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MEDI-CAL ELIGIBILITY PROCEDURES MANUAL LETTER NO.: 179

TO: All Holders of the Medi-Cal Eligibility Procedures Manual

Enclosed are revised procedures for Article 9 J-- Property Held in Trust.

Procedures Revision:	**Description:**
Article 9J	This section provides revisions on the information on how trusts and annuities are treated and valued in determining eligibility for Medi-Cal. This revision is meant to replace the existing Article 9J in full.

Filing Instructions:

Remove Pages:	**Insert Pages:**
Article 9 Table of Contents Pages TC-1 and TC-2	Article 9 Table of Contents Pages TC-1 and TC-2
Article 9J Pages 9J-1 through 9J-101	Article 9J Pages 9J-1 through 9J- 108

If you have any questions on this issue, please feel free to contact either Kathy Harwell at (916) 657-0146 or Sharyl Shanen-Raya at (916) 657-2942.

Sincerely,

Frank S. Martucci

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosures

ARTICLE 9J PROPERTY HELD IN TRUST - DIRECTORY ASSISTANCE PAGE

9 J - PROPERTY HELD IN TRUST

I. INTRODUCTION TO TRUSTS

This section is intended to clarify Medi-Cal policy regarding the establishment of trusts and their effect on eligibility (Title 22, California Code of Regulations, Section 50489). This section does not address burial trusts. The treatment of burial trusts is contained in Title 22, California Code of Regulations, Section 50479.

> *A trust is an obligation arising when a person holds legal title to property for the benefit of another.*

In general, a valid trust includes:

- ➤ An intent by a person with a property right to create a trust (trustor).
- ➤ A person or entity appointed to manage the trust (trustee).
- ➤ An individual who will benefit from the trust (trust beneficiary).
- ➤ An original investment of income, property or property rights (principal).
- ➤ A valid purpose.

The trustee holds legal title while the trust beneficiary holds a beneficial interest in the trust.

The county shall examine the trust document in order to determine the way in which to treat the trust. The particular role of the Medi-Cal applicant or Medi-Cal beneficiary as either trustor, trustee, and/or trust beneficiary will determine to what extent the trust property is or is not available.

In accordance with Title 22, Section 50489, Section 9J divides trusts into three categories:

- "OBRA '93 TRUSTS, INCLUDING SIMILAR LEGAL DEVICES (SLDs) AND ANNUITIES, ESTABLISHED ON OR AFTER AUGUST 11, 1993 "

  - ✓ Established on or after August 11, 1993
  - ✓ Established with income, property and/or property rights of the individual or spouse
  - ✓ Not established by a will

- "MEDICAID QUALIFYING TRUSTS (MQTs) AND SLDs ESTABLISHED PRIOR TO AUGUST 11, 1993 "

  - ✓ Established prior to August 11, 1993
  - ✓ Established with income, property and/or property rights of the individual or spouse
  - ✓ Individual or spouse is the beneficiary(ies) of the trust
  - ✓ Trustee has discretion in distributing funds to, or for the benefit of the beneficiary
  - ✓ Not established by a will

- "TRUSTS THAT ARE NOT MQTs, SLDs, OR OBRA '93 TRUSTS"
  (regardless of the date established)

II. GENERAL DEFINITIONS

The following words are used within the context of "trusts". These definitions are not complete legal definitions; they are only included to assist in reviewing trust documents.

A. "Beneficiary" - Any individual or individuals, designated in the trust instrument as benefiting in some way from the trust.

B. "Established" - A trust is established on the date the trust documents are dated and signed. A trust is not considered to be established on the date it is merely amended.

C. "Irrevocable" - A trust that cannot, in any way, be revoked or terminated by its own terms. A trust may be irrevocable even though it may be modified under the terms of the trust. The trust may state, for example, that the trustor may at any time during his/her lifetime amend any of the terms of the trust agreement by a notarized written instrument signed by the trustor and delivered to the trustee. A revocable trust is considered to be irrevocable whenever the trustor dies or becomes incompetent and the trust documents have not provided that the power to revoke the trust be passed on to the trustee or another person. The terms of a revocable trust could make the trust irrevocable if a triggering event takes place, such as entry into long term care.

D. "Principal/Corpus" - The principal of the trust refers to the:

- original investments of income, property or property rights placed in the trust,
- any subsequent additions of income, property or property rights into the trust, and
- any income (such as interest and dividends) generated by the income, property or property rights placed in the trust for which there are no provisions in the trust documents for distribution.

E. "Property right" - The right of an individual to receive income or property. Any type of right to specific property whether it is personal or real, tangible or intangible. An individual is said to have a property right when:

- ✔ the individual has been designated or named to receive income or property such as in a will, trust, or insurance policy, or
- ✔ when the individual has been awarded income or property such as in a settlement by the courts, or
- ✔ when the individual contracts for them.

F. "Revocable" - A trust which can be revoked or terminated by its own terms. The trust principal is available property to anyone who can revoke the trust and who can use the principal thereafter, whether or not he/she actually does. In determining available property held in trust Section 50402 (b) -(f) applies except that subsection (e) does not apply to annuities purchased on or after August 11, 1993. If a trust is revocable, the right to revoke is usually reserved with the trustor. The trust beneficiary will not generally have authority to revoke the trust; however if the trust itself gives the beneficiary access to the property without trustee intervention, then the property will be considered the trust beneficiary's property. Occasionally a trustee will have the legal authority to revoke a trust; however he/she might not have the legal right to use the property to meet his/her own needs. In such cases the property would be considered unavailable to the trustee.

Example: An example of a revocable trust is a Totten trust established with the property of the trustor/trustee. The trustor and trustee are the same person and he/she deposits his/her own money into a trust for the benefit of another person. The trustor/trustee of this Totten trust has access to the income and property and the authority to revoke the trust at any time. An example of a Totten trust would be a passbook savings account established with a parent's or grandparent's own assets, in a trust for child or a grandchild.

G. "Similar Legal Device (SLD)" - Any legal instrument, device or arrangement which may not be called a trust under State law but is similar to a trust. It involves the transfer of income, property or property rights from an individual or entity (transferor) to another individual (transferee) with the intent that the income, property or property rights are held, managed or administered by the individual or entity for the benefit of the transferor or another trust beneficiary. This also includes annuities if purchased on or after August 11, 1993.

H. "Trust" - A trust is any arrangement in which an individual or entity (trustor) transfers income, property or property rights to a trustee(s) with the intent that the income, property or property rights are held, managed, or administered by the trustee(s) for the benefit of certain designated individuals (beneficiaries). The trust must be valid under State law and manifested by a valid trust instrument or agreement. A trust must include a designated trust beneficiary, trustor and trustee. Although these roles may be designated to the same individual, at least one other person must be designated as a beneficiary upon the death of the original beneficiary. The term "trust" also includes any legal instrument or device similar to a trust. Refer to the definition of Similar Legal Device.

I. "Trustee" - Any individual, individuals, or entity such as an insurance company, bank, a trust advisory committee, or a person with powers of appointment, who manages, holds, or administers a trust for the benefit of the trust beneficiary or beneficiaries. The person or entity who holds legal title and manages the property and income in the trust, according to the instructions in the trust agreement, for the benefit of another. The trustee of a trust, or SLD, has fiduciary (the duty to act primarily for another's benefit) responsibilities outlined in the trust to deal with the trust income or property in a way that carries out the wishes of the trustor for the benefit of the trust beneficiary.

A trustee has a fiduciary responsibility to the beneficiaries of the trust to carry out the terms of the trust within applicable State law. If the trustee does not fulfill his/her fiduciary responsibilities, he/she could be held liable by the trust beneficiaries.

J. "Trustor" - An individual with income, property or property rights who creates and whose income, property or property rights fund a trust. This person is also called the settlor or grantor.

K. "Trust Income" - Income generated by the trust, such as interest and dividends, or payments of income made in the name of the trust, such as annuity payments, etc. (Payments made in the name of the individual or spouse and then transferred to the trust would be considered income of that individual and not considered trust income.)

III. VERIFICATION

A. Written Trusts - Obtain the trust documents and any other verification that substantiates investments and distributions. Affidavits shall be dated and signed under the penalty of perjury and shall specify the terms of the trust.

B. Oral Trusts - Obtain written affidavits and other verification that substantiates any investments and distributions. Affidavits shall be dated and signed under the penalty of perjury and shall specify the terms of the oral agreement. Affidavits may be obtained from the individual or spouse, or any other person who knows the terms of the trust agreement, for example: brothers, sisters, stock brokers, ministers, etc.

- ✔ Real property cannot be held in an oral trust.
- ✔ When an oral trust is held in a financial institution, determine property availability in accordance with draft Section 50402 (ACWDL 90-01). If the property is unavailable to the trustor in accordance with draft Section 50402 (ACWDL 90-01), then it shall be considered a transferred asset.
- ✔ Additional documentation may be requested to clarify the terms of an oral trust.

IV. EXEMPT INCOME OR PROPERTY HELD IN TRUST

Exempt assets, when transferred into a trust, such as the exempt home, remain exempt. Placement of an exempt asset in a trust does not change the exempt nature of the asset.

A transfer of property into an exempt burial trust shall not be considered a disqualifying transfer. Exempt burial trusts are not treated by the rules pertaining to MQTs, OBRA '93 Trusts, SLDs, or other trusts. (See Title 22, Section 50479 for information on the treatment of burial trusts and contracts.)

V. OBRA '93 TRUSTS INCLUDING SLDs AND ANNUITIES, ESTABLISHED ON OR AFTER AUGUST 11, 1993

A. BACKGROUND

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended Section 1917 of the Social Security Act by incorporating new requirements for the treatment of trusts and annuities.

B. IMPLEMENTATION

These procedures shall be effective in accordance with federal law (Section 1917 of the Social Security Act) for trusts established on or after August 11, 1993 and for Medi-Cal services received on or after October 1, 1993. Counties shall implement these procedures no later than March 1, 1996, at application and redetermination.

No potential overpayment shall be calculated as a result of a trust established on or after August 11, 1993 to and including February 29, 1996 due to the delay in implementation because these trust provisions were not implemented during that time. However, when these trusts and annuities are reviewed at application and redetermination, on or after March 1, 1996, and they result in an increase in the share of cost or ineligibility due to excess resources counties shall issue an adequate 10-day notice and take the action prospectively.

C. DEFINITIONS SPECIFIC TO OBRA '93

1. "Annuitant" - An annuitant means a person who has the right to receive payments from an annuity. The annuity shall be annuitized based upon the life expectancy of the annuitant.

2. "Annuitized" - An annuity shall be considered annuitized when the payment schedule results in fixed, equal payments to the annuitant on a periodic basis. Payments shall be no less frequently than monthly over a number of years equal to or less than the annuitant's life expectancy as indicated in life expectancy tables provided by the Secretary for the Department of Health and Human Services. The final annuity payment may be for an amount less than the previously fixed annuity payments in order to fully exhaust benefits under the annuity.

Note: An annuity will be considered annuitized even though it may provide a reasonable cost of living adjustment (i.e., of ≤5% annual increase).

3. "Annuity" - Annuity is a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as an annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity. Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Title 22, Section 50402(e) and Article 10.

4. "Assets" - Income, property and property rights of the individual or spouse, including income or property which the individual or spouse is entitled to, but does not receive because of circumstances brought about by:

   a. the individual or spouse,

b. any person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or spouse, or

c. any person or entity, including any court or administrative body, acting at the direction or upon the request of the individual or spouse.

Examples of actions which would cause income or resources not to be received are:

✔ Irrevocably waiving pension income,

✔ Waiving an inheritance, or

✔ Assigning annuity payments to a third party.

5. "Payment" - For purposes of this section, a payment from a trust is any disbursement from the trust. A payment from the trust income or trust principal to or for the benefit of the individual or spouse is to be considered income of that person in accordance with Article 10. A payment may include, but is not limited to:

a. liquid or non-liquid disbursement,

b. payments made to third parties or other entities for the benefit of the individual or spouse, or

c. a disbursement to pay bills, purchase items, or pay for services.

D. TREATMENT OF ANNUITIES PURCHASED ON OR AFTER AUGUST 11, 1993

Note: If an annuity is contained within a trust, evaluate the trust first. The annuity would be evaluated as a trust asset.

Annuity is a contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally. Annuity payments may continue for a fixed period of time or for as long as an annuitant lives. An annuitant purchases an annuity with his or her property or property rights. Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity. Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Section 50402(e) and Article 10.

Annuities may be purchased privately or commercially. Insurance companies may sell annuities once they are certified to do so by the Insurance Commissioner.

✔ Annuities are either deferred or immediate:

➤ Deferred Annuities - Payments are available as either a cash lump sum, or fixed payments to begin after a period of time specified in the contract.

✔ Types of annuities that may be purchased include:

- ➤ Lifetime Annuities - Periodic payments are made over the lifetime of the annuitant.
- ➤ Period Certain Annuities - Periodic payments are made for a period of time specified in the contract.
- ➤ Lifetime Annuities with Period Certain - Combines the characteristics of both lifetime and period certain annuities but guarantees payments over a specified number of years. If the annuitant happens to die before the expiration of the period certain the remainder of the payments will go to a designated beneficiary.

✔ Features that an annuity may contain include:

- ➤ A cash refund - A cash payment is paid to a designated individual upon the death of the annuitant if the annuitant dies before receiving payments equal to the purchase price of the annuity.
- ➤ A death benefit - A portion of the purchase price has been set aside by the annuity company to fund death benefits of a specified, predetermined amount or specified number of payments to be paid to a beneficiary upon the death of the annuitant.
- ➤ Cost-of-Living Increases - A portion of the purchase price has been set-aside by the annuity company to fund a periodic increase in the amount of the annuity payments.

Annuities acquired upon the death of the original annuitant, or established by will, periodic payment plans not within the definition of annuity, or established prior to August 11, 1993 shall continue to be treated in accordance with All County Welfare Directors Letter (ACWDL) 90-01, Section 50402(e) and Title 22, California Code of Regulations (CCR), Article 10. For example, a periodic payment plan resulting from a personal injury settlement paid from municipal funds rather than a commercial annuity contract would continue to be treated in accordance with, ACWDL 90-01, Section 50402(e) and Title 22, CCR, Article 10.

1. <u>ANNUITIES PURCHASED ON OR AFTER AUGUST 11, 1993</u>

Annuities purchased on or after August 11, 1993, and not subject to treatment under the undue hardship provisions (see procedures Section 9 V I) , shall be treated in accordance with this subsection.

- ➤ Payments from the annuity shall be considered <u>income</u> in accordance with Article 10.
- ➤ If payments are deferred at any time, the cash surrender value of the annuity shall be considered <u>available property</u>.

a. <u>PERIOD CERTAIN ANNUITIES</u>

- ➤ Once the individual or spouse <u>receives or takes steps to receive periodic payments of principal and interest</u>, the balance of the annuity shall be considered <u>unavailable</u>.

- Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy, based upon the life expectancy tables compiled by the Actuary of the Social Security Administration included in this section. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.

- If the years of expected life for the annuitant, based on the life expectancy tables compiled by the Actuary of the Social Security Administration, is less than the years of scheduled payments under the terms of the annuity, and if the annuity cannot be restructured, then the payments in excess of the annuitant's life expectancy shall be considered a transfer of property for less than fair market value that may be a disqualifying transfer. (See "Note" below.)

  ✔ Years of expected life is determined by using the age of the person at the time the annuity was purchased or the date the payment plan was implemented, whichever is the most recent.

- Any predetermined specified amount or number of payments set aside for any other individual (other than for the sole benefit of the spouse) shall be considered a transfer of property that may be a disqualifying transfer. (See "Note" below.)

- After payments to the annuitant begin, if payments are later designated that payments are to be made to any other individual (other than for the sole benefit of the individual or spouse), the payments shall be considered a transfer of income that may be a disqualifying transfer in the future. (See "Note" below.)

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.

Note: Whenever an annuity has not been properly annuitized, counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures Section 9 J V I) When undue hardship is considered and found not to apply, the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆Undue Hardship: Among other undue hardship provisions which may apply there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✔ no period of ineligibility for nursing facility level of care shall result, and
- ✔ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402(e).

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

b. LIFETIME ANNUITIES

In the case of a lifetime annuity purchased on or after August 11, 1993:

(1). If the contract does not allow anyone to receive payments upon the death of the annuitant and the annuitant is receiving payments:

- ➤ The individual or spouse must obtain the specific life expectancy table used by the annuity company to establish his/her specific annuity.
- ➤ If the years of expected life, based upon the annuity company's tables for that individual or spouse, are equal to or less than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration for that individual or spouse, there is no transfer of property for less than fair market value. Count the payments as income, in accordance with Article 10, and consider the balance to be unavailable. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.
- ➤ If the years of expected life based on the annuity company's tables for the annuitant are greater than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration, for the annuitant and if the annuity cannot be restructured, or the annuitant chooses not to restructure the annuity, there is a transfer of property for less than fair market value that may be a disqualifying transfer. (See "Note" below.)
- ➤ After payments to the annuitant begin, if payments are later designated to any other individual (other than for the sole benefit of the individual or spouse), the payment shall be considered a

transfer of income that may be a disqualifying transfer in the future. (See "Note" below.)

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.

Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures Section 9 J VI.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆Undue Hardship: Among other undue hardship provisions which may apply there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✔ no period of ineligibility for nursing facility level of care shall result, and
- ✔ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402(e).

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

(2). If the contract provides that a **specified** number of payments or a specified amount will go to someone upon the death of the individual, then the annuitant must restructure the annuity's payment schedule. When the annuitant takes steps to restructure the annuity, the balance of the annuity shall be considered unavailable. The restructured annuity payment schedule must conform with the procedures for annuities purchased on or after August 11, 1993 as follows:

- ➤ Once the annuitant takes steps to annuitize the annuity in accordance with these procedures the balance of the annuity shall be considered unavailable until payment(s) are received.
- ➤ Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy,

based upon the life expectancy tables compiled by the Actuary of the Social Security Administration included in this section. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent. (See "Note" below.)

- If the annuity cannot be restructured to one that is based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy table compiled by the Actuary of the Social Security Administration, for that annuitant, consider the amount set-aside or the specified payments for the beneficiary upon the death of the individual or spouse, as property transferred for less than fair market value that may be a disqualifying transfer. (See "Note" below.)

- After payments to the annuitant begin, if payments are later designated to any other individual (other than for the sole benefit of the spouse), they shall be considered a transfer of income that may be a disqualifying transfer in the future. (See "Note" below.)

Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See Procedures Section 9 J VI.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆ Undue Hardship: Among other undue hardship provisions which may apply, there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✔ no period of ineligibility for nursing facility level of care shall result, and

- ✔ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402(e).

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.

(3). If the contract provides for a beneficiary upon the death of the individual or spouse to some **unspecified** amount:

- Once the annuitant takes steps to annuitize the annuity in accordance with these procedures, the balance of the annuity shall be considered unavailable until payment(s) are received.

- The annuitant must obtain the specific life expectancy table used by the annuity company to establish their specific annuity.

- If the years of expected life, based upon the annuity company's tables for that annuitant, are equal to or less than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration for the annuitant, there is no transfer for less than fair market value. To determine whether or not the balance of the annuity will be exhausted by the end of the annuitant's life expectancy, refer to the life expectancy tables compiled by the Office of the Actuary of the Social Security Administration, provided in this section. Enter the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.

- If the years of expected life based on the annuity company's tables for that annuitant are greater than the number of years indicated on the life expectancy tables compiled by the Actuary of the Social Security Administration for the annuitant then:

  - ✔ The county must advise the individual or spouse that they must take steps to restructure the annuity's payment schedule to one that is based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy table compiled by the Actuary of the Social Security Administration, for that individual or spouse. When the individual or spouse takes steps to restructure the annuity the balance of the annuity shall be considered unavailable until payment(s) are received.

  - ✔ If steps are not taken there is a transfer of property for less than fair market value that may be a disqualifying transfer. (See "Note" below.)

- After payments to the annuitant begin, if the payments are later designated to any other individual (other than for the sole benefit of the spouse), they shall be considered a transfer of income that may result in a disqualifying transfer in the future. (See "Note" below.)

See Transfer of Asset guidelines to determine whether or not a period of ineligibility for nursing facility level of care should be calculated. Do not treat transfers of income until guidelines have been issued to do so.

Note: Whenever an annuity has not been properly annuitized, counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant /beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures 9 J VI.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆ Undue Hardship: Among other undue hardship provisions which may apply, there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✔ no period of ineligibility for nursing facility level of care shall result, and
- ✔ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402(e).

If such an annuity cannot be restructured, then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

2. **ANNUITY EXAMPLES:**

Example # 1: On January 30, 1996, at age 65, Mr. Baker purchases a $20,000 period certain annuity to be paid over the course of 10 years. Fixed, equal, monthly payments begin March 1, 1996.

Discussion: At age 65, Mr. Baker's life expectancy is 14.96 years according to the life expectancy table for males compiled by the Actuary of the Social Security Administration. Since Mr. Baker's life expectancy figure (14.96 years) exceeds the payout period of the annuity (10 years) by 4.96 years and Mr. Baker is receiving payments, the balance of the annuity is considered unavailable. The payments would be treated as income in accordance with Article 10.

Example # 2: On March 10, 1996, at age 65, Mr. Baker purchases a $100,000 period certain annuity to be paid over the course of 20 years. Fixed, equal, monthly payments are to begin April 15, 1996.

Discussion: Based on the life expectancy table for males, compiled by the Actuary of the Social Security Administration, Mr. Baker has a life expectancy of only 14.96 years. The payout period exceeds Mr. Baker's life expectancy. Mr. Baker is unable to restructure the annuity's payment schedule. The payments scheduled to occur beyond Mr. Baker's life expectancy, (20 payment years - 14.96 life expectancy years = 5.04 years of payments) would be considered transferred property that may be a disqualifying transfer. (See "Note" below.)

To calculate the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund those payments that exceed the life expectancy on the Secretary's tables. Total the payments within the life expectancy, then total the payments beyond the life expectancy. Divide each of the two sums by the sum of the total payments, this will result in the percentage of the total payments made within the life expectancy and the percentage of the total payments made beyond the life expectancy. Multiply the original purchase price by the percentage of payments to be paid beyond the life expectancy.

Example # 3: Mrs. Baker purchases a $50,000 period certain annuity on December 4, 1996 and makes her daughter the annuitant.

Discussion: Mrs. Baker's purchase of the $50,000 period certain annuity is considered a transfer of property to the daughter that may be a disqualifying transfer. (See "Note" below.)

Example # 4: On June 10, 1996, Mrs. Baker purchases a $50,000 lifetime annuity with 5 years worth of payments designated to go to her daughter upon the death of Mrs. Baker. Mrs. Baker is 79 years old and her life expectancy, based on the life expectancy tables for females compiled by the Social Security Administration, is 9.67 years. The life expectancy in the tables used by the insurance company to establish this specific annuity is equal to the life expectancy shown on the Social Security Administration tables. Mrs. Baker is receiving fixed, equal, monthly payments.

Discussion: Since the 5 years worth of payments were specified death benefits when the annuity was purchased the total amount of death benefit payments designated for the daughter shall be considered transferred property that may be considered disqualifying. Mrs. Baker's monthly payments are considered income in accordance with Article 10 and the balance of the annuity less the death benefits are considered unavailable.

Example # 5: Mrs. Baker purchases a $50,000 lifetime annuity on April 15, 1996 and designates her daughter as the beneficiary upon her death to receive a cash refund (an unspecified amount). Mrs. Baker is 79 years old and her life expectancy, based on the life expectancy tables for females compiled by the Social Security Administration, is 9.67 years. The life expectancy tables used by the annuity company to establish this specific annuity give Mrs. Baker a life expectancy of 8 years. Mrs. Baker is receiving fixed, equal, monthly payments.

Discussion: Since the cash refund (an unspecified amount) will pay the difference between the total amount of the payments made to Mrs. Baker during her lifetime and the $50,000 purchase price to the daughter upon Mrs. Baker's death and the number of years of the company's life expectancy tables are less than those compiled by the Actuary of the Social Security Administration, the monthly payments are considered income in accordance with Article 10 and the balance of the annuity is considered unavailable.

Example # 6: Mrs. Baker begins receiving payments from her properly annuitized annuity but designates her daughter as the annuitant after receiving payments for 1 year. The daughter will receive the remaining four years worth of payments from the annuity.

Discussion: The 4 years of payments will be considered transferred income which may result in a disqualifying transfer in the future. (See "Note" below.)

Example # 7: Mrs. Baker begins receiving payments from her properly annuitized annuity but designates that her daughter is to receive the 4 years of payments remaining for the sole support of Mrs. Baker.

Discussion: There is no period of ineligibility for nursing facility level of care for Mrs. Baker. The payments will be considered income in accordance with Article 10 and the balance or the annuity is considered unavailable.

Example # 8: Mrs. Baker, age 64, purchases a $50,000 lifetime annuity on March 1, 1996 with a period certain of 15 years. Her life expectancy based on the life expectancy tables complied by the Actuary of the Social Security Administration is 19.72 years. The life expectancy tables used by the annuity company to establish her specific annuity give Mrs. Baker a life expectancy of 18 years. She is receiving fixed, equal, monthly payments.

Discussion: Since the number of years of both the company's life expectancy table and the period certain are less than Mrs. Baker's life expectancy according to the life expectancy table for females compiled by the Social Security Administration, the monthly payments are considered income in accordance with Article 10 and the balance of the annuity is considered unavailable.

Note: Whenever an annuity has not been properly annuitized, counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant/beneficiary that they must annuitize their annuity in accordance with these procedures, provide the applicant /beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See procedures 9 J VI.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply."

☆ Undue Hardship: Among other undue hardship provisions which may apply, there is an undue hardship exception for annuities purchased between August 11, 1993 and March 1, 1996 (see procedures Section 9 J V I). If such an annuity cannot be annuitized to a period equal to or less than the number of years of life expectancy on the following life expectancy tables established by the Actuary of the Social Security Administration, or if a lifetime annuity cannot be annuitized to a payment schedule based upon a life expectancy that is equal to or less than the number of years reflected on the life expectancy tables established by the Actuary of the Social Security Administration, then:

- ✔ no period of ineligibility for nursing facility level of care shall result, <u>and</u>
- ✔ the annuity shall continue to be treated in accordance with ACWDL 90-01, draft regulation Section 50402(e).

If such an annuity cannot be restructured then written verification must be obtained from the agent or company who issued the annuity or the individual agent who sold the annuity.

3. ANALYSIS OF SAMPLE ANNUITY PAYMENT SCHEDULES

This subsection includes sample annuity payment schedules. The payment schedules represent some annuities that have been annuitized in accordance with the guidelines of the Secretary for the Department of Health and Human Services, as well as some that are not properly structured.

Note: Each row of the attached sample annuity payment schedules contains the **sum of the equal monthly payments** that would be paid in each year of the annuity.

When using the Secretary's Life Expectancy Tables in determining whether an annuity has been properly annuitized, enter those tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent. When it is necessary to advise a Medi-Cal applicant/beneficiary that they must annuitize their annuity in accordance with these procedures, enter the Secretary's tables using the individual's current age.

a. PERIOD CERTAIN ANNUITIES

(1). Properly Annuitized Payment Schedules

The sample payment schedules on the following page represent annuities that are to be considered properly annuitized. The payment schedules are for 15-year, period certain annuities. The 15-year guarantee period coincided with the life expectancy of the annuitant based upon the Secretary's tables as of the date the annuity was purchased (or the date of annuitization, whichever was the most recent). Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living increases (i.e., less than or equal to 5%).

Amount Invested: $100,000
Rate of Return: 5.00%
Guarantee Period: 15 Years

		Level Payments	3% Annual Increase	5% Annual Increase
	Year	Payment	Payment	Payment
	1	$9,634.23	$7,981.13	$7,000.00
	2	$9,634.23	$8,220.57	$7,350.00
	3	$9,634.23	$8,467.18	$7,717.50
	4	$9,634.23	$8,721.20	$8,103.38
	5	$9,634.23	$8,982.83	$8,508.54
	6	$9,634.23	$9,252.32	$8,933.97
	7	$9,634.23	$9,529.89	$9,380.67
	8	$9,634.23	$9,815.79	$9,849.70
	9	$9,634.23	$10,110.26	$10,342.19
	10	$9,634.23	$10,413.57	$10,859.30
	11	$9,634.23	$10,725.97	$11,402.26
	12	$9,634.23	$11,047.75	$11,972.38
	13	$9,634.23	$11,379.19	$12,570.99
Life	14	$9,634.23	$11,720.56	$13,199.54
Expectancy	15	$9,634.23	$12,072.18	$13,859.52
Sum:		$144,513.43	$148,440.38	$151,049.95
Sum <=LE:		$144,513.43	$148,440.38	$151,049.95
Sum>LE:		$0.00	$0.00	$0.00

(2). Improperly Structured Payment Schedules

The payment schedules on the following page represent period certain annuities that have not been properly annuitized. They are payment schedules for 20-year period certain annuities. The guarantee period of 20-years exceeded the 15-year life expectancy of the annuitant, as determined by the Secretary's tables as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased (or the date the payment plan was established, whichever was most recent). To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that exceeded the life expectancy on the Secretary's tables as of the date of purchase or the date the payment plan was established, whichever was the most recent.

Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. (See procedures Section 9 J VI.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(A). Level Payment Sample

The sum of the payments within the life expectancy is $120,363.88. The sum of the payments beyond the life expectancy is $40,121.29. Dividing each of the two sums by the sum of the total payments ($160,485.17) will result in the following, based upon the Secretary's tables: 75% of the payments will be made during the life expectancy of the annuitant; and 25% of the payments will be made beyond the life expectancy of the annuitant. Multiplying the original purchase price ($100,000) by 25% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 25% = $25,000).

(B). 3% Annual Increase Sample

The sum of the payments within the life expectancy is $116,499.63. The sum of the payments beyond the life expectancy is $51,810.67. Dividing each of the two sums by the sum of the total payments ($168,310.30) will result in the following, based upon the Secretary's tables: 69.2% of the payments will be made during the life expectancy of the annuitant; and 30.8% of the payments will be made beyond the life expectancy of the annuitant. Multiplying the original purchase price ($100,000) by 30.8% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 30.8% = $30,800.00).

(C). 5% Annual Increase

The sum of the payments within the life expectancy is $113,287.46. The sum of the payments beyond the life expectancy is $60,308.80. Dividing each of the two sums by the sum of the total payments ($173,596.26) will result in the following, based upon the Secretary's tables: 65.3% of the payments will be made during the life expectancy of the annuitant; and 34.7% of the payments will be made beyond the life expectancy of the annuitant. Multiplying the original purchase price ($100,000) by 34.7% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 34.7% = $34,700.00).

Amount Invested: $100,000
Rate of Return: 5.00%
Guarantee Period: 20 Years

	Level Payments	3% Annual Increase	5% Annual Increase
Year	Payment	Payment	5% Increase
1	$8,024.26	$6,263.79	$5,250.00
2	$8,024.26	$6,451.70	$5,512.50
3	$8,024.26	$6,645.25	$5,788.13
4	$8,024.26	$6,844.61	$6,077.53
5	$8,024.26	$7,049.95	$6,381.41
6	$8,024.26	$7,261.45	$6,700.48
7	$8,024.26	$7,479.29	$7,035.50
8	$8,024.26	$7,703.67	$7,387.28
9	$8,024.26	$7,934.78	$7,756.64
10	$8,024.26	$8,172.82	$8,144.47
11	$8,024.26	$8,418.01	$8,551.70
12	$8,024.26	$8,670.55	$8,979.28
13	$8,024.26	$8,930.66	$9,428.25
14	$8,024.26	$9,198.58	$9,899.66
Life Expectancy 15	$8,024.26	$9,474.54	$10,394.64
16	$8,024.26	$9,758.78	$10,914.37
17	$8,024.26	$10,051.54	$11,460.09
18	$8,024.26	$10,353.09	$12,033.10
19	$8,024.26	$10,663.68	$12,634.75
20	$8,024.26	$10,983.59	$13,266.49
Sum:	$160,485.17	$168,310.30	$173,596.26
Sum <=LE:	$120,363.88 / 75.0%	$116,499.63 / 69.2%	$113,287.46 / 65.3%
Sum>LE:	$40,121.29 / 25.0%	$51,810.67 / 30.8%	$60,308.80 / 34.7%
	$ 25,000.00	$ 30,782.83	$ 34,700.00

b. LIFETIME ANNUITIES

When considering whether a lifetime annuity has been annuitized in accordance with the Secretary's tables, the applicant must provide the life expectancy that the company used as of the date the annuity was purchased or the date the payment plan was established. The company's life expectancy for the annuitant is then compared to the life expectancy for the annuitant based upon the Secretary's tables. The age to use when entering the Secretary's table is the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is most recent.

(1). Properly Annuitized

The payment schedule on the following page represents a lifetime annuity. The life expectancy of the annuitant per the Secretary's tables coincides with the life expectancy of the annuitant based upon the company's tables. The purchase of the annuity is considered to be for adequate consideration and there is no disqualifying transfer of property even though payments are to be paid regardless of how long the annuitant may actually live. Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living increases (i.e., less than or equal to 5%).

Amount Invested: $100,000
Rate of Return: 5.00%

Lifetime Annuity

		Level Payments	3% Annual Increase	5% Annual Increase
	Year	Payment	Payment	5% Increase
	1	$8,024.26	$6,263.79	$5,250.00
	2	$8,024.26	$6,451.70	$5,512.50
	3	$8,024.26	$6,645.25	$5,788.13
	4	$8,024.26	$6,844.61	$6,077.53
	5	$8,024.26	$7,049.95	$6,381.41
	6	$8,024.26	$7,261.45	$6,700.48
	7	$8,024.26	$7,479.29	$7,035.50
	8	$8,024.26	$7,703.67	$7,387.28
	9	$8,024.26	$7,934.78	$7,756.64
	10	$8,024.26	$8,172.82	$8,144.47
	11	$8,024.26	$8,418.01	$8,551.70
	12	$8,024.26	$8,670.55	$8,979.28
	13	$8,024.26	$8,930.66	$9,428.25
Life	14	$8,024.26	$9,198.58	$9,899.66
Expectancy	15	$8,024.26	$9,474.54	$10,394.64
Coincides	16	$8,024.26	$9,758.78	$10,914.37
	17	$8,024.26	$10,051.54	$11,460.09
	18	$8,024.26	$10,353.09	$12,033.10
	19	$8,024.26	$10,663.68	$12,634.75
	20	$8,024.26	$10,983.59	$13,266.49

(2). Improperly Structured Payment Schedules

The payment schedules on the following page represent lifetime annuities that have not been properly annuitized. The company's life expectancy for the annuitant exceeded the 15-year life expectancy of the annuitant, as determined by the Secretary's tables as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased (or the date the payment plan was established, whichever is most recent). To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that may be paid between the company's life expectancy for the annuitant and the life expectancy in accordance with the Secretary's tables. When entering the Secretary's tables, use the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever was the most recent.

Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. (See procedures Section 9 J VI.) When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(A). Level Payment Sample

The sum of the payments within the life expectancy based upon the Secretary's table is $120,363.90. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is $24,072.78. Dividing each of the two sums by the sum of the total payments ($144,436.68) will result in the following: 83.3% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 16.7% of the payments will be made between the two life expectancies. Multiplying the original purchase price ($100,000) by 16.7% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 16.7% = $16,700).

(B). 3% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is $116,499.62. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is $30,163.41. Dividing each of the two sums by the sum of the total payments ($146,663.03) will result in the following: 79.4% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 20.6% of the payments will be made between the two life expectancies. Multiplying the original purchase price ($100,000) by 20.6% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 20.6% = $20,600).

(C). 5% Annual Increase

The sum of the payments within the life expectancy based upon the Secretary's table is $113,287.46. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is $34,407.56. Dividing each of the two sums by the sum of the total payments ($147,695.02) will result in the following: 76.7% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 23.3% of the payments will be made between the two life expectancies. Multiplying the original purchase price ($100,000) by 23.3% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 23.3% = $23,300).

Amount Invested: $100,000
Rate of Return: 5.00%
Lifetime Annuity

	Year	Level Payments: Payment	3% Annual Increase: Payment	5% Annual Increase: 5% Increase
	1	$8,024.26	$6,263.79	$5,250.00
	2	$8,024.26	$6,451.70	$5,512.50
	3	$8,024.26	$6,645.25	$5,788.13
	4	$8,024.26	$6,844.61	$6,077.53
	5	$8,024.26	$7,049.95	$6,381.41
	6	$8,024.26	$7,261.45	$6,700.48
	7	$8,024.26	$7,479.29	$7,035.50
	8	$8,024.26	$7,703.67	$7,387.28
	9	$8,024.26	$7,934.78	$7,756.64
	10	$8,024.26	$8,172.82	$8,144.47
	11	$8,024.26	$8,418.01	$8,551.70
	12	$8,024.26	$8,670.55	$8,979.28
	13	$8,024.26	$8,930.66	$9,428.25
Life	14	$8,024.26	$9,198.58	$9,899.66
Expectancy	15	$8,024.26	$9,474.54	$10,394.64
Per Secretary	16	$8,024.26	$9,758.78	$10,914.37
	17	$8,024.26	$10,051.54	$11,460.09
	18	$8,024.26	$10,353.09	$12,033.10
Per Company	19	$8,024.26	$10,663.68	$12,634.75
	20	$8,024.26	$10,983.59	$13,266.49
Sum:		$144,436.68	$146,663.03	$147,695.02
Sum <=LE:		$120,363.90 (83.3%)	$116,499.62 (79.4%)	$113,287.46 (76.7%)
Sum>LE:		$24,072.78 (16.7%)	$30,163.41 (20.6%)	$34,407.56 (23.3%)
		$ 16,700.00	$ 20,600.00	$ 23,300.00

c. LIFETIME WITH PERIOD CERTAIN ANNUITIES

A lifetime with period certain annuity combines the features of both the lifetime and the period certain annuities into one. When considering whether a lifetime with a period certain annuity has been annuitized in accordance with the Secretary's tables, the applicant must provide the life expectancy that the company used as of the date the annuity was purchased or the date the payment plan was established. The company's life expectancy for the annuitant is then compared to the life expectancy for the annuitant based upon the Secretary's tables. The guarantee period must also be less than or equal to the life expectancy based upon the Secretary's tables. The age to use when entering the Secretary's table is the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established whichever is most recent.

(1). Properly Annuitized Payment Schedules

The sample payment schedules on the following page represent annuities that are to be considered properly annuitized. The payment schedules are for lifetime with 15-year, period certain annuities. The 15-year guarantee period AND the company's life expectancy coincided with the life expectancy of the annuitant based upon the Secretary's tables as of the date the annuity was purchased or the date of annuitization, whichever was the most recent. Monthly payments are fixed, equal and monthly but may reflect reasonable, annual cost-of-living increases (i.e., less than or equal to 5%).

Amount Invested: $100,000
Rate of Return: 5.00%

Lifetime with 15-year Period Certain

	Level Payments	3% Annual Increase	5% Annual Increase
Year	Payment	Payment	5% Increase
1	$8,024.26	$6,263.79	$5,250.00
2	$8,024.26	$6,451.70	$5,512.50
3	$8,024.26	$6,645.25	$5,788.13
4	$8,024.26	$6,844.61	$6,077.53
5	$8,024.26	$7,049.95	$6,381.41
6	$8,024.26	$7,261.45	$6,700.48
7	$8,024.26	$7,479.29	$7,035.50
8	$8,024.26	$7,703.67	$7,387.28
9	$8,024.26	$7,934.78	$7,756.64
10	$8,024.26	$8,172.82	$8,144.47
11	$8,024.26	$8,418.01	$8,551.70
12	$8,024.26	$8,670.55	$8,979.28
13	$8,024.26	$8,930.66	$9,428.25
14	$8,024.26	$9,198.58	$9,899.66
15	$8,024.26	$9,474.54	$10,394.64
16	$8,024.26	$9,758.78	$10,914.37
17	$8,024.26	$10,051.54	$11,460.09
18	$8,024.26	$10,353.09	$12,033.10
19	$8,024.26	$10,663.68	$12,634.75
20	$8,024.26	$10,983.59	$13,266.49

Life Expectancy Coincides [between years 15 and 16]

Guarantee Period

(2). Improperly Structured Payment Schedules

(A). *Company's Life Expectancy Exceeds Secretary's Life Expectancy - Guarantee Period Coincides*

The payment schedules on the following page represent lifetime with 15-year period certain annuities that have not been properly annuitized. Although the life expectancy for the individual based upon the Secretary's tables and the 15-year guarantee period coincide, the company's life expectancy for the annuitant exceeds the 15-year life expectancy of the annuitant, as determined by the Secretary's tables. This is determined as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever is most recent. To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that may be paid between the company's life expectancy for the annuitant and the life expectancy in accordance with the Secretary's tables. When entering the Secretary's tables, use the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever was the most recent.

NOTE: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(i). Level Payment Sample

The sum of the payments within the life expectancy based upon the Secretary's table is $120,363.90. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is $24,072.78. Dividing each of the two sums by the sum of the total payments ($144,436.68) will result in the following: 83.3% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 16.7% of the payments will be made between the two life expectancies. Multiplying the original purchase price ($100,000) by 16.7% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 16.7% = $16,700).

(ii). <u>3% Annual Increase</u>

The sum of the payments within the life expectancy based upon the Secretary's table is $116,499.62. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is $30,163.41. Dividing each of the two sums by the sum of the total payments ($146,663.03) will result in the following: 79.4% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 20.6% of the payments will be made between the two life expectancies. Multiplying the original purchase price ($100,000) by 20.6% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 20.6% = $20,600).

(iii). <u>5% Annual Increase</u>

The sum of the payments within the life expectancy based upon the Secretary's table is $113,287.46. The sum of the payments between the company's life expectancy and the life expectancy based upon the Secretary's tables is $34,407.56. Dividing each of the two sums by the sum of the total payments ($147,695.02) will result in the following: 76.7% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 23.3% of the payments will be made between the two life expectancies. Multiplying the original purchase price ($100,000) by 23.3% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 23.3% = $23,300).

Amount Invested: $100,000
Rate of Return: 5.00%

Lifetime with 15-year Period Certain

	Year	Level Payments: Payment	3% Annual Increase: Payment	5% Annual Increase: 5% Increase
	1	$8,024.26	$6,263.79	$5,250.00
	2	$8,024.26	$6,451.70	$5,512.50
	3	$8,024.26	$6,645.25	$5,788.13
	4	$8,024.26	$6,844.61	$6,077.53
	5	$8,024.26	$7,049.95	$6,381.41
	6	$8,024.26	$7,261.45	$6,700.48
	7	$8,024.26	$7,479.29	$7,035.50
	8	$8,024.26	$7,703.67	$7,387.28
	9	$8,024.26	$7,934.78	$7,756.64
	10	$8,024.26	$8,172.82	$8,144.47
	11	$8,024.26	$8,418.01	$8,551.70
	12	$8,024.26	$8,670.55	$8,979.28
	13	$8,024.26	$8,930.66	$9,428.25
Life	14	$8,024.26	$9,198.58	$9,899.66
Expectancy	15	$8,024.26 (Guarantee Period)	$9,474.54	$10,394.64
Per Secretary	16	$8,024.26	$9,758.78	$10,914.37
	17	$8,024.26	$10,051.54	$11,460.09
	18	$8,024.26	$10,353.09	$12,033.10
Per Company	19	$8,024.26	$10,663.68	$12,634.75
	20	$8,024.26	$10,983.59	$13,266.49
Sum:		$144,436.68	$146,663.03	$147,695.02
Sum <=LE:		$120,363.90 (83.3%)	$116,499.62 (79.4%)	$113,287.46 (76.7%)
Sum>LE:		$24,072.78 (16.7%)	$30,163.41 (20.6%)	$34,407.56 (23.3%)
		$ 16,700.00	$ 20,600.00	$ 23,300.00

(B). *Life Expectancy's Coincide - Guarantee Period Exceeds the Life Expectancy*

The payment schedules on the following page represent lifetime with 20-year period certain annuities that have not been properly annuitized. Although the life expectancy for the individual based upon the Secretary's tables and the company's life expectancy for the annuitant coincide, the 20-year guarantee period exceeds the 15-year life expectancy of the annuitant as determined by the Secretary's tables. This is determined as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever is most recent. To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments that are guaranteed to be paid beyond the life expectancy in accordance with the Secretary's tables. When entering the Secretary's tables, use the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever was the most recent.

✎ *Note*: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

(i). Level Payment Sample

The sum of the payments within the life expectancy based upon the Secretary's table is $120,363.88. The sum of the payments between the life expectancy and the end of the 20-year guarantee period is $40,121.29. Dividing each of the two sums by the sum of the total payments ($160,485.17) will result in the following: 75% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 25% of the payments will be made between the life expectancies and the end of the 20-year guarantee period. Multiplying the original purchase price ($100,000) by 25% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 25% = $25,000).

(ii). <u>3% Annual Increase</u>

The sum of the payments within the life expectancy based upon the Secretary's table is $116,499.62. The sum of the payments between the life expectancy and the end of the 20-year guarantee period is $51,810.67. Dividing each of the two sums by the sum of the total payments ($168,310.30) will result in the following: 69.2% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 30.8% of the payments will be made between the life expectancy of the annuitant and the end of the 20-year guarantee period. Multiplying the original purchase price ($100,000) by 30.8% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 30.8% = $30,800.00).

(iii). <u>5% Annual Increase</u>

The sum of the payments within the life expectancy based upon the Secretary's table is $113,287.46. The sum of the payments between the life expectancy and the end of the 20-year guarantee period is $34,740.84. Dividing each of the two sums by the sum of the total payments ($173,596.26) will result in the following: 65.3% of the payments will be made during the life expectancy of the annuitant based upon the Secretary's tables; and 34.7% of the payments will be made between the life expectancy of the annuitant and the end of the 20-year guarantee period. Multiplying the original purchase price ($100,000) by 34.7% will result in the percentage of the original purchase price which was transferred to fund the payments beyond the annuitant's life expectancy ($100,000 x 34.7% = $34,700).

Amount Invested: $100,000
Rate of Return: 5.00%
Lifetime with 20-year Period Certain

	Level Payments		3% Annual Increase	5% Annual Increase
	Year	Payment	Payment	5% Increase
	1	$8,024.26	$6,263.79	$5,250.00
	2	$8,024.26	$6,451.70	$5,512.50
	3	$8,024.26	$6,645.25	$5,788.13
	4	$8,024.26	$6,844.61	$6,077.53
	5	$8,024.26	$7,049.95	$6,381.41
	6	$8,024.26	$7,261.45	$6,700.48
	7	$8,024.26	$7,479.29	$7,035.50
	8	$8,024.26	$7,703.67	$7,387.28
	9	$8,024.26	$7,934.78	$7,756.64
	10	$8,024.26	$8,172.82	$8,144.47
	11	$8,024.26	$8,418.01	$8,551.70
	12	$8,024.26	$8,670.55	$8,979.28
	13	$8,024.26	$8,930.66	$9,428.25
Life	14	$8,024.26	$9,198.58	$9,899.66
Expectancy	15	$8,024.26	$9,474.54	$10,394.64
Coincides	16	$8,024.26	$9,758.78	$10,914.37
	17	$8,024.26	$10,051.54	$11,460.09
	18	$8,024.26	$10,353.09	$12,033.10
Guarantee	19	$8,024.26	$10,663.68	$12,634.75
Period	20	$8,024.26	$10,983.59	$13,266.49

	Level Payments		3% Annual Increase		5% Annual Increase	
Sum:	$160,485.17		$168,310.30		$173,596.26	
Sum <=LE:	$120,363.88	75.0%	$116,499.63	69.2%	$113,287.46	65.3%
Sum>LE:	$40,121.29	25.0%	$51,810.67	30.8%	$60,308.80	34.7%
	$ 25,000.00		$ 30,800.00		$ 34,700.00	

d. ANNUITIES WITH DEFERRED PAYMENTS

When annuities are paid out **within the life expectancy** established by the Secretary's tables but the payments are not fixed, equal, monthly payments (or vary because of reasonable cost of living increases, i.e., ≤ 5% annually), payments shall be considered deferred. The cash surrender value of the annuity is to be counted.

Notes:

① Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

② When payments extend **beyond the life expectancy** of the annuitant based upon the secretary's tables there has been a transfer of assets that may be disqualifying. The transfer issue must be addressed first. Counties must not count the case surrender value of the annuity in cases where a period of ineligibility for a disqualifying transfer has been assessed.

To determine whether or not the annuity has a cash surrender value, look to the policy provisions. If the policy provisions state that there is no cash surrender value, then there is nothing to count in the property reserve. The payments actually made, however, continue to be considered income in accordance with Article 10.

e. SAMPLE LANGUAGE WITH A CASH SURRENDER VALUE

The following paragraphs represent sample language of an annuity with a possible cash surrender value. In cases where there are penalties for surrendering a policy early, counties shall count only the amount the annuitant would actually receive.

(1) Surrender of Policy -- Except as provided herein, at any time prior to the Maturity Date, the Owner may surrender this policy for its Cash Value. Such surrender request shall be in writing on a form provided by the Company and signed by the Owner. This policy shall accompany the request form and be surrendered. If this policy shall have been previously assigned, any surrender request must be approved in writing by the assignee.

(2) Withdrawal Charge -- Any Withdrawal from this policy shall be subject to a Withdrawal Charge, exempt as otherwise provided herein. The Withdrawal Charge on this policy shall be an amount equal to 8% of such Withdrawal. After the policy has been in force 5 years, the Withdrawal

Charge shall be reduced by 2%. It will be reduced by 2% on each policy anniversary thereafter. After the policy has been in force 8 years no Withdrawal shall be subject to a Withdrawal Charge.

(3) Waiver of Withdrawal Charge -- Beginning one calendar month after the Effective Date, up to 1% of the Premium may be withdrawn each month without a Withdrawal Charge. The unused portion of this Waiver of Withdrawal Charge provision is accumulative.

(4) Surrender Charge -- The Surrender Charge on this policy shall be an amount equal to 8% of the Accumulation Value. After the policy has been in force 5 years, the Surrender Charge shall be reduced by 2%. It will be reduced by 2% on each policy anniversary thereafter. The Surrender Charge shall also be reduced by any applicable Waiver of Withdrawal Charge. After the policy has been in force 8 years, no surrender shall be subject to a Surrender Charge.

f. SAMPLE LANGUAGE WITHOUT A CASH SURRENDER VALUE

The following paragraphs represent sample language of an annuity without a cash surrender value. In these cases there would be no amount to count. Payments actually made are continued to be considered income in accordance with Article 10.

(1). Payments -- The Payments shown in the Policy Schedule will begin on the Annuity Start Date. The Payments are payable to the Annuitant in the manner described on the Policy Schedule. In no event will less than the Number of Payments Certain be made. The Payments will not be subject to:

- ✔ Transfer, alteration, claims of creditors before any payment is due; or
- ✔ Encumbrance by creditors,

Once this Policy is issued you may not:

- ✔ Change the manner in which Payments are made;
- ✔ Surrender this Policy for the value of any remaining guaranteed Payments; or
- ✔ Take any cash withdrawals or loans from this Policy.

g. SAMPLE IMPROPERLY ANNUITIZED PAYMENT SCHEDULE REPRESENTING DEFERRED PAYMENTS

(1) Unreasonable Annual Increases

The sample payment schedule on the following page represents an improperly annuitized annuity with 25% annual cost of living increases. Unreasonable annual increases of this sort tend to push the majority of the payments toward the back-end of the payment phase. In these cases, Counties shall count the cash surrender value of the annuity as available property.

Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

Amount Invested:	$100,000
Rate of Return:	5.00%
Guarantee Period:	15 Years

25% Annual Increase

	Year	Payment
	1	$1,578.36
	2	$1,972.95
	3	$2,466.19
	4	$3,082.74
	5	$3,853.43
	6	$4,816.79
	7	$6,020.99
	8	$7,526.24
	9	$9,407.80
	10	$11,759.75
	11	$14,699.69
	12	$18,374.61
	13	$22,968.26
Life	14	$28,710.33
Expectancy	15	$35,887.91
	16	
	17	
	18	
	19	
	20	

Sum	$173,126.04
Sum<LE	$173,126.04
Sum > LE	$0.00

h. Small Percentage of Principal Plus Interest Each Year

The sample payment schedule on the following page represents an improperly annuitized annuity that pays out only interest with .8% of the principal per year. Payment plans of this sort tend to push most of the principal of the annuity into a single payment at the end of the guarantee period. In these cases, Counties shall count the cash surrender value of the annuity as available property.

Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

Amount Invested: $100,000
Rate of Return: 5.00%
Guarantee Period: 15 Years

Interest + .8% of Principal per year

	Year	Payment
	1	$5,800.00
	2	$5,760.00
	3	$5,720.00
	4	$5,680.00
	5	$5,640.00
	6	$5,600.00
	7	$5,560.00
	8	$5,520.00
	9	$5,480.00
	10	$5,440.00
	11	$5,400.00
	12	$5,360.00
	13	$5,320.00
Life	14	$5,280.00
Expectancy	15	$93,240.00
	16	
	17	
	18	
	19	
	20	

Sum	$170,800.00
Sum<LE	$170,800.00
Sum > LE	$0.00

i. Guarantee Period Extends Beyond the Life Expectancy

The payment schedule on the following page represents a period certain annuity that has not been properly annuitized. It is a payment schedule for a 20-year period certain annuity. The guarantee period of 20-years exceeds the 15-year life expectancy of the annuitant, as determined by the Secretary's tables as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. In these cases there may be a disqualifying transfer as of the date the annuity was purchased or the date the payment plan was established, whichever was most recent. To determine whether or not the transfer is disqualifying, counties must review the transfer of property guidelines contained in ACWDL 90-01.

Even though the annuity also provides for an unreasonable 12% annual cost of living increase, the federal law requires that payments beyond the life expectancy of the annuitant are to be considered potentially disqualifying transferred assets. Counties must ***FIRST*** look to the transfer of property guidelines to determine whether or not there has been a disqualifying transfer. If the transfer to purchase the annuity was not a disqualifying transfer then, in these cases, Counties shall consider the cash surrender value of the annuity to be countable property.

To determine the amount that was transferred for less than adequate consideration, determine the percentage of the original purchase price which was transferred to fund the payments which exceed the life expectancy in accordance with the Secretary's tables as of the date of purchase or the date the payment plan was established, whichever was the most recent.

Note: Whenever an annuity has not been properly annuitized counties shall advise the individual that they must attempt to have the annuity annuitized in accordance with these procedures. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking any adverse actions. When undue hardship is considered and found not to apply the notice of action for the adverse action shall state that "the undue hardship provisions were considered and found not to apply".

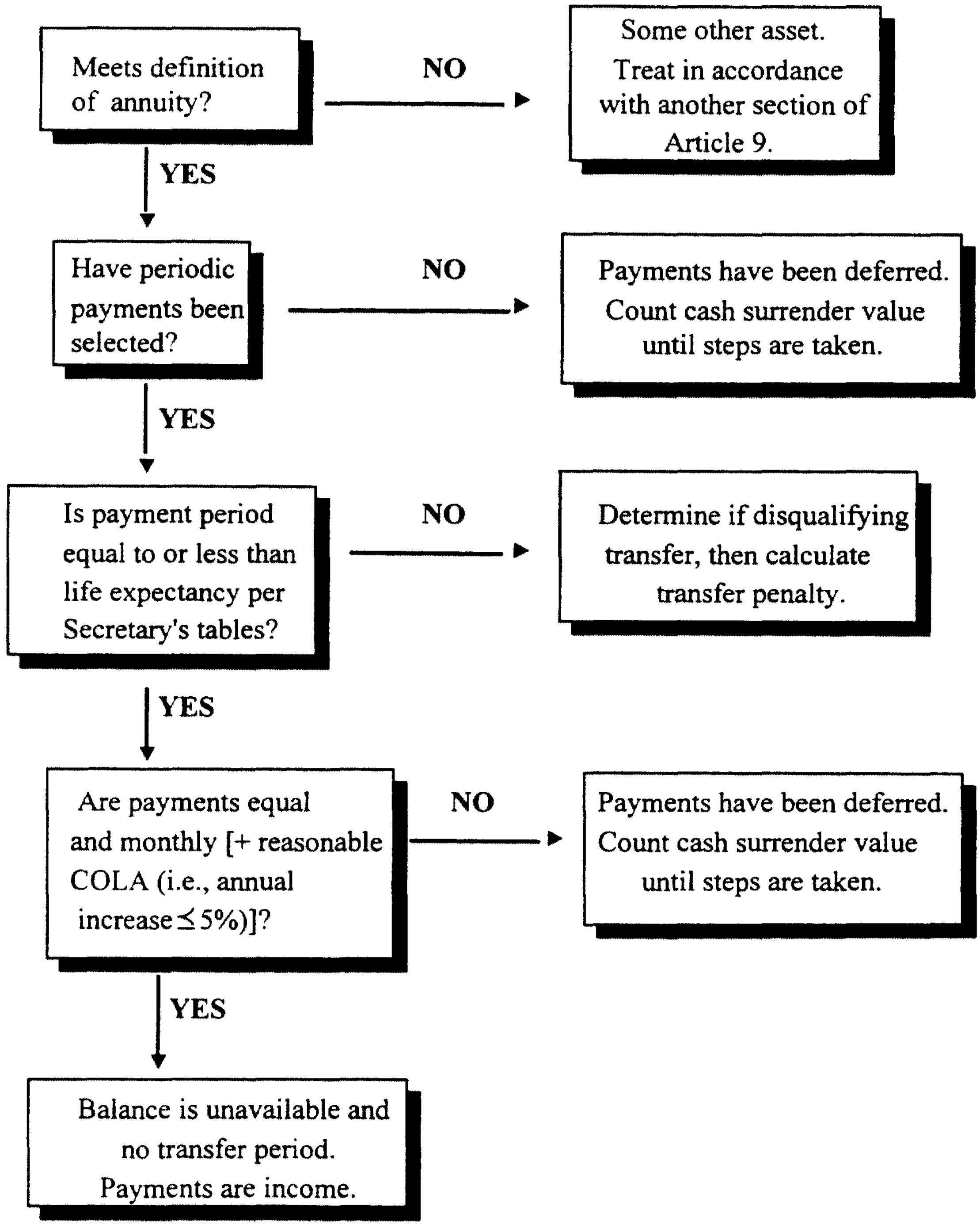
Amount Invested:	$100,000
Rate of Return:	6.00%
Guarantee Period:	20 Years

12% Annual Increase

	Year	Payment
	1	$2,655.96
	2	$2,974.68
	3	$3,331.64
	4	$3,731.44
	5	$4,179.21
	6	$4,680.72
	7	$5,242.41
	8	$5,871.50
	9	$6,576.08
	10	$7,365.21
	11	$8,249.04
	12	$9,238.92
	13	$10,347.59
Life	14	$11,589.30
Expectancy	15	$12,980.02
	16	$14,537.62
	17	$16,282.13
	18	$18,235.99
	19	$20,424.31
	20	$22,875.23

Sum	$191,369.00
Sum<LE	$99,013.72
Sum > LE	$92,355.28

TREATMENT OF ANNUITIES PURCHASED ON OR AFTER AUGUST 11, 1993



MALES - LIFE EXPECTANCY TABLE #1 (Office of the Actuary of the Social Security Administration)

AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	71.80	30	44.06	60	18.42	90	3.86
1	71.53	31	43.15	61	17.70	91	3.64
2	70.58	32	42.24	62	16.99	92	3.43
3	69.62	33	41.33	63	16.30	93	3.24
4	68.65	34	40.23	64	15.62	94	3.06
5	67.67	35	39.52	65	14.96	95	2.90
6	66.69	36	38.62	66	14.32	96	2.74
7	65.71	37	37.73	67	13.70	97	2.60
8	64.73	38	36.83	68	13.09	98	2.47
9	63.74	39	35.94	69	12.50	99	2.34
10	62.75	40	35.05	70	11.92	100	2.22
11	61.76	41	34.15	71	11.35	101	2.11
12	60.78	42	33.26	72	10.80	102	1.99
13	59.79	43	32.37	73	10.27	103	1.89
14	58.82	44	31.49	74	9.27	104	1.78
15	57.85	45	30.61	75	9.24	105	1.68
16	56.91	46	29.74	76	8.76	106	1.59
17	55.97	47	28.88	77	8.29	107	1.50
18	55.05	48	28.02	78	7.83	108	1.41
19	54.13	49	27.17	79	7.40	109	1.33
20	53.21	50	26.32	80	6.98	110	1.25
21	52.29	51	25.48	81	6.59	111	1.17
22	51.38	52	24.65	82	6.21	112	1.10
23	50.46	53	23.82	83	5.85	113	1.02
24	49.55	54	23.01	84	5.51	114	0.96
25	48.63	55	22.21	85	5.19	115	0.89
26	47.72	56	21.43	86	4.89	116	0.83
27	46.80	57	20.66	87	4.61	117	0.77
28	45.88	58	19.90	88	4.34	118	0.71
29	44.97	59	19.15	89	4.09	119	0.66

FEMALES - LIFE EXPECTANCY TABLE #2 (Office of the Actuary of the Social Security Administration)

AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	78.79	30	50.15	60	22.86	90	4.71
1	78.42	31	49.19	61	22.06	91	4.40
2	77.48	32	48.23	62	21.27	92	4.11
3	76.51	33	47.27	63	20.49	93	3.84
4	75.54	34	46.31	64	19.72	94	3.59
5	74.56	35	45.35	65	18.96	95	3.36
6	73.57	36	44.40	66	18.21	96	3.16
7	72.59	37	43.45	67	17.48	97	2.97
8	71.60	38	42.50	68	16.76	98	2.80
9	70.61	39	41.55	69	16.04	99	2.64
10	69.62	40	40.61	70	15.35	100	2.48
11	68.63	41	39.66	71	14.66	101	2.34
12	67.64	42	38.72	72	13.99	102	2.20
13	66.65	43	37.78	73	13.33	103	2.06
14	65.67	44	36.85	74	12.68	104	1.93
15	64.68	45	35.92	75	12.05	105	1.81
16	63.71	46	35.00	76	11.43	106	1.69
17	62.74	47	34.08	77	10.83	107	1.58
18	61.77	48	33.17	78	10.24	108	1.48
19	60.80	49	32.27	79	9.67	109	1.38
20	59.83	50	31.37	80	9.11	110	1.28
21	58.86	51	30.48	81	8.58	111	1.19
22	57.89	52	29.60	82	8.06	112	1.10
23	56.92	53	28.72	83	7.56	113	1.02
24	55.95	54	27.86	84	7.08	114	0.96
25	54.98	55	27.00	85	6.63	115	0.89
26	54.02	56	26.15	86	6.20	116	0.83
27	53.05	57	25.31	87	5.79	117	0.77
28	52.08	58	24.48	88	5.41	118	0.71
29	51.12	59	23.67	89	5.05	119	0.66

E. OBRA '93 TRUST CHARACTERISTICS

Trusts, as classified under OBRA '93, include trusts, SLDs, and annuities established or purchased on or after August 11, 1993, **other than by will**. Trusts established under OBRA '93 are no longer called Medicaid Qualifying Trusts (MQTs); however, they retain many of the same characteristics.

1. TRUST CHARACTERISTICS

OBRA '93 trusts are established:

➤ In part or in whole with assets of the individual or spouse,

➤ On or after August 11, 1993, and

➤ With income, property or property rights of the individual or individual's spouse.

The following subsection applies to OBRA '93 trusts without regard to:

✔ the purposes for which the trust is established,

✔ whether the trustee(s) has, or exercises, any discretion under the terms of the trust,

✔ any restrictions on when, or whether, distributions may be made from the trust, or

✔ any restrictions on the use of the trust assets or distributions.

This means that any trust which meets the basic characteristics outlined above must be considered in accordance with the following procedures in determining eligibility for Medi-Cal. No clause or restriction in the trust, no matter how specifically it applies to availability for Medicaid, Medi-Cal, or other federal or State programs (i.e., special needs trusts, exculpatory clauses), precludes a trust from being considered under these provisions.

2. INCOME OR PROPERTY

- Funds held in OBRA '93 trusts (whether trust income or trust principal) are considered property regardless of when or whether distributions may be made.

- Payments made from OBRA '93 trusts, to or for the benefit of the individual or spouse, are considered income to the individual or spouse whether the payment is made from trust principal or trust income (unlike MQTs or SLDs established on or before August 10, 1993).

3. OBRA '93 EXCEPTIONS

Two types of trusts for disabled individuals, established on or after August 11, 1993 have been excepted from treatment under OBRA '93, and are to be treated in accordance with provisions contained in VII C of this Section.

F. TO WHOM THESE TRUST PROVISIONS APPLY

These provisions apply to any individual or spouse whose assets or property rights, regardless of how little, are used to establish a trust, on or after August 11,1993, other than by will. An individual shall be considered to have established an OBRA '93 trust if any of the following individuals established the trust:

- ✔ the individual, or
- ✔ the individual's spouse, or
- ✔ a person or entity, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or spouse, regardless of whether that person or entity claims to be acting in such a capacity at the time of the action, or
- ✔ a person or entity, including any court or administrative body, acting at the direction or upon the request of the individual or spouse.

G. INDIVIDUAL'S ASSETS FORM ONLY PART OF AN OBRA '93 TRUST

When a trust includes the assets of another person, or persons, as well as the assets of the individual or spouse, the provisions of this section will apply only to that portion of the trust containing the assets of the individual or spouse. In determining the amount of countable property, prorate the property held in the trust, in the month, based on the proportion of the individual's or spouse's assets that have been transferred to the trust.

H. TREATMENT OF OBRA '93 TRUSTS

Once the trust has been categorized as an OBRA '93 trust, review the trust document to determine if the trust is revocable or irrevocable. Depending upon the terms of the trust, the principal and income contained within the trust will be treated in one of three ways:

- ✔ as available property
- ✔ as income, or
- ✔ as a transferred asset.

1. REVOCABLE TRUSTS

a. The entire amount of trust principal and trust income retained in the trust is treated as available property (pursuant to Section 50402(a), property held in trust shall be considered available subject to Section 50402 (a) -(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993) of the individual or spouse.

b. Any actual payment from the trust (whether from trust income or trust principal) made to, or for the benefit of the individual or spouse is treated as income to the individual or spouse, in accordance with Article 10.

c. Any actual payment from the trust which is not made to, or for the benefit of the individual or spouse is considered a transferred asset.

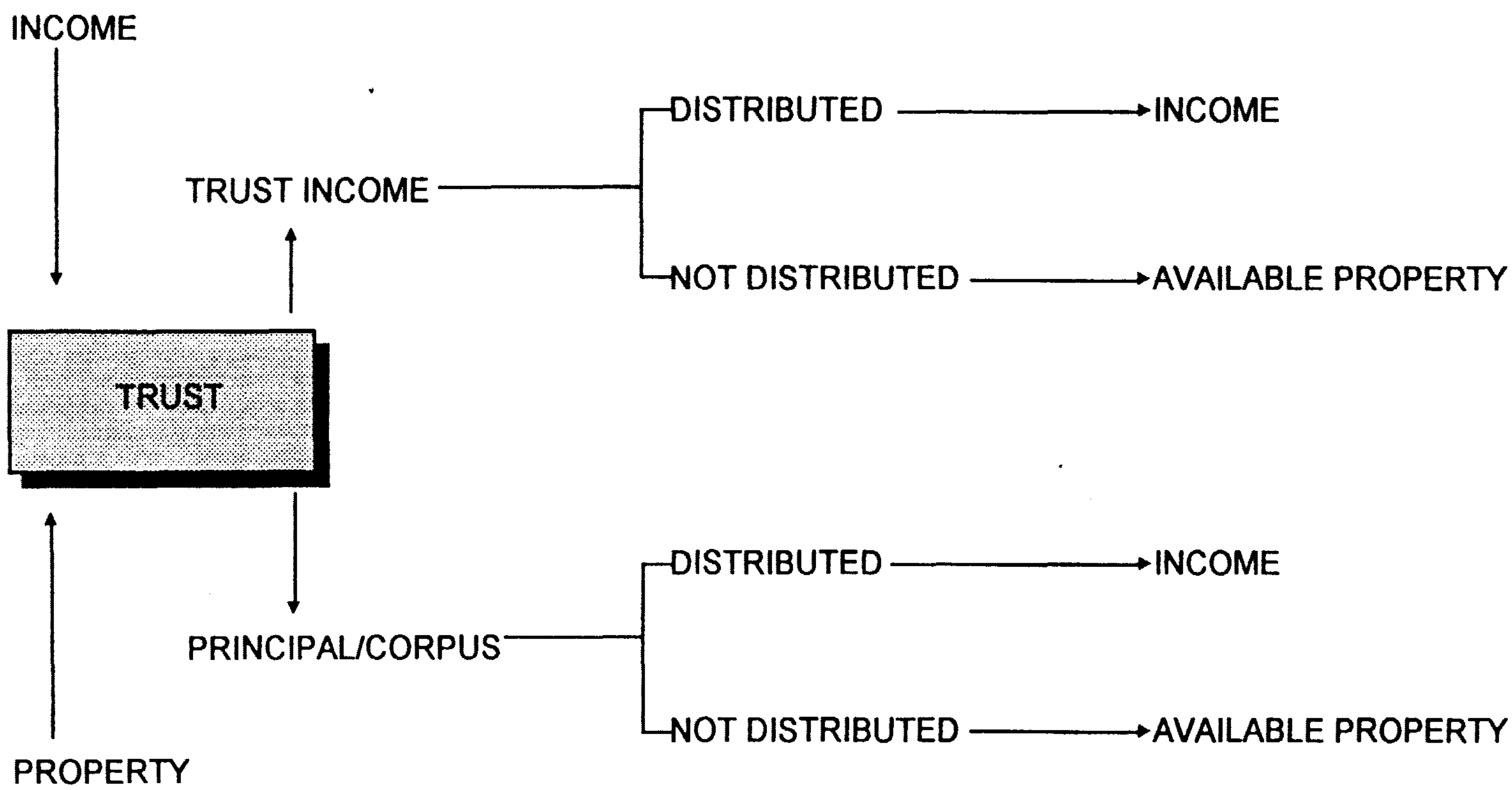
Example: Mr. Baker establishes a revocable trust, with a principal of $100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing funds from the trust. Each month, the trustee disburses $100 as an allowance to Mr. Baker, and $500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives $50,000 from the trust principal to Mr. Baker's brother.

Discussion: In this example, the $100 personal allowance, and the $500 for upkeep of the house, would count as <u>income</u> each month to Mr. Baker. Because the trust is revocable, the entire value of the trust principal and trust income retained by the trust is considered <u>available property</u> (pursuant to Section 50402 (a) -(f), excluding subsection 50402(e), for annuities purchased on or after August 11, 1993) to Mr. Baker. Originally, the trust principal was $100,000, however, in June 1994 the trustee gave away $50,000. Only the remaining $50,000 plus the trust income accrued since the trust was established and which was not disbursed, is countable as <u>available property</u> to Mr. Baker. The $50,000 would be considered a <u>transferred asset.</u>

OBRA 93: REVOCABLE TRUSTS

POSSIBLE OUTCOMES:

- Income
- Available Property



2. IRREVOCABLE TRUSTS

a. In the case of an irrevocable trust, where there is some circumstance under which payment *can* be made to, or for the benefit of the individual or spouse, regardless of when the distribution can be made, the following rules apply:

(1) An actual payment of trust income made to, or for the benefit of the individual or spouse shall be treated as income to that person, in accordance with Article 10.

(2) An actual payment from the trust principal made to, or for the benefit of the individual or spouse, shall be treated as income to that person, in accordance with Article 10.

(3) Any portion of trust income that could be paid to, or for the benefit of the individual or spouse, but is not shall be treated in accordance with the following.

(a) If the terms of the trust state that undistributed trust income is principal/corpus, then review these procedures for the treatment for principal/corpus.

(b) If the terms of the trust state that undistributed trust income remains trust income, then treat as available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993.)

(4) Any portion of trust principal that could be paid to, or for the benefit of the individual or spouse, but is not shall be treated as available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993) of that person.

(5) Any portion of trust principal or trust income that must be paid in the future, to or for the benefit of the individual or spouse, shall be treated as available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993) of that person regardless of when payment is, or can be made.

(6) Any actual payment of trust principal, which is not made to or for the benefit of the individual or spouse shall be treated as a transferred asset.

(7) Any actual payment(s) of trust income, which is not made to, or for the benefit of the individual or spouse, shall be treated as a transferred asset.

Example: Mr. Baker establishes an irrevocable trust, with a principal of $100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing funds from the trust. Each month, the trustee disburses $100 as an allowance to Mr. Baker, and $500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives $50,000 from the trust principal to Mr. Baker's brother.

Discussion: The $50,000 trust principal remaining after the gift to Mr. Baker's brother, is considered to be available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after

August 11, 1993) because the trustee has discretion to disburse the entire amount. Therefore, there is some circumstance under which payment can be made to, or for the benefit of the individual or spouse.

The $100 personal allowance and $500 for home upkeep are income to Mr. Baker. The $50,000 left after the gift to Mr. Baker's brother is available property to Mr. Baker. The $50,000 gift to Mr. Baker's brother would be treated as a transferred asset. The $50,000 gift was a payment made from the trust principal that was not for the benefit of Mr. Baker.

b. In the case of an irrevocable trust where:

✔ payments from all or some portion of the trust **cannot, at any time or under any circumstance**, be made to or for the benefit of the individual or spouse, or

✔ payments to or for the benefit of the individual or spouse have been stopped, or

✔ provisions for payments never existed,

the following rules apply.

(1) When all, or a portion, of the trust principal cannot be paid to or for the benefit of the individual or spouse because provisions for distribution never existed or the provisions for distribution have been stopped, that portion of trust principal shall be treated as a transferred asset.

(2) When all, or a portion, of the trust income cannot be paid to or for the benefit of the individual or spouse because provisions for distribution never existed, treat the trust income as principal/corpus and review the terms of the trust regarding the treatment of the trust principal/corpus.

(3) When all, or a portion, of the trust income cannot be paid to or for the benefit of the individual or spouse because the provisions for distribution have been stopped treat in accordance with the following.

(a) If undistributed income becomes principal/corpus according to the terms of the trust, then review the terms of the trust regarding the treatment of principal/corpus.

(b) If undistributed trust income remains income under the terms of the trust then treat as a transfer of assets.

Example: Mr. Baker establishes an irrevocable trust, with a principal of $100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing income from the trust; however the trustee is precluded by the terms of the trust from disbursing any of the principal of the trust to, or for the benefit of Mr. Baker. Each month, the trustee disburses $100 as an allowance to Mr. Baker, and $500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives $50,000 from the trust principal to Mr. Baker's brother.

Discussion: The $100 and $ 500 are disbursed from trust income and counted as income to Mr. Baker. Because none of the principal can be disbursed to Mr. Baker, the entire value of the principal at the time the trust was created ($100,000 in March, 1994) is treated as a transferred asset .

c. Determination of available property contained in an irrevocable trust:

Refer to the trust document to determine whether payments can, under any circumstances, be made from the trust, to or for the benefit of the individual or spouse, regardless of when payments may be made.

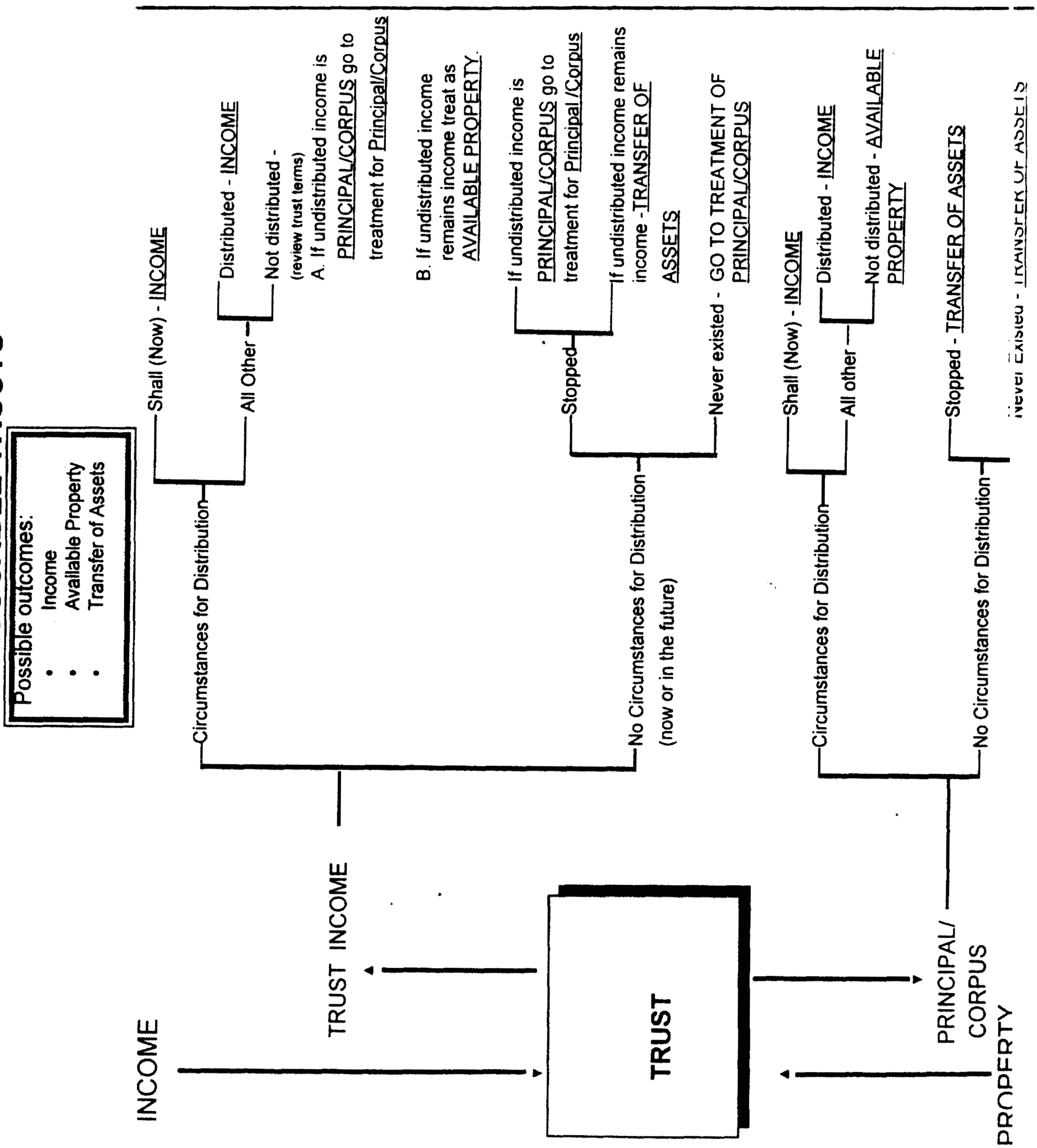
Example #1: An irrevocable trust provides that only $1,000 of the trust principal contained in a $20,000 trust can be paid out when the individual reaches the age of 18.

Discussion: If the trust document provides for no other payments, only the $1,000 would be treated as available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993.). The remaining $19,000, (which cannot under any circumstances be paid to, or for the benefit of that individual) would be considered a transferred asset.

Example #2: An irrevocable trust provides that $40,000 of the trust principal contained in a $100,000 trust can be paid by the trustee only in the event that the trustor needs a heart transplant.

Discussion: There is a circumstance, however remote, when a payment can be made from $40,000 of the trust principal. Therefore, the full $40,000 would be considered available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993)_to the trustor, regardless of when or whether the payment is made. The remaining $60,000 cannot, under any circumstances, be paid to, or for the benefit of that individual, and is considered a transferred asset.

OBRA '93: IRREVOCABLE TRUSTS



I. UNDUE HARDSHIP

Eligibility cannot be denied or discontinued without first considering whether or not undue hardship exists. In considering the undue hardship provisions the individual must demonstrate that the application of the OBRA '93 trust provisions would result in undue hardship. Undue hardship does not exist when application of the trust provisions merely causes the individual, parent or spouse inconvenience.

1. For undue hardship to exist, <u>all</u> of the conditions in a-d (below) must be present except that subsection 1d does not apply in the case of an annuity.

    a. The trust assets cannot, under any circumstances, be used to provide for health care or medical needs of the individual, <u>and</u>

    b. Health care cannot be obtained from, and medical needs cannot be met by, any source other than Medi-Cal without depriving the individual of food, clothing, shelter, or other necessities of life, <u>and</u>

    c. The individual's parents (if the individual is under 21) or the individual's spouse, do not have assets to provide for health care and medical needs, or health care coverage for the individual without depriving themselves of food, health care or medical needs, clothing, shelter, or other necessities of life, <u>and</u>

    d. The courts have denied a good faith petition to release the trust assets to pay for the required medical care. A petition to release the trust assets shall not be considered a valid good faith petition if the petition contains language that suggests or requests the courts do anything other than release the trust assets needed to pay for the required medical care. The County must verify the petition by viewing both the petition and the court order.

2. **No person shall be made ineligible to the extent otherwise exempt income or property is held in trust.**

3. Annuities purchased between August 11, 1993 and March 1, 1996, which cannot be annuitized to comply with treatment under OBRA '93, shall continue to be treated in accordance with ACWDL 90-01, Section 50402. Written verification must be obtained from the entity that issued the annuity verifying that the annuity cannot be restructured.

If undue hardship <u>does</u> apply, only the treatment of the trust under OBRA '93 is waived. The trust must then be considered and eligibility determined under Title 22, Section 50489.9 (a) and (c).

If undue hardship is found not to apply, the applicant/beneficiary must receive notice of any adverse actions. This notice must include the statement, "the provisions regarding undue hardship were considered and found not to apply."

J. CONSIDERATIONS FOR TRANSFER OF ASSETS

To calculate the period of ineligibility for making a disqualifying transfer of assets, the <u>date of transfer</u> and the <u>uncompensated value</u> must be determined. To determine whether a period of ineligibility for such a transfer should be assessed, see the Transfer of Asset guidelines.

1. DATE OF TRANSFER

The date of the transfer is considered to be one of the following depending on the situation. One or more of the following may occur in a single trust.

a. The date the trust was established (the date the original trust document was dated and signed).

b. The date on which payment to the individual or spouse stopped.

c. The date assets were made unavailable by a transfer into an already existing trust.

d. The date available trust assets were transferred to someone or some entity not for the benefit of the individual or spouse.

Example #1: A revocable trust has a triggering clause making it irrevocable and the trust assets unavailable if the beneficiary enters an institution.

Discussion: The date of transfer would be the date of institutionalization since that is when the trust became irrevocable and the date trust disbursement was stopped.

Example #2: An "income only trust" may have a clause to dissolve the trustees' power to make distributions after the date the individual or spouse enters into an institution.

Discussion: There may be two transfers. If the income only trust were established with assets or property rights of the individual or spouse, then the date of the first transfer would be the date the trust was established. The date of the second transfer of the income would be the date the individual entered the institution since that is the date trust disbursement stopped.

Note: In situations where trust principal or trust income is considered transferred as a result of a "trigger" when an individual enters a nursing facility and the individual is discharged, the trust principal and trust income may once again be considered available.

See Transfer of Property/Asset guidelines for voiding all or part of a period of ineligibility and calculating a potential overpayment for any month where there would have been excess property had the trust principal and/or trust income not been considered transferred.

2. UNCOMPENSATED VALUE DETERMINATION

In treating a trust or portions of a trust that cannot at any time, or under any circumstances, be distributed to the individual or spouse, the value of the transferred amount shall be its value on the date of establishment, the date that disbursement to the individual or spouse was stopped, or the date the assets were transferred into an already existing trust, depending upon the situation. One or more situations may apply in a single trust.

a. In determining the value of the trust or the portions of the trust that cannot, under any circumstances, be distributed to or for the benefit of the individual or spouse, do not subtract from the trust the value of any payment made (this refers to a payment made to someone else, not for the benefit of the individual or spouse), for whatever purpose, after the date the trust was established.

b. If disbursement to the individual or spouse was stopped, then the uncompensated value of the portions of the trust described in a (above) shall be the value of the trust assets on the day disbursement was stopped.

c. If funds were added to that portion of the trust described in a (above), after the date the trust was established or disbursement was stopped, the transfer of those funds is considered another transfer of assets.

Example: Mr. Baker establishes an irrevocable trust, with a principal of $100,000, on March 1, 1994, enters a nursing facility on November 15, 1994, and applies for Medi-Cal on February 15, 1995. Under the terms of the trust, the trustee has complete discretion in disbursing income from the trust; however the trustee is precluded by the terms of the trust from disbursing any of the principal of the trust to, or for the benefit of Mr. Baker. Each month, the trustee disburses $100 as an allowance to Mr. Baker, and $500 to a property management firm for the upkeep of Mr. Baker's home, from the trust income. On June 15, 1994, the trustee gives $50,000 from the trust principal to Mr. Baker's brother.

Discussion: The trust is irrevocable and none of the trust principal can be distributed. Therefore, the transfer of the entire value of the principal at the time the trust was created ($100,000 in March 1994) is treated as a transferred asset. The trust income can be distributed. Therefore, the $100 and $500 disbursed from trust income are counted as income to Mr. Baker.

The date of transfer would be the date the trust was established, March 1994, the date the funds were transferred. The term unavailable, as used herein, refers to the portion of the trust that cannot be disbursed to the individual or spouse. The fact that $50,000 was actually transferred out of the trust, to Mr. Baker's brother, does not alter the amount of assets transferred by Mr. Baker. The transfer to Mr. Baker's brother was not made to, or for the benefit of Mr. Baker. The transfer amount remains $100,000, even after the gift to Mr. Baker's brother.

If, at some point after the establishment of the trust, Mr. Baker placed another $50,000 in the trust, none of which could be disbursed to him, the transfer of that $50,000 would be treated as another transfer of assets.

VI. TRUSTS ESTABLISHED PRIOR TO AUGUST 11, 1993

A. BACKGROUND

Section 50489.1 describes the treatment of trusts established prior to August 11, 1993 and complies with federal law as it existed for those trusts [42 U.S.C., Section 1396 a(k)]. That section defined Medicaid Qualifying Trusts (MQTs) and Similar Legal Devices (SLDs) and provided that trust principal and income may be considered available even though they may not be actually available, or even though the terms of the MQT or SLD limit the usage of funds to specific items or services.

B. IMPLEMENTATION

Counties were instructed to implement these procedures no later than May 1, 1993, at application and redetermination, per ACWDL 93-07. No potential overpayment was to be calculated due to a delay in implementation; however, in cases where the revised rules resulted in an increase in the share of cost, ineligibility due to excess resources or a period of ineligibility for nursing facility level of care, counties were instructed to issue an adequate 10-day notice and take the action prospectively.

C. DEFINITIONS SPECIFIC TO SIMILAR LEGAL DEVICES (SLDs) AND MEDICAID QUALIFYING TRUSTS (MQTs)

1. "Individual" - For purposes of this section, the term individual means a person or spouse who establishes (or on whose behalf is established) an MQT or SLD with his/her property or property rights and who is a beneficiary of that MQT or SLD.

2. "Medicaid Qualifying Trust (MQT)" - An MQT is a trust that meets **ALL** of the following conditions:

   a. Was established, prior to August 11, 1993, other than by will, by the individual who is a beneficiary of the MQT or SLD, by the individual's spouse, or by a person who is appointed to act as guardian or conservator, or by a person who is the legal representative of that individual.

   Note: Persons listed above, other than the individual, shall be considered to be acting, on behalf of that individual, as long as their actions involve funds originating with that individual, awarded to that individual, or involve that individual's MQT or SLD.

   b. Provides that the individual or spouse receives all or part of the payments of the trust dispersed either directly or to another person or entity on behalf of that individual regardless of the limitations contained in the trust documents on the use of the funds.

   c. Gives the trustee any discretion in distributing funds.

   An MQT may also be:

   ➤ Revocable or irrevocable, and

➤ Established with the intent of enabling the individual to qualify for Medi-Cal (see "Note" below) or for another purpose.

Note: The term "Medicaid Qualifying Trust" does not mean that the individual is automatically eligible for Medi-Cal. An individual with a trust which meets the definition of an MQT **IS LIKELY TO BE INELIGIBLE FOR MEDI-CAL** due to excess property.

3. "Similar Legal Device (SLD)" - An SLD is any legal instrument, device, or arrangement (written or oral) that involves the transfer of property or property rights from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the property or property rights be held, managed, or administered by an individual or entity for the benefit of the transferee. An SLD must meet all of the conditions specified in the definition of an MQT however, an arrangement may be considered an SLD even if it is not called a trust and does not qualify as a trust under state law.

D. TREATMENT OF AN MQT OR SLD

The characteristics of the MQT or SLD will determine how the MQT or SLD is to be considered for eligibility purposes. Review the MQT or SLD to determine whether it is revocable or irrevocable. Depending on the terms of the trust, the principal and income contained in the trust will be treated in one of three ways:

✔ as available property,

✔ as income, or

✔ as a transfer of property or assets.

1. REVOCABLE MQT OR SLD -

a. The entire amount of principal contained in an MQT or SLD is available property (pursuant to Section 50402(a)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993.) .

b. The entire amount of MQT or SLD income is available income and is subject to treatment under Article 10.

Example: Ann Jones is applying for Medi-Cal on behalf of her husband Bob who is in long-term care. She declares that she and her husband placed all of their property into a living trust on September 20, 1992. Ann and Bob are both trustors and both are named as trustees. The trust document has been set up to be revocable and contains approximately $100,000 in personal property, as well as the principal residence, and one other piece of non-income producing real property. Note: The $100,000 will produce trust income.

Discussion: A living trust is usually established to avoid probate and to minimize estate taxes. When establishing a living trust, titles of real estate and/or other property or property rights are transferred to a trustee and held in trust while the transferors are still alive. The trust document specifies how the property is to be managed and distributed during the trustor's lifetime and after death.

Usually the individual who creates a living trust makes the trust revocable and names him/herself as trustee thereby, retaining control over his/her property during his/her lifetime. A living trust established by the individual or spouse prior to August 11, 1993 is considered an MQT as long as the trustee has any discretion in distributing funds and as long as the trustor is also a beneficiary of at least some payments from the trust.

In this example, the living trust is an MQT because it meets the following requirements:

✔ the trust was established prior to August 11, 1993, and

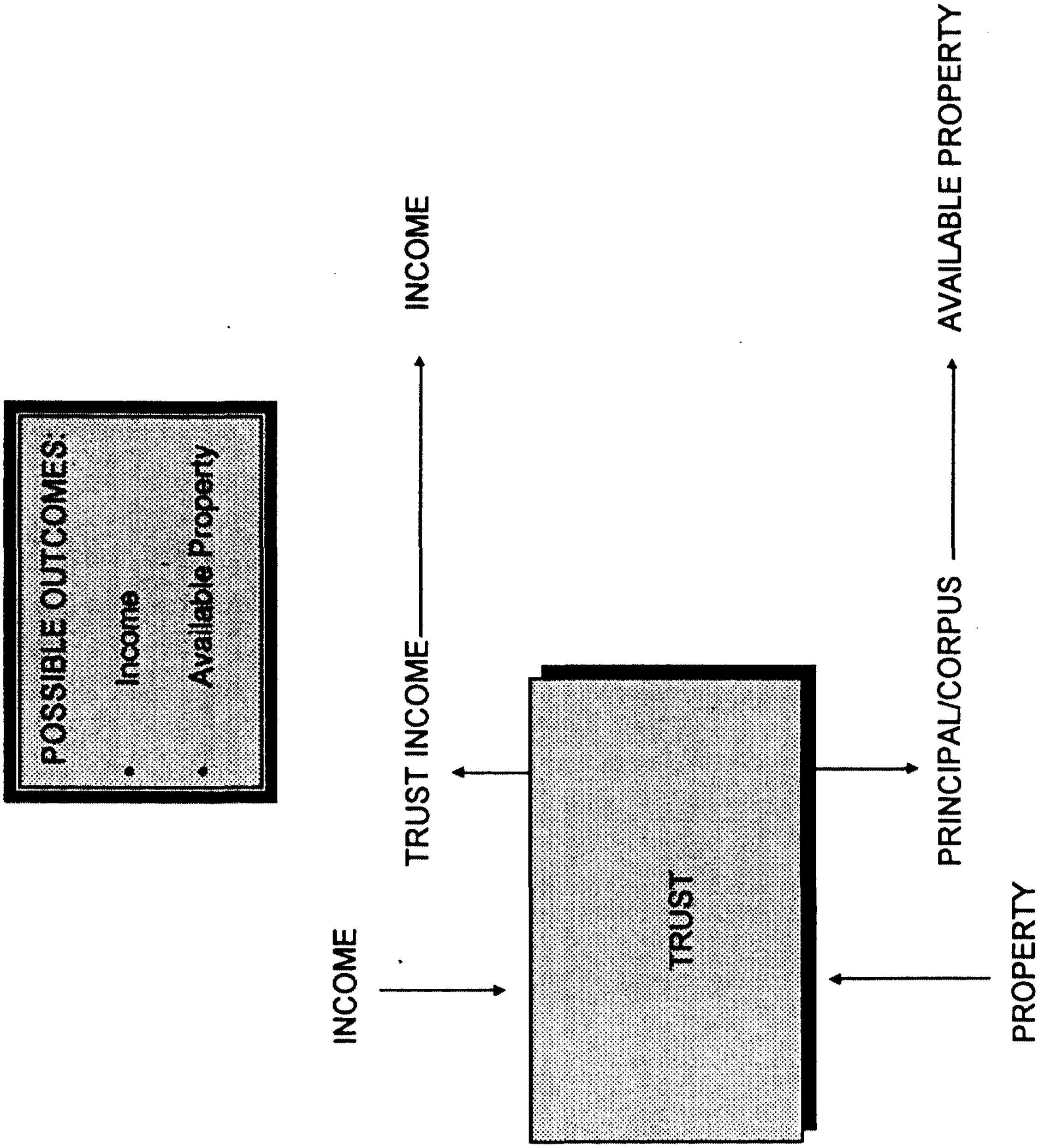
✔ the trust was established by the applicant and his/her spouse, the trustors, and

✔ the trustees, (the applicant and spouse) have at least some discretion over the trust principal and/or trust income contained in the trust, and

✔ the applicant and spouse are trust beneficiaries to all or a part of the payments from the trust.

Since the trust is revocable by the applicant and he/she has the right to the proceeds, the entire amount of principal in the trust is considered available property (pursuant to Section 50402(a)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993) and trust income is available income.

MEDICAID QUALIFYING TRUSTS: REVOCABLE TRUSTS



2. IRREVOCABLE MQT OR SLD -

The maximum amount of trust principal and trust income that the trustee may distribute either directly or to another person or entity on behalf of the individual, if the trustee were to exercise full discretion under the terms of the MQT or SLD, is considered available:

- ✔ Whether or not the trustee is actually releasing it, and
- ✔ Regardless of any limitations on the use of the funds that may be contained in the MQT or SLD.

a. Principal

(1) Any amount distributed from the principal of the MQT or SLD to the individual or spouse, or to another person or entity on behalf of that individual is available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993).

(2) The maximum amount from the principal that the trustee may distribute to the individual or spouse, or to another person or entity on behalf of that individual, if the trustee were to exercise full discretion under the terms of the MQT or SLD, but which is not distributed, is available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993).

(3) Any amount of trust principal that the trustee has no discretion to release to the individual or spouse, or to another person or entity on behalf of that individual, shall be considered transferred property as of the date the trust was established or the date disbursement is discontinued.

b. Income

(1) Any amount distributed from the income of the MQT or SLD to the individual or spouse, or to another person or entity on behalf of that individual, is treated as available income and is subject to treatment under Article 10.

(2) The maximum amount that the trustee may distribute to the individual or spouse, or to another person or entity on behalf of that individual, from trust income, if the trustee were to exercise full discretion under the terms of the MQT, but which is not distributed, is determined in accordance with (A) or (B) below.

Depending on the terms of the trust any undistributed income will either remain trust income or become trust principal/corpus. To evaluate undistributed income, first review the terms of the trust to determine whether undistributed income remains trust income or if the undistributed income becomes principal. Then determine the maximum extent of trustee discretion over these funds and apply (A) or (B) below.

(A) If undistributed trust income remains trust income, count as income in the first month distribution was possible and available property (pursuant to Section 50402 (b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993) the month following. If a payment is made at a later time, consider this a conversion of property.

(B) If undistributed trust income becomes principal, count as income in the first month distribution was possible, and review the terms of the trust to determine treatment of principal for following months. Then follow the procedures for counting trust principal.

(3) If the trust document does not address the distribution of trust income at all, trust income immediately becomes trust principal/corpus. Review the terms of the trust to determine the maximum extent of the trustee's discretion over trust principal and treat in accordance with the procedures for evaluating trust principal/corpus.

(4) Any amount of trust income that the trustee has no discretion to release to the individual or spouse, or to another person on behalf of that individual, shall be treated in accordance with (A) and (B) below after reviewing the terms of the trust.

(A) If undistributed trust income remains trust income under the terms of the trust it shall be considered a transfer of assets, if a transfer of income to the trust occurred on or after August 11, 1993. (See Section F Consideration for Transfer of Assets)

(B) If undistributed trust income is principal/corpus under the terms of the trust, review the trust to determine how principal/corpus may be distributed and follow the procedures for evaluating principal /corpus.

Example: Ann Jones is applying for Medi-Cal on behalf of her husband Bob who is in long-term care. She declares that she and her husband placed all of their property into a living trust on September 20, 1992. Ann and Bob are both trustors and both are named as trustees. The trust document has been set up to be irrevocable and provides the trustees with full discretion regarding the distribution of principal/corpus and trust income. The trust contains approximately $100,000 in personal property, as well as the principal residence, and one other piece of non-income producing real property. Note: the $100,000 will produce trust income.

Discussion: A living trust is usually established to avoid probate and to minimize estate taxes. When establishing a living trust, titles of real estate and/or other property or property rights are transferred to a trustee and held in trust while the transferors are still alive. The trust document specifies how the property is to be managed and distributed during the trustor's lifetime and after that individual's death. Usually the individual who creates a living trust names themselves as trustee; thereby, retaining control over their property during their lifetime. When property or property rights are placed into an **irrevocable living trust**, the trust documents must be examined to determine the maximum extent of the trustee's discretion to make disbursements to the individual or spouse, or to another person or entity on behalf of that individual, in order to determine the amount that may be considered available property or income. In determining the availability of the property held in trust, Section 50402(b)-(f) applies except that subsection 50402(e) does not apply to annuities purchased on or after August 11, 1993. A living trust established by the individual or spouse prior to August 11, 1993 is considered an MQT as long as the trustee has any discretion in distributing funds and as long as the trustor is also a beneficiary of at least some payments from the trust.

In this example, the living trust is an MQT because it meets the following requirements:

- ✔ the trust was established prior to August 11, 1993, and
- ✔ the trust was established by the applicant and his/her spouse, the trustors, and
- ✔ the trustees, (the applicant and spouse) have at least some discretion over the trust principal and/or trust income contained in the trust, and
- ✔ the applicant and spouse are trust beneficiaries to all or a part of the payments from the trust.

Even though the trust is irrevocable, the applicant has discretion over the full amount of trust principal and trust income, therefore the entire amount in the trust is considered available property (pursuant to Section 50402(b)-(f) except that subsection (e) does not apply to annuities purchased on or after August 11, 1993) and available income.

MEDICAID QUALIFYING TRUST : IRREVOCABLE