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NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
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Robert Doar
Commissioner

Informational Letter

Section 1

Transmittal:	06-INF-25
To:	Local District Commissioners
Issuing Division/Office:	Division of Employment and Transitional Supports
Date:	July 11, 2006
Subject:	Consolidated Shelter Arrears Policy and Emergency Safety Net Assistance Shelter Arrears Repayment Agreement
Suggested Distribution:	Temporary Assistance Directors Food Stamp Directors Staff Development Coordinators WMS Coordinators Fair Hearing Staff CAP/TOP Coordinators HEAP Coordinators
Contact Person(s):	Temporary Assistance Bureau at 1-800-343-8859, Ext. 4-9344
Attachments:	1. Emergency Safety Net Shelter Arrears Repayment Agreement
Attachment Available On Line: X	

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
03 ADM-7 03 ADM-11 02 ADM-2 94 ADM-20 93 ADM-35 92 ADM-26 95 INF-43 95 INF-31 93 INF-11	95 INF-43	§352.7(g)(3) and (4) §370.3 §372 §397	SSL §131-w	TASB Chapter 10-F & G Energy Manual Section VIII	GIS 91 IM/DC 026

Section 2

I. Purpose

The purpose of this informational letter is to clarify, update and consolidate policy regarding the payment of shelter arrears, and to transmit to local districts a revised "Emergency Safety Net Assistance (ESNA) Shelter Arrears Repayment Agreement".

II. Background

Beginning in 1991, a series of administrative directives (ADMs) were issued which updated the Office's policy regarding the provision of shelter arrears payments to applicants for emergency one-time only payments, to applicants for recurring temporary assistance (TA) and to recipients of recurring TA. Shelter arrears include rent, mortgage and tax arrears. Below is a summary of these directives which remain in effect as of the release of this informational letter.

- 91 ADM-38 advised local districts that the payment of shelter arrears above the maximum monthly shelter standard, regardless of the category of assistance under which the arrears are paid, is subject to recovery or recoupment.
- 92 ADM-26 advised local districts that a repayment agreement is a condition of eligibility for receiving an (ESNA) payment. Also contained in 92 ADM-26 was information on the requirement that a repayment agreement also must be signed to receive utility arrears assistance under Emergency Assistance to Families (EAF) or ESNA. The "Utility Arrears Repayment Agreement" was separated from the "ESNA Shelter Arrears Repayment Agreement" for clarity of policy and is discussed further in Section VIII of the Energy Manual (<http://otda.state.nyenet/dta/TAEnergyManual.rtf>).
- 93 ADM-35 advised local districts that shelter arrears above the maximum monthly shelter standards could be paid for recipients under certain circumstances.
- 03 ADM-07 advised local districts that shelter arrears payments authorized under recurring categories of assistance, such as, Family Assistance (FA) or Safety Net Assistance (SNA), and as single issuances or "one-shots" under Emergency Assistance to Families EAF or ESNA, were limited to one arrears payment that may not total more than six months in a five year period, unless the local district has established guidelines for exception to this policy.

III. Program Implications

The authority to make shelter arrears payments is found in Section §131-w of the Social Services Law and Office regulations §352.7(g)(3),(4), §370.3 (b)(5) and §397.5 (l)(3). Although some general requirements apply to all household types, such as ability to pay future ongoing shelter and the lack of available alternative housing, recipients of recurring assistance (FA and SNA), applicants for recurring FA, SNA and one-time only EAF, applicants for one-time only ESNA and applicants for EAA have certain category specific processing and eligibility requirements outlined in Sections A - D below.

A payment to prevent eviction or foreclosure may be made for the time prior to the month in which an FA or SNA case was opened and for applicants seeking emergency assistance

under EAF, ESNA or EAA. The amount of the payment is limited to a total period of six months once every five years unless the local district determines, at its discretion, that an additional shelter arrears payment is necessary based on individual case circumstances. This limitation does not apply to shelter arrears payments authorized under EAA. Current month's rent or mortgage payment must not be considered when calculating the amount of the shelter arrears payment unless the current month's rent is past due and there is a threat of eviction or foreclosure if it is not paid. Local districts must determine to the best of their ability that the applicant/recipient has no available resources to alleviate his or her emergency need. Applicants/recipients with available resources must use these resources to alleviate their emergency need. Available resources include such things as money in the bank and community resources. Local districts must be sure that the resource is actually available to meet the applicant's/recipients emergency need. Before making a referral to a community resource, the district must confirm with the community resource that they are indeed able to meet that person's emergency need.

Local districts may require the signing of a lien as a condition of eligibility for FA, SNA, ESNA and EAF. If a district has a policy of requiring liens for recurring and/or emergency assistance, the requirement must apply to all recipients or applicants of recurring and/or emergency assistance in similar situations.

A. Recipients of recurring FA or SNA: Advanced Allowances

A recipient of FA or SNA who is threatened with eviction or foreclosure for non-payment of shelter expenses incurred during a period for which a TA grant has already been issued may be provided with an advance allowance for rent, mortgage or taxes to prevent eviction or foreclosure. A shelter arrears payment which exceeds the appropriate maximum monthly shelter standard may be provided to recipients, but only if all the following conditions are met:

- the recipient agrees to use all available liquid resources for the payment of the shelter expenses necessary to prevent the eviction or foreclosure;
- the recipient demonstrates an ability to pay shelter expenses in the future, including any amounts in excess of the appropriate monthly maximum shelter standard;
- the recipient agrees to future restriction of the rent or mortgage payments; and
- the recipient has not previously received an allowance in excess of the appropriate local agency maximum monthly shelter allowance and, subsequent to receiving such allowance, requested discontinuance of restriction of the shelter payments.

Shelter arrears payments are limited to a total period of six months once every five years unless the district determines that an additional shelter payment is necessary based on individual case circumstances.

In order for a current recipient of TA to receive a shelter arrears payment that represents a period for which a TA grant has already been issued, the payment must be considered an advance allowance. The TA recipient must request the payment in writing and agree in writing that his/her future TA grants will be reduced to recover the full amount of the arrears payment including any amounts in excess of the appropriate maximum monthly shelter standard.

The "ESNA Shelter Arrears Repayment Agreement" (Attachment 1) is not to be signed for any shelter arrears paid to a current recipient under recurring FA or SNA.

B. Applicants for recurring FA, SNA or EAF

A payment to prevent eviction or foreclosure may be made for the time prior to the month in which the FA or SNA case was opened and is limited to a total period of six months once every five years, unless the district determines that an additional shelter payment is necessary based on individual case circumstances. Current month's rent must not be considered when calculating this payment unless the current month's rent is past due.

Applicants eligible for FA, SNA or EAF-only, may receive an allowance for rent, mortgage or tax arrears for the time prior to the time the case was opened if the following conditions are met :

- such payment is essential to forestall eviction or foreclosure and no other shelter accommodations are available; or,
- the health and safety of the applicant is severely threatened by failure to make such payment; and,
- the authorization of the payment receives special written approval by the social services official or such other administrative officer as he or she may designate, provided such person is in higher authority than the supervisor who regularly approves authorization; and
- the applicant reasonably demonstrates an ability to pay future shelter expenses, including any amounts in excess of the appropriate local agency maximum monthly shelter allowance. However, when in the judgment of the local social services official, the individual or family has sufficient income or resources to secure and maintain alternate permanent housing, shelter arrears need not be paid to maintain a specific housing accommodation.

Such payment may exceed the appropriate maximum monthly shelter allowance. However, any amount which exceeds the appropriate maximum monthly shelter standard is an overpayment and is subject to recovery or recoupment:

- If the applicant subsequently receives FA or SNA, then this overpayment is recouped from future recurring grants. If an applicant for emergency assistance receives a shelter arrears payment under ESNA, and becomes eligible for recurring TA at a later time through a separate application, the Repayment Agreement is suspended and the outstanding balance owed on the suspended Agreement, including any amount in excess of the maximum appropriate monthly shelter standard, is not recoverable from the future recurring TA grant.
- If the applicant receives a one time only shelter arrears payment under EAF, then the amount above the shelter standard should be referred for collection, using the same means that the local district uses to collect overpayments when a TA case closes and there are outstanding overpayments.

Note: The “ESNA Shelter Arrears Repayment Agreement” (Attachment 1) is not required for this one-time only payment under EAF or for any shelter arrears paid to a recipient under recurring FA or SNA.

To avoid negatively impacting participation rates districts must issue shelter arrears payments as emergency one-time only assistance.

Upstate Payment Codes

52- Emergency Allowance to Forestall Eviction
F5 Diversion Payment

Districts must use the EAF case type “19-Emergency Assistance to Families (EAF)” when appropriate. Application of the special claiming code “F-Emergency Assistance to Families” on a payment line written on a FA or SNA case does not remove the payment from the data base used to calculate participation rates.

Downstate Payment Codes
31-Pre-PA Rent Arrears
39-Rent in Advance to Secure an Apartment
40- Rent in Advance to Avoid Eviction

C. Shelter Arrears paid under ESNA

1. Definition of Terms

Household

A household includes all persons residing in the applicant’s house or apartment. It includes related and unrelated persons, such as lodgers, roomers and boarders, foster children and wards or employees who share the housing unit.

Gross Income

Gross income is all income on the date of application (earned, unearned, including Supplemental Security Income (SSI) and in-kind before any deductions are taken). This includes such income of all persons in the household as defined above.

2. Policy

An applicant who is not applying for, or who is determined ineligible for recurring FA or SNA or for one-time emergency relief under EAF or EAA, who is subsequently determined otherwise eligible for ESNA, is required to sign the “ESNA Shelter Arrears Repayment Agreement” (Attachment 1). The applicant must agree as a condition of eligibility for the shelter arrears assistance under ESNA to repay, within a twelve (12) month period, all of the shelter arrears assistance provided to him/her. Only the applicant and his/her legal spouse may be required to sign the Repayment Agreement. In addition, all of the conditions for receiving a shelter arrears payment outlined below must be met:

- such payment is essential to forestall eviction or foreclosure and no other shelter accommodations are available; and,
- the health and safety of the applicant is severely threatened by failure to make such payment; and,
- the authorization of the payment receives special written approval by the social services official or such other administrative officer as he/she may designate, provided such person is in higher authority than the supervisor who regularly approves authorization; and
- the applicant reasonably demonstrates an ability to pay shelter expenses, including any amounts in excess of the appropriate local agency maximum monthly shelter allowance in the future. However, when in the judgment of the local social services official, the individual or family has sufficient income or

resources to secure and maintain alternate permanent housing, shelter arrears need not be paid to maintain a specific housing accommodation.

In addition, to receive a shelter arrears payment under ESNA, the household's gross monthly income on the date of application may not exceed 125% of the federal income poverty level guidelines for that household size. These guidelines are revised annually and are effective April 1 through March 31 of the year for purposes of ESNA.

To avoid negatively impacting participation rates districts must issue shelter arrears payments as emergency one-time only assistance.

Upstate Payment Codes

52- Emergency Allowance to Forestall Eviction
F5 Diversion Payment

Downstate Payment Codes

31-Pre-PA Rent Arrears
39-Rent in Advance to Secure an Apartment
40- Rent in Advance to Avoid Eviction

3. Completion of the Shelter Arrears Repayment Agreement Form

The language set forth in the attached "ESNA Shelter Arrears Repayment Agreement" must be reproduced locally, without change. In order to determine if an applicant for shelter arrears is required to sign a repayment agreement, local districts must complete the entire Part 1 of the "ESNA Shelter Arrears Repayment Agreement" (unless the person is already in receipt of recurring FA or SNA).

Part 2 of the Agreement must be completed for applicants where the local district has completed Part 1 and the answer to 1. F is "no".

A copy of the Repayment Agreement must be retained in the case file. Applicants who are required to sign the Repayment Agreement must receive a copy of the completed form.

A local district currently operating under an approved local equivalent may request approval of a local change to the standard language on the repayment agreement form, including the addition of a "Confession of Judgment" provision by sending a request and copy of the draft to:

NYS Office of Temporary and Disability Assistance
Division of Employment and Transitional Supports
40 North Pearl Street
Albany, NY 12243

4. Repayment Requirements

Local districts must set forth a schedule of payments that assure repayment within 12 months of the date of the shelter arrears assistance.

In completing Part 2 of the Agreement, local districts must clearly specify the dates for repayment. A specific date must be established for receipt of the first payment. Local districts must provide the address to which payments must be made.

There is no requirement that the local district send a bill. However, if the local district chooses to send bills and does not send a bill, the person is still responsible for the

payment. The Repayment Agreement itself sets forth the amount of the arrears received, the payment schedule and the dates payments must be received by the agency. The applicant has agreed to these terms, signed the form, and is therefore liable.

General business practice dictates that a receipt should always be given when cash is received.

5. Suspension of a Repayment Agreement

When a person who has received a shelter arrears payment under ESNA in the past becomes eligible for recurring FA or SNA, any unpaid balance on the "ESNA Shelter Arrears Repayment Agreement" is suspended until such person is no longer receiving recurring FA or SNA. At such time, the unpaid balance will again become due to the local district under the terms of the agreement. The outstanding balance owed on the suspended agreement, including any amount in excess of the shelter standards, is not recoverable from the future recurring TA grant. The suspended agreement does not share the same status as an agreement which is deemed to be null and void as in the case of an applicant for recurring TA who has not yet been determined eligible for recurring TA, but who is in need of a shelter arrears payment to prevent an eviction or a foreclosure.

6. Enforcement of the Shelter Arrears Repayment Agreement

In addition to any rights it has pursuant to the Social Services Law, local districts must enforce the Repayment Agreement by any legal method available to a creditor, including but not limited to referral to a collection agency, obtaining a judgment from a court, garnishment of wages in appropriate cases, obtaining a lien on real property. Only the wages of those person(s) who signed the Agreement can be garnished.

In the case of a person with a court ordered bankruptcy discharge of debt which lists the shelter arrears payment as a discharged debt, the local district is prohibited from pursuing collection and enforcement of the Agreement. However, the payment of future shelter arrears under ESNA is prohibited as long as the terms of the Agreement are not met, and the applicant for emergency shelter arrears is not determined eligible for recurring SNA.

7. Liens

Local districts may also require that recipients of ESNA for shelter arrears execute a lien on real property. The portion of the lien that represents the amount of the shelter arrears assistance which has already been satisfied by payments under the Agreement must be deducted from the amount of the lien.

8. Failure to Cooperate

Applicants who are required to sign a Repayment Agreement but who refuse to do so are ineligible to receive shelter arrears assistance under ESNA. In addition, those households that fail to cooperate in providing information necessary to determine eligibility are ineligible for shelter arrears assistance.

9. Provision of Subsequent Shelter Arrears Assistance

Subsequent assistance to pay shelter arrears under ESNA may not be provided unless the applicant is current on payments agreed to under a prior Repayment Agreement, including those applicants whose previous Repayment Agreement was discharged under bankruptcy.

Whether or not an individual is current on an ESNA Repayment Agreement is not a condition of eligibility for EAF or recurring TA.

Note: To receive an emergency shelter arrears payment under ESNA, the applicant does not need to be current on a previous “Utility Arrears Repayment Agreement”. Conversely, an applicant does not need to be current on a previous “ESNA Shelter Arrears Repayment Agreement” to receive assistance with a utility emergency.

D. Shelter Arrears paid under EAA

Up to four months of shelter arrears may be paid under the EAA program for persons in receipt of SSI to prevent eviction or foreclosure when no other housing accommodations appropriate for the person are available in the area. The dollar amount of the payment made under EAA is not limited to the maximum monthly shelter standards, or to the five year limit described above.

If there is a child under 18 years of age or 18 years of age attending full time secondary school or an equivalent level in the household, the household’s eligibility for EAF must be determined. If the household is eligible for EAF, the shelter arrears should be paid under EAF. However, EAF may not be used to duplicate or replace TA already granted.

An execution of a lien may not be required as a condition for granting EAA. The “ESNA Shelter Arrears Repayment Agreement” requirement does not apply to payments made under EAA.

Case type “18-Emergency Assistance for Adults (EAA)” has no impact on the districts participation rates. However, districts should continue to strive to use the correct payment codes when authorizing emergency shelter assistance under EAA.

Issued By _____

Name: Russell Sykes
Title: Deputy Commissioner
Division/Office: Division of Employment and Transitional Supports

**EMERGENCY SAFETY NET ASSISTANCE
SHELTER ARREARS REPAYMENT AGREEMENT
[ELIGIBILITY WORKSHEET (PART 1) AND AGREEMENT (PART 2)]**

Part 1. APPLICANT INFORMATION

A. Name: _____

Address: _____

Case Number: _____

B. (1) Is household in receipt of FA? Yes No
SNA? Yes No

(2) Is household eligible for EAF? Yes No
EAA? Yes No

(3) Is household applying for recurring FA? Yes No

(4) Is household applying for recurring SNA? Yes * No

If Yes is checked in (1) (2) or (3) above STOP, pay arrears under the appropriate category of assistance (FA, EAF, SNA or EAA). REPAYMENT AGREEMENT NOT REQUIRED.

If Yes is checked in (4) above, see footnote below and proceed to C.

If No is checked in all categories in (1), (2) (3) and (4), proceed to C.

C. Household Size: _____ (include all persons residing in the applicant's house or apartment)

D. 125% of federal official poverty line for household size in C. \$ _____

E. Household's gross monthly income at time of application \$ _____
(include all earned and unearned income (including SSI) for all persons residing in the applicant's household).

F. Does the amount in E (above) exceed the amount in D?
Yes , applicant ineligible for shelter arrears payment.
No , applicant eligible for ESNA shelter arrears payment and proceed to Part 2.

*If applicant is applying for recurring SNA, but eligibility has not yet been established for recurring assistance, the Repayment Agreement should be signed in the event that the recurring case is not opened. If the recurring Safety Net Assistance case is opened, the Repayment Agreement is null and void and the arrears should be claimed under recurring SNA. In this situation, any arrears that exceed the maximum shelter standards for the month of application and/or for any prior months must be recouped from future SNA grants.

If shelter arrears are paid under EAF or for applicants found eligible under recurring FA or SNA, any amount that exceeds the maximum monthly shelter allowance is to be recovered or recouped. A Repayment Agreement is suspended when a subsequent application for recurring TA is opened; no amount of the

Repayment Agreement including the amount that exceeds the maximum monthly shelter allowance can be recovered or recouped while the case is opened.

Part 2. REPAYMENT AGREEMENT

I understand that as a condition of eligibility for receiving this assistance, I agree to repay the _____ Department of Social Services the following amount: \$_____ shelter arrears assistance to prevent eviction or foreclosure. I agree to repay this amount within twelve (12) months. I will repay the assistance, in full, in installments of \$_____ per _____ (month, bi-weekly, etc.).

Each installment must be received by the _____ Department of Social Services on or before the _____ of each _____. The first installment is due on or before _____ (date).

The payments must be sent to:

I understand that I will not be eligible for subsequent shelter arrears assistance under the Emergency Safety Net Assistance program to prevent eviction or foreclosure unless I have fully repaid any prior shelter arrears payments or I am repaying this assistance in accordance with the terms of any Repayment Agreement(s) as of the date of application for such subsequent assistance. I also understand that if I fail to repay this assistance within the 12 month period, the Department of Social Services will enforce this Repayment Agreement by any method available to a creditor. This includes, but is not limited to, referring the matter to a collection agency, obtaining a judgment from a court, obtaining a lien on real property or garnishing wages in appropriate cases. Additionally, I understand that regardless of the repayment agreement, I cannot receive more than one shelter arrears payment in a five-year period, unless the local Department of Social Services has an exception policy and makes an exception.

I understand that the _____ Department of Social Services also has the right to require that I sign a lien on my real property for receiving a shelter arrears payment authorized under the Emergency Safety Net Assistance program. If a lien is taken, that part of the lien representing this arrears payment will be considered satisfied when the arrears payment have been repaid in full.

If I later become eligible for recurring public assistance, any unpaid balance of this arrears payment will be suspended until I am no longer receiving recurring public assistance. At that time, the unpaid balance again will become due to the Department of Social Services under the terms of this agreement.

I understand that by signing this form, I agree to all of the above conditions.

Signature of Applicant(s)

Date

Signature of Agency Personnel Designated to Sign

Date