

For Department of State use only.

## Notice of Adoption

Temporary and Disability Assistance, Office of  
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.  
 This adoption will not amend the NYCRR.

**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. *Action taken:*

Amendment of Part 344 and § 347.9 of Title 18 NYCRR

"X" box if the rule was originally proposed as a consensus rule making.

2. *Effective date of rule:*

- Date this notice is published in the *State Register*.  
 This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:  
 Date of filing.  
 Other date (*specify*): \_\_\_\_\_  
 Other date (*specify*): \_\_\_\_\_  
 \_\_\_\_\_ days after filing.

3. *Statutory authority under which the rule was adopted:*

42 United States Code (U.S.C.) §§ 651, 654b, 666(a)(8)(B)(iii) and 666(b)(6); Civil Practice Law and Rules (CPLR) §§ 5241 and 5242; Social Services Law (SSL) §§ 17(a)-(b), and (j), 20(3)(d), 34(3)(f), 111-a, and 111-b(14)

4. *Subject of the rule:*

Income withholding of child or combined child and spousal support

5. *Purpose of the rule:*

Update State regulations to conform to federally-mandated changes to CPLR §§ 5241 and 5242 and SSL § 111-b.

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: TDA-21-16-00005 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

No changes were made to the proposed rule.

● Do NOT attach the text of the previously published rule. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C, if applicable, as well as remaining Items 7-8 and 13-14.

Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

● Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.

Text attached.

Summary attached.

This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of **revised** rule making:

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_ - \_\_\_\_\_

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_ - \_\_\_\_\_

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

Agency contact Richard P. Rhodes, Jr.

Agency name New York State Office of Temporary and Disability Assistance

Office address 40 North Pearl Street 16C

Albany, NY 12243-0001

Telephone (518) 456-7503 E-mail: richard.rhodesjr@otda.ny.gov

8. Additional matter required by statute:

Yes (include below material required by statute).

No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)

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

A. The attached Revised RIS contains:

The full text of the Revised RIS.

A summary of the Revised RIS.

B. A statement is attached explaining why a revised RIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RIS.

This is a technical amendment exempt from SAPA §202-a.

- C.  A revised RIS is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

10. **Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

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

- A. The attached Revised RFA contains:  
 The full text of the Revised RFA.  
 A summary of the Revised RFA.
- B. A **statement is attached** explaining why a revised RFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RFA.  
 The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. **Revised Rural Area Flexibility Analysis (RAFA)**

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

- A. The attached Revised RAFA contains:  
 The full text of the Revised RAFA.  
 A summary of the Revised RAFA.
- B. A **statement is attached** explaining why a revised RAFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RAFA.  
 The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RAFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. **Revised Job Impact Statement (JIS)**

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

- A. The attached Revised JIS contains:  
 The full text of the Revised JIS.  
 A summary of the Revised JIS.
- B. A **statement is attached** explaining why a revised JIS is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published JIS.  
 The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings 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.
- C. A revised JIS is **not** attached because:  
 This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 This rule was proposed by the State Comptroller or Attorney General.

13. **Assessment of Public Comment** (includes legislative comments) (check applicable box):

- A.  45-day minimum comment period is complete (Full text was submitted with proposal or summary of text was submitted with the proposal and the full text was 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-day minimum comment period is complete (Summary of text was submitted with the proposal and the full text was 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])
- B. (COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)
- Attached is an assessment of public comment.  
No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- An assessment is not attached because no comments were received.
- An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2) (a)(ii).

14. **Referenced material** (check one box):

- No information is being incorporated by reference in this rule.
- This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

15. **Initial Review of Rule** (SAPA §207)

(SELECT AND COMPLETE ONE)

- A.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year which is no later than the 3<sup>rd</sup> year after the year in which this rule is being adopted.
- B.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year which is the 4<sup>th</sup> or 5<sup>th</sup> year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
- Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period;  
or  
An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C.  As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5<sup>th</sup> year after the year in which this rule is being adopted.
- D.  Not Applicable. This rule is a "rate making" or a "consensus rule," or the agency is not required to review existing rules.

**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 Richard P. Rhodes, Jr. Signature \_\_\_\_\_

Address N.Y.S.O.T.D.A., 40 North Pearl Street, 16C, Albany, NY 12243-0001

Telephone (518) 486-7503 E-mail richard.rhodesjr@otda.ny.gov

Date 07/28/2016

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**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.

**Title 18 NYCRR Part 344 is amended to read as follows:**

**§ 344.1 is amended to read as follows:**

**§ 344.1 Purpose.**

This Part establishes procedures for income withholding of child support or combined child and spousal support for persons who [request such services and who] are not in receipt of title IV-D child support [enforcement] services from a social services district.

**§ 344.2 is amended to read as follows:**

**§ 344.2 Duties of the [department] Office.**

(a) [The department will receive] For purposes of this Part, the office of temporary and disability assistance (“Office”), through its State disbursement unit, is authorized to collect, record and [transmit] disburse any support payments paid pursuant to any order of child support or combined child and spousal support issued on or after the first day of January, 1994 under the provisions of article 3-A or section 236 or 240 of the Domestic Relations Law, or article 4, 5, [or] 5-A, or 5-B of the Family Court Act, for which a court has ordered such amounts to be paid pursuant to an income execution issued by the sheriff, the clerk of the court, or the attorney for the creditor pursuant to section 5241 of the Civil Practice Law and Rules or an income deduction order issued pursuant to section 5242[(c)] of the Civil Practice Law and Rules (“income withholding order”).

(b) The [department] State disbursement unit will record, collect, and [transmit] disburse support [payments] to the [person in receipt of services] creditor within [five] two business days of the [department's] State disbursement unit's receipt of a payment.

(c) The [department] State disbursement unit will maintain records of its [receipt] collection and [transmission] disbursement of each support payment, and will furnish copies of such records to the court and/or parties to the order upon request.

(d) The [department] State disbursement unit is responsible for the [receipt] collection and [transmission] disbursement of support payments only if:

(1) the [department] State disbursement unit has received a copy of the income [deduction order containing the names, addresses and social security numbers of the parties] withholding order and such income withholding order pertains to either child support or combined child and spousal support obligations;

(2) the [person entitled to the payment of support pursuant to the order of support] creditor has submitted to the [department] State disbursement unit payment of the annual service fee, if any;

(3) the [department's] State disbursement unit's records show that it has [received] collected support payments on behalf of the parties to the order; and

(4) the [party to whom support payments are to be transmitted] creditor has provided the [department] State disbursement unit with [his or her correct] any address changes.

(e) The [department] State disbursement unit may collect from the [party to whom payments are to be transmitted] creditor an annual service fee for its provision of services; such fee will not exceed the actual costs incurred by the [department] Office in the delivery of such services.

(f) The [department] Office may not furnish to the parties any additional services [to the parties to enforce the support order] beyond the services described herein; however, a party seeking [enforcement of a support order] other services may apply for child support [enforcement] services pursuant to section 111-g of the Social Services Law.

**Subdivisions (a)-(b) and paragraphs (1)-(3) of subdivision (b) of § 344.3 are amended to read as follows:**

(a) [The] When an income withholding order for child support or combined child and spousal support is issued, the court or other issuer must [transmit] serve or cause to be served a copy of [an] such income [deduction] withholding order [issued pursuant to section 5242(c) of the Civil Practice Law and Rules to the department], along with any supplemental document required, upon the State disbursement unit, the employer or income payor, and [to] the parties to the order.

(b) An income [deduction] withholding order directing payment to the [department] State disbursement unit pursuant to this Part [must] shall:

(1) direct the employer or income payor to [send] remit payments, payable to the [person entitled to payment as named in the order] State disbursement unit, to the mailing address designated by the [department] Office;

(2) [specify the names, addresses and social security numbers of the parties to the support proceeding] be on the form for income withholding promulgated by the Office for this purpose, which form shall include the necessary information and directions to ensure the characterization of the income withholding order as an income withholding notice as described and required by section 666(b) of chapter 7 of title 42 of the United States Code; and

(3) specify the amount of support to be withheld by the [support obligor's] debtor's employer or income payor, which must be sufficient to ensure compliance with the order of support and also must include an additional amount to be applied to the reduction of arrears, if any.]; and]

**Paragraph (4) of subdivision (b) of § 344.3 is REPEALED.**

**§ 344.4 is amended to read as follows:**

**§ 344.4 Employer and income payor responsibilities.**

An employer or income payor served with an income [deduction] withholding order [issued pursuant to section 5242[(c)] of the Civil Practice Law and Rules] must:

(a) remit to the [department] State disbursement unit [support payments made payable to the creditor named in the income deduction order] the amount set forth in the income withholding order including the additional amount applied to the reduction of arrears, if any; provided, however, that if the income is compensation for personal services and the deduction exceeds the limits in subdivision (g) of section 5241 of the Civil Practice Law and Rules or subdivision (f) of section 5242 of the Civil Practice Law and Rules, the employer or income payor shall remit the maximum amount permitted pursuant to those provisions;

(b) [indicate with each payment the names, addresses and social security numbers of both parties to the support proceeding, and the date and the amount of the obligor's income withheld included in the payment] make support payments payable to the State disbursement unit and include with each remittance the pay date(s) associated with the remittance and the case identifier as provided by the State disbursement unit;

(c) include the information as instructed in the income withholding order;

[(c)] (d) commence deductions no later than the first pay period that occurs 14 calendar days after service of the income [deduction] withholding order; and

[(d)] (e) remit payments to the [department] State disbursement unit within [10] seven [calendar] business days of the date that the [support obligor] debtor is paid.

**Title 18 NYCRR § 347.9 is amended to read as follows:**

**§ 347.9 Enforcement of support obligations and issuance of income [executions] withholding orders.**

**Subparagraph (i), paragraph (1), and subdivision (a) of § 347.9 are amended to read as follows:**

(a) *Immediate issuance of income [executions] execution for support enforcement (“income withholding order”)*. For any child support or combined child and spousal support court order issued under the provisions of section 236 or 240 of the Domestic Relations Law, or article 4, 5, 5-A or 5-B of the Family Court Act, which directs payments to the Support Collection Unit (SCU), the local child support enforcement unit through its SCU, must:

- (1) immediately issue and process an income [execution for support enforcement] withholding order within 15 calendar days of the date the support order is received if the employer's or income payor's address is known or, if unknown, within two business days of the date the [Child Support Management System (CSMS)] automated case record receives notice of the income source from the State New Hire Directory or other source, unless:
  - (i) The court finds and sets forth in writing the reasons that there is good cause not to require immediate income withholding. For purposes of this paragraph, *good cause* means substantial harm to the debtor. The absence of an arrearage or the mere issuance of an income [execution] withholding order does not constitute good cause; or

**Paragraph (2) of subdivision (a) of § 347.9 is amended to read as follows:**

(2) issue and process an income [execution] withholding order as follows:

(i) use the [income execution form developed by State Division of Child Support Enforcement (DCSE) and provided to the district through the CSMS] form for income withholding promulgated by the Office;

(ii) serve the income [execution] withholding order upon the debtor's employer or income payor, and provide a copy of the income [execution] withholding order to the debtor. Service must be by regular mail or in the same manner as a summons may be served; the debtor's copy may be mailed to the debtor's last known residence or such other place where the debtor is likely to receive notice;

(iii) correct any error made in the issuance of an income [execution] withholding order which is to the detriment of the debtor, within 30 days after notification by the debtor of such error; and

(iv) to the extent not already included on the form provided by the Office, include the following information [on the income execution form] in a separate document served with the income withholding order:

**Clauses (a)-(b) of subparagraph (iv) of paragraph (2) of subdivision (a) of § 347.9 are REPEALED.**

**Clauses (c)-(j) of subparagraph (iv) of paragraph (2) of subdivision (a) of § 347.9 are relettered as clauses (a)-(h). Clause (k) of subparagraph (iv) of paragraph (2) of subdivision (a) of § 347.9 is REPEALED and subclauses (1)-(10) of repealed clause (k) are renumbered as subclauses (5)-(14) of relettered clause (h), and relettered clauses (b), (f)-(h), and subclauses (2)-(4) and renumbered subclauses (5)-(7), (9)-(11), and (13)-(14) of relettered clause (h) are amended to read as follows:**

[(d)] (b) the amount of the periodic payments [specified in the order of support] directed;

[(h)] (f) the amount of the deduction to be made from the debtor's income to satisfy the [court ordered] court-ordered current support obligation;

[(i)] (g) the amount, determined in accordance with subdivision (e) of this section, of any additional deduction to be made from the debtor's income, to [satisfy any accrued] be applied to the reduction of support arrears/past due support;

[(j)] (h) a statement [that] providing notice of the following:

(2) the income [execution] withholding order will be served upon any current or subsequent employer or income payor;

(3) the income [execution] withholding order is binding until further notice; and

(4) the procedures available for claiming that the support collection unit made an error in issuing the income [execution] withholding order;

[(I)] (5) no employer is permitted to discharge, lay off or discipline an employee or refuse to hire a prospective employee because one or more wage assignments or income [executions] withholding orders have been served upon such employer or a former employer against the employee's or prospective employee's wages, and that a violation of this provision is punishable as a contempt of court by fine or imprisonment or both;

[(2)] (6) each payment remitted by an employer or income payor must be payable to the State disbursement unit and must include[, in addition to the name and social security number of the debtor and the debtor's CSMS account number, the date and amount of each withholding of the debtor's income included in the payment. *Date of withholding* means the date on which the income would otherwise have been paid or made available to the debtor if it were not withheld by the

employer or income payor.] the information as instructed in the income withholding order;

[(3)] (7) an employer or income payor served with an income [execution] withholding order is required to commence deductions from income due or thereafter due to the debtor no later than the first pay period that occurs 14 days after service of the [execution] income withholding order, and is required to remit payments to the [creditor] State disbursement unit within seven business days of the date that the debtor is paid;

[(5)] (9) if the employer or income payor fails to [pay the creditor] remit payments as provided in the income withholding order, the creditor or the debtor may commence a proceeding against such person for accrued deductions, together with interest and reasonable attorney's fees;

[(6)] (10) if the money due to the debtor consists of salary or wages and the debtor's employment is terminated by resignation or dismissal at any time after service of the [execution] income withholding order, the levy will thereafter be ineffective and the [execution] income withholding order will be returned, unless the debtor is reinstated or reemployed within 90 days after such termination;

[(7)](11) an employer or income payor must notify the [issuer] State disbursement unit promptly when the debtor terminates employment or no longer receives income, and must provide the debtor's last [known home] address and the name and address of the new employer, if known;

[(9)] (13) upon a finding by the family court that the employer or income payor failed to deduct or remit deductions as specified in the income [execution] withholding order, the court shall issue to the employer or income payor an order directing compliance and may direct the payment to the creditor of a civil penalty not to exceed five hundred dollars for the first instance and one thousand dollars per instance for the second and subsequent instances of employer or income payor noncompliance; and

[(10)] (14) when an employer or income payor receives an income withholding order issued by another state, the employer or income payor shall apply the income withholding law of the state of the debtor's principal place of employment in determining;

**Subdivision (b) of § 347.9 is amended to read as follows:**

(b) *Issuance of income [execution] withholding order upon default.* For any child support or combined child and spousal support court order issued prior to November 1, 1990, the local child support enforcement unit, through its support collection unit (SCU), must maintain an effective system for identifying those debtors who become delinquent in meeting their court-ordered support obligations(s). The following action must be taken against those respondents who have been identified as being delinquent:

(2) For those debtors who have failed to remit three payments when due in the full amount directed by an order of support, or if the accumulation of arrears is equal to or greater than the amount directed to be paid for one month, the local district SCUs must issue and process an income [execution] withholding order as follows:

(i) Use the [income execution form developed by DCSE and provided through CSMS] form for income withholding promulgated by the Office.

(ii) Serve a copy of the income [execution] withholding order upon the debtor, by regular mail or in the same manner as a summons may be served, at the debtor's last known residence or such other place where the debtor is likely to receive notice.

(iii) If a mistake of fact is alleged by the debtor, determine the validity of such claim and provide written notice of such determination within 45 days after notice to the debtor of the intent to serve the income [execution] withholding order on the employer or income payor, and the time that deductions will begin.

(iv) If no mistake of fact is alleged by the debtor, or if a determination is made by the SCU that the alleged mistake of fact is not valid, proceed with the expeditious implementation of the income [execution] withholding order by serving the income [execution] withholding order upon the debtor's employer or income payor.

(v) [Include] To the extent not already included on the form for income withholding, the following information [on the income execution form] must be provided in a separate document served with the income withholding order:

**Clauses (a)-(b) and (f) of subparagraph (v) of paragraph (2) of subdivision (b) of § 347.9 are REPEALED.**

**Clauses (c)-(e) and (g)-(m) of subparagraph (v) of paragraph (2) of subdivision (b) of § 347.9 are relettered as clauses (a)-(j), and relettered clauses (c), (f)-(g), and (i)-(j) are amended to read as follows:**

[(e)] (c) the total amount of [the] any arrears [that gave rise to the implementation of the income execution];

[(i)] (f) the amount of the deduction to be made from the debtor's income to satisfy the current court-ordered support obligation;

[(j)] (g) the amount, determined in accordance with subdivision (e) of this section, of [the] any additional deduction to be made from the debtor's income[, that is] to be applied to the reduction of [the] support arrears/past due support[ that gave rise to the income execution];

[(l)] (i) a statement [that] providing notice of the following:

(1) the deductions will apply to current and future income;

(2) the income [execution] withholding order will be served upon any current or subsequent employer or income payor, unless a mistake of fact is asserted within 15 days; [and]

(3) if the debtor claims a mistake of fact, a determination of the validity of such claim will be made within 45 days after notice to the debtor is provided and the debtor will receive written notice of:

(i) whether or not the income [execution] withholding order will be served; and

(ii) the date when deductions will begin; and

(4) the income [execution] withholding order is binding until further notice; and

[(m)] (j) [and] the statements set forth in clause (a)(2)(iv)[(k)] (h)(5)-(14) of this section.

**Subparagraphs (i) and (ii) of paragraph (3) of subdivision (b) of § 347.9 are amended to read as follows:**

(i) if the amount in default is not sufficient for the implementation of an income [execution] withholding order, an attempt should be made to obtain a written voluntary agreement to support, whereby the Department of Labor would be authorized to withhold the amount agreed upon from the debtor's unemployment

insurance benefits and remit such amount to the [SCU] State disbursement unit; or

(ii) if the amount in default is sufficient for the implementation of an income [execution] withholding order, action should be taken as set forth in paragraph (2) of this subdivision.

**Subdivision (d) of § 347.9 is amended to read as follows:**

(d) *Additional enforcement action.* The child support enforcement unit, in addition to following the procedures set forth in subdivisions (a) and (b) of this section, must employ all appropriate statutory support enforcement remedies, within 30 calendar days of identifying a failure to comply with the support provisions of the order, or of locating the absent parent, whichever occurs later. If service of process is necessary prior to initiating an enforcement action, such service must be completed and enforcement action taken or the child support enforcement unit must document [on CSMS] in the automated case record unsuccessful diligent efforts to serve process, as defined in section 347.7 of this Part, no later than 60 calendar days after identifying a failure to comply with the support provisions of the order or of locating the absent parent, whichever occurs later.

**Paragraph (1) of subdivision (e) of § 347.9 is amended to read as follows:**

(e) *Calculation of the amount of additional deduction for income [execution] withholding.* (1) When an income [execution] withholding order is issued under subdivision (a) or (b) of this section for a debtor who owes support arrears/past due support, the SCU must set the amount of the additional deduction to be made from the debtor's income. Such deduction must be in addition to the amount withheld to ensure compliance with the support obligation directed in the order of support. The amount of the additional deduction must be set as follows:

**Subparagraph (ii) of paragraph (1) of subdivision (e) of § 347.9 is amended to read as follows:**

(ii) If the income is from a source not identified in subparagraph (i) of this paragraph including, but not limited to, lump sum payments of bonuses, interest, dividends, workers' compensation, disability, social security, or unemployment insurance benefits income, the amount of the additional deduction shall be the total amount of support arrears/past due support. Provided, however, that two or more periodic payments of workers' compensation, disability, social security, or unemployment insurance benefits income disbursed to a debtor as a single payment shall not be considered a lump sum payment, but shall be treated as separate periodic payments, each subject to deduction pursuant to subparagraph (i) of this paragraph.

**Paragraphs (4)-(5) of subdivision (e) of § 347.9 are amended to read as follows:**

(4) The amount of the additional deduction for an income [execution] withholding order must be eliminated by the SCU upon satisfaction of the support arrears/past due support.

(5) The SCU must maintain on [CSMS a] the automated case record a record of any action to eliminate or modify the amount of the additional deduction.

**Subdivision (f) of § 347.9 is amended to read as follows:**

(f) *Issuance of income [executions] withholding orders upon request.* Upon request of the debtor, the SCU must issue an income [execution] withholding order pursuant to subdivision (a) of this section. Upon receipt of a written revocation of the debtor's request for an income [execution] withholding order, the SCU must notify the employer or income payor that the income [execution] withholding order is no longer effective [and that it must be returned to the SCU].



# Office of Temporary and Disability Assistance

**ANDREW M. CUOMO**  
Governor

**SAMUEL D. ROBERTS**  
Commissioner

**MICHAEL PERRIN**  
Executive Deputy Commissioner

## CERTIFICATION

I hereby certify that the attached amendments to Part 344 and §347.9 of Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR) are duly adopted by me, Executive Deputy Commissioner Michael Perrin, acting pursuant to designation under Public Officers Law § 9, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance (OTDA) by 42 United States Code §§ 651, 654b, 666(a)(8)(B)(iii), and 666(b)(6); Civil Practice Law and Rules §§ 5241 and 5242; and Social Services Law §§ 17(a)-(b), and (j), 20(3)(d), 34(3)(f), 111-a, and 111-b(14). These amendments shall be effective upon publication of the Notice of Adoption in the New York State Register.

The Notice of Proposed Rule Making for these amendments was previously published in the New York State Register on May 25, 2016, under I.D. No. TDA-21-16-00005-P.

No other publication of prior notice is required by statute.

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Michael Perrin  
Executive Deputy Commissioner

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Date