2313 – CONTRACTS - PROMISSORY NOTES, LOANS, AND PROPERTY AGREEMENTS

POLICY STATEMENT	The resource value of a promissory note, loan or property agreement is determined by whether an A/R's class of assistance (COA) is Non-FBR or FBR ABD Medicaid. This is not applicable in Family Medicaid COAs.
BASIC CONSIDERATIONS	The context of the instructions in this section assumes that the individual is the creditor (lender of money or seller of property) and therefore the owner of the promissory note, loan or property agreement. A promissory note is a written, unconditional agreement whereby one party promises to pay a specified sum of money at a specified time (or on demand) to another party. It may be given in return for goods, money loaned, or services rendered. 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. A written loan agreement is a form of promissory note. A property agreement is a pledge or security of particular property for the payment of a debt or the performance of some other obligation within a specified period. Property agreements on real estate generally are referred to as mortgages but also may be called land contracts, contracts for deed, deeds of trust, etc. Personal property agreements such as a pledge of crops, fixtures, inventory, etc, are commonly known as chattel mortgages.

PROCEDURES

Non-FBR Medicaid COA s

Totally exclude a promissory note, loan or property agreement owned by a non-FBR A/R or deemor from resources if the A/R or deemor is receiving regularly scheduled payments from the borrower. The payment must include repayment of the principal. The document should specify that repayment of the principal is expected.

Count as unearned income the entire amount of any payment from a contract owned by a Non-FBR A/R or deemor.

PROCEDURES

Non-FBR Medicaid COAs (cont.)

If the borrower is not making scheduled payments on the contract, or the payments do not include repayment of the principal, follow the procedures for determining the resource value of a contract owned by a FBR A/R.

FBR COAs

Assume that the resource value of a promissory note, loan or property agreement owned by a FBR A/R or deemor is its outstanding principal balance unless the individual furnishes reliable evidence that it has a CMV of less value or no CMV at all.

Verification and Documentation

Non-FBR Medicaid COAs

Obtain a copy of the contract, if written. Obtain written statements from the A/R and borrower that include the amount of the payments and the payment schedule.

FBR Medicaid COAs

Obtain a copy of the agreement for the file. Cease development if including the original balance in countable resources does not cause ineligibility.

If including the outstanding principal balance as a countable resource causes ineligibility, inform the individual that the outstanding principal balance will be used in determining the resource value unless s/he submits either of the following within 30 days:

- evidence of a legal bar to the sale of the agreement
- statements from two knowledgeable sources that buy notes, one which may be chosen by DFCS, as to the value of the note, including the following information:

  - Do you buy notes?
  - Would you be willing to buy this note?
  - If yes, how much would you pay for this note?
  - If not, why not?

PROCEDURES

Verification and Documentation (cont.)

FBR COAs (cont.)

If both brokers offer to buy the note, count the higher offer as a resource. If only one broker offers to buy the note, count that amount as a resource. If neither broker offers to buy the note, the note is excluded as a resource.

If the note is counted as a resource, count the interest portion of payments as income.

If the note is excluded as a resource, count the entire amount of all payments as income.

Oral Loans

For oral loan agreements, obtain a statement from each of the parties involved (lender and borrower) acknowledging the borrower's obligation to repay and specifying the following information:

- the date and amount of the original loan
- any collateral used
- the schedule and amount of payments if any, or other plan repayment (e.g., borrower plans to repay the loan when he or she receives expected income)
- the outstanding principal balance.

If both the lender and borrower agree that an oral loan exists, consider the oral loan to be a contract. If otherwise, the oral loan agreement is not a contract, and therefore not a resource to the lender.