

- (1) For the purposes of this rule:
  - (a) "Actuarially sound" means a *commercial annuity* which pays principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant, with no deferral and no balloon payments. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within 12 months of the actuarial life expectancy, measured at the time of purchase.
  - (b) For an individual, an annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR [461-145-0380](#).)
  - (c) The definition of "child" in OAR [461-001-0000](#) does not apply.
  - (d) "Child" means a biological or adoptive child who is:
    - (A) Under age 21; or
    - (B) Any age and meets the Social Security Administration criteria for blindness or disability.
  - (e) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

- (2) An annuity that does not make regular payments for a lifetime or specified number of years will not be excluded from countable resources under this rule.
- (3) When an individual applies for medical assistance, both initially and at periodic redetermination (see OAR [461-115-0050](#) and [461-115-0430](#)), the individual must report any annuity owned by the individual or a spouse of the individual.
- (4) By signing the application for assistance, an individual and the spouse of an individual agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any *commercial annuity* purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR [461-160-0580](#)(2)(c).
- (5) If the Department is notified about a *commercial annuity*, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the individual.
- (6) If an individual or a spouse of an individual purchases or transfers a commercial annuity prior to January 1, 2006, the following applies:
  - (a) If the individual is in a *nonstandard living arrangement* (see OAR [461-001-0000](#)), the transaction may be subject to the rules on asset transfers at OAR [461-140-0210](#) and following. For an annuity that is not disqualifying or the disqualification period has already been served, the annuity is not counted as a resource; payments are counted as unearned income to the payee.
  - (b) If the individual is in a *standard living arrangement*, the annuity payments are counted as unearned income to the payee.
- (7) Sections 8 and 9 of this rule apply to a *commercial annuity* if---

- (a) The individual is in a *nonstandard living arrangement*, and the individual or the spouse of the individual purchases an annuity from January 1, 2006 through June 30, 2006; or
  - (b) The individual is in a *standard living arrangement* (see OAR [461-001-0000](#)), and the individual or the spouse of an individual purchase an annuity on or after January 1, 2006.
- (8) A *commercial annuity* covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:
- (a) If a married individual is an annuitant, the annuity must meet the requirements of subsection (8)(d) of this rule.
  - (b) If an unmarried individual is an annuitant, the annuity must meet the requirements of subsection (8)(d) of this rule, and the annuity must specify that upon the death of the individual, the first remainder beneficiary is either of the following:
    - (A) The Department, for all funds remaining in the annuity up to the amount of medical assistance provided on behalf of the individual.
    - (B) The *child* of the individual, if the Department is the next remainder beneficiary (after this child), up to the amount of medical assistance provided on behalf of the individual, in the event that the child does not survive the individual.
  - (c) If a spouse of an individual is the annuitant, the annuity must meet the requirements of subsection (8)(d) of this rule, and the annuity must specify that, upon the death of the spouse of the individual, the first remainder beneficiaries are either of the following:
    - (A) The individual, in the event that the individual survives the spouse; and the Department, in the event that the individual does not survive the spouse, for all funds remaining in the annuity up to the amount of medical assistance provided on behalf of the individual.

- (B) A *child* of the spouse; and the individual in the event that this child does not survive the spouse.
- (d) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:
  - (A) The annuity is irrevocable.
  - (B) The annuity must be *actuarially sound*.
  - (C) The annuity is issued by a business that is licensed and approved to issue a *commercial annuity* by the state in which the annuity is purchased.
- (9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income to the payee. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.
- (10) This section lists the requirements for a *commercial annuity* purchased by the individual or the spouse of the individual on or after July 1, 2006, when an individual is in a *nonstandard living arrangement*, and the annuity names the individual or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income to the payee. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.
  - (a) The annuity must comply with one of the following paragraphs:
    - (A) The first remainder beneficiary is the spouse of the individual; the Department is named as the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual; and in the event that the spouse transfers any of the remainder

of the annuity for less than *fair market value* (see OAR [461-001-0000](#)), the Department is the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual.

(B) The first remainder beneficiary is the annuitant's *child*; the Department is named as the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual; and in the event that the *child* or a representative on behalf of the *child* transfers any of the remainder of the annuity for less than *fair market value*, the Department is the second remainder beneficiary for up to the total amount of medical assistance paid on behalf of the individual.

(C) The first remainder beneficiary is the Department for up to the total amount of medical assistance paid on behalf of the individual.

(b) The annuity must be irrevocable.

(c) The annuity must be non-assignable.

(d) The annuity must be *actuarially sound*.

(e) The annuity is issued by a business that is licensed and approved to issue a *commercial annuity* by the state in which the annuity is purchased.

(11) If the individual is the annuitant and a *commercial annuity* does not meet all of the requirements of subsections (10)(a), (10)(d), and (10)(e) of this rule, or the spouse of the individual is the annuitant and a *commercial annuity* does not meet the requirements of subsections (10)(a), (10)(d), and (10)(e) of this rule, there is a disqualifying transfer of assets under OAR [461-140-0210](#) and following. See OAR [461-140-0296](#)(5) and (6) for calculation of the disqualification period. To the extent to which there is a disqualifying transfer of assets under this section, the annuity is not counted as a resource.

- (12) If the annuity does not meet all of the requirements of subsections (10)(b) or (10)(c) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

Statutory/Other Authority: ORS [411.060](#), [411.070](#), [411.083](#), [411.404](#)

Statutes/Other Implemented: ORS [411.060](#), [411.070](#), [411.083](#), [411.404](#)

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