10. Land contracts;
11. Land leases;
12. Revocable burial funds;
13. Trust or guardianship funds;
14. Cash value of insurance policies;
15. A home;
16. Additional pieces of property;
17. Trailer houses;
18. Burial spaces;
19. Motor vehicles;
20. Life estates;
21. Farm and business equipment;
22. Livestock;
23. Poultry and crops;
24. Household goods and other personal effects;
25. Contents of a safe deposit box;
26. Tax refunds; ~~and~~
27. Elective share of a spouse's augmented estate; and
28. Revocable, assignable, or saleable annuity.

{Effective }

2-009.01 Verification of Resources: Before determining eligibility of an AABD/MA or SDP/MA client who does not receive SSI, the worker ~~shall~~ must verify and document in the case record all resources. The worker is not required to verify resources of an SSI recipient including a client who is determined eligible for 1619(b) status by SSI. For any retroactive or prospective month that an AABD/MA client is not in current pay status for SSI, the worker must verify resources. Verification of resources consists of but is not limited to the following information:

1. A description of the type of resource to include account or policy number(s), legal descriptions (for property), etc.
2. The location of the resource (i.e., name and address of the bank, insurance company, etc.);
3. Current value of the resource, encumbrances against the resource, and the resulting equity value (see 469 NAC 2-009.06);
4. Description of current ownership (see 469 NAC 2-009.03 ff.); and
5. Source of verification and the date the verification is obtained.

If the client or spouse of the client has a guardian, the worker may use the guardian's report to the court for verification. The guardian's report applies only to the period covered by the report. The worker ~~shall~~ must follow regular verification procedures if there is no guardian's report or the report does not coincide with the date of redetermination.

The worker ~~shall~~ must also note any additional information that may affect resource eligibility.

If the Central Office notifies the worker that there may have been a deprivation of resources by an SSI recipient, see 469 NAC 2-009.10.

2-009.02 Definition of Available Resources: For the determination of eligibility, available resources include cash or other liquid assets or any type of real or personal property or interest in property that the client owns and may convert into cash to be used for support and maintenance.

2-009.02C3 Assessment of Resources: Either spouse may request an assessment of their resources no earlier than the beginning of a period of continuous residence in a specified living arrangement. An assessment of resources may not be finalized and signed until a client has been in a specified living arrangement for 30 consecutive days or would have been except for death. A couple is allowed only one assessment. The worker must complete an Assessment of Resources listing all countable resources owned jointly or individually by the couple the ~~day~~ month the spouse entered the specified living arrangement. Resources owned the day of entry must be used if a transfer or sale of resources occurred during the month. The couple is allowed resource exclusions listed in 469 NAC 2-009.02B.

Ownership of ~~all excluded resources may be transferred to the community spouse, e.g.,~~ the home, one automobile, and all essential property (business property and $6,000 equity in non-business property used to produce goods for home consumption) may be transferred to the community spouse. Other resources transferred to the community spouse are limited to that spouse's protected resource amount. The alternate care spouse is not eligible for Medicaid if resources in excess of the protected amount have been transferred

If the community spouse transfers away any resource for less than fair market value, it is a deprivation of resources.

~~This is not considered a deprivation of a resource unless the community spouse transfers away ownership for less than fair market value.~~ See 469 NAC 2-009.10~~B~~ ff.

The worker must verify and document all resources declared by the couple. The couple or their representative has the primary responsibility for providing verification and documentation. The assessment must be completed within ~~45~~ 90 days from the request. ~~If the assessment has not been completed within 45 days, the worker must send a letter to the couple advising them why the assessment has not been completed. If the couple does not respond to the letter, but contacts the office at a later date, the worker must complete a new Assessment of Resources with the original date of entry into the specified living arrangement.~~

{Effective}

2-009.02C3a Appeal of Assessment: The Assessment of Resources notifies the couple that they may appeal the assessment of resources. The couple may appeal:

1. The value assigned to the resource(s); and
2. The amount reserved for the community spouse. If the couple show that the community spouse requires more than the limit, s/he may be allowed to reserve more.

In order to appeal, the alternate care spouse must apply for medical assistance, even if s/he has excess resources.

Note: Income from the institutionalized spouse must first be used before additional reserved resources for the community spouse may be considered.

Revocable Trust: A trust which can be revoked by the grantor. A trust which provides that the trust can only be modified or terminated by a court is considered to be a revocable trust, since the grantor (or representative) can petition the court to terminate the trust. A trust called irrevocable but which will terminate if some action is taken by the grantor is a revocable trust for purposes of these regulations.

Special Needs Trust: A trust containing the assets of a client age 64 or younger who is disabled and which is established for the sole benefit of the client by a parent, grandparent, legal guardian, or a court.

Testamentary Trust: A trust established through a will.

Trust: For purposes of these regulations, a trust is any arrangement in which an individual (grantor) transfers property to another person(s) (trustee[s]) with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated beneficiaries. The trust must be valid under state law and manifested by a valid trust instrument of agreement. A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

The term trust also includes any legal instrument or device that is similar to a trust for purposes of these regulations. It involves a grantor who transfers property to an individual or entity with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, irrevocable burial trusts, annuities, and other similar entities managed by an individual or entity with fiduciary obligations.

2-009.07A6b Testamentary Trusts: Testamentary trusts may be exluded as resources, depending on the availability of the funds to the individual or his/her spouse as specified in the terms of the trust.

2-009.07A6c Annuities

2-009.07A6c(1) Purchased or Annuitized Before February 8, 2006: ~~An annuity may be treated as a trust in that it is a legal entity created by a grantor for the benefit of a designated beneficiary(ies).~~ Where the client cannot ~~access the principal~~ assign or change the ownership or payee, the annuity is unavailable. A determination must then be made if a deprivation has occurred. If the expected return on the annuity is commensurate with the life expectancy of the client, the annuity can be deemed actuarially sound and no deprivation has occurred.

If the average number of years of expected life remaining for the client ~~do~~ does not coincide with the life of the annuity (i.e., the client is not reasonably expected to live longer than the guarantee period of the annuity), a deprivation has occurred. The look back period is the same for trusts, i.e., 60 months. See 469-000-212 ~~Life Expectancy~~ Period Life Tables.

2-009.07A6c(2) Annuity Transaction On or After February 8, 2006: ~~For long term care services (see 469 NAC 2-009.10B), an annuity transaction after February 8, 2006, is treated as a disposal of an asset for less than fair market value unless the State of Nebraska is named as the remainder beneficiary in the first position for at least the total amount of Medicaid expenditures paid, or is named as the remainder beneficiary in the second position after the community spouse and/or minor or disabled child. An annuity is also treated as a disposal of assets for less than fair market value unless it is irrevocable and non-assignable, actuarially sound, and provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments. This provision also applies to a community spouse.~~

~~The issuer of an annuity must notify the Department when there is a change in the amount of income or principal withdrawn from the annuity.~~

Revocable and assignable annuities are a countable resource. Saleable irrevocable and non-assignable annuities are a countable resource for the amount purchased or annuitized, less the amount of payments already received.

2-009.07A6c(2)(a) Annuities Excluded from Resources: An annuity which has been annuitized will be excluded from countable resources if it meets the following conditions:

1. The annuity is considered either an individual retirement annuity according to Internal Revenue Code (IRC) or a deemed Individual Retirement Account under a qualified employer plan by IRC; or
2. The annuity is purchased with the proceeds from a simplified employee pension; and
3. The annuity is irrevocable and non-assignable, the individual who owned the retirement account or plan is receiving equal monthly payments with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

The applicant or recipient must verify that the annuity meets these requirements.

2-009.07A6c(2)(b) Deprivation of Resources for Annuity Transactions: For long term care services (see 469 NAC 2-009.10B), an annuity transaction after February 8, 2006, is treated as a disposal of an asset for less than fair market value unless the State of Nebraska is named as the remainder beneficiary in the first position for at least the total amount of Medicaid expenditures paid, or is named as the remainder beneficiary in the second position after the community spouse and/or minor or disabled child. An annuity is also treated as a disposal of assets for less than fair market value unless it is irrevocable and non-assignable, actuarially sound, and provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments. This provision also applies to a community spouse.

The issuer of an annuity must notify the Department when there is a change in the amount of income or principal withdrawn from the annuity.

2-009.10 Deprivation of Resources: Any action taken by the individual, or any other person or entity, that reduces or eliminates the individual's or spouse's recorded ownership or control of the asset for less than fair market value (full value) is a deprivation of resources. The worker must verify the fair market value of the resource at the time the resource was disposed of and determine the equity value of the resource by taking into consideration any encumbrances against the resource.

This includes:

1. Recorded transfer of ownership of real property;
2. Not receiving the spousal share of an augmented estate;
3. Purchase of a life estate in another individual's home without meeting the 12-month requirement to reside there;
4. Promissory notes, loans, mortgages, and contract sales for less than fair market value and not enforced;
5. Purchase of an irrevocable, nonassignable annuity if Medicaid is not the preferred beneficiary and the annuity is issued on February 8, 2006, or later~~.~~;
6. Any transfer above the protected spousal reserved amount to a community spouse; and
7. Purchase of any contract or financial instrument, including an endowment or insurance, where the criteria for fair market value are not met.

~~Fair market value (full value) includes such considerations as the life expectancy of the client with equal monthly or annual payments commencing immediately during the term of the contract, recovery through default, and no exculpatory or cancellation terms of balance due.~~

The criteria for fair market value are not met when:

1. The term of the instrument exceeds the life expectancy of the applicable client(s);
2. The instrument does not provide for equal monthly or annual payments commencing immediately during the term of the contract;
3. The instrument does not provide for the recovery of assets in the event of default; or
4. The instrument contains exculpatory or cancellation terms of balance due.

A service given for free at the time cannot later be claimed as an amount owed.

When an asset is placed in an annuity on February 8, 2006 or later, see annuity ~~preferred beneficiary~~ regulations at 469 NAC 2-009.07A6c(2) ~~take precedence over deprivation regulations.~~

Trust regulations at 469 NAC 2-009.07A6 ff. take precedence over deprivation when an asset is placed in a trust.

When real property in which the individual has a life estate is sold, the individual or spouse must receive as a lump sum his/her life estate interest from the net proceeds, or the entire net proceeds invested and the individual(s) who has the life estate receives all the income.

2-009.10A Deprivation of Resources for a Grant: The worker needs to investigate for deprivation of a resource if an individual or an individual's spouse applies for or becomes eligible for a grant. For deprivation of resources for medical assistance, see 469 NAC 2-009.10B.

{Effective 6/18/2001}

a. Pell Grants (formerly called BEOG's);
b. Supplemental Educational Opportunity Grants (SEOG);
c. College work study;
d. Perkins Loans (formerly National Direct Student Loans);
e. Guaranteed student loans; (including PLUS loans and Supplemental Loans for Students);
f. State Student Incentive Grants (SSIG); and
g. Student assistance from the Bureau of Indian Affairs.

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13. Any portion of grants, scholarships, or graduate assistantships not listed in item 12 and actually used for items such as tuition, books, fees, equipment, special clothing needs, transportation to and from school, child care services necessary for school attendance, etc. Transportation costs are allowed if the client uses private transportation or the actual cost of public transportation. The client must provide verification of the expenses. Money received from the GI Bill, Veterans Administration under the Veterans Education and Employment Assistance Act for education expenses of a veteran, or BIA, is treated the same way. (This reference applies to undergraduate students, graduate students, and students working for a second undergraduate degree.)	13. Disregard.

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14. Any portion of a grant, scholarship, or funds paid out from a Veterans Education and Employment Assistance account not used for the items listed in number 13.	14. Consider as unearned income and prorate over the period for which it is intended to cover.

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15. Financial assistance for a graduate student <u>or a student</u> working for a second <u>undergraduate</u> degree if the student is required to work in order to receive the assistance. This includes work study, stipends, fellowships, and graduate assistantships.	15. Consider as earned income.

b. Insurance payments for damage to personal property	b. Disregard
35. Any assigned child/spousal support	35. Disregard.
36. Unassigned child support paid on behalf of an AABD child	36. Disregard 1/3 of the amount.
37. Subsidized adoption or subsidized guardianship payments from Title IV-E or child welfare funds	37. Disregard.
38. Income from the sale of blood or plasma	38. Consider as unearned income.
39. Agent Orange settlement payments	39. Disregard.
40. Loans	40. Disregard bona fide loans that must be repaid.
41. Veterans Assistance benefits received by the spouse of an SSI recipient if the spouse is applying for or receiving AABD/MA	41.a. Disregard the amount of VA benefits, if any, that are budgeted by SSI to the SSI spouse. b. Consider as unearned income the remainder on the AABD/MA budget of the non-SSI spouse.
42. Veterans pension benefits reduced to $90 for ~~nursing home residents~~individuals receiving Medicaid	42. Disregard. If the $90 VA pension is disregarded, do not allow the SON or MNIL in the budget.
43. Income from Experience Works, Inc. Senior Community Service Employment, and any other income received under Title V of the Older Americans Act	43. Consider as earned income.