



Office of Temporary and Disability Assistance

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Administrative Directive

Section 1

Transmittal:	15-ADM-05-T
To:	Local District Commissioners
Issuing Division/Office:	Center for Employment and Economic Supports
Date:	October 5, 2015
Subject:	Recovery of Liens and Requirement to Provide Biennial Accounting
Suggested Distribution:	Temporary Assistance Directors SNAP Directors HEAP Coordinators Staff Development Coordinators Employment Coordinators WMS Coordinators Fair Hearing Staff Medicaid Staff
Contact Person(s):	Temporary Assistance (TA) Bureau: 1-800-343-8859, ext. 4-9344 SNAP Bureau: 1-800-343-8859, ext. 3-1469 Metropolitan Field Support Bureau: 212-961-8207 Medicaid (MA) Upstate: 518-474-8887; New York City: 212-417-4500
Attachments:	Attachment A: LDSS-5069: "Biennial Accounting Letter" Attachment B: LDSS-5041: "Lien Acknowledgement" Attachment C: Completion of Biennial Accounting Letter-Examples Attachment D: Calculation of TA Payments with Recoupments
Attachment Available Online:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
09-ADM-04 97-ADM-13 06-INF-25 06-INF-21 03-INF-36 01-INF-12 99-INF-15 99-INF-10		352.23 352.27 352.30(d)(ii) 352.31(d)	SSL § 106 SSL § 360	TASB Chapter 10, Chapter 13 and Chapter 19.	GIS 14 TA/DC019

Section 2

I. Summary

This Administrative Directive (ADM) informs Social Services Districts (SSDs) of amendments to Social Services Law (SSL) § 106 enacted in 2014 which require SSDs to send biennial accountings for existing and future real property liens to recipients and former recipients of Temporary Assistance (TA)¹.

In addition, the ADM instructs SSDs when the LDSS-5041: “Lien Acknowledgement” and DSS-5069: “Biennial Accounting Letter” must be used, explains the implications of SSD failure to timely provide biennial accounting, and informs SSDs of their ability to subordinate their rights to collect on a lien.

II. Purpose

The purpose of this ADM is to provide guidance on district implementation of amendments to SSL § 106, which require SSDs to:

1. Obtain a signed acknowledgement from real property owner(s) when a SSD chooses to pursue a real property lien to recover all TA payments (assistance and non-assistance) received by the household when the real property is sold;
2. Prepare and mail a biennial (every other year) accounting of TA payments issued and any recoveries received by the SSD to reduce a homeowner’s debt and;
3. Allow SSDs to subordinate their rights to collect on a lien.

III. Background

Social Services Law §106 authorizes SSDs to:

1. Pursue a real property lien from an applicant or recipient for recovery of all TA payments issued to a household. TA payments include Family Assistance (FA), Safety-Net Assistance (SNA) and Emergency Aid to Families (EAF). See 09-ADM-04: “Temporary Assistance (TA) Payment Type Codes – Designations as Assistance or Non-Assistance” for a listing of TA payments;
2. Require an applicant or recipient to sign a real property lien as a condition of initial and continuing TA eligibility if it is SSD policy to pursue a real property lien;
3. Recover TA payments issued to a household beginning 10 years prior to the date the lien is signed by the real property owner through to the date the real property lien is satisfied; and
4. Impose an incremental sanction when any applicant for or recipient of TA fails, without good cause, to sign a real property lien.

¹ Whenever ‘Temporary Assistance’ or ‘TA’ is used in this document, it means ‘Family Assistance’ and ‘Safety Net Assistance.’ Statutorily, these programs are referred to as ‘Public Assistance.’

In addition, SSL § 106 forbids the recovery by a real property lien of Supplemental Nutrition Assistance Program (SNAP) payments, Home Energy Assistance Program (HEAP), Child Care Services or Emergency Assistance to Adults (EAA).

The SSL § 106 amendments significantly impact SSD internal operations relating to the recovery of TA payments when property owned by a recipient or former recipient is sold and the SSD is a lien holder. Specifically:

- A. SSDs are required to obtain a signed acknowledgment from a real property owner when the SSD intends to pursue a real property lien. To assist SSDs with this requirement, LDSS-5041: “Lien Acknowledgement” form was provided via GIS 14 TA/DC019. This form is designed to afford TA applicants and recipients the benefit of written notification regarding:
 - 1. Types of payments that can and cannot be recovered by the SSD when collecting on a lien recovery;
 - 2. Time period of the recovery;
 - 3. When recovery will occur; and
 - 4. Consequences if the applicant or recipient refuses to sign a lien acknowledgement.

- B. SSDs must prepare and mail a biennial accounting to the last known address of all current and former TA recipients with real property liens that includes information regarding:
 - 1. Any TA payment paid to the household (either cash or voucher paid to a vendor) from 10 years prior to the date the real property lien was signed up to the date of the biennial accounting period;
 - 2. Credits to the amount of the real property lien (see Section 2, V, F) and;
 - 3. How payments can be made to the SSD to reduce the amount of the real property lien.

- C. SSDs may only agree to subordinate their rights to a real property lien if there is a recorded mortgage that pre-dates the SSD lien. SSDs may choose to subordinate their rights when a homeowner pursues a modification to an older, pre-existing mortgage, such as refinancing a mortgage or changing a home equity loan. By subordinating the SSD’s rights, the SSD retains its status as a creditor on the real property lien in the same position as it was before with regard to the pre-existing mortgage.

IV. Program Implications

The amendments to SSL § 106 significantly impact SSD internal operations relating to the recovery of TA payments when property owned by a recipient or former recipient is sold and the SSD holds a real property lien. Program implications are as follows:

A. Required Use of LDSS-5041: “Lien Acknowledgement” Form:

Effective May 30, 2014, SSDs must obtain a signed LDSS-5041: “Lien Acknowledgement” from the applicant or recipient real property owner(s) when the SSD pursues a real property lien (see GIS 14 TA/DC019).

When a property is sold or refinanced, this form, in conjunction with a signed lien, allows the SSD to recover TA provided to an applicant, recipient or former recipient and/or to TA household members.

Effective May 30, 2014, the SSD must not recover any TA payments from a lien on real property unless the SSD has a signed LDSS-5041: “Lien Acknowledgement” from the real property owner(s), PRIOR to the acceptance of the lien.

Each applicant or recipient real property owner must sign the same LDSS-5041: “Lien Acknowledgement”.

Only one signed LDSS-5041 is needed for each applicant or recipient owned real property and the form remains valid until the lien for that property is satisfied.

SSDs must impose an incremental sanction if any applicant or recipient of TA who is required to sign an LDSS-5041 refuses, without good cause, to sign the form.

B. Biennial Accounting Letter

Effective **February 1, 2016**, and every other year thereafter, SSDs must send an initial biennial accounting letter to all current and former TA recipients at their last known address. It must include information regarding:

1. Any TA payments issued to the household during the biennial accounting period. The biennial accounting period is for 10 years prior to the date the lien was signed up to end of the SSD’s fiscal year.
2. The total dollar amount of TA payments as of the end of the biennial accounting period.
3. The total dollar amount of recoveries (see Section 2, V, F) received by the SSD that reduce the amount of TA payments that can be recovered by the SSD as of the end of the biennial accounting period.
4. Information on how an individual can make payments to the SSD to reduce the amount of TA payments that are recovered by a real property lien.

If the biennial accounting is NOT issued and mailed to the property owner’s last known address, or to their estate, within the time period required, the SSD shall not recover TA payments issued to the household for the previous two fiscal years when recipient or former recipient owned property is sold and the SSD is a lien holder on the property.

SSDs will be able to recover TA payments from applicants, recipients and former recipients by any other means available, except a real property lien, for the time period the SSD failed to timely provide a biennial accounting.

C. Calculations in the “Biennial Accounting Letter”

The calculations listed in the “Biennial Accounting Letter” should reflect only case circumstances during the biennial accounting period. The calculations may not reflect the amount of assistance issued to a household or amount of assistance recovered during the actual lien recovery period. The end date of the lien recovery period is the date the real property is sold.

When determining the amount of TA payments issued and recoveries received by a household during the real property lien period, SSDs must only use the TA payments issued and recoveries received in the SSD that holds the real property lien. For example, if County A places a lien on real property and the property owner moves and receives TA in County B, only TA payments issued by County A are used in the Biennial Lien Accounting calculation. This amount is reported on the LDSS-5069: “Biennial Accounting Letter” and should not reflect any TA payments issued to a household from another SSD.

Once the property owner has moved out of the homestead and into other housing, the former homestead now becomes either a resource that must be sold or income producing rental property. The SSD must evaluate the purpose of the property and take appropriate action. See Temporary Assistance Source Book (TASB) Chapter 19, Section E.

D. Subordinate Mortgage

Effective May 30, 2014, a SSD may agree to a homeowner’s mortgage modification by subordinating the SSD’s lien rights to the real property covered by the modification. If a homeowner pursues a modification to a mortgage, such as refinancing their existing mortgage or changing an existing home equity loan, a SSD official, as identified by the SSD, may consent to a subordination agreement if necessary to allow the mortgage modification to be approved. Although this will subordinate the SSD’s lien rights as compared to the new real property lien, the SSD will retain its lien position relative to any other creditors.

By subordinating the SSD’s rights, the SSD retains its status as a creditor on the real property, in the same lien position relative to the pre-existing mortgage.

When a SSD’s rank as a creditor is lowered, the SSD cannot recover on the real property lien until superior creditors are paid in full. If a SSD agrees to subordinate its right as a real property lien holder, the SSD must do so within 30 days of receipt of a written notice that the homeowner is attempting to modify his or her mortgage.

V. Required Action

A. Mandated Use of LDSS-5041: “Lien Acknowledgement”

As was explained in GIS 14 TA/DC019, effective May 30, 2014, SSDs must use the form LDSS-5041: “Lien Acknowledgement” if a real property lien is pursued.

For liens taken on and after May 30, 2014:

1. A SSD must not recover any TA payments from a real property lien unless the SSD has an LDSS-5041, signed prior to acceptance of the lien.
2. SSDs must provide a copy of the signed LDSS-5041 to each applicant or recipient real property owner.

SSDs are not required to obtain a signed LDSS-5041 for real property liens taken PRIOR to May 30, 2014.

SSDs must impose an incremental sanction if any applicant or recipient of TA that is required to sign an LDSS-5041 refuses, without good cause, to sign the form. This budgeting method will result in the denial or discontinuance of assistance for a single individual household. Incremental budgeting methodology imposed in a multi-person household will remove the ineligible individual(s) from both the TA household (HH) and case (CA) count, which reduces the amount of the TA grant. Remaining household members are eligible to receive TA if they are otherwise eligible. See 01-INF-12: "Temporary Assistance Sanctions: Budgeting for TA and FS, Treatment of Income for FS when the TA Case Closes, and Medicaid Implications" on the implementation of incremental budgeting.

SSDs must not require a non-parent caregiver (NPC) who does not want to apply for TA or is not in receipt of TA to sign the LDSS-5041. This is not considered a refusal to sign and an incremental sanction must not be imposed.

B. Initial Biennial Lien Accounting

SSDs must send the initial biennial accounting for all existing real property liens to current and former recipients by **FEBRUARY 1, 2016**, and include all TA payments and recovery information from 10 years prior to the real property lien being signed by the applicant or recipient through December 31, 2015. If the initial biennial accounting is not mailed to the real property lien holder by the required date, the SSD cannot recover TA payments issued to a household for the two previous SSD fiscal years, which includes the SSD fiscal years of 2014-2015.

SSDs must:

1. Mail the LDSS-5069: "Biennial Accounting Letter" (Attachment A) to the real property owner's last known address. If a biennial accounting is returned in the mail to the SSD with a new address, the SSD must re-mail the "Biennial Accounting Letter" to the new address and update the real property lien record with the new address.

If the biennial accounting is returned without a forwarding address, the SSD must file the returned mail in the real property lien record. However, future biennial accountings must still be mailed to the last known address of the real property owner. Previous returned mail does not absolve the SSD from complying with this requirement.

2. Not recover any TA payments issued to the household for the previous two SSD fiscal years, through a real property lien, if a current or future recurring Biennial Accounting Letter is NOT mailed to the real property owner's last known address or to their estate within the time period required.
3. Not recover any TA payments issued to the household for any real property lien period when the SSD does not have documentation of TA payments and recoveries to support the amount of the real property lien.

When determining the amount of TA payments and recoveries a household has received during the real property lien period, SSDs must only use the TA payments issued and recoveries received in the SSD that holds the real property lien. For example, if County A places a lien on real property and the property owner moves and receives TA in County B, only County A payments and recoveries are used in the Biennial Lien Accounting calculation and reported on the LDSS-5069: "Biennial Accounting Letter" and should not reflect any TA payments issued to a household from another SSD.

SSDs must re-evaluate a household's eligibility for TA when real property is no longer an exempt resource. This includes determining if the property is a resource or income producing property and taking appropriate action on the TA case. See TASB Chapter 19, Section E.

SSDs will be able to recover TA payments issued to a household from applicants, recipients and former recipients by any other means available, except a lien, for the time period the SSD fails to timely provide a biennial accounting.

C. Recurring Biennial Accounting

The recurring biennial accounting must be sent to real property owner(s) by February 1st of each accounting period. The first recurring biennial accounting is due February 1, 2018 and every other year thereafter.

The accounting period is based on SSD fiscal reporting. Rest of State (ROS) districts have a different district fiscal accounting year from New York City (NYC).

1. For Rest of State (ROS) districts, each biennial accounting must include all TA payments and recoveries from 10 years prior to the real property lien was signed by the applicant or recipient through **December 31** of the year prior to the February 1st biennial accounting mailing date. For example:

An applicant for TA is determined eligible for ongoing TA benefits and has signed a real property lien on 3/1/2010. The individual continues to receive TA until the case closes on 5/31/2018.

The TA lien payment and recovery period for the initial biennial accounting (due 2/1/2016) is 3/1/2000 through 12/31/2015. The biennial accounting includes all TA payments issued to the household and the total amount of assistance recovered by any available means from 3/1/2000 through 12/31/2015. The payment and recovery information is used to complete the LDSS-“Biennial Accounting Letter”. (See Attachment A)

The next biennial accounting is a recurring accounting and must be mailed by February 1, 2018. The TA lien payment and recovery period is from 3/1/2000-12/31/2017. The biennial accounting includes all TA payments issued to the household and the total amount of assistance recovered by any available means from 3/1/2000 through 12/31/ 2017.

2. For NYC, each biennial accounting must include all TA payments and recoveries from 10 years prior to the real property lien was signed by the applicant or recipient through **June 30** of the year prior to the February 1st biennial accounting mailing date. For example:

An applicant for TA is determined eligible for ongoing TA benefits and has signed a real property lien on 3/1/2010. The individual continues to receive TA until the TA case closes on 5/31/2018.

The TA lien payment and recovery period for the initial biennial accounting (due 2/1/2016) is 3/1/2000 through 6/30/2015. The biennial accounting includes all TA payments issued to the household and the total amount of assistance recovered by any available means from 3/1/2000 through 6/30/2015. The payment and recovery information is used to complete the LDSS-“Biennial Accounting Letter”. (See Attachment A)

The next biennial accounting is a recurring accounting and must be mailed by February 1, 2018. The TA lien payment and recovery period is from 3/1/2000-6/30/2017. The biennial accounting includes all TA payments issued to the household and the total amount of assistance recovered by any available means from 3/1/2000 through 6/30/2017.

When determining the amount of TA payments and recoveries a household has received during the real property lien period, SSDs must only use the TA payments issued and recoveries received in the SSD that holds the real property lien. For example, if County A places a lien on real property and the property owner moves and receives TA in County B, only County A payments and recoveries are used in the Biennial Lien Accounting calculation and reported on the LDSS-5069: “Biennial Accounting Letter”.

SSDs must re-evaluate a household’s eligibility for TA when real property is no longer an exempt resource. This includes determining if the property is a resource or income producing property and taking appropriate action on the TA case. See TASB Chapter 19, Section E.

D. Biennial Accounting Letter

The LDSS-5069: “Biennial Accounting Letter” is a mandated form. SSDs must use this form to advise real property owners of their total outstanding lien amount.

A biennial accounting letter does not have to be provided to a real property owner when the real property lien is satisfied PRIOR to the due date of the next biennial accounting letter.

E. Implications of Failure to Timely Provide Biennial Accounting

SSDs must not recover any TA payments issued to a household from a real property lien for the previous two SSD fiscal years if an initial or future recurring biennial accounting is NOT mailed to the real property owner’s last known address or to their estate within the time period required.

If the SSD does not mail the biennial accounting, or does not mail the biennial accounting timely, the SSD must manually calculate the amount of TA payments that cannot be recovered by a real property lien. The unrecoverable dollar amount is cumulative; therefore, the unrecovered dollar amount increases for each time period the SSD fails to timely provide the biennial accounting.

SSDs must be able to clearly show how the penalty period and amount are determined. This information must be available for fair hearings and other reviews.

SSDs will be able to recover TA payments from applicants, recipients and former recipients by any other means available, except a real property lien, for the time period the SSD fails to timely provide a biennial accounting.

See Attachment C for examples.

F. Sources of TA Recoveries and Application to TA Assistance and Non-Assistance Payments

SSDs must keep in mind how each source of recovery is applied to outstanding TA payments issued to a household when determining the amount of TA repaid by the various recovery sources. For example, recoveries from lottery intercept are applied to the oldest TA payments within 10 years of prize receipt.

The following is a list of recovery sources and how they are applied to TA payments:

Child Support Collected and Disbursed to the SSD	Oldest TA assistance payments
Cash or other payments made to SSD	Oldest TA assistance and non-assistance payments
Tax Offset	Oldest TA assistance and non-assistance payments
Lawsuit settlements	Oldest TA assistance and non-

	assistance payments
Lottery Intercept	Oldest TA assistance and non-assistance payments 10 years from receipt of prize.
Utility Repayment Agreement	Offset utility repayment agreement
Shelter Repayment Agreement	Offset shelter repayment agreement
Interim Assistance Reimbursement (IAR)	Oldest TA assistance and non-assistance payments in the IAR period.
Work Experience prior to August 20, 1997	Oldest TA assistance payments
Liens or Mortgages from real property other than current lien	Oldest TA assistance and non-assistance payments

G. Preparation for Timely Completion of Initial Biennial Accounting

To prepare for the timely mailing of the initial biennial accounting it is highly recommended that SSDs immediately begin gathering the following information:

- Case Name and Case Number
- Name of Property Owner
- Address of Property Lien
- Date real property lien was signed by owner
- Date real property lien was filed with County Clerk/County Court
- Beginning Date of Real Property Lien Recovery
- TA payments for period of real property lien
- TA recoveries for the period of the real property lien (see Section 2, V, F)

At this time, SSDs must manually gather required information such as the amount of TA payments issued to a household and determining the amount of TA payments already recovered by other means such as recoupment, current assigned child support and Interim Assistance Reimbursement (IAR).

SSDs may gather information from paper files, microfiche or any other methods used to document the amount of TA payments issued to a household and the amount of recoveries used to offset TA payments when determining the amount of the real property lien. The systems that are currently available to gather required information are the Benefit Issuance Control System (BICS), Welfare Reporting and Tracking System (WRTS), Cash Management Sub-System (CAMS), Computer Output to Laser Disc (COLD) and the Social Security Administrations Government-to-Government Services Online (GSO) for IAR.

CAMS is a resource that collects certain recovery information only for the period that a SSD has input and maintained recovery information in CAMS.

OTDA is pursuing computer system support to help SSDs outside of New York City comply with the biennial accounting requirement. For more information on system support, see Section 2, VI-Systems Implications.

H. Record Retention

SSDs must retain all of the following information for six years after the real property lien has been satisfied.

1. LDSS-5041: "Lien Acknowledgment" form;
2. All documentation supporting TA payments issued to a household;
3. All documentation supporting the amount of TA payments recovered, by any means; and,
4. All documentation supporting how a penalty period and amount is determined.

Documentation must be retained in the real property lien record and can be retained as hard copy or electronically for those SSDs that have imaging systems.

All real property lien documents must be made available upon request for fair hearings, reviews and audits by this office.

I. Subordination of Mortgage

If a SSD agrees to subordinate its right as a lien holder, the SSD must do so within 30 days of receipt of a written notice that the homeowner is attempting to modify his or her pre-existing mortgage or home equity loan.

J. Forms Ordering

The English versions of LDSS-5069: "Biennial Accounting Letter" and LDSS-5041: "Lien Acknowledgement" is not State printed, but is available to SSDs from the OTDA Intranet website.

The LDSS-5069: "Biennial Accounting Letter" is in the process of being translated into all required languages and the translated versions will be posted on the OTDA Internet site. Once the translated forms are available online, SSDs must make applicants/recipients aware that translated versions are available and provide a translated version upon request.

The LDSS-5041: "Lien Acknowledgement" is now available in alternative languages.

The above referenced documents have been posted on the OTDA Intranet website at http://otda.state.ny.net/ldss_eforms and are available for downloading by local districts for reproduction locally.

Any future written requests for printed master camera ready copies of the English version of the document, should be submitted on OTDA-876: "Request for Forms or Publications," and should be sent to:

Office of Temporary and Disability Assistance
BMS Document Services and Operational Support
PO Box 1990
Albany, NY 12201

Questions concerning ordering forms should be directed to BMS Document Services at 1-800-343-8859, ext. 4-9522.

Master camera ready copies of the documents may also be ordered through Outlook. To order a master camera ready copy you must obtain an OTDA-876 electronically by going to the OTDA Intranet Website at: <http://otda.state.nyenet/psqi/eforms/>. This page contains the electronic OTDA-876.

For those who do not have Outlook but who have Internet access for sending and receiving e-mail, the Internet e-mail address is: gg7359@dfa.state.ny.us. For a complete list of available forms, please refer to the OTDA Intranet site: http://otda.state.nyenet/ldss_eforms

K. Local Equivalent Forms

Local equivalent forms are forms developed by SSDs which are designed to be used in place of State-mandated forms. Local equivalent forms must contain all of the information required on the State-mandated forms, but may also contain additional information required for the SSDs own purposes. Local equivalents may differ in format as well as media from the mandated forms. The goal of the local equivalent form approval process is to guarantee that SSDs are using forms which are legally, programmatically and systemically accurate and up-to-date.

In order to guarantee that all local equivalent form requests are correctly processed, all requests should be submitted to the Bureau of Forms and Print Management at:

Office of Temporary and Disability Assistance
BMS Document Services and Operational Support
PO Box 1990
Albany, NY 12201

Requests not submitted directly to BMS may be delayed for approval. For more information see 97 ADM-13: "Procedure for Requesting Approval of Local Equivalent Forms."

VI. Systems Implications

A. Rest of State (ROS)

OTDA is pursuing computer system support to assist SSDs outside of New York City with compliance of the biennial accounting requirement. It is anticipated that the system support described below will be available in advance of the February 2016 reporting requirement.

WRTS and CAMS will be used to capture the amount of TA payments issued to a household and recoveries electronically maintained, and then Cognos will be used to produce a report to assist SSDs in determining the amount of TA that can be recovered by a real property lien.

In addition, a new menu selection will be implemented in CAMS to allow SSDs to input real property lien information including:

- Case name and case number
- Name of property owner
- Address of property lien
- Date real property lien was signed by owner
- Date real property lien was filed with County Clerk/County Court
- Beginning date of real property lien recovery
- Date real property lien was satisfied
- Area where SSDs can input mailing dates of biennial accounting
- Lien Indicator field that will assist SSDs in generating reports regarding what liens are outstanding and/or satisfied.

OTDA system support will only be available for TA benefits and recoveries from December 2, 1996-forward. Any payments and recoveries prior to this time will need to be reviewed manually and included in the calculation of the real property lien. The SSD must maintain any paper files, microfiche or any other methods SSDs used to document the amount of a real property lien.

A Lien Indicator field will be added to the WMS/myWorkspace clearance reports in support of new case openings and cross district tracking of liens.

A separate policy directive will be provided when the system support is operational.

B. New York City (NYC)

NYC currently maintains a computerized process that provides TA payment and recovery information for real property liens.

VII. Effective Date

Immediately

Issued By

Name: Phyllis Morris

Title: Deputy Commissioner

Division/Office: Center for Employment and Economic Supports