



# Office of Temporary and Disability Assistance

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Governor

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Commissioner

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Executive Deputy Commissioner

## Administrative Directive

### Section 1

<b>Transmittal:</b>	18-ADM-06
<b>To:</b>	Social Services District Commissioners
<b>Issuing Division/Office:</b>	Child Support Services
<b>Date:</b>	September 5, 2018
<b>Subject:</b>	Unclaimed Child Support Funds
<b>Suggested Distribution:</b>	Child Support Enforcement Coordinators Support Collection Unit Supervisors Accounting Staff IV-D Attorneys DSS Attorneys Staff Development Coordinators
<b>Contact Person(s):</b>	Child Support Services – County Representative: Albany (518-473-0574) or New York City (212-961-8269) Office of Legal Affairs: 518-474-9502
<b>Attachments:</b>	<a href="#">Attachment 1 – Petition – Order for Deposit of Identifiable Unclaimed Funds</a> <a href="#">Attachment 2 – Petition – Order for Deposit of Unidentifiable Unclaimed Funds</a> <a href="#">Attachment 3 – Attachment – Petition – Order for Deposit of Unidentifiable Unclaimed Funds</a> <a href="#">Attachment 4 – Proposed Order – Deposit of Identifiable Unclaimed Funds</a> <a href="#">Attachment 5 – Proposed Order – Deposit of Unidentifiable Unclaimed Funds</a>
<b>Attachment Available Online:</b>	<input checked="" type="checkbox"/>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
10-ADM-01		18 NYCRR § 346.6	SSL § 111-h(5), (7); 45 CFR § 302.51		

## Section 2

### I. Summary

This Administrative Directive (ADM) reminds districts of the statutory and regulatory requirements related to the disposition of unclaimed child support funds. The ADM also introduces new petitions, an attachment associated with one (1) of the petitions, and proposed orders that districts may use for the disposition of unclaimed funds paid to the district Support Collection Unit (SCU) pursuant to an order of support under the provisions of article four, five, five-A or five-B of the Family Court Act (FCA).

### II. Purpose

This ADM informs districts of the following new petitions, attachment, and proposed orders as well as the procedures for their use. The petitions, attachment, and proposed orders, as appropriate, are to be filed with the family court to obtain an order for the deposit of unclaimed funds with the county treasurer or the New York City Commissioner of Finance pursuant to Social Services Law § 111-h(5).

- *Petition – Order for Deposit of Identifiable Unclaimed Funds (Attachment 1)*, used when the unclaimed funds have been identified as due and owing to one (1) of the parties pursuant to the order of support and the federal distribution rules (refer to Title 45 Federal Codes, Rules and Regulations [CFR] § 302.51 and 10-ADM-01), along with the account(s) associated with that order;
- *Petition – Order for Deposit of Unidentifiable Unclaimed Funds (Attachment 2)*, used when it is not possible to associate the unclaimed funds with a corresponding order of support or child support account(s);
- *Attachment – Petition - Order for Deposit of Unidentifiable Unclaimed Funds (Attachment 3)* supplements the *Petition – Order for Deposit of Unidentifiable Unclaimed Funds (Attachment 2)*. The attachment provides the court with a summary of the unclaimed funds that are the subject of the petition including, upon information and belief, all information known as of the date of the petition about the circumstances of the collection of the subject funds, such as the date of receipt and dollar amount of the funds collected;
- *Proposed Order – Deposit of Identifiable Unclaimed Funds (Attachment 4)*, prepared in association with the *Petition – Order for Deposit of Identifiable Unclaimed Funds (Attachment 1)*, to be signed by the court; and
- *Proposed Order – Deposit of Unidentifiable Unclaimed Funds (Attachment 5)*, prepared in association with the *Petition – Order for Deposit of Unidentifiable Unclaimed Funds (Attachment 2)* and *Attachment – Petition - Order for Deposit of Unidentifiable Unclaimed Funds (Attachment 3)*, to be signed by the court.

### III. Background

Pursuant to Title 18 New York Codes, Rules and Regulations (NYCRR) § 346.6, the commissioner, as administrator of the SCU, must report to the appropriate family court the facts concerning funds that have remained unclaimed for two (2) years or more. Pursuant to Social Services Law § 111-h(5), the family court may, in its discretion, enter an order decreeing that the funds be returned to the person who paid the funds, or that the funds be deposited with the county treasurer or the New York City Commissioner of Finance and invested for a period of five (5)

years. If the latter is ordered, upon the expiration of five (5) years, the county treasurer or commissioner of finance shall pay any unclaimed funds to the State Comptroller pursuant to the provisions of the Abandoned Property Law (APL) § 602.

For certain deceased persons with unclaimed funds and prior to the expiration of the two-year holding period, a *Small Estate Affidavit* may be obtained in accordance with Surrogate's Court Procedure Act §1310 to release the funds to a surviving spouse, certain relatives, or a creditor without court action. For more information, refer to the guidance document titled *Death of a Child or a Party to an Order of Support: Questions and Answers*, which is available on the Electronic Resource System (ERS).

#### IV. Program Implications

This directive provides petitions, an attachment to one (1) of the petitions, and proposed orders that districts may use for the disposition of unclaimed funds to the county treasurer or New York City Commissioner of Finance, as appropriate, where the proper payee under the federal distribution rules is known but cannot be found, or where a corresponding order of support or child support account(s) cannot be identified.

#### V. Required Action

These actions relate to funds that have remained unclaimed for two (2) years or more due to unsuccessful search efforts.

Note: Actions necessary to transfer the unclaimed funds from an individual child support account to the fiscal account of the county treasurer or the New York City Commissioner of Finance are described in Section V.C.1.a. Information that must be documented to prepare the case record for future transfer of the unclaimed funds to the Office of the State Comptroller is described in Section V.C.3. Finally, actions related to fiscal reporting and claiming are described in Section V.D.

##### A. Pre-Court

To obtain an order for the deposit of unclaimed funds with the county treasurer or the New York City Commissioner of Finance pursuant to Social Services Law § 111-h(5), the SCU must:

- Prepare and file the appropriate petition, attachment (if necessary), and proposed order. These documents will be accessible through the Automated State Support Enforcement and Tracking System (ASSETS) document generation feature as a local template and can be saved to the appropriate case record in ASSETS. Refer to the local correspondence section of the [ASSETS User Guide](#) for specific instructions.
  - Manually store the status and reason codes **E001 00** (*Enforcement activity initiated*) and **E200 00** (*Petition filed*); and
  - Document the actions taken in the remarks of the case records.
1. **Identifiable unclaimed funds:** The *Petition – Order for Deposit of Identifiable Unclaimed Funds (Attachment 1)* and the *Proposed Order – Deposit of Identifiable Unclaimed Funds (Attachment 4)* are prepared when the unclaimed funds have been identified as due and owing to one (1) of the parties pursuant to the order of support, the account(s) associated with that order, and the federal distribution rules. On the petition, the SCU must include the amount of the unclaimed funds, the period when

such funds were collected, and the party entitled to the funds. In addition, the SCU must list efforts taken to find that party (e.g., review of available local, State, and federal information sources, including electronic data from other governmental agencies; internet searches [e.g., local online newspapers, online directory services, assessment/tax rolls]; and direct contact with the other party and/or relatives and friends of the party entitled to the funds). On the proposed order, the SCU must include the amount of the unclaimed funds and the party entitled to the funds.

2. **Unidentifiable unclaimed funds:** The *Petition – Order for Deposit of Unidentifiable Unclaimed Funds (Attachment 2)*, *Attachment – Petition - Order for Deposit of Unidentifiable Unclaimed Funds (Attachment 3)*, and *Proposed Order – Deposit of Unidentifiable Unclaimed Funds (Attachment 5)* are prepared when it is not possible to associate the unclaimed funds with a corresponding order of support or child support account(s). On the petition, the SCU must include the amount of the unclaimed funds. On the attachment, the SCU must identify the date of receipt and the dollar amount of the funds. Other relevant information about the funds may be included in the *Comments* column on the attachment. On the proposed order, the SCU must include the amount of the unclaimed funds.

## B. Service of Process and Court Appearance

When the unclaimed funds are identifiable, the petition must be served at the last known address of each party to the order of support (refer to FCA § 427). When the unclaimed funds are unidentifiable, the SCU must file the petition and attachment according to district protocol.

The SCU must appear in court at any hearing, as appropriate and in accordance with district protocol, to testify regarding any automated child support records, including whether the unclaimed funds are an overpayment owed to the noncustodial parent or collections due under the order to the custodial parent.

## C. Post-Court

1. **Petition granted.** Pursuant to the provisions of Social Services Law § 111-h(5), the court may enter an order decreeing that the funds be returned to the person who paid the funds, or deposited with the county treasurer or the New York City Commissioner of Finance. It is important to note that the petition seeks relief in the form of disbursement of the unclaimed funds to the proper party pursuant to the order of support and the federal distribution rules for child support collections.

- a. **Disburse funds:** The SCU must disburse the unclaimed funds in accordance with the order of the court and pursuant to district protocol. The following actions should be taken to transfer the unclaimed funds out of an individual child support account and to the fiscal account of the county treasurer or the New York City Commissioner of Finance:

- i. Build an administrative refund account;
  - (a) The account must be utilized solely to transfer unclaimed funds to the county treasurer or the New York City Commissioner of Finance;
  - (b) The account must be used for a specified time (e.g., yearly, *2018 Unclaimed Funds*; larger districts may want to create these accounts more frequently);

- (c) The payee on the account must be the county treasurer or the New York City Commissioner of Finance. Note: The SCU must confirm, and update if necessary, the address of the county treasurer or New York City Commissioner of Finance to ensure that the disbursement goes to the proper destination;
  - (d) A tickler date must be set on the account for at least one (1) week prior to the expiration of the five (5) year period, starting from the date of the initial transfer of unclaimed funds from a child support account into the administrative refund account. The tickler date will serve as a reminder to confirm that any funds transferred to the Office of the State Comptroller are properly claimed upon the expiration of the five (5) year period (refer to Section V.D.). Note: Once the tickler date has been reached and the SCU has determined the amount to be claimed as program income, the tickler date must be reset. To do this, the SCU must determine the next oldest transfer date into the administrative refund account. The SCU must use this date to determine the expiration of the next five (5) year period and then set the tickler date as described above; and
  - (e) The account number must be reported to the Division of Child Support Services for tracking purposes. Districts must email the shared mailbox of the Bureau of Program Operation and Community Outreach (BPOCO), [otda.sm.dcse.bpo@otda.ny.gov](mailto:otda.sm.dcse.bpo@otda.ny.gov);
- ii. Complete a 71 batch to transfer the funds from the individual child support account to the administrative refund account;
  - iii. On the administrative refund account, complete a positive 61 batch to make the funds due and create a disbursement;
  - iv. On the individual child support account, document the reason for the batch in the remarks of the account record;
  - v. On the next business day, review the batch transactions to ensure the transactions were accepted and the appropriate disbursement was created; and
  - vi. Notify the county treasurer or the New York City Commissioner of Finance of the amount of the disbursement and the reason for the disbursement.
- b. Perform account maintenance and prepare the case for closure:** Before the account is prepared for case closure, the SCU must complete any necessary account maintenance. This includes manually storing the status and reason code **E 901 00** (*Activity completed; successful*) to the status group created for the status set when the unclaimed funds petition was generated and saved to ASSETS. For further guidance about case closure, refer to 13-ADM-01, issued January 16, 2013, titled *Automated Case Closure and Closure of Administrative Cases*.

- 2. Petition dismissed:** If the court dismisses the petition without prejudice, the SCU must, at the time of dismissal, examine the reasons for dismissal. If possible, the SCU must then take any necessary steps to address the reasons for dismissal and determine when, in the future, it would be appropriate to again file a petition.

When the petition is dismissed, the SCU must also manually store the status and reason code **E801 00** (*Activity completed; unsuccessful*) to the status group created for the status set when the unclaimed funds petition was generated and saved to ASSETS.

**3. Document actions in the case record:** The SCU must document the actions taken in the case records. In order to prepare the case record for future transfer of the unclaimed funds to the Office of the State Comptroller, the SCU must also document the following information related to the unclaimed funds, when available:

- Information about the court that issued the most recent order of support, including the name of the court (Family or Supreme) and the county in which the court is located;
- Index or docket number of the most recent order of support;
- Where the unclaimed funds are identifiable, the title of the action or proceeding related to the most recent order of support or, where the unclaimed funds are unidentifiable, the title of the action or proceeding seeking the transfer of the funds;
- Date of the court order authorizing the transfer of the funds;
- Name of intermediary public office in which the funds are to be deposited (e.g. Albany County Treasurer);
- Amount of funds to be deposited;
- Full name of the payee (last name, first name, middle initial, suffix);
- Last known street address of the payee or “care of” data, including city, state, zip code, and country if not the United States of America;
- Social Security number of the payee, if known;
- Property type (e.g., funds for support of a child or spouse, or both);
- Date on which the account was determined to be dormant by the SCU (e.g., date of last activity, date of last payment, date of death of payee [if applicable], date of check).

#### **D. Fiscal and Claiming Impact**

Pursuant to SSL § 111-h(7), upon the expiration of five (5) years from the date of deposit of the unclaimed child support funds with the county treasurer, or the commissioner of finance of the city of New York, all such remaining funds shall be paid to the State Comptroller pursuant to the provisions of APL § 602 and such payment shall be accomplished by the report required by APL § 603.

The funds and any interest earned to the point of being deemed abandoned must be reported as program income at that time on the LDSS-2547, *Schedule D-8 Allocation for Claiming Title IV-D Child Support Activities & Support Collection Unit Expenditures*.

Completed and submitted monthly, the LDSS-2547 is used as the basis for determining federal, state, and local shares of child support activities and SCU expenditures.

**The unclaimed funds and any interest earned to the point of being deemed abandoned must be reported on Section 2, Line 19, *Escheated Funds*, of the LDSS-2547.** Since it is not income/revenue to the district (funds are remitted to the State Comptroller), it is tracked separately to ensure no negative fiscal impact on the district.

## **VI. Systems Implications**

Modifications are being made to ASSETS to add the *Petition – Order for Deposit of Identifiable Unclaimed Funds*, *Petition – Order for Deposit of Unidentifiable Unclaimed Funds*, *Attachment – Petition – Order for Deposit of Unidentifiable Unclaimed Funds*, *Proposed Order – Deposit of Identifiable Unclaimed Funds*, and *Proposed Order – Deposit of Unidentifiable Unclaimed Funds*. Corresponding edits will be made to the *ASSETS User Guide*. Districts will be advised under separate letter when these documents are available.

## **VII. Effective Date**

This ADM is effective immediately.

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### **Issued By**

**Name:** Nancy P. Maney  
**Title:** Deputy Commissioner  
**Division/Office:** Integrated Family Assistance Programs