowed for other family members. For example, in the case of a couple, one spouse cannot be insured for \$5,000 based on the assumption that the couple is allowed a total of \$5,000 in life insurance.

#### **1640.0555 Verification of Life Insurance (MSSI, SFP)**

The individual must provide the following information on life insurance policies

1. the owner of the policy;
2. the individual insured by the policy;
3. the amount of the policy's cash surrender value, if any; and
4. the amount of any dividends or interest earned on this policy.

The life insurance policy may provide all the necessary information. If not, the information may be obtained from the insurance company or a local agent. However, with the exception of the MSSSI and SFP Programs, it is not necessary to see the policy(s) or contact the company unless the cash value must be verified.

#### **1640.0556 Loans (MSSSI, SFP)**

A **loan** is a transaction when one party (lender) advances money to another party (borrower) who promises to repay the debt in full within the borrower's lifetime. Repayment of loans may or may not include interest. A loan may take the form of a formal written document or an informal verbal agreement. A formal written loan agreement is a form of a promissory note.

A **promissory note** is a written, unconditional agreement signed by a person who promises to pay a specific sum of money at a specified time, or on demand, to the person, company, corporation, or institution named on the note. A promissory note may or may not involve the loan of money or goods (e.g., a promissory note may be given in return for goods or service rendered).

A **personal and real property agreement** is a pledge or security of a particular property or properties for the payment of a debt or performance of some other obligation within a specified time period. Property agreements on real estate (land and buildings) are generally referred to as mortgages but may also be called land contracts, contracts for deed, or deed of trust, etc. Personal property agreements (e.g., pledges on crops, fixtures, inventory, etc.) are commonly known as chattel mortgages.

#### **1640.0560.01 Evaluating Loans (MSSSI, SFP)**

Loans may be formal (written) or informal (verbal). The individual must provide information on the type, amount, purpose, and unpaid balance of the loan. The loan contract can be used as the source of this information.

Any loan agreement must be legally binding under state law to be considered a bona fide loan for Medicaid purposes.

A bona fide agreement is an agreement that is legally valid and made in good faith. A bona fide loan must meet all of the following requirements:

1. The loan must be enforceable under State law ; and
2. The loan agreement was in effect at the time the cash proceeds were provided to the borrower; and
3. The lender and the borrower both acknowledge the lender has an obligation to repay the loan; and
4. The loan includes a plan or schedule for repayment by pledging real or personal property or anticipated income; and
5. the repayment plan must be feasible.

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

Loans by verbal agreement that will affect an individual's eligibility must be reviewed by Circuit Legal Counsel to determine if the loan is negotiable/bona fide. When the loan is an informal

verbal loan, information such as the type of the loan, parties involved, and the commitment to repay, must be obtained to determine if the loan is legally binding.

**When the individual is the borrower:**

1. The loan agreement itself is not an asset.
2. Cash proceeds of a loan may be an included asset if retained into the month following the month of receipt.
3. Cash proceeds of a bona fide loan are not income in the month of receipt.
4. When the loan is not bona fide, cash proceeds are income in the month of receipt.

**When the individual is the lender:**

If the loan is determined to be bona fide and negotiable:

1. The loan agreement is an asset valued at the equity balance. The equity balance is the outstanding balance owed to the individual minus any debt.
2. The principal portion of the loan payment is conversion of an asset, not income.
3. the interest portion of the loan payment is excluded as income in the month of receipt in eligibility determination, but is counted as income in patient responsibility calculations. If retained into the following month, the interest is included as an asset.

**If the loan is not bona fide or not negotiable:**

1. The loan agreement is not a countable asset. (Refer to manual passage 1640.0606 et.al. for policy regarding transfer of assets.
2. The goods or money specified in the agreement are an asset if the lender can access it for his or her use.
3. The total payment received (principal and interest) is unearned income in the month of receipt.

Refer to passage 1640.0562 for information on student grants, loans and scholarships.

**1640.0561.02 Promissory Notes Prior to 3/1/05 (MSSSI, SFP)**

Promissory notes, loans and mortgages signed before March 1, 2005 are assets for an individual (lender) who has the legal right to sell the loan or owns an interest in the loan that can be converted to cash. The amount included is the outstanding balance shown in payment records unless the individual can provide reliable evidence the value is less.

If any part of a promissory note, loan or mortgage can be converted to cash within 20 days, it is defined as a liquid asset; otherwise, it is a nonliquid asset. If it is determined to be nonliquid it must be evaluated to see if it can be excluded under income producing property policy. Presume that mortgages are nonliquid assets unless the individual states otherwise.

If the note, loan or mortgage is determined to be an asset that portion of any payment received representing payment on the principal is also an asset. The portion of any payment which represents interest on the principal is excluded as unearned income in eligibility determination. Interest is counted as unearned income in patient responsibility calculations.

If the note, loan or mortgage is determined not to be an asset, the total payments received (principal and interest) are unearned income.



**1640.0561.03 Promissory Notes Signed On or After 03/1/05 (MSSSI, SFP)**

Promissory notes, loans and mortgages signed on or after March 1, 2005 are included as assets for an individual (lender) who has the legal right to sell the loan or owns an interest in the loan that can be converted to cash. The asset value of the promissory note, loan, or mortgage is the equity value. Equity value is the outstanding balance minus indebtedness. When there is no indebtedness the equity value is the outstanding balance shown in payment records unless the individual can provide evidence that the value is less.

Absent evidence to the contrary, a promissory note, loan, or mortgage is bona fide and negotiable. A bona fide agreement is an agreement that is legally valid and made in good faith. A negotiable agreement is an agreement whereby the ownership of the instrument itself and the whole amount of money expressed on its face can be transferred from one person to another.

If the note, loan or mortgage is determined to be bona fide and negotiable, it is an asset. When payments consist of both principal and interest, the interest portion of the payment is excluded as unearned income in eligibility determination, but is counted as unearned income in patient responsibility calculations. The principal portion of the payment is conversion of an asset, not income.

If the note, loan or mortgage is not bona fide or not negotiable, the instrument cannot be converted to cash (sold) and is not an asset.

If the note, loan or mortgage is determined not to be an asset, the total payments received (principal or interest) is considered unearned income.

**1640.0561.04 Home Equity Plans (MSSSI, SFP)**

Home Equity Conversion Plans, home equity loans and home equity lines of credit allow home owners to convert the value of their homes into cash. The proceeds from these plans are usually paid out in monthly installments and are not considered an asset unless the proceeds are retained into the following month.

The amount of an individual's equity in their home is not reduced until the proceeds from a home equity plan are received.

Home equity loans and lines of credit are a loan against the equity of the home. The proceeds of a loan are not counted to the borrower as income or as an asset in the month of receipt. Funds from a loan that are given away in the month of receipt are potential transfers and are subject to transfer penalties if fair compensation is not received.

Refer to annuity policy in 1640.0609.02 and 1640.0609.03 if an annuity is purchased with the proceeds from a home equity plan.

**1640.0562 Student Grants, Loans and Scholarships (MSSSI, SFP)**

Any grants, loans, gifts or scholarships received by an individual for educational expenses are excluded as an asset. This is true even if the loan or other money is received in a lump sum and deposited as cash in a bank. The individual must provide information on the amount and type of the grant, loan, gift or scholarship.

**1640.0563 Personal Property (MSSSI, SFP)**

Personal property includes personal effects such as clothing, jewelry, tools of a trade, and pets, in addition to household goods such as furniture and appliances. Generally, personal property is excluded as an asset. For institutional care (or HCBS) applicants with community spouses, all personal property is excluded if the applicant was admitted to the institution on or after September 30, 1989.

**1640.0565.01 Personal Property (MSSI, SFP)****Household Items and Personal effects**

Exclude household goods and personal effects from resources, regardless of their dollar value

**Household goods**

Household goods are items of personal property, found in or near the home, the householder uses on a regular basis. The householder needs household goods for maintenance, use, and occupancy of the premises as a home.

Examples of household goods include

- Furniture;
- Appliances;
- Electronic equipment, for instance computers and televisions;
- Carpets;
- Cooking and eating utensils; and,
- Dishes.

**Personal effects**

Personal effects are items of personal property ordinarily worn or carried by the individual, or items that have an intimate relation to the individual.

Examples of personal effects include

Personal effects may consist of the following:

- Personal jewelry, including wedding and engagement rings;
- Personal care items and clothing;
- Pets, such as a cat, dog, hamster, horse, monkey, or snake;
- Educational or recreational items, such as books, musical instruments, or hobby materials; or
- Items of cultural or religious significance to an individual, such as ceremonial attire.
- Items required because of an individual's physical or mental impairment

**Other Personal Property**

Other personal property may be a countable resource

Property that an individual acquires or holds because of its value or as an investment is a countable resource (unless excluded under a different provision); and is not considered a household good or personal effect for the purposes of this exclusion.

Examples of other personal property

- Gems;
- Jewelry that one does not wear or does not hold for family significance;
- Animals for investment purposes, such as a horse or dog for breeding, for resale, or investment; and
- Collectibles.

**Items held because of their value or investment**

Items an individual acquires or holds because of their value, or as an investment, are not considered household items or personal effects; even if they otherwise meet the definitions provided above

Example:

Mrs. Willis received \$10,000 from an insurance settlement. Staff must determine how she spent the \$10,000.

Mrs. Willis paid back creditors with \$7,000 and purchased \$3,000 in jewelry that she wears. Because Mrs. Willis wears the jewelry, staff must determine if the jewelry should be treated as a personal effect or as other personal property.

Mrs. Willis's statements establish that the jewelry has no family significance and that she purchased the jewelry **for its value**, to spend down the \$10,000. Staff determines the jewelry is not an excludable personal effect because it was purchased for its value. Staff treated the jewelry as "other personal property" and evaluates it using normal resource counting rules.

#### **1640.0565.03 Household Goods/Personal Effects Verification (MSSI, SFP)**

The statement on the application that an individual (or spouse) does not own any unusual items worth more than \$500 is accepted without further review unless there is evidence to the contrary.

If items of unusual value (with a total estimated FMV of \$500 or more), are reported, the individual must provide verification of the FMV of these items. Any reliable and reasonable method may be used to establish and verify FMV; for example, sales slips, insurance, prior appraisals, contacts with local merchants. The development and assessment of values must be recorded for the case record.

Insurance and insurance appraisals often reflect replacement value (the amount it would cost to purchase a similar item new) rather than fair market value of the item in question. The FMV, not the replacement value, is the amount to be used in determining the asset value.

#### **1640.0565.04 Value of Household Goods/Personal Effects (MSSI, SFP)**

If items of unusual value are involved, the eligibility specialist must conclude that the FMV of all other durable household goods and personal effects is \$1,000 unless there is evidence to the contrary. This amount is added to the FMV of the items of unusual value. The total less the \$2,000 equity exclusion, described in passage 1640.0565.01, is added to the total value of all other included assets.

If the estimated FMV of included household goods and personal effects exceeds allowable limits the FMV must be verified. Any reasonable, practical method can be used to verify FMV.

An individual's records can be used to document their share of ownership and equity in personal property. If there is any doubt about the documentation of any legal debts claimed by the individual, third party verification must be obtained.

#### **1640.0566 Stocks and Bonds (MSSI, SFP)**

Investments include the value of stocks and bonds. The current market quotation is considered the asset value. Information sufficient to establish ownership is required in order to determine if the stock/bond value must be included/excluded. Sources of information on the current market value of stocks and bonds may be secured from the bank, investment company, newspapers, and the like. The source and date of the quotation must be recorded.

#### **1640.0567 Definition of Stocks (MSSI, SFP)**

Shares of stock represent ownership in a corporation. The shares of many corporations are traded on the New York Stock Exchange or the American Stock Exchange. Many stocks are also traded "over-the-counter".

Most stocks, for incorporation purposes, are assigned a certain value known as "par value". Par value has no relation to the actual market value of a stock.

The value of a stock is normally determined by the demand for it when it is bought and sold. As the result of constant trading, the value of stocks varies daily. To establish the value of a stock, use the most current closing price.

The individual is required to furnish stock certificates unless the stock is being held for the individual by a securities firm. If so, the eligibility specialist must obtain the individual's copy of the firm's most recent statement concerning the individual's account.

The closing prices (on any particular date) of many stocks may be verified by consulting the following day's newspaper or financial newspaper. If the closing price of a stock is not shown in the next day's newspaper, contact a local securities firm to determine its value.

The value of stocks traded over-the-counter is expressed on a "bid" and "asked" basis. A "bid" is the amount being offered for the stock. The "asked" figure is the amount the seller asked for the stock. Use the bid price to determine the market value of this type of stock.

The individual's statement that a stock is worthless must be supported by a local securities dealer's statement.

**1640.0568 Stock in a Close Corporation (MSSI, SFP)**

A "close" or closely held corporation is wholly owned or controlled by one or more members of the board. Stock in this type of company must be reviewed to determine if the stock is a liquid or nonliquid asset. Usually the stocks cannot be converted to cash within 20 days and they may qualify for exclusion as property needed for self-support.

If such stocks are not traded publicly the value of the stock is determined by dividing the company's net assets (total assets minus liabilities) by the total number of shares. The corporation's net assets can be obtained from the corporation's most recent tax return.

**1640.0569 Alaskan Native Stock (MSSI, SFP)**

Federal law excludes certain shares of stock held by natives of Alaska in a regional or village corporation from counting as assets for a period of 20 years from the date they are purchased.

**1640.0570 Mutual Fund Shares (MSSI, SFP)**

A mutual fund is a company that buys and sells securities and other property as its primary business. Mutual fund shares are generally liquid assets.

The value of mutual funds is determined in the same way as stock values are determined.

**1640.0571 Bonds (MSSI, SFP)**

When an individual requests that a bond be sold, about seven to ten days are usually required for the individual to receive the proceeds. Therefore, bonds are generally included as assets.

A bond is a written obligation to pay a sum of money at a future specified date. It is a negotiable instrument and is transferable.

Municipal bonds are issued by a state or local government. Corporate bonds are issued by corporations. Government bonds are issued by an agency of the federal government and, except for U.S. Savings Bonds, are transferable.

A bond must be held until the specified date of maturity before it can be redeemed for its face value. The current cash value of a bond before maturity is determined by the market for it.

If there is a great demand for a bond, its market value may be more than the face value; or if there is little demand, the bond's current market value may be substantially less than the face value. The current price of a bond can generally be determined as it would be for a stock.

**1640.0572 Savings Bonds (MSSSI, SFP)**

U.S. Savings Bonds are an obligation of the federal government, but unlike other government bonds, they are not transferable; that is, they can only be sold back to the government.

U.S. Savings Bonds are usually registered in the name of the owner(s) shown on the front of the bond and may be redeemed by the owner by completing a form on the back of the bond. If ownership of a bond is shared, each person's share is equal. All owners must agree to liquidate the bond.

Several series of U.S. Savings Bonds (for example, Series EE, HH, E, I, J, and H) can normally be quickly converted into cash at local banks. These bonds are defined as liquid assets and are counted as resources. Do not use the table sometimes provided on the back of the bond to determine its value. The tables often do not reflect changes in interest rates. A bank must be contacted to determine the current value. The face value of Series H bonds does not change. No further verification of value is necessary for that series; however, interest is paid rather than accrued on these bonds.

Some bonds must be held for a specific period of time from the date of issue before they can be converted to cash. Examples of bonds with retention periods are indicated below:

1. Series EE and I bonds issued prior to February 1, 2003 can be converted to cash at any time after six months from the issue date.
2. Series EE and I bonds issued on or after February 1, 2003 can be converted to cash at any time after twelve months from the issue date.
3. Series HH bonds can be converted to cash at any time after six months from the issue date.

Although there are mandatory retention periods for the bonds referenced above, they may be converted to cash early if the owner requests a waiver of the retention period claiming hardship circumstances. A hardship exemption request must be in writing, accompanied by the bond that is still within the mandatory retention period, to the following address:

Treasury Direct Address:  
Series EE and Series I  
Bureau of the Fiscal Service  
Division of Customer Assistance  
PO BOX 7015  
Parkersburg, WV 26106-7015

For Paper Savings Bonds:  
Series EE and Series I  
Treasury Retail Securities Site  
PO Box 214  
Minneapolis, MN 55480-0214

Series HH and Series H  
Bureau of the Fiscal Service  
Division of Customer Assistance  
P.O. Box 2186  
Parkersburg, WV 26106-2186

When the value of a bond will affect eligibility, the bond's owner must request a waiver of the retention period due to hardship (for example, need to receive public assistance or enter a nursing home). If evidence indicates the waiver was denied, the value of the bond is considered unavailable and not counted as a resource until the month after the mandatory retention period

expires. If the waiver is granted, the amount of funds an owner receives or can receive by cashing in the bond early is considered as a countable resource.

#### **1640.0576.01 Trusts (MSSI, SFP)**

A trust is a right of property held by one party for the benefit of another. The term "trust" also includes any legal instrument or device that is similar to a trust. It does not cover trusts established by will. It can include (but is not limited to) escrow accounts, investment accounts, pension funds, and other similar devices managed by an individual or entity with fiduciary obligation.

The trustee is the individual who holds the legal title to and manages property for the benefit or use of another. The beneficiary is the individual for whose benefit the trust is created.

A trust is considered revocable if the trust can be dissolved; it is considered irrevocable if it cannot be dissolved.

It is important to understand other terms used in reference to trusts:

1. Grantor (Trustor/Settlor) - Sets up the trust.
2. Trustee - Manages the trust.
3. Beneficiary - Receives benefits from the trust.
4. Corpus/Principal - Assets or income used to establish the trust.
5. Distributions/Disbursements - Money or assets paid out of the trust (either from the corpus or income produced by the corpus).

Refer to policies in 1640.0576.02 through 1640.0576.11 to determine how to consider trust funds.

#### **1640.0576.02 How to Analyze Trusts (MSSI, SFP)**

How to count funds held in a trust, whether as income or assets, depends on several factors:

1. who created the trust;
2. when it was created;
3. whether the trust is revocable or irrevocable; and
4. the conditions and terms of the trust.

#### **1640.0576.03 Trusts Set Up By Others (MSSI, SFP)**

For trusts that are established by someone other than the individual, the individual's spouse or representative, the trust must be evaluated according to these SSI policies:

1. If the individual does not have authority to revoke or direct use of the trust, it is not considered an asset to him. Conversely, if the individual has the authority to revoke or direct use of the trust, the corpus of the trust is considered an asset to him.
2. Cash paid directly from the trust to the individual is unearned income.
3. Disbursements made by the trustee directly to a third party are not considered income to the individual.

The above policies also apply to trusts established by a will, regardless of the relationship of the now deceased grantor to the individual.

Refer to passages 1640.0576.04 and 1640.0576.07 for information on how to treat trusts established by the individual, individual's spouse or representative.

**1640.0576.04 Medicaid Qualifying Trusts before 10/1/93 (MSSI, SFP)**

The following policy applies only to those trusts established before 10/1/93:

A Medicaid qualifying trust is a trust or similar legal device (other than through a will) created by an individual, his spouse, or legal representative under which (a) the individual may be the beneficiary of all or part of the payments from the trust, and (b) the amount of the distribution is determined by one or more trustees who are permitted to exercise any discretion with respect to the amount to be distributed to the individual.

**Note:** The term "Medicaid qualifying trust" (MQT) must not be confused with the term "qualified income trust". The MQT refers to some trusts established prior to 10/1/93 which disqualified individuals for Medicaid, while the "qualified income trust" refers to certain income-only trusts permitted on or after 10/1/93 which allow individuals to qualify for ICP or HCBS.

If the trust meets the definition of a Medicaid qualifying trust, consider the maximum distribution that could be paid to the applicant/recipient by the trustee(s) as an available asset and income to the individual whether or not the distribution is made. These policies apply even if the trust is irrevocable, regardless of the purpose of the trust or whether or not the trustee(s) actually exercises their discretion.

If the trustee has no or limited discretion or ability to disburse funds to the individual, the amount that is unavailable must be considered a transfer of an asset without fair compensation and must be evaluated under transfer of asset policy if it was established within the applicable transfer look-back period.

**1640.0576.05 Exceptions for Trusts before 10/1/93 (MSSI, SFP)**

The following trusts are exempt from the Medicaid qualifying trust provisions:

1. Trusts set up by a family member (other than the individual or spouse) under the State of Florida Umbrella Trust Agreement for developmentally disabled or mentally ill individuals in accordance with Florida Administrative Code 65-19. Any money given to the beneficiary by the trustee would be considered as income.
2. "Individual trusts" when the beneficiary is a mentally retarded individual who resides in an ICF/DD, provided the trust or initial trust decree was established prior to April 7, 1986, and is solely for the benefit of that developmentally disabled or mentally ill individual.
3. Trusts established by will.

**1640.0576.06 Undue Hardship/Trusts Set Up before 10/1/93 (MSSI, SFP)**

If undue hardship exists, only the amount of the trust that is actually made available as income or assets is counted. Undue hardship is defined as any situation in which an individual may be forced to go without life sustaining services because the proceeds from a trust fund are not available to the individual. This may be due to legal restrictions or illegal actions by the trustee. All undue hardship decisions must be reviewed and approved by the eligibility specialist.

**1640.0576.07 Trusts Established On or After 10/1/93 (MSSI, SFP)**

The following policy applies to trusts established by an individual on or after 10/1/93.

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

1. the individual;
2. the individual's spouse;

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

If the trust was not established by one of the above individuals, refer to passage 1640.0576.03.

If the trust is **revocable**:

1. Consider the entire principal as an available asset to the individual.
2. Consider any payments which can be made as countable income to the individual.
3. Consider any other payments from the trust as assets disposed of by the individual without fair compensation.

If the trust is **irrevocable** and there are any circumstances under which payment from the trust could be made to or for the benefit of the individual:

1. Consider that portion of the principal that could be available, as an asset to the individual.
2. Consider payments from that portion of the principal which could be available as income to the individual.
3. Consider any other payment from the trust as a transfer of assets.

If the trust is **irrevocable** and no payment could be made from the trust under any circumstances:

1. Apply the transfer of assets policy to the individual's assets and income used to establish the trust. The transfer policy applies only to applicants or recipients of nursing facility services and HCBS.
2. The trust is not counted as an available asset.

The above policies apply without regard to:

1. the purpose of the trust;
2. whether the trustees have or exercise any discretion under the trust;
3. any restrictions on when or whether distributions may be made from the trust; or
4. any restrictions on the use of distributions from the trust.

For more information on transfer of assets for SSI-Related Medicaid, see passage 1640.0606.

#### **1640.0576.08 Exceptions for Trusts Set Up 10/1/93 or Later (MSSI, SFP)**

The policies listed above in passage 1640.0576.07 do not apply to the following trusts:

1. Trusts established by a will (see passage 1640.0576.03).
2. Trusts for the disabled under age 65.
3. Pooled trusts for the disabled under age 65.
4. Qualified income trusts (see passage 1840.0110).

All special trusts must be forwarded to the Region or Circuit Program Office for review and Circuit Legal Counsel's written approval before the case can be approved, per guidelines in the Appendix-A-22.4, A-22.5 and A-22.6.

The following special trusts may be created on or after October 1, 1993, for disabled individuals if the trust meets the specific criteria indicated below:

**Trusts for the disabled under 65:** A trust containing the assets of a disabled individual under age 65, if:



1. it was established on or after 10/01/93; and
2. it was established for the benefit of the individual by, a parent, grandparent, the disabled individual himself, legal guardian or a court order; and
3. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual.

**Pooled trusts for the disabled:** A trust containing the assets of an individual who is disabled, if:

1. it was established on or after 10/01/93;
2. the trust is established and managed by a nonprofit association;
3. a separate account is maintained for the beneficiary of the trust but, for purposes of investment and management, the trust pools the accounts;
4. the trust is established solely for the disabled individual by a parent, grandparent, legal guardian, court or the individual himself; and
5. to the extent that amounts remaining in the trust upon the individual's death are not retained by the trust, the trust pays to the state an amount equal to the total amount of medical assistance paid on behalf of the individual.

Both of the above special trusts can only be set up to benefit individuals who meet SSI disability criteria. Trusts for the disabled under 65 can be established only for individuals who are under 65. Pooled trusts for the disabled can be established for individuals of any age.

Disability must be determined for both of the above special trusts via regular policy; that is, the person must receive Social Security disability or SSI benefits or the Department must make an independent determination to show that the individual meets the disability requirement.

#### **1640.0576.09 Treatment of Qualified Disabled Trusts (MSSI, SFP)**

After the trust is approved by the Circuit Legal Counsel as meeting the criteria of a qualified trust for the disabled under age 65 or a pooled trust for individuals under age 65, apply the following policies to determine the individual's eligibility for Medicaid benefits:

1. Do not consider the corpus of the exempt trust as an asset to the individual beginning with the month the assets are placed into an executed qualified disabled trust or pooled trust;
2. Do not consider the funding of a qualified disabled or pooled trust as a transfer of assets or income subject to imposition of a penalty period, provided the trust purchases items and services at fair market value for the sole benefit of the disabled individual (refer to 1640.0609.06);
3. Do not count any income deposited into the trust as income to the individual when determining the individual's eligibility;
4. Do not consider disbursements from the trust to third parties as income to the individual;
5. Do not consider any income earned by the trust which remains in the trust as income to the individual;
6. Count any payments made directly to the individual as income to the individual;
7. Count all income placed into the trust (along with countable income outside the trust) when computing patient responsibility. Standard spousal impoverishment policies apply.

If income is deposited into the trust, the trustee must provide quarterly statements identifying the deposits (and disbursements) made to the trust for each month.

Any funds paid directly to the individual from the trust must be counted as income to the individual. Disbursements not paid to the individual are not counted as income to the individual.

Fax or send a copy of the approved qualified disabled or pooled trust to:

ACS Recovery Services  
Post Office Box 12188  
Tallahassee, Florida 32317-2188  
Fax: (844) 845-8352

When you receive inquiries regarding the settlement of remaining funds in the trust after a recipient's death, tell them to make checks payable to Agency for Health Care Administration and send to the above address. Also advise them to clearly identify the individual by including a note with the individual's full name and social security number or Medicaid number. If there are further questions, refer callers to ACS Recovery Services (877) 357-3268.

**1640.0576.10 Undue Hardship/Trusts Set Up 10/1/93 or Later (MSSI, SFP)**

If undue hardship exists, only the amount of the trust that is actually made available as income or assets is counted.

Undue hardship exists when application of the trust provision would deprive an individual of food, clothing, shelter or medical care such that his life or health would be endangered. All efforts to access the assets (including assets and income) must be exhausted before this exception applies. All undue hardship decisions must be reviewed and approved by the eligibility specialist.

**1640.0576.11 Verification of Trusts (MSSI, SFP)**

A copy of the trust document must be reviewed carefully to determine the trustee's ability to use the principal. When appropriate, the eligibility specialist should request an official legal interpretation.

All OBRA '93 special trusts (trusts for disabled under 65, pooled trusts and income trusts) must be forwarded to your Region or Circuit Program Office who will refer it to your District Legal Counsel for review and approval.

**1640.0577 Real Property (MSSI, SFP)**

Real property includes assets (in which an individual has ownership interest) that fall into the following categories:

1. any real estate owned by the individual or couple, and
2. income producing property.

**1640.0578 Real Estate (MSSI, SFP)**

Real estate that is not a homestead and does not involve life estate is included as an asset.

Otherwise non-excluded real property that an individual or family is making a good faith effort to sell can be excluded. Refer to passage 1640.0537 for good faith effort policies.

For, SSI-Related Medicaid, and State Funded Programs, real estate is not included as an asset if the property is producing income consistent with its fair market value (see passage 1640.0544).

Information containing the name of owner, legal description, amount of indebtedness and to whom owed, and the assessed value is required verification. Sources of verification include deeds in possession of parent or relative, liens in personal possession, county property records, or contract with lien holder.

**1640.0581 Value of Real Property (MSSI, SFP)**

The county tax assessment of the property (minus any debts) may be used to determine the ownership and value of the property. However, because the value of the property based upon

the tax assessment may be substantially lower than the property's actual fair market value (FMV), a knowledgeable source estimate of a property's FMV is required in all cases if the individual is eligible on the factor of assets using the tax assessed value of the property. Any debts on the property must be subtracted from the FMV to determine the equity value to consider an asset to the individual.

#### **1640.0582.01 Verification of Real Property Value (MSSI, SFP)**

The tax assessment cannot be used when the following conditions exist:

1. The individual is eligible on the factor of assets using the tax assessment.
2. The tax assessment is more than one year old (based upon the date of the last notice).
3. An estimate of the property's FMV can be easily obtained from a knowledgeable source at no cost to the agency.
4. The tax assessment is a special purpose assessment (unless the tax jurisdiction also provides a fair market value assessment, which may be used).
5. The tax assessment cannot be used if it is under appeal.
6. The taxing authority does not provide an assessment ratio or provides only a range of the value; for example, between 50 and 75 percent (unless the individual would be ineligible using even the upper limit of the range).
7. The tax assessment cannot be used if it is based on a fixed rate per acre method. The term "fixed rate per acre," applies only to standard dollar per acre assessments for land based on land usage without regard to market prices; for example, agricultural, industrial, and residential. This term does not apply when certain conditions require that types of land be taxed similarly, regardless of location.
8. The tax assessment cannot be used to help determine home equity when an individual files an application on or after November 1, 2007 and the assessed value of the home exceeds \$450,000.

#### **1640.0582.02 Knowledgeable Sources (MSSI, SFP)**

If the tax assessment cannot be used for any of the reasons listed in passage 1640.0582.01 the individual must obtain a written, signed estimate of the property's FMV from a knowledgeable source. It must be specific as to the point in time for which the estimate is effective.

Knowledgeable sources include:

1. real estate brokers (they often have a list of recent sales of comparable properties in the area);
2. the local office of the Farmer's Home Administration (for rural land);
3. banks, savings and loan associations, mortgage companies, and similar lending institutions;
4. a local office of the Agricultural Stabilization and Conservation Service (for rural land);
5. an official of the local real property tax jurisdiction (for an estimate rather than an assessment);
6. the county agricultural extension service; and
7. local newspaper real estate advertisements, "multiple listing" publications.

#### **1640.0582.03 Obtaining Correct Verification of FMV (MSSI, SFP)**

It is the individual's responsibility to obtain an estimate of the fair market value (FMV) of his property. If the individual is not able to obtain an estimate, the eligibility specialist may try to obtain a free estimate from a knowledgeable source. If there are questions as to the correctness of an estimate from a knowledgeable source, an estimate should be obtained from one or more other sources listed in passage 1640.0582.02 and averaged in order to establish a fair estimate of the FMV.

The knowledgeable source's estimate of the FMV will be effective with the month in which it is obtained.

If the individual, in submitting the evidence, indicates he disagrees with the evidence, the individual may furnish reliable evidence to support a different FMV. Such evidence should be considered along with all other evidence obtained in making an FMV determination.

**1640.0583 Vehicles (MSSI, SFP)**

A vehicle is any automobile, truck, motorcycle, etc., that is used to provide transportation, and includes vehicles that are unregistered, inoperable, or in need of repair.

While each program may include all or portions of a vehicle's value, the determination of the value of the vehicles to be included differs by program.

**1640.0591 Automobile (MSSI, SFP)**

One automobile, regardless of value or use, is excluded as an asset.

Unless otherwise excluded, any other automobiles are treated as nonliquid assets and counted to the extent of their equity value. The equity value is the average trade-in value of the vehicle minus any indebtedness.

When there is more than one vehicle, apply the automobile exclusion in the manner most advantageous to the individual. That is, the automobile with the highest equity value may be the one vehicle totally excluded, leaving the automobile with less equity value to count as an asset to the individual.

Any automobile over seven years old is an excluded asset except for the following instances requiring development:

1. Luxury cars (for example, Jaguar, Mercedes Benz, Cadillac, Lincoln, Corvette);
2. Automobiles or trucks that are 25 model years or older (because they may have value as classics or antique vehicles); or
3. Customized or specially modified automobiles, except for those modified for use by a handicapped person.

**1640.0592 Verification of Vehicle Value (MSSI, SFP)**

Information containing the name(s) of the owner(s), make, model, and year of the vehicle is required for all vehicles. The amount of indebtedness is required on all included vehicles.

Sources of documentation include:

1. title,
2. tag registration,
3. Department of Motor Vehicle records,
4. purchase contract,
5. payment schedule, or
6. lien holder.

Use the average trade-in value listed in the National Automobile Dealers' Association (NADA) book with no adjustments for any special equipment as fair market value in determining equity value (fair market value minus indebtedness).

If a vehicle is not listed in the Southeastern Edition, National Automobile Dealers' Association (NADA) book, the Official Used Car Guide or the NADA Older Car Guide, the individual must obtain an appraisal or produce other evidence of the vehicle's value, such as a tax assessment or a newspaper advertisement indicating the amount for which like vehicles are being sold.

**1640.0593 Assets Excluded by Federal Law (MSSI, SFP)**

Items excluded by federal law as income are also excluded as assets. These items include, but are not limited to the following:

1. Payments to a natural child of a Vietnam veteran born with spina bifida, except spina bifida occulta, as a result of the exposure of one or both parents to Agent Orange (P.L. 104-204).
2. Payments to a natural child of a woman Vietnam veteran born with one or more birth defects resulting in permanent physical or mental disability (P.L. 106-419).
3. Lump sum SSI, Social Security, are excluded for nine consecutive calendar months following the month of receipt or until funds are spent, whichever occurs first. This exclusion applies only to the extent that funds are kept separate and identifiable from other assets. Federal income tax returns, including refundable tax credits (EITC and Child Tax Credit) and over-withholding (tax refunds) are excluded as income and assets in the month of receipt and will continue to be excluded as an asset for 12 months from the date of receipt.
4. Value of any assistance paid with respect to a dwelling unit under the U.S. Housing Act of 1937, as amended; the National Housing Act; Section 101 of the HUD Act of 1965; or Title V of the Housing Act of 1949.
5. Disaster assistance payments (P.L. 100-707). This exclusion applies to federal disaster assistance and comparable state or local assistance.
6. All student financial assistance received under Title IV of the Higher Education Act of 1965, or under Bureau of Indian Affairs (BIA) student assistance programs is excluded from income and assets, regardless of use. Examples of Title IV Programs include, but are not limited to: Pell grants, State Student incentives, Academic Achievement Incentive Scholarships, Supplemental Educational Opportunities grants, Upward Bound, work-study programs.
7. Any portion of a grant, scholarship, loan, gift or fellowship received by an individual to pay the costs of tuition, fees or other necessary educational expenses.
8. German, Japanese, or Aleutian reparation payments.
9. Any increase in the value of excluded burial funds that are left to accumulate.
10. Netherlands reparation payments based on Nazi persecution during World War II.
11. Austrian Reparation Payments made under Sections 500-506 of the Austrian General Social Insurance Act.
12. Payments made to class members under the Factor VIII of IX Concentrate Blood Products lawsuit settlement. This exclusion applies only to the extent that funds are kept separate and identifiable.
13. Payments received under the Crime Victim Compensation Program that offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence (P.L. 103-322).
14. Payments made to individuals under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 (Public Law 106-398).

15. Achieving a Better Life Experience (ABLE) accounts which are established for individuals who meet the Social Security Administration's definition of disabled or the individual has a certification of disability from their physician prior to age 26. Verification must be requested if:
- questionable, or
  - value of ABLE account exceeds \$100,000, or
  - value of combined assets exceeds the program limit.

Note: In order for these payments and benefits to be excluded from resources, such funds must be segregated and not commingled with other countable resources so that the excludable funds are identifiable.

**1640.0594 Long-Term Care Insurance Partnership Payments (MSSI)**

This policy applies to the Medicaid Institutional Care Program (ICP), Home and Community Based Services, Hospice, and Program for All-inclusive Care for the Elderly.

An individual who is a beneficiary of a qualified state Long-Term Care (LTC) Insurance Partnership Policy will have a portion of their total countable resources disregarded when evaluating their Medicaid eligibility for the programs listed above. The disregarded portion is equal to the actual amount of LTC insurance partnership benefits paid out to or on behalf of the individual by the company. The resource disregard will continue to apply for the duration of the individual's Medicaid coverage.

For example, an individual has countable resources of \$61,000 and reports that his LTC Insurance Partnership Policy paid out \$60,000 toward his nursing home bill. The individual's countable resources are reduced by \$60,000 and the remaining \$1,000 is considered countable in the eligibility determination.

The resource disregard is protected from estate recovery. Complete and send a Third Party Recovery Transmittal (CF-ES 2356) to notify the Agency for Health Care Administration's Third Party Liability vendor of the amount to be disregarded for estate recovery purposes. If the individual will continue to receive the LTC insurance benefits, determine if the payments will be considered income to the individual or a third party source. If the recipient directly receives the insurance payments, follow instructions in manual passage 1840.1007 to determine if the payments are considered income to the individual. If the insurance benefits are paid to the nursing home, exclude the payments under 1840.0118 as a third party source that the provider must bill prior to billing Medicaid.

**Verification Requirements:**

Not all long-term care insurance policies are a qualified LTC Insurance Partnership Policy. Eligibility staff must request documentation at the time of application to verify the:

- policy is a qualified LTC Insurance Partnership Policy, and
- total amount of long term care benefits paid out to or for the applicant.

The insurance company may use the approved Office of Insurance Regulation Form (OIR-B2-1781) or a similar form developed by the insurance company.

**1640.0595 Continuing Care Entrance Fee (MSSI)**

The following policy applies to individuals applying for ICP, institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services Programs or PACE on or after November 1, 2007. Do not apply the policy to recipients who were eligible for Medicaid prior to November 1, 2007 and have no break in eligibility.

An entrance fee paid by an individual upon admission into a continuing care retirement community (CCRC) or life care community is considered an asset when all of the following conditions are met:

1. The individual has the ability to use the entrance fee when their income and assets are insufficient to pay for their care.
2. The entrance fee (or any remaining portion) is refundable when the individual dies or terminates the contract with the CCRC or life care community.
3. The entrance fee does not confer an ownership interest in the CCRC or life care community. Examples of ownership interest include circumstances where all or part of the entrance fee is used to purchase an apartment, condominium or cooperative unit within the CCRC.

When all three of the above conditions are met, count the maximum refund that could be available to the individual as an available asset regardless of whether the refund is actually received.

Request and review the CCRC or life care community contract. Forward the contract to the Circuit Legal Counsel, if necessary. If it is determined the potential for a refund exists, accept the CCRC's statement as to the amount of the refund.

#### **1640.0600      TRANSFER OF ASSETS (MSSI)**

At application and eligibility reviews, individuals must provide information regarding assets transferred prior to the application or eligibility review. The time periods for asset transfers and the specific policy for transfer of assets vary by program.

#### **1640.0606      Transfer of Assets and Income (MSSI)**

Apply transfer of assets and income policy to the Institutional Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services Programs (HCBS), and the Program for All-Inclusive Care for the Elderly (PACE). Apply this policy to transfers made by SSI-Direct Assistance (cash) recipients applying for these programs as well as non-SSI recipients.

**Note:** Do not apply transfer policy to Community Hospice, ICF/DD, state mental hospital programs or other SSI-related community Medicaid Programs.

A transfer occurs when an individual, their spouse, a legally authorized representative, or a joint owner of a jointly held asset does not receive fair compensation when:

1. disposing of an asset (by selling it or giving it away) or decreases the extent of the individual's or spouse's ownership interest in an asset; or
2. decreasing the value of a countable asset in the process of converting it to an excluded asset.

When an asset or income is disposed of or transferred for less than fair market value within the transfer look-back period, the individual may be ineligible for Medicaid nursing facility services and HCBS services for a specified period of time.

A transfer is presumed to be made for the purposes of obtaining Medicaid eligibility and a period of ineligibility will be imposed unless the individual presents convincing evidence of one of the following:

1. the individual intended to dispose of the assets either at fair market value (FMV) or in exchange for other valuable compensation (for example, support and/or maintenance); or
2. the asset was transferred solely for reasons other than to become eligible for Medicaid; or
3. the transfer was considered allowable under policies in passages 1640.0609.03, 1640.0609.04, 1640.0610, 1640.0611 or 1640.0612; or
4. all of the assets transferred for less than fair market value have been returned to the individual (refer to passage 1640.0620); or
5. imposing the transfer penalty on the individual would place an undue hardship on the individual (see passage 1640.0613).

If a person is ineligible due to the uncompensated value of a transfer, they are ineligible for Medicaid nursing facility, HCBS or PACE services. However, they are entitled to regular Medicaid benefits if they meet all other factors of eligibility (including level of care). This coverage group is identified as "MI T" on the FLORIDA system.

**Note:** Continue to verify all other factors of eligibility while exploring the possibility that a transfer of assets without fair compensation occurred. If assets are transferred on or after 11/1/07, do not deny ICP for a transfer of assets if there is any other reason the individual does not qualify for a long term care program. The individual must be determined eligible on all factors, including placement and level of care, before a transfer penalty may be imposed.

#### **1640.0607 How to Determine if a Transfer Penalty Applies (MSSI)**

If an individual, their spouse, a legally authorized representative or a joint owner of a jointly owned asset disposes of an asset or income without receiving fair compensation, the individual may be ineligible for Medicaid nursing home care services, Home and Community Based Services (HCBS), or Program for All-Inclusive Care for the Elderly (PACE) for a period of time. Refer to Appendix A-8 for determination steps.

#### **1640.0608 Transfer Look-Back Period (MSSI)**

You must consider any transfer that occurred within the transfer look-back period prior to the date of application or anytime after applying. The look-back period begins with the month of application, counting backwards. Each transfer must be evaluated to determine if fair compensation was received and if not, to evaluate if a period of ineligibility must apply.

The look-back period for non-trust transfers is 60 months.

#### **1640.0609.01 Identifying Potential Transfers of Assets or Income (MSSI)**

Applicants may declare transfers on the application and unreported transfers may be discovered during application processing or the annual review. At application for ICP, ICP-Hospice, HCBS or PACE, ask all applicants if they (or their spouses if applicable) have transferred any assets within the look-back period preceding the month of application. At review, explore transfers that may have occurred over the course of the year, such as a homestead that was excluded at application.

The following list indicates the most common clues to potential transfers of assets:

1. unidentified withdrawals from bank accounts;
2. tax assessor online pages showing change in ownership of property;
3. quit claim deed to property with recent signature date;
4. unidentified deposits on financial statements;
5. data exchange responses for sources not on record;
6. purchase of annuities;
7. promissory notes and mortgages received in exchange for cash or property;



8. formal and informal loans made to others;
9. purchase of personal services or care contract;
10. purchase life estate interest;
11. assets declared at application not included on the Interim Contact Letter; and
12. funds placed in a trust.

Evaluate all the above situations and all other transactions that change an asset from potentially countable to excluded, including transfer of ownership interest in a home that was previously excluded as an asset. A homestead is still subject to a transfer of asset penalty, even if it could be/have been excluded prior to the transfer.

#### **1640.0609.02 Transfers to Annuities Prior to 11/1/07 (MSSI)**

Annuities are a type of retirement fund providing income after an individual retires. Most are set up in advance of retirement as part of the person's retirement plan. Others are set up shortly before an individual applies for Medicaid services and are a means to shelter the individual's assets to qualify for Medicaid assistance. To avoid penalizing annuities validly purchased as part of a retirement plan, but to capture those annuities sheltering assets, you must evaluate an annuity purchased within the look-back period to determine if the annuity is actuarially sound. Actuarially sound means the individual can expect to receive fair compensation from the fund within their lifetime. If the retirement fund is actuarially sound, no transfer of assets or income has occurred. If the individual cannot expect to receive a fair return in their lifetime, the establishment of the account must be regarded as a transfer of assets or income.

**To determine if an annuity is actuarially sound use the following instructions:** If the average number of years of expected life remaining for the individual equal or exceed the life of the annuity (or other retirement fund), fair compensation is received. If the individual is not expected to live at least as long as the guarantee period of the annuity, then the individual may not have received fair market value for the annuity. In this case, a transfer of assets for less than fair market value may have taken place, subjecting the individual to a period of ineligibility.

The penalty must be based on the uncompensated value of the transfer of assets that is considered to have occurred at the time the annuity (or other retirement fund) was purchased.

**Example 1:** Mr. Jones (age 65) purchases an annuity to be paid over the course of 10 years. According to the life expectancy tables, his life expectancy is 16.15 years. The annuity is considered actuarially sound and there is no uncompensated value.

**Example 2:** Mr. Smith (age 80) purchases the same annuity, also to be paid over 10 years. His life expectancy is only 8.94. Since Mr. Smith's life expectancy is less than the payout of the annuity, the annuity is not actuarially sound and he did not receive fair compensation.

**To determine if the individual will receive a fair market return in his lifetime on an annuity or other retirement fund, use the life expectancy tables in Appendix A-14, and the following instructions:**

**Step 1:** Calculate the compensation the individual is expected to receive in his lifetime by computing the individual's annual income from the annuity and multiplying by the individual's life expectancy. Use the life expectancy factor corresponding to the individual's age at the time the annuity (or retirement fund) was purchased (i.e., the time of the transfer). (If a couple is involved, use the life expectancy factor for the spouse who is receiving the retirement payments.)

**Step 2:** Determine the uncompensated value by subtracting the compensation the individual expects to receive in his lifetime from the annuity (the result of step 1) from the total amount put into the annuity. The result is the uncompensated portion of the annuity (or other retirement fund) which the individual cannot reasonably expect to receive in his lifetime.

**Step 3:** If there is no uncompensated value, the annuity is actuarially sound and no transfer of assets penalty applies. If there is uncompensated value, proceed by following all standard transfer of asset procedures, including the opportunity to rebut the reason for the transfer.

#### **1640.0609.03 Transfers to Annuities on or After 11/1/07 (MSSI)**

This policy applies to ICP, institutionalized MEDS-AD, institutionalized Hospice, HCBS Programs and PACE.

#### **Applicant's or Recipient's Annuity**

The purchase of an annuity on or after 11/01/2007, and within the look-back period, by an individual (or his representative) will be considered a transfer of assets for less than fair compensation unless the annuity meets all of the following requirements:

1. Names the state of Florida, Agency for Health Care Administration (AHCA), as the primary beneficiary, for the total amount of medical assistance paid on behalf of the individual, except for when the individual has a spouse or minor or disabled adult child. In this case, the state shall be named as secondary beneficiary after the spouse and/or the minor or disabled child.

**Note:** If the spouse or minor/disabled child disposes of their primary remainder beneficiary interest for less than fair market value (for example, transferred their interest to someone who does not meet the criteria), AHCA must be named primary beneficiary or the individual will be subject to a transfer of asset penalty.

2. Is irrevocable and nonassignable.
3. Makes payments (that include both principal and interest) to the individual in equal amounts during the term of the annuity, with no balloon or deferred payments.
4. Is actuarially sound based on the actuarial tables used by the Social Security Administration, (refer to Appendix A-14).

If the annuity meets all of the above criteria, funds in the annuity are excluded as a resource and the periodic payments are counted as income in the eligibility determination and patient responsibility.

If all of the requirements above are not met, the total amount of funds transferred into the annuity is considered a transfer without fair compensation, except when the annuity is revocable or assignable. When the annuity is revocable, count as an asset the amount the purchaser would receive from the annuity issuer if the annuity is cancelled. When the annuity is assignable, count as an asset the amount the annuity can be sold for on the secondary market.

Certain transactions that occur on or after 11/01/2007 make an annuity (including an annuity purchased before 11/01/2007) subject to the transfer of assets provisions. The transactions include such actions as additions of principal to an existing annuity or electing to annuitize an existing annuity.

**Exception:** Certain Individual Retirement Accounts (IRAs) or annuities that were established by an employee or their employer are not considered under the transfer of assets provisions and do not have to meet the above criteria. These include such financial vehicles as an individual retirement annuity, a simplified employee pension or a Roth IRA.

#### **Community Spouse's Annuity**

The purchase of an annuity on or after 11/01/2007 (and within the look-back period) by the community spouse of an applicant of ICP, institutionalized MEDS-AD, institutionalized Hospice, HCBS Programs and PACE will be considered a transfer of assets for less than fair compensation unless the annuity meets the criteria below:

1. Names AHCA as the primary beneficiary for the total amount of medical assistance paid on behalf of the applicant/recipient spouse, except for when the spouse has a minor or disabled child. In this case, AHCA shall be name as secondary after the minor or disabled child.
2. Is actuarially sound based on the spouse's age on the actuarial table used by the Social Security Administration (Refer to Appendix A-14).

Community spouse annuities that are revocable or assignable shall count as an asset, in the same manner as an applicant's/recipient's annuity counts, as indicated above.

Annuities purchased by the community spouse after approval of long-term care Medicaid for the applicant spouse are not evaluated for transfer of assets provisions.

### **Evaluating Annuities**

At application, when an individual indicates ownership interest in an annuity, request a copy of the annuity contract and evaluate the annuity using the Evaluating Annuities job aid (Appendix A-34) to determine if the annuity will be subject to transfer of asset provisions. For annuities that name AHCA as beneficiary, send a copy of CF-ES 2355, Letter to Annuity Issuers (along with a copy of the contract) to the annuity company. At each annual review, send form CF-ES 2355 to the annuity issuer to solicit information about any changes that might have occurred during the year. Any time an issuer reports a change to the individual's (or spouse's) annuity, evaluate the change to determine if it subjects the annuity to transfer of asset provisions.

### **AHCA Notification**

The Agency for Health Care Administration must be notified of annuities that name the state as beneficiary. Using Form CF-ES 2356, eligibility staff must forward to the AHCA Third Party Liability (TPL) vendor a copy of each annuity that names the state as beneficiary.

When eligibility staff becomes aware of the death of an individual whose annuity was forwarded to the AHCA TPL vendor, eligibility staff must notify the TPL vendor of the individual's death to assist them in collecting beneficiary proceeds from the annuity.

### **1640.0609.04 Allowable Transfers - Homestead Property (MSSI)**

The transfer of a homestead is considered allowable if the individual transfers his home to his spouse or any of the following relatives:

1. His legal spouse
2. A child under 21
3. A blind or permanently disabled adult child (Receipt of SSI or Title II Social Security disability is acceptable proof of disability. Otherwise a disability decision must be obtained in all situations, including adult children over 65. These policies apply to all blind/disabled adult children.);
4. A sibling of the individual who has an equity interest in the home and was residing in the home for at least one year immediately before the individual became institutionalized (the

eligibility specialist must accept the sibling's statement unless there is reason to question); or

5. An adult son or daughter of the individual who was residing in the home for at least two years immediately before the date the individual became institutionalized and who provided care to the individual that delayed the individual's institutionalization (the eligibility specialist must accept the son/daughter's statement unless there is reason to question).

If the home is transferred to any individual not listed above, the transfer of assets policy is developed. The individual must be given the opportunity to rebut and gather data on the compensation received from the transfer.

#### **1640.0609.05 Allowable Transfers (MSSI)**

The following transfers are considered "allowable" and no period of ineligibility will be imposed:

1. Transfers by individuals who are not applying for or receiving ICP, institutionalized MEDS-AD, institutionalized Hospice, HCBS, or PACE;
2. Transfers of assets which are excluded because they are not marketable;
3. Transfers of life estate in property previously owned by the individual;
4. Transfers where fair compensation is received. An example would be assets used to make a purchase for an applicant or recipient or used to pay (or repay) a valid debt equal to the fair market value of the asset. In order for the debt to be considered a valid debt, it must be a legally enforceable debt. An informal loan will be considered to be a valid debt provided it meets the criteria for a bona fide loan set forth in passage 1640.0560.01 and 1640.0560.02.
5. A transaction in which an individual makes burial arrangements with a funeral director and places funds in a burial trust is considered a purchase.
6. Transfers to the individual's blind or disabled child (adult or minor) or to a trust described in passage 1640.0576.08, established solely for the benefit of the individual's disabled adult child;
7. Transfers to a trust (including a qualified trust for the disabled, as described in passage 1640.0576.08) for the sole benefit of a disabled individual under age 65;
8. Transfers of the individual's income to a qualified income trust (see passages 1840.0110 and 1840.0111);
9. Interspousal transfers made on or after October 1, 1989;
10. Transfers of assets to a third party by the individual applying for nursing home care (ICP, institutionalized MEDS-AD, institutionalized Hospice) or HCBS Programs or by the individual's spouse, if the third party intends to use the funds for the sole benefit of the individual's spouse (see passage 1640.0609.06);
11. Transfers of excluded assets other than homestead or real property excluded from countable assets due to a bona fide effort to sell; and

**Note:** Transfer of homestead property is allowable if it meets the criteria as set forth in 1640.0609.03.

12. Transfers made by the spouse of an HCBS individual of any of the spouse's individually owned assets.

**1640.0609.06 Definition of Disability (MSSI)**

When an allowable transfer is alleged to have been made to a disabled individual (per policy in 1640.0609.04), you must determine if the individual meets the definition of disability used by the SSI Program.

Disability must be determined according to standard procedures. That is, if the person receives Social Security disability or SSI benefits, he is considered disabled for Medicaid purposes. If he does not, the District Medical Review Team (DMRT) must make an independent determination to evaluate if the individual meets the disability criteria.

**1640.0609.07 Definition of "For the Sole Benefit of" (MSSI)**

In order for the transfer to be considered to be for the sole benefit of the spouse, the individual's blind or disabled child, or a disabled individual under age 65 (and not be subject to a transfer penalty), there must be a written transfer document which legally binds the parties to a specific course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer.

The transfer instrument or document must provide that:

1. no individual or entity except the spouse, the individual's disabled child, or the disabled individual under age 65 can benefit from the assets or income transferred in any way either at the time of the transfer or at any time in the future; and
2. the spending of the funds involved for the benefit of the individual is actuarially sound based on the life expectancy of the individual involved; that is, the individual must be able to receive fair compensation or return of the benefit of the transferred asset during his lifetime. (Follow instructions in 1640.0609.02 and use life expectancy tables in Appendix A-14 to determine if the person will receive fair compensation in his lifetime.)

If the transfer instrument or document does not meet these requirements, it cannot be considered a transfer for the sole benefit of the spouse, the blind or disabled child, or disabled individual and any potential exemption from penalty or consideration for eligibility purposes is void. In this case, you need to compute the uncompensated value of the transferred funds, notify the individual and give him the opportunity to rebut the presumption that the transfer was done to become Medicaid eligible.

**Note:** There are two issues to consider. An individual who transfers assets to someone else for the sole benefit may not incur a transfer penalty if the transfer meets the above two criteria. For the individual who receives the transferred asset, the asset may or may not count. Assets transferred to a third party in the form of a trust for the sole benefit of the spouse must be evaluated under trust policies. To qualify as being for the sole benefit of the spouse, the assets must be able to be paid to or for the benefit of the spouse over the spouse's lifetime. Assets transferred to a trust for the sole benefit of the spouse count as an available asset to the spouse and must be included in the couple's countable assets.

**1640.0609.08 Promissory Notes Signed On or After 11/1/07 (MSSI, SFP)**

Promissory notes, loans and mortgages signed on or after November 1, 2007 will be considered transfers of assets without fair market compensation to become Medicaid eligible unless the promissory notes, loans, or mortgages meet all of the following criteria:

1. the repayment term is actuarially sound in accordance with the Life Expectancy Tables used by the Social Security Administration (Refer to Appendix A-14).
2. payments must be made in equal amounts during the term of the loan with no deferral and no balloon payments being possible; and
3. debt forgiveness is not allowed.

If the above criteria are not met, for purposes of transfer of assets, the value of the promissory notes, loans or mortgages will be the outstanding balance due as of the date of application for long-term care services.

#### **1640.0610 Interspousal Transfers after Approval (MSSI)**

This policy only applies to nursing home cases (ICP, institutional MEDS-AD, or institutionalized Hospice). It does not apply to Home or Community Based Services (HCBS), Program for All-Inclusive Care for the Elderly (PACE), or Community Hospice.

In determining initial eligibility of an institutionalized individual with a community spouse, the eligibility specialist must consider all countable assets of the institutionalized person and their legal spouse (refer to 1640.0205; 1640.0314.01). A portion of the couple's total countable assets is attributed to the community spouse and not counted when determining the institutionalized spouse's eligibility for Medicaid nursing home services. This portion is known as the community spouse's asset allowance, which are the assets the community spouse may keep to help meet their needs in the community. After the community spouse's asset allowance is subtracted from the couple's total assets, any remaining assets are considered countable assets to the institutionalized individual. The institutionalized individual's eligibility depends on whether or not these remaining assets are within program standards.

After approval of Medicaid nursing home services, assets which are attributed to the community spouse but remain in the institutionalized spouse's name are not considered available to the institutionalized spouse if the assets are transferred to the community spouse before the next scheduled complete redetermination. The FLORIDA system generates an alert for the eligibility specialist to check on the transfer 90 days following approval.

At the time of approval, the couple and the legally authorized representative must be advised of the need to transfer assets remaining in the institutionalized spouse's name (which are part of the community spouse's asset allowance) to the community spouse. Such transfers are allowed and no penalty can be imposed.

Partial reviews must be scheduled on a quarterly basis to check on the status of the transfers and to remind the couple or the legally authorized representative of the necessity to transfer excess assets (over the applicable program limits) to the community spouse. All necessary transfers should be completed as soon as possible after approval to assure such assets will not cause the individual to become ineligible for Medicaid assistance at the time of the annual review.

Failure to transfer assets to the community spouse before the next scheduled redetermination must not be reported as overpayment.

#### **1640.0611 Transfers by Community Spouse (MSSI)**

Transfer of assets between spouses does not affect eligibility. Transfer of assets to a third party by the spouse of the individual applying for nursing facility services prior to the approval of the institutional spouse's eligibility are subject to the transfer of assets penalty. However, if the third party intends to use the funds for the sole benefit of the community spouse, it is not counted as a transfer (refer to 1640.0609.06), but may or may not continue to count as an available asset.

After the individual has been determined eligible for Medicaid nursing facility, institutional Hospice, HCBS or PACE services, transfers of assets owned by the community spouse (or ineligible spouse) will not affect eligibility of the institutionalized spouse provided included assets were within the applicable limit at the time of application disposition.

**1640.0612 Assets Transferred Due to Court Ordered Support (MSSI)**

For ICP, institutionalized MEDS-AD, institutionalized Hospice, HCBS, or PACE when a court has entered an order against an institutional spouse for the support of the community spouse or family member, there will be no penalty imposed due to assets transferred to comply with the court order.

**1640.0613 Processing Transfer Cases (MSSI)**

Evaluate all transfers of assets or income that occur within the look-back period to determine the following if the:

1. transfer is legally binding; and
2. individual has any remaining ownership in the asset; and
3. individual received fair compensation.

If the individual would have been eligible if the asset was kept, you may assume the he did not transfer the asset(s) to become eligible. In other words, if the total countable resources, including the transferred amount, were below the program limits after considering all applicable exclusions and asset allocations at the time of transfer, no transfer penalty may be imposed.

When an asset that affects eligibility is transferred, you must determine if the individual received fair compensation for it. If the individual received fair compensation, there is no need to apply transfer policy. If the individual did not receive fair compensation, you must:

1. presume the transfer was for the purpose of becoming Medicaid eligible, and
2. determine the amount of the uncompensated value.

Explain to the individual the presumption that the transfer was for purposes of becoming Medicaid eligible and may result in a period of ineligibility. Notify the individual in writing (via the system generated transfer notice or by using CF-ES 2264, Notice of Determination of Asset (or Income) Transfer, offering the opportunity to rebut the presumption of transfer or claim an undue hardship (refer to 1640.0616 and 1640.0617 for additional information on rebuttal of presumption and undue hardship).

The Notice of Determination of Asset or Income Transfer tells the individual to contact the eligibility specialist within 15 days to discuss the transfer. If contacted by the individual, designated representative, or legal representative, use form CF-ES 2264A, Rebuttal/Undue Hardship Questionnaire, as a guide to interview the individual and record the individual's statement on the form.

Request from the individual any additional documentation (such as legal documents, financial statements, realtor agreements, relevant correspondence, statements from other individuals) needed to substantiate the individual's statements during the interview.

Evaluate the questionnaire and any supporting documentation presented for rebuttal and if necessary, undue hardship, using form CF ES 2357, Rebuttal/Undue Hardship Evaluation, and form instructions. Complete Part I (Rebuttal Evaluation) in coordination with the supervisor. If rebuttal is successful, complete the application and do not apply a penalty period.

If rebuttal is not successful, complete Part II (Undue Hardship Evaluation) and forward the evaluation form and documentary evidence to the Region or Circuit Program Office for review and

signature approving or denying hardship. All undue hardship claim evaluations must be reviewed by the Region or Circuit Program Office.

The evaluation must be completed within 10 calendar days following the interview date, not considering client delay days. The Region or Circuit Program Office will communicate the decision to the eligibility specialist and return all documents. The eligibility specialist will complete the case on FLORIDA based on the outcome of the evaluation.

A period of ineligibility is not imposed if the individual successfully demonstrates the following:

1. the asset was transferred solely for reasons other than to become Medicaid eligible; or
2. the individual intended to dispose of the assets either at fair market value or in exchange for other valuable compensation; or
3. the transfers are considered allowable per policies in 1640.0609.04 and .05, 1640.0610, 1640.0611 and 1640.0612; or
4. all transferred assets were returned to the individual (see 1640.0620); or
5. imposing the period of ineligibility would place an undue hardship on the individual.

#### **1640.0613.01 Property Transferred and Life Estate Retained (MSSI)**

If an individual transfers ownership in property but retains a life estate interest, the uncompensated value depends on the type of life estate the individual retains.

If an individual retains regular life estate, determine the transferred amount by multiplying the fair market value of the property at the time of the transfer by the remainder interest factor in the life estate/remainder interest table (Appendix A-17) using the individual's age at the time of the transfer. The result is the amount of the transfer.

If an individual retains life estate using a lady bird deed or life estate with powers, no transfer has occurred. The individual retains full ownership powers in the property and it is only upon their death that the property transfers ownership to the remainderman.

#### **1640.0613.02 Purchase of Life Estate (MSSI)**

If an individual purchases regular life estate in property they have not resided in for at least a year prior to nursing home admission, a transfer has occurred equal to the full amount paid for the life estate.

If an individual purchases regular life estate and lives in the property for at least a year prior to entering a nursing home, a transfer has occurred, but the transfer amount is reduced by the value of the life estate interest. Determine the value of the life estate by multiplying the fair market value of the property as the date of the purchase by the life estate factor (based on the age of the individual as of the date of purchase) from the life estate/remainder interest table in Appendix A-17. Deduct the value of the life estate from the amount the individual paid for it. The remainder is the amount of the transfer.

If an individual purchases a lady bird life estate or life estate with powers, this gives them full rights to the property, including the right to sell. The compensation received is equal to the fair market value of the property less any indebtedness or restrictions that may reduce the actual value.

#### **1640.0614.01 Value of Compensation Received (MSSI)**

A determination of the value of compensation received must be made based on the agreement and expectation of the parties at the time of transfer or sale, if earlier. The value of compensation is the gross amount paid or agreed to be paid by the purchaser. Expenses attributed to the sale do not reduce the value. Compensation may be received in one or more forms as described in passages 1640.0614.02-1640.0614.04.



**1640.0614.02 Compensation in Cash (MSSI)**

Compensation in the form of cash is the total amount paid or agreed to be paid, if greater, in exchange for the asset. The eligibility specialist must obtain documentary evidence when available (for example, bill of sale, contract, receipts, and the like) or statements from the eligible individual and the person(s) to whom the property was transferred to establish the amount of cash compensation received.

**1640.0614.04 Compensation in Support or Services (MSSI)**

Compensation in the form of support and/or maintenance or services is based on:

1. the FMV,
2. the support or services at the time of asset transfer, and
3. the frequency/duration of the support or service.

In order for compensation to be considered, a statement and any related documentation must be obtained from the person(s) to whom the property was transferred to establish the FMV of the support and/or maintenance provided if:

1. the intent is for a specified period, the actual length of time the support or service is provided is used;
2. services are to be performed on an "as needed" basis, or for an interim period, the statement must include the individual's expectation as to the frequency of the services and the basis for that expectation; and
3. the support or services are to be provided for the life of the individual, using the life expectancy tables in Appendix A-14.

To establish the value of support and maintenance for the individual's life, use the following formula:

Multiply the yearly fair market value (FMV) of the support and/or maintenance times the life expectancy factor corresponding to the individual's age (as of the last birthday) at the time the asset was transferred.

Contact with an outside source in the same locality will usually be necessary to determine value. The case record must:

1. state how the value was determined; and
2. include a copy of the agreement or a statement from the person receiving the transferred asset showing the type, frequency, and duration of the support or services.

**1640.0615 Uncompensated Value/Notifying the Individual (MSSI)**

Whenever the individual disposes of income or assets within the transfer look-back period and does not receive fair compensation, he is potentially ineligible for Medicaid institutional care, HCBS, or PACE for a period of time. The ineligibility period is dependent on the amount of the uncompensated value of the transferred funds.

The uncompensated value (UV) of the transferred funds is determined by subtracting the compensation received after the transfer from the fair market value of the transferred asset or income at the time of the transfer (less any outstanding loans, mortgages or other encumbrances on the asset).

Whenever the UV exceeds the average monthly private pay nursing home rate (refer to Appendix A-35), the individual is potentially ineligible for at least one month of nursing home care or HCBS. You must send CF-ES Form 2264 to the individual to offer him the opportunity to dispute the presumption that the asset was transferred to establish eligibility.

Notification of uncompensated value due to transfers of income or assets is not required and the application may be processed immediately if:

1. the individual is ineligible for other reasons; or
2. the total uncompensated value of the transferred assets is less than the private nursing home rate; or
3. the period of ineligibility has elapsed; or
4. the transfer was considered allowable.

When notification is required, you must allow the individual the full 15 days to respond to the rebuttal notice. If the individual does not respond within 15 days, the uncompensated value must be considered in determining eligibility.

You must record the individual's written statement or remarks on CLRC.

#### **1640.0616 Rebuttal of Presumption (MSSI)**

To rebut the presumption that the transfer was for the purpose of becoming Medicaid eligible, the individual must establish that the transfer was done exclusively for some other purpose than establishing eligibility. If the individual had some other purpose for transferring the asset but establishing eligibility was a factor in the decision to transfer the asset, the presumption is not successfully rebutted.

The presence of one or more of the following factors may indicate that assets were transferred exclusively for some purpose other than establishing eligibility:

1. Total included assets were below the asset limit at all times from the month of transfer through the present month even if the transferred asset had been retained.
2. A court ordered transfer.
3. Exploitation (another person stole the funds of the individual).

This list is not all inclusive.

#### **1640.0617 Undue Hardship (MSSI)**

When application of the transfer of assets or income provisions discussed in this chapter would cause an undue hardship on the applicant/recipient, the transfer provisions do not apply.

To successfully establish undue hardship, the individual or their designated representative or legal representative must claim and demonstrate the Medicaid applicant/recipient would be deprived of medical care to such an extent that their life or health would be endangered, or that the individual would be deprived of food, clothing, shelter or other necessities of life if determined ineligible for Medicaid long-term care services.

Endangerment exists when the absence of medical care, shelter, food, or clothing will cause acute symptoms of such severity that will result in serious jeopardy to the health of the individual or serious impairment of bodily functions or serious dysfunction of a bodily organ or part. Endangerment must be documented by a medical doctor with knowledge of the applicant/recipient's medical condition at the time of the potential application of the penalty period.

A nursing facility may request an undue hardship waiver on an applicant/recipient's behalf, with the consent of the individual or their designated representative.

**1640.0618 Period of Ineligibility (MSSI)**

When the presumption that a transfer was made to become Medicaid eligible is not successfully rebutted and the hardship claim denied, determine the period of ineligibility.

The penalty period depends on:

1. the amount of the Uncompensated Value (UV),
2. when the transfer occurred, and
3. the average private nursing home cost at the time of application or discovery of the transfer.

The following basic formula is used to determine the period of ineligibility on all applicable cases:

Uncompensated value divided by the average private nursing home rate equals the number of months of ineligibility.

**For assets transferred before 11/1/07:** Add all uncompensated values together that occur in the same month. Determine the potential penalty period for each month's total UV, rounding down to the nearest whole month. Where assets have been transferred in amounts and/or frequency that would make the calculated penalty period of one month overlap the penalty period of another, the values of all assets from months with overlapping penalty periods are added together and divided by the average cost of private nursing home care.

Where multiple transfers are made in such a way that the penalty periods for each would not overlap, each transfer is treated as a separate event with its own penalty period.

**For assets transferred on or after 11/1/07:** Add together the uncompensated value of all assets transferred on or after 11/1/07 to obtain the total value of transferred assets and divide the total by the current average private nursing home rate.

Fractional penalty periods apply for transfers made on or after 11/1/07. Do not round down the result. Convert the fraction of a penalty period month to days by multiplying the fraction by 30. The penalty period will be in months and days.

**For transfers regardless of date of transaction:** If an institutionalized individual is ineligible for assistance due to a transfer of assets or income by the community spouse and the community spouse becomes eligible for ICP, HCBS, or PACE, any remaining period of ineligibility must be apportioned between spouses. This will be done by dividing any new or remaining penalty periods by two and attributing to each spouse. Any odd months may be attributed to the spouse that caused the penalty or attributed according to the couple's (or their representative's) wishes.

The current average private nursing home rate is used for all transfers, regardless of when the transfer occurred. There is no limit on the number of months of ineligibility.

**1640.0619 Uncompensated Value Months (MSSI)**

After establishing a period of ineligibility exists using the policy in 1640.0618, determine when to begin the penalty period.

**Penalty begin date for uncompensated transfers made before 11/1/07:**

1. For transfers in months that have no overlapping penalty periods, begin the penalty the month the transfer occurred.
2. For months the potential penalty periods overlap by at least one month, use the first transfer date as the date of transfer for all transfers made prior to 11/1/07.

**Penalty begin date for uncompensated transfers made on or after 11/1/07:** For all uncompensated transfers made on or after 11/1/07, begin the penalty period with the latter of the following dates:

1. The first day the individual would be eligible for long term Medicaid were it not for imposition of a transfer penalty (includes filing an application and meeting all criteria). or
2. The first day of the month the individual transfers the assets. or
3. The first day following the end of an existing penalty period.

The individual must file an application and be determined eligible on all factors except for the transfer of assets in order for the penalty to apply.

**Note:** Do not deny the case for a transfer reason if the individual fails to cooperate or is ineligible on any other factor.

**Reapplications:** If an individual reapplies before the end of an existing period of ineligibility, keep the original penalty period even if the transfer occurred before the look-back period applicable to this application. Once established, the penalty period continues even if there are breaks in eligibility.

**Note:** The period of ineligibility may be adjusted if the transferred asset is returned or additional compensation is received (see 1640.0620). This applies to assets transferred before, on, or after 11/1/07. When multiple penalty periods exist, allow one penalty period to expire before applying a subsequent penalty period.

#### **1640.0620 Adjustments to Penalty Period (MSSI)**

If all transferred assets or income are returned to the individual, the penalty period is eliminated. Eligibility must be evaluated with the returned assets included as though the individual had never transferred the asset or income. Returned assets or income must be counted as available according to standard policy when determining eligibility for retroactive months.

If the transferred asset or income is returned to the individual in part, the eligibility specialist must:

1. reduce the uncompensated value accordingly,
2. refigure the period of ineligibility,
3. evaluate the returned asset according to normal asset rules, and
4. count the returned asset as if it had been available in retroactive months.

If the individual receives additional compensation from the person who received the transferred asset or income, the eligibility specialist must:

1. document the compensation received,
2. refigure the uncompensated value and the penalty period,
3. evaluate the compensation received according to normal asset rules, and
4. count the compensation as if it had been available in the retroactive months.

#### **1640.0621 Case Recording of Transfers (MSSI)**

Record the following information on CLRC regarding exploration and development of transferred assets:

1. What assets were transferred and their Fair Market Value.
2. Compensation received, with a clear explanation of the determination.
3. Uncompensated value of each transfer and the total of all uncompensated values for a given month.
4. The date the transfer rebuttal/hardship notice was sent (or given) to the individual.

5. Evaluation of the rebuttal and hardship, and if successful, a clear explanation as to basis for determination.
6. Period(s) of ineligibility, including basis for determination, penalty start date(s) and end date(s).

**1640.0622 Complete Eligibility Reviews (MSSI)**

The transfer of asset provisions applies to reviews of currently eligible individuals. No special development is required in eligibility reviews unless you have reason to believe that the individual has transferred an asset. It is not necessary to redevelop transfers which occurred before the initial application or last eligibility reviews.

Transfer policies do apply to the following assets which were previously excluded as countable assets unless the property was transferred to an allowable relative according to 1640.0609.03 or transferred for a reason other than to remain Medicaid eligible:

1. transfers of homestead property, or
2. transfers of property excluded due to a bona fide effort to sell.

**1640.0623 Denial of Nursing Facilities Services (MSSI)**

Institutionalized individuals ineligible for ICP, institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services Programs or PACE, solely due to a transferred asset or the amount of their home equity are not eligible for Medicaid payment of nursing home or waiver services but can receive Medicaid payment of other services. Approve general Medicaid benefits if the individual meets all other factors of eligibility (including level of care).

**Note:** If the individual is ineligible for ICP, institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services Programs or PACE for any reason(s) other than the transferred asset or their home equity, the case must be evaluated to see if they are eligible under any other Medicaid coverage groups.