

	<b>GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES MEDICAID POLICY MANUAL</b>			
	<b>Chapter:</b>	<b>2300</b>	<b>Effective Date:</b>	<b>April 2020</b>
	<b>Policy Title:</b>	<b>Loans (Borrower)</b>		
<b>Policy Number:</b>	<b>2347</b>	<b>Previous Policy Update:</b>	<b>MT 17</b>	

## REQUIREMENTS

Treatment of a loan or loan agreement as a resource or income depends on whether the A/R is the lender or the borrower and upon whether the loan is bona fide and negotiable.

## BASIC CONSIDERATIONS

The context of the instructions in this section assumes that the individual (A/R) is the Borrower of the loan and is therefore the recipient of the asset (cash) and the person making payments to the Lender. Reference Section 2313, Contracts, for regulations and procedures for the Lender of the loan.

### **Terminology**

#### **Loan**

A loan is a transaction whereby one-party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest. The loan agreement may be written or oral and must be enforceable under State law.

#### **Informal Loan**

An informal loan is one between entities who are not in the business of lending money or extending credit. It may be oral or written.

#### **Formal Loan**

Formal loans are commercial loans with an entity that is in the business of making loans.

#### **Negotiable Agreement**

A negotiable loan agreement is one in which the ownership of the loan instrument itself and the amount of money stated in the agreement may be transferred from one entity to another.

**BASIC CONSIDERATIONS (cont.)****Bona Fide Agreement**

A “bona fide” loan agreement is one that is legally binding and made in good faith.

**PROCEDURES****Determination of Loan Value**

The resource value of the loan is different for the Borrower and the Lender.

For the **Borrower**:

If the loan is a **Bona Fide** agreement, then:

- The loan agreement itself is **NOT** a resource.
- The cash received from the lender is **NOT** counted as income when received.
- The cash received from the lender is a **countable resource** if retained in the month following the month or receipt.

If the loan is not a **Bona Fide** agreement, then:

- The loan agreement itself is **NOT** a resource.
- Cash received from the lender **IS income** in the month received.
- The cash received from the lender **is a countable resource** if retained in the month following the month or receipt.

For the **Lender**, refer to Section 2313, Contracts.

**Determining if an Informal Loan is Bona Fide**

An Informal Loan is Bona Fide if it meets the following requirements:

- It must be enforceable under State Law.
- The loan agreement must be in effect at the time the asset (cash) is given to the borrower. The loan cannot be established after the fact.
- The obligation to repay the loan **MUST** be acknowledged by both lender and borrower to be a bona fide loan. The borrower feeling an obligation to repay a friend or relative does not make it a legal obligation, nor does stating a loan should only be repaid if the borrower becomes able to pay because of a change in financial circumstances.
- The loan must have a plan for repayment and state the collateral used to back the loan.
- The repayment plan must be reasonable considering the borrower’s financial circumstances including anticipated income and living expenses.

**PROCEDURES (cont.)**

Follow the steps below to determine the treatment of a Loan for the **Borrower**:

- Step 1** Obtain a copy of the loan agreement for a formal loan or informal written loan.
- Step 2** Assume a formal loan is bona fide and negotiable unless A/R presents convincing evidence of a legal bar to a transfer of ownership.
- Step 3** If the loan is informal, obtain signed statements from the lender(s) and borrower(s) addressing the requirements for a bona fide informal loan. See page 2. Use this information to determine if the informal loan is bona fide.
- Step 4** Determine the countable income using the criteria on page 1 of this section.
- Step 5** Determine the resource value of the loan proceeds based on the criteria on pages 1 and 2 of this section. It may be necessary to verify if the loan proceeds are retained into the month(s) after receipt via a bank statement, etc.
- Step 6** If the loan proceeds along with other countable resources puts the A/R over the resource limit deny/close the case. If the loan proceeds along with other countable income does NOT put the A/R over the resource limit, proceed to Step 7.
- Step 7** Continue the application process with the remaining eligibility criteria.