For Department of State use only.

Notice of Proposed Rule Making

Temporary and Disability Assistance, Office of
(SUBMITTING AGENCY)

[x] Approval has been granted by Executive Chamber to propose this rule making.
[ ] This rule making does not require Executive Chamber approval.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. A. *Proposed action:*

Amendment of	§ 347.19 of	Title 18	NYCRR
		Title	NYCRR
		Title	NYCRR
		Title	NYCRR
		Title	NYCRR
		Title	NYCRR

B. [ ] This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].

C. [ ] This rule was previously proposed as a consensus rule making under I.D. No. _____. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].

D. [ ] This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. *Statutory authority under which the rule is proposed:*

Social Services Law §§ 20(3)(d), 34(3)(f), 111-a, and 111-v; 42 U.S.C. §§ 651-658, 660, 663-664, 666-667, 1302, 1396a (25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396b(k); 45 C.F.R. §§ 303.21, 303.69, 303.70, and 307.13

3. *Subject of the rule:*

Child Support

4. *Purpose of the rule:*

See attached.

5. *Public hearings* (check box and complete as applicable):

[x] A public hearing is not scheduled. (*SKIP TO ITEM 8*)

[ ] A public hearing is required by law and is scheduled below. (***Note***: first hearing date must be at least 45 days **after** publication of this notice unless a different time is specified in statute.)

[ ] A public hearing is not required by law, but is scheduled below.

Time:	*Date:*	*Location:*

6. *Interpreter services* (check only if a public hearing is scheduled):
   [ ] Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. Accessibility (check appropriate box only if a public hearing is scheduled):
   [ ] All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
   [ ] Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):
   A. [ ] The full text of the rule is attached because it does not exceed 2,000 words.
   B. [x] A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
      [x] Full text is posted at the following State website: http://otda.ny.gov/legal/
      [ ] Full text is not posted on a State website.
      [ ] Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102 (2)(a)(ii).
   C. [ ] Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].

9. *The text of the rule and any required statements and analyses may be obtained from:*

Agency contact Matthew Tulio
Agency Name NYS Office of Temporary and Disability Assistance
Office address 40 North Pearl Street, 16C
Albany, New York 12243-0001
Telephone (518) 486-9568 *E-mail:* matthew.tulio@otda.ny.gov

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact _____
Agency name _____
Office address _____
_____
Telephone _____ *E-mail:* _____

11. Public comment will be received until:

[x] 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

[ ] 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

[ ] 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).

[ ] Other: (*specify*) _____.

12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register,* I.D. No. _____-_____.

13. Expiration date (check only if applicable):

[ ] This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

14. Additional matter required by statute:

[ ] Yes (include below material required by statute).

[x] No additional material required by statute.

15. Regulatory Agenda (See SAPA §202-d[1]):

[x] This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register:* 06/29/2016.

[ ] This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register.*

[ ] Not applicable.

16. ***Review of Existing Rules*** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

[ ] Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

[ ] Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.

[ ] An assessment of public comments is not attached because no comments were received.

[x] Not applicable.

17. ***Regulatory Impact Statement (RIS)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:
[x] The full text of the RIS.
[ ] A summary of the RIS.
[ ] A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached,** because this rule is:
[ ] subject to a consolidated RIS printed in the *Register* under I.D. No.: _____-_____; issue date: _____ .
[ ] exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
[ ] exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. [ ] A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. ***Regulatory Flexibility Analysis (RFA) for small businesses and local governments***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:
[x] The full text of the RFA.
[ ] A summary of the RFA.
[ ] A consolidated RFA, because this rule is one of a series of closely related rules.

B. [ ] A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not** attached, because this rule:
[ ] is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____-_____; issue date: _____ .
[ ] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
[ ] is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. ***Rural Area Flexibility Analysis (RAFA)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:
[x] The full text of the RAFA.
[ ] A summary of the RAFA.
[ ] A consolidated RAFA, because this rule is one of a series of closely related rules.

B. [ ] A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached,** because this rule:
[ ] is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____-_____; issue date: _____ .
[ ] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

[ ] is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. ***Job Impact Statement (JIS)***

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

[ ] The full text of the JIS.

[ ] A summary of the JIS.

[ ] A consolidated JIS, because this rule is one of a series of closely related rules.

B. [x] A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

[ ] A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached,** because this rule:

[ ] is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____, issue date: _____.

[ ] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

[ ] is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Matthew L. Tulio *Signature* _____

Address 40 North Pearl Street, 16C, Albany, New York 12243-0001

Telephone (518) 486-9568 *E-Mail* matthew.tulio@otda.ny.gov

Date 08/25/2016

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York.*
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

Proposed Regulatory Amendments to 18 NYCRR § 347.19

4. Purpose of the rule:

To help ensure the State's compliance with the federal rules for safeguarding confidential information, disclosing said information, where appropriate, to authorized persons and entities for authorized purposes, and reporting of delinquent child support payors to credit reporting agencies.

Summary of the Text

This is a general summary of the proposed rule text to amend to 18 NYCRR § 347.19. The full proposed rule text is posted at the following State website: http://otda.ny.gov/legal/.

The proposed rule amends 18 NYCRR § 347.19 to conform with amendments to title IV-D of the federal Social Security Act and regulations promulgated by the federal Department of Health and Human Services. Section 347.19 is renamed as "Use and Disclosure of Confidential Information and Credit Reporting" to better reflect the new provisions.

Section 347.19 (a) clarifies what information is to be safeguarded and what uses are permitted for child support purposes. It details when disclosure of location information is not permitted due to the risk of family violence. It also addresses the limitations on disclosure to third parties, including other government agencies or programs. The revisions provide instructions on the manner in which to respond to court ordered disclosure and identify the penalties for unauthorized use or disclosure. The revisions authorize the Office of Temporary and Disability Assistance to promulgate standards and controls for safeguarding confidential information on State and local systems.

New York State maintains a State parent locator service in accordance with federal law. As required by recently adopted federal regulation, § 347.19 (b) establishes separate rules regarding the use and disclosure of information contained in the state parent locator service. The proposed regulation identifies the persons authorized to receive the information, the authorized uses of information, and the types of information that may be disclosed.

Section 347.19 (c) amends the existing rules regarding reporting child support arrears to consumer reporting agencies. The amendments clarify the rules setting out the threshold requirements for reporting child support arrears and the process for challenging the support collection unit's determination to make such a report.

Section 347.19 of Title 18 NYCRR is amended to read as follows:

347.19 [Confidentiality of information] Use and Disclosure of Confidential Information and Credit Reporting.

Subdivision (a) of section 347.19 is repealed, and a new subdivision (a) is added to section 347.19 to read as follows:

(a) Use and Disclosure

(1) The office of temporary and disability assistance (Office) and the child support enforcement unit (CSEU) shall maintain all information and data, including information and data in the state automated child support management system (automated system), in a confidential manner designed to protect the privacy rights of the parties and shall not use or disclose information or data except for the purpose of, and to the extent necessary to establish paternity, to establish, modify or enforce an order of support, or to administer the child support program, unless otherwise authorized by law.

(i) The information to be safeguarded includes all information or data obtained in connection with performance of child support functions, including records or information received in electronic form.

(ii) The requirements of this section apply to the Office and CSEU, any other state or local agency or official to whom the Office or CSEU delegates any of the functions of the child support program, and any official, person or entity performing child support functions pursuant to a cooperative agreement or purchase of services agreement.

(2) Except as provided in subparagraphs (i) and (ii) of this paragraph, Office and CSEU employees may access, use or disclose information and data obtained in connection with the performance of functions under title IV-D of the federal Social Security Act to the extent necessary to perform their duties within the child support program. The Office or CSEU shall monitor use of and access to the automated system to prevent unauthorized use or access by its employees or contractors.

(i) Access to and use of any information from the Internal Revenue Service, including federal tax return information, is restricted as specified in the Internal Revenue Code.

(ii) *(a)* The CSEU shall prohibit disclosure of location information by entry of a family violence indicator, if requested by any

person, where that person provides reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child, including but not limited to evidence that:

(1) The person resides or has resided in a domestic violence shelter or is receiving non-residential domestic violence services;

(2) A temporary or final protective order has been entered;

(3) The person is enrolled in an address confidentiality program;

(4) The person provides a domestic violence or child abuse incident report or police report which describes domestic violence or child abuse;

(5) A court has determined that contact with the other party creates a risk of physical or emotional harm to the person or child;

(6) A good cause exemption has been issued due to domestic violence; or

(7) A family violence option waiver is granted by the social services district.

(*b*) As used in this subparagraph, location information shall include residential address, employer name, employer address, county of residence or employment, or other information identifying an employer, educational institution, or residence of an individual.

(*c*) Upon request by any authorized person for location information from an account or case where a family violence indicator has been entered, the social services district shall advise that the location information cannot be provided absent a determination by a court of competent jurisdiction that disclosure to any other person of that information would not be harmful to a party, parent or child.

(d) Notice of entry or deletion of a family violence indicator shall be transmitted to the Federal Case Registy within five (5) days of receipt of information which would cause entry or deletion of an indicator.

(iii) All new employees of the Office or of the CSEU or social services district with access to child support information shall receive training in the permitted use, disclosure, and safeguarding of this information, as well as the penalties for its misuse. All employees of the Office or of the CSEU or social services district with access to child support information shall receive periodic training regarding these subjects.

(3) The Office or CSEU may disclose the following information to individuals who are parties to a support order being collected or enforced by a CSEU except where disclosure is otherwise prohibited by law or pursuant to subparagraph (ii) of paragraph (2) of this subdivision:

(i) A party to the support order may obtain disclosure of any of his or her confidential information, information regarding case status and pending court appearances, and payment histories, except that information regarding an investigation of the parent or guardian for fraud or criminal prosecution shall not be disclosed;

(ii) A custodial parent or guardian may obtain information regarding current or pending support proceedings or processes and disclosure of information of the noncustodial parent, including location, employment, income, and assets, but only to the extent necessary to prepare for an administrative or court proceeding or for other child support purposes; or

(iii) A parent or guardian may grant written authorization to a third person, including an attorney, translator or legislator, to obtain disclosure of such information as he or she is entitled to obtain. The written authorization shall be valid for one year from the date signed or the date it is received by the CSEU, whichever is earlier, or until revoked by the parent or guardian in writing filed with the Office or CSEU.

(4) Authorized Disclosures to Government Agencies or Programs.

(i) The Office or CSEU may, subject to such requirements as the Office may prescribe, disclose information to state agencies as necessary to carry out state agency functions under plans or programs under titles IV (including tribal programs under title IV),

XIX, or XXI of the federal Social Security Act, and the Supplemental Nutrition Assistance Program, including:

(a) Any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program.

(b) Information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child under circumstances which indicate that the child's health or welfare is threatened may be provided to the Statewide Central Register of Child Abuse and Maltreatment or a social services official charged with protection of children or a law enforcement officer; provided, however, that information obtained from financial institution data matches, the National or State Directory of New Hires or Federal or State Case Registry may not be disclosed absent independent verification.

(c) The Office or CSEU shall require agencies authorized to receive information to enter into agreements setting out the frequency, scope, and manner of information exchanges, and the limitations on use and re-disclosure of child support information. Agreements shall require that information disclosed to the agency or public official shall not be re-disclosed unless authorized by law and shall only be used for the purpose for which it is provided.

(ii) Notwithstanding anything in this section to the contrary, information obtained from the following sources may only be used for the purpose of, and to the extent necessary to, establish paternity, establish, modify or enforce an order of support or for the administration of the child support program:

(a) Records or information of other state and local agencies which may not be re-disclosed pursuant to state or federal law;

(b) Business or financial records of corporations, companies or other entities;

(c) Records of financial institutions and utility or cable companies;

(d) Use and disclosure of federal tax return information is restricted as specified in the Internal Revenue Code, and shall not be otherwise re-disclosed absent independent verification; and

(e) Information obtained from financial institution data matches shall not be disclosed outside the administration of the child support program.

(iii) Notwithstanding any other provision of this section, authorized disclosures under this paragraph shall be subject to the following limitations:

(a) Information in the automated system obtained from the national or state directory of new hires or federal or state case registry may be disclosed to agencies administering plans or programs under title IV-B and IV-E of the federal Social Security Act to locate parents or putative fathers for the purposes of establishing paternity or establishing parental rights with respect to a child.

(b) Information obtained from the national directory of new hires or federal or state case registry may be disclosed to agencies administering plans or programs under titles IV-A, IV-B, IV-D and IV-E of the federal Social Security Act for the purpose of assisting that program to carry out its responsibilities of administering title IV-A, IV-B, IV-D and IV-E programs.

(c) Information regarding the employee's name, Social Security number and address and the employer's name, address, and federal employer identification number obtained from the state directory of new hires may be disclosed to agencies administering plans or programs under title IV-A of the federal Social Security Act for the purpose of verifying income and eligibility.

(d) For purposes of this section, "independent verification" is the process of acquiring and confirming information through the use of a secondary source. The information from the secondary source, which verifies the original information, may only be released for purposes permitted by and to persons or entities authorized to receive the information under federal and state law and these regulations.

(5) (i) If information is requested by court-issued subpoena, the Office or the CSEU shall oppose release of the information unless:

(a) Disclosure is not prohibited by law;

(b) The party requesting the information is entitled to disclosure of the information requested without resort to legal process;

(c) The subpoena is accompanied by a written consent to release of the information by the person or persons whose information is the subject of the request; or

(d) Disclosure is required by other provisions of law.

(ii) If disclosure is not authorized, the Office or CSEU shall move to quash the subpoena, or request that the child support agency in the state of the court issuing the subpoena take like steps to prevent the disclosure of the information. In instances where disclosure is prohibited due to the existence of a family violence indicator, the CSEU shall move that the court, pursuant to federal law, hold a hearing to determine if disclosure could result in harm to a family member or former family member, on notice to that individual. In such cases, the information will only be released to the court.

(6) Any person who discloses or uses child support information in violation of law or regulation shall be subject to legal sanctions for such disclosure, including:

(i) A civil action pursuant to section 111-v (3) of the social services law by any person who incurs damages due to the improper use or disclosure;

(ii) If willful, referral for criminal prosecution pursuant to section 111-v (4) of the social services law and/or for official misconduct pursuant to section 195.00 of the Penal Law. Improper disclosure of federal tax return information may be subject to additional federal criminal penalties; and

(iii) Administrative penalties, including dismissal from employment.

(7) Security, confidentiality and compliance for information and data flowing through, accessed and/or utilized by non-state computerized systems.

(i) Information integrity, security and compliance. The CSEU shall have safeguards, protocols and policies in place protecting the

integrity, accuracy, completeness of, access to, and use of information and data in any social services district computerized system, as well as meeting all compliance requirements. As used herein, computerized system means any system, network, hardware, software, program, or application which stores, produces, utilizes, manages, processes, accounts for, transmits, or monitors information or data used by the CSEU or any employee, agent, contractor or subcontractor in carrying out the CSEU's duties.

(ii) All computerized systems shall meet the applicable security and compliance requirements of federal and state law, regulation, and policy, including but not limited to requirements for the security of federal tax return information. The Office shall establish security and compliance controls, standards, and policies as may be applicable to all computerized systems and the handling of data subject to the requirements in this subdivision and notify the CSEU by administrative directive.

(iii) The Office and/or its agents will audit, review, assess and inspect the planning, design, development, installation, provisioning and deprovisioning of users, enhancement and operation of computerized systems and the policies and procedures involved in the handling of data subject to the requirements in this subdivision to determine the extent to which they meet the requirements of this section.

(iv) The Office may require the CSEU to submit and implement a corrective action plan to correct any deficiencies.

Paragraphs (1), (2) and (3) of subdivision (b) of section 347.19 are repealed, and a new subdivision (b) is added to section 347.19 to read as follows:

(b) State Parent Locator Service.

(1) State parent locator service. The Office shall maintain a State parent locator service to submit requests to the Federal parent locator service and to provide location information to authorized persons for authorized purposes.

(i) For cases receiving child support services under title IV-D of the Social Security Act. The State parent locator service shall access the Federal parent locator service and other sources of information and records within the State or other States, if available, for locating custodial and noncustodial parents or children for the purpose of establishing paternity, for establishing, modifying or enforcing child support obligations, or for the administration of the child support program under title IV-D of the Social Security Act.

(ii) For other individuals and purposes authorized under title IV-D of the Social Security Act.

(a) The Office and CSEU shall access State parent locator service and release information from the Federal parent locator service only if disclosure is authorized under title IV-D of the Social Security Act.

(b) The Office and CSEU shall access State parent locator service and release information from other state sources of information and records only if disclosure is authorized under title IV-D of the Social Security Act, and not otherwise prohibited by State law or regulation. Information may only be released upon the request of authorized persons specified in paragraph (2) of this subdivision, for authorized purposes specified in paragraph (3) of this subdivision.

(c) The Office and CSEU shall not release information from the automated system, state or federal tax return information, or financial institution data match information, nor forward a request for such information to another State child support agency.

(d) The Office and CSEU need not make subsequent location attempts if locate efforts fail to find the individual sought.

(e) The Office and CSEU shall only access the State parent locator service in conjunction with a request for information from the Federal parent locator service.

(2) Authorized persons. The State parent locator service shall accept requests for locate information only from the following authorized persons/entities:

(i) Any State or local agency or official providing child and spousal support services pursuant to the state plan under title IV-D of the Social Security Act;

(ii) A court that has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;

(iii) *(a)* The custodial parent, legal guardian, or the attorney of the child or caretaker relative having custody of a child who is not receiving assistance under title IV-A of the Social Security Act, but only if the individual:

(1) Attests that the request is being made to obtain information on, or to facilitate the discovery of, the location of any individual for the purpose of establishing paternity, or establishing, modifying, or enforcing child support obligations;

(2) Attests that any information obtained through the Federal or State parent locator service shall be used solely for these purposes and shall be otherwise treated as confidential;

(3) For a child not receiving assistance under title IV-D of the Social Security Act, provides evidence that the requestor is the custodial parent, legal guardian, caretaker relative with custody, or attorney of the child; and

(4) Pays the fee required for Federal parent locator service and an additional fee as set forth by the Office based on actual or standardized costs for each search of the State parent locator service.

(b) Requests under this subparagraph shall be submitted on forms designated by the Office. Copies of the request,

attestation, and supporting evidence shall be retained for a period of three years.

(iv) A court, authorized agent or attorney of a state which has an agreement in connection with parental kidnapping, child custody or visitation cases meeting the requirements of federal law. Requests from such courts, agents or attorneys shall be made solely in the manner proscribed by the Office; or

(v) A State agency that is administering a program operated under a State plan under titles IV-B or IV-E of the Social Security Act.

(3) Authorized purposes for requests and scope of information provided. The State parent locator service shall obtain and disclose the information set out below, subject to the privacy safeguards required under title IV-D of the Social Security Act and the social services law, only for the following purposes:

(i) To locate an individual with respect to a child in a support or paternity proceeding (whether receiving services pursuant to title IV-D of the federal Social Security Act or not) or a case under titles IV-B or IV-E of the Social Security Act. The State parent locator service shall locate individuals for the purpose of establishing parentage, or establishing, modifying, or enforcing child support obligations, for the administration of the child support program under title IV-D of the Social Security Act, or for determining who has or may have parental rights with respect to a child. For these purposes, only information available through the Federal or State parent locator services may be provided. This information is limited to Social Security number(s), most recent address, employer name and address, employer identification number, wages or other income from, and benefits of, employment, including rights to, or enrollment in, health care coverage, and asset and debt information.

(ii) To assist state or local agencies in carrying out their responsibilities under programs established pursuant to titles IV–D, IV–A, IV–B, and IV–E of the Social Security Act. In addition to the information that may be released pursuant to subparagraph (i) of this paragraph, State parent locator service information may be disclosed to agencies administering programs pursuant to titles IV–D, IV–A, IV–B, and IV–E of the Social Security Act for the purpose of assisting these agencies to carry out their responsibilities to administer such programs, including information to locate an individual who is a child or a relative of a child in a case under title IV–B or IV–E. For purposes of this section,

"relative" of a child is a person related to such child by blood, marriage or adoption. Information that may be disclosed about relatives of children involved in title IV–B and IV–E cases is limited to name, Social Security number(s), most recent address, employer name and address and employer identification number.

(iii) To locate an individual sought for the unlawful taking or restraint of a child or for child custody or visitation purposes. The State parent locator service shall locate individuals for the purpose of enforcing state law with respect to the unlawful taking or restraint of a child or for making or, upon request by a court of competent jurisdiction, enforcing a child custody or visitation determination. This information is limited to the most recent address and place of employment of a parent or child.

Paragraph (4) of subdivision (b) of section 347.19 is relettered as the new subdivision (c) of section 347.19 and is amended to read as follows:

[(4)] (c) Credit Bureau Reporting

(1) Information regarding the amount of support arrears/past[-] due support owed by the respondent must be reported to consumer reporting agencies [whenever the amount of past-due support exceeds $1,000 or is at least two months delinquent, whichever occurs first,] and must indicate the name of any respondent who owes support arrears/past [-] due support and the amount of the delinquency. [However, such information cannot] Information shall not be made available to a consumer reporting agency that the [department] Office determines does not have sufficient capability to systematically and timely make accurate use of the information, [nor] or to an entity that has not furnished evidence satisfactory to the [department] Office that the entity is a consumer reporting agency. In determining whether a consumer reporting agency lacks sufficient capability to systematically and timely make accurate use of such information, the [department] Office may require such agency to demonstrate its ability to comply with the provisions of section 380-j of the General Business Law.

(2) At least 10 days prior to reporting the information to a consumer reporting agency, the local department or appropriate [local] child support enforcement/support collection unit hereafter "SCU" must provide [a] notice to the respondent [who owes the support which must inform such person] stating that:

(i) [the child support enforcement collection unit] The SCU proposes to release the information to consumer reporting agencies;

(ii) Federal and State law permit such release;

(iii) [release] Release of the information can be prevented [by the respondent] by payment of the total amount of support arrears/past [-] due [child] support owed;

(iv) If the support arrears/past[-]due support amount indicated in the notice is paid in part or in full after the release, the appropriate consumer reporting agencies will be so notified; and

(v) The procedures for contesting release of the information set out in paragraph (3) of this subdivision.

[(v) if the] (3) If the respondent believes that there is a mistake of fact in the amount of the support arrears/past[-]due support [amount] indicated in the notice [is believed to be in error] or in the identity of the respondent or that the order of support does not exist or has been vacated, a review of the account can be requested and the SCU must complete such review as soon as practicable and notify the respondent of the results, in writing[;].

[(vi) the SCU will not release the information to consumer reporting agencies until after the review of the account, if such review is requested, provided such release is still appropriate;]

[(vii) in] (i) In order to obtain review of the account, the respondent must contact the SCU by using the [name and telephone number or] address provided in the notice and comply with any requests for information [;].

[(viii) in connection with the review of the account, the respondent may be represented by an attorney or other person;]

[(ix) prior] (ii) Prior to submitting any written documentation [or appearing at any conference scheduled] in connection with the review of the account, the respondent or his/her representative may obtain and review a copy of the SCU payment records relating to the [proposed release of information to consumer reporting agencies and obtain a copy of such SCU payment records;] account.

(iii) The SCU may not release the information to consumer reporting agencies until after the review of the account, provided such release is still appropriate.

[(x) in] (iv) In connection with the review of [an] the account, the respondent may be represented by an attorney or assisted by another person.

(v) The respondent may submit written documentation in support of his/her claim, including a written explanation of why the proposed release of information to consumer reporting agencies should not occur.

[(xi) the] (vi) The decision of the SCU will be based solely upon consideration of the court orders, SCU records [,] and any written documentation submitted by the respondent [and any written and oral evidence presented at any conference with the respondent that may be held] in connection with [a] the review of [any] the account.[; and]

[(xii) if the respondent disagrees with the decision made by the SCU to release information to any consumer reporting agency, (s)he may seek judicial review of the determination to release information to the credit reporting agencies, pursuant to article 78 of the Civil Practice Law and Rules, within the time limits provided in law.]

(vii) The SCU must complete such review as soon as practicable and notify the respondent of the results, in writing.

Former subdivision (c) and subdivisions (d), (e), (f) and (g) of section 347.19 are repealed.

Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 20 (3) (d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 34 (3) (f) requires the Commissioner of OTDA to establish regulations for the administration of public assistance and care within the state.

SSL § 111-a requires OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the federal Department of Health and Human Services by Part D of Title IV of the federal Social Security Act.

SSL § 111-v requires that OTDA shall by regulation prescribe and implement safeguards on the confidentiality, integrity, accuracy, access, and the use of all confidential information and other data handled or maintained, including such information handled and maintained in the automated child support enforcement system and such information shall not be disclosed except for authorized purposes.

Title 42 of the United States Code (42 U.S.C.) §§ 651 - 658, 660, 663- 664, 666- 667, 1302, 1396a (25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396b(k) sets forth authority for the title IV-D program and authorizes states to, in part, establish and maintain a State Parent Locator Service that interacts with State agencies and the federal parent locator service, requires that states safeguard confidential information contained in their records including computerized records and sets forth for what purposes and to whom confidential information may be disclosed.

Title 45 of the Code of Federal Regulations (45 C.F.R.) § 303.21 provides that states may disclose confidential information to certain state agencies as necessary to carry out their plans and responsibilities.

Federal regulations at 45 C.F.R. § 303.69 provide that states may provide confidential information to agents or attorneys of the United States from the Federal Parent Locator Service.

Federal regulations at 45 C.F.R. § 303.70 provide, in part, that states have procedures for submissions to the State Parent Locator Service or the Federal Parent Locator Service.

Federal regulations at 45 C.F.R. § 307.13 provide, in part, that states provide for security and confidentiality for computerized support enforcement systems.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that, to the greatest extent possible, parents provide financial support for their children. The Legislature has given OTDA and the social services districts access to confidential information about the parties and children subject to paternity and child support proceedings, and the intent of the above statutes is that such information be safeguarded and used in a confidential manner and disclosed only for permitted purposes.

3. Needs and Benefits:

The amendments to 18 NYCRR § 347.19 are being made to ensure the State's compliance with the federal rules on safeguarding confidential information, disclosing said information, where appropriate, to authorized persons and entities for authorized purposes, and on reporting of delinquent child support payors to credit reporting agencies.

Specifically, the amendments describe the use and disclosure of confidential information that may be provided by OTDA or by the local child support enforcement unit to authorized persons and agencies for only authorized purposes, and authorize OTDA to set systems standards for safeguarding confidential information. The amendments describe the State parent locator service and detail the purposes for which the State parent locator and Federal parent locator services may be accessed and what agencies, persons, and courts have authority to access such services and for what purposes. The amendments further simplify the regulation as it pertains to credit reporting and the rights of respondents to contest credit reporting. These amendments align State regulations with federal rules and current processes. As such, State and local child support enforcement units are in compliance with these amendments.

4. Costs:

The proposed amendments to the regulation will not require the social services districts to incur any initial capital costs or annual costs for continuing compliance with the rule.

5. Local Government Mandates:

Social services districts will be required to comply with the proposed amendments by ensuring that any and all disclosures of confidential information are done in full compliance with federal and State requirements. The proposed amendments are clarifying in nature and consistent with federal and State laws.

6. Paperwork

No new paperwork or reporting requirements are anticipated to be required by the proposed rule, except that persons not receiving child support services may apply for location

only services through the State Parent Locator Services. Support collection units for each social services district are already processing applications for this service.

7. Duplication:

The proposed amendments do not duplicate, overlap or conflict with any existing federal or State law or regulation.

8. Alternatives

There are no significant alternatives to consider because the proposed amendments are consistent with federal and State statutes and regulations.

9. Federal Standards

The proposed amendments do not exceed federal minimum standards for the same subject.

10. Compliance Schedule

It is anticipated that social services districts will be in compliance with the proposed amendments on the effective date.

Regulatory Flexibility Analysis
For Small Businesses and Local Governments

1. Effect of Rule:

Each of the 58 social services districts in New York State will be affected by the proposed regulatory amendments. However, the proposed amendments will not impact small businesses.

2. Compliance Requirements

Social services districts will be required to comply with the proposed amendments by ensuring that confidential information is properly safeguarded and that any use or disclosure is done in full compliance with federal and State requirements. The proposed amendments are clarifying in nature and consistent with federal and State laws and regulations.

3. Professional Services

To the extent social services districts already comply with the current requirements regarding confidentiality of information, no new professional services will be imposed on them.

4. Compliance Costs

The proposed amendments to the regulations will not require the social services districts to incur any initial capital costs or annual costs for continuing compliance with the rule.

5. Economic and Technological Feasibility

The Division of Child Support Enforcement within the Office of Temporary and Disability Assistance (OTDA) continues to assume all administrative cost and

responsibility for the systematic programming for implementing the State Parent Locator Service and State automated systems. Consequently, economic and technological feasibility are not concerns for social services districts.

6. Minimizing Adverse Impact

The proposed regulations will not have an adverse economic impact on social services districts or small businesses.

7. Small Business and Local Government Participation

The procedure for social services districts to safeguard confidential information is not new. The proposed amendments are clarifying in nature. Small businesses do not currently have access to child support information and will not be affected.

The statutes on which these regulatory changes are predicated have been discussed with the social services districts. OTDA and the social services districts have had ongoing discussions regarding these requirements, and this regulatory proposal will bring State regulations into compliance with federal and State requirements and, at the same time, address the practical, day-to-day needs of the social services districts.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed regulations will affect the 44 rural social services districts in the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

Social services districts in rural areas will be required to comply with the proposed amendments by ensuring that confidential information is properly safeguarded and that any use or disclosure of confidential information is done in full compliance with federal and State requirements. The proposed amendments are clarifying in nature and consistent with existing federal and State laws and regulations.

3. Costs:

The proposed amendments to the regulations will not require the social services districts in rural areas to incur any initial capital costs or annual costs for continuing compliance with the rule.

4. Minimizing adverse impact:

The proposed regulations will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

The procedure for social services districts in rural areas to safeguard confidential information and limit disclosure of such information to authorized persons and entities for authorized purposes is not new. The proposed amendments are clarifying in nature. The proposed amendments will ensure State regulations are consistent with federal requirements.

The regulatory changes have been discussed with the social services districts in rural areas. The Office of Temporary and Disability Assistance and the social services districts have

had ongoing discussions regarding these requirements, and this regulatory proposal will bring State regulations into compliance with federal and State requirements, and, at the same time, address the practical, day-to-day needs of the social services districts in rural areas.

Job Impact Statement

A Job Impact Statement has not been prepared for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities in the State. The proposed amendments to 18 NYCRR § 347.19 will have no impact on jobs and employment opportunities in either the public sector or private sector of the State. Furthermore, the jobs of the child support enforcement personnel and the attorneys representing the social services districts will not be impacted in any real way by the proposed amendments.