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Issue

Codify the SSI Exclusion for Irrevocable Funeral and Burial Trusts

Background

Under current regulations, the Supplemental Security Income Program (SSI) provides that funds set aside by low income individuals in an irrevocable funeral/burial trust to pay for funeral and burial expenses are not treated as resources when determining an applicant's eligibility for SSI. By providing this exclusion, Congress and the Social Security Administration (SSA) have recognized that funeral planning is good social policy – especially for low-income individuals. Pre-need funeral planning and funding actually saves federal, state and local governments money as it encourages individuals to pay for their funeral and burial with funds set aside in advance, thus avoiding government-funded indigent funerals.

Problem

Without this exclusion, many SSI recipients would die without adequate funds for a dignified funeral and burial. Without this exclusion, state and local governments would be forced to allocate public monies to fund this expense, which is currently being covered by the SSI recipient using personal monies under the funeral funds exclusion. This option is problematic since many state and local governments are eliminating or severely reducing indigent funeral and burial funds due to the current economic downturn.

The problem is that the irrevocable funeral trust exclusion is a regulatory exclusion and is subject to unilateral agency revocation. This accidentally occurred in 2001 when SSA misinterpreted SSI antifraud legislation passed by Congress and repealed this regulatory exclusion. This caused considerable concern for many low income SSI applicants whose applications were held up pending resolution of this issue. While NFDA was successful in convincing SSA that its interpretation was incorrect, this situation could occur again.

Congressional Solution

To prevent further uncertainty and to prevent this situation from happening again, NFDA supports passage of legislation (H.R. 935/S.863) to codify this exclusion. It is important to note that this bill does not change the current regulation, it merely codifies it.