

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. change in text

1. Action taken:

Amendment of Part 398 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:

Social Services Law §§ 17(a)-(b) and (k), 20(3)(d), 22(8), 207, 209 and 212

4. Subject of the rule:

Supplemental Security Income (SSI) Additional State Payments

5. Purpose of the rule:

See Addendum A

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed or emergency/proposed** rule making: TDA-26-20-00007 - P

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

No changes were made to the proposed rule.

● *Text/Summary does not need to be republished in the State Register. 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), and D, as well as remaining Items 7-8 and 13-14.*

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

<u>§398-2.1(e)</u>	<u>§398-2.1(i)</u>	<u>§398-2.1(j)</u>	<u>§398-2.1(l)</u>
<u>§398-2.1(aa)</u>	<u>§398-2.1(af)</u>	<u>§398-2.1(ag)</u>	<u>See Addendum B</u>

● *Text/Summary is required to be republished in the State Register. 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. _____ -

D. Signed certification of adoption and full text of the rule are attached:

Signed certification of adoption (scanned pdf).

Full text of the rule (MS Word).

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

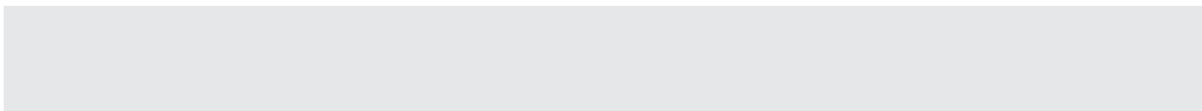
Office address 40 North Pearl Street, 16-C

Albany, NY 12243-0001

Telephone (518) 486-7503 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 ONE; 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 ONE; 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 ONE; 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 ONE; 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)

(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:

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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 3rd 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 4th or 5th 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 2026, which is no later than the 5th year after the year in which this rule is being adopted.
- D. Not Applicable. This is a “rate making” or a “consensus rule,” or a repeal of a rule.

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 /s/ Richard P. Rhodes, Jr.

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

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

Date 12/29/2020

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 (in MS Word unless otherwise specified), should be e-filed via the Department of State website.

18 NYCRR Part 398 Notice of Adoption – Addendum A

5. *Purpose of the rule:*

To amend State regulations to clarify certain aspects of the State Supplement Program (SSP), including, but not limited to: (1) who is eligible to participate in the SSP based on the initial eligibility determination transmitted from the Social Security Administration to New York State (NYS) via the State Data Exchange process; (2) the intended uses for SSP or State Supplemental Personal Needs Allowance benefit issuances; (3) that benefits will not be issued once a participant's death has been verified; (4) time frames for timely reporting by SSP participants and circumstances under which underpayment and retroactive benefits will issue; and (5) that NYS has the right to operate the SSP under State rules.

18 NYCRR Part 398 Notice of Adoption – Addendum B

6. *Terms and identification of rule* (continued):

B. Comparison of the proposed rule to the adopted rule:

Nonsubstantive changes were made in:

§ 398-2.1(ao)

§ 398-2.1(ap)

§ 398-3.1

§ 398-3.3

§ 398-4.1(a)

§ 398-4.2

§ 398-4.2(a)(1)

§ 398-4.2(a)(2)

§ 398-4.3

§ 398-4.4(a)

§ 398-5.1

§ 398-8.1(b)(5)

§ 398-8.1(b)(8)

§ 398-11.3

§ 398-14.1

Revised Summary of the Rule

The Office of Temporary and Disability Assistance (OTDA) amends 18 NYCRR Part 398 relative to Supplemental Security Income (SSI) Additional State Payments. The revised full text of the rule is posted at <http://otda.ny.gov/legal/regulatory-activities.asp>. Revisions to the regulatory text made since the proposed regulations were published in the July 1, 2020 issue of the *New York State Register* are non-substantive in nature and do not materially alter its purpose, meaning, or effect. Revisions were made to 18 NYCRR §§ 398-2.1(e) and (j), 398-4.2(a)(1), 398-5.1 and 398-8.1(b)(5) to remove brackets from the proposed regulatory text, thereby maintaining existing text related to cross-references. Revisions were made to 18 NYCRR §§ 398-2.1(i), (l), (aa), (af), (ag), (ao) and (ap), 398-3.1, 398-3.3, 398-4.1(a), 398-4.2 and 398-4.2(a)(2), 398-4.3, 398-4.4(a), 398-8.1(b)(5) and (8), 398-11.3 and 398-14.1 to make technical fixes, including adding an apostrophe, deleting an extra word, fixing the underlining of new text, changing letters from upper to lower case, replacing “for” with “or” and adjusting spacing. Consequently, a Notice of Revised Rule Making is unnecessary.

Subpart 398-1:

Amend § 398-1 to clarify the scope and purpose of the rule – namely, to provide the framework for the State Supplement Program (SSP) – and to make technical revisions.

Subpart 398-2:

Amend § 398-2 to make clarifying revisions to the terms used in this Part. The proposed regulatory amendments add the following definitions: “active receipt of SSI”; “federal payment status codes potentially eligible for SSP benefits”; “minor child”; “State Supplement Program benefit issuances”; “State Supplement Program benefit levels”; and “timely reporting”. The following definitions would be removed: “additional state payments”; “child”; “mandatory SSP benefit”; and “optional SSP benefit”. In addition, clarifying updates would be made to the definitions of: “aid continuing”; “countable income”; “countable resources”; “designated representative”; “eligible couple”; “eligible individual”; “eligible spouse”; “good cause”; “interim assistance reimbursement process”; “Medical Assistance program”; “notice of action”; “office”; “overpayment”; “parental control”; “public institution”; “representative payee”; “retroactive benefits”; “State benefit rate”; “State living arrangements”; “State standard of need”; “State supplement program benefit”; “State supplement program”; “SSP-only recipient”; “State supplemental personal needs allowance”; “Supplemental Security Income Program”; “temporary absence”; “timely notice”; and “underpayment”. Existing definitions remaining unchanged would be relettered as needed to accommodate aforementioned revisions.

Subpart 398-3:

Amend § 398-3.1 to make technical updates and clarifying revisions pertaining to an individual's or couple's eligibility for the Supplemental Security Personal Needs Allowance (SSPNA), when eligibility for SSPNA is deemed to begin, and the date on which SSPNA benefits are payable.

Amend § 398-3.2 to make technical updates.

Amend § 398-3.3 to make technical updates.

Subpart 398-4:

Amend § 398-4.1 to make technical updates and clarifying revisions pertaining to an individual's or couple's eligibility for participation in the State Supplement Program (SSP) , when eligibility for SSP is deemed to begin, and the date on which SSP benefits are payable.

Amend § 398-4.2 to make technical updates and clarifying revisions providing that, to be eligible for SSP benefits, an individual or couple must be in active receipt of federal Supplemental Security Income (SSI) benefits or otherwise be in active receipt of SSI benefits at the time the relevant federal Social Security Administration (SSA) electronic data file is transmitted to New York State (NYS) via the State Data Exchange (SDX).

Amend § 398-4.3 to make technical updates and clarifying revisions providing that OTDA is bound by the actions taken by SSA on the SSI eligibility determination at the time the relevant federal SSA electronic data file is transmitted to NYS via the SDX and further clarifying that notices issued by SSA shall not be used to determine eligibility for SSP benefits.

Amend § 398-4.4 to make technical updates and clarifying revisions replacing "standard of need" with "benefit rate" in the calculation for monthly SSP benefit amount and repealing language in subdivision (c) stating "except that a supplemental benefit will be issued when a move to a new living arrangement after the first day of the month is financially advantageous to the SSP recipient".

Amend § 398-4.5 to add clarifying language providing that that if there is discrepancy between the living arrangement information reported to SSP by the SSP participant and the Supplemental Nutrition Assistance Program (SNAP) record, the information on household composition in the SNAP record will take precedence, and to make technical updates throughout the section.

Amend § 398-4.6(a) to add clarifying language providing that OTDA will issue SSP benefits to persons in active receipt of SSI as of such time that the federal SSA electronic data file, containing such individual's or couple's relevant SSI eligibility determination, is transmitted to NYS via the SDX by the same manner

in which such persons receive SSI benefits, and to make technical updates throughout the section.

Amend § 398-4.7 to make technical updates.

Subpart 398-5:

Amend § 398-5.1 to make technical updates.

Amend § 398-5.2 to replace “applicants and recipients” with “SSP recipients” and to make technical updates.

Subpart 398-6:

Amend § 398-6.1 to replace “applicants and recipients” with “SSP recipients”; and to make technical updates.

Amend § 398-6.2 to replace “applicants and recipients” with “SSP recipients”, amend the response time to requests for information and/or documentation made by OTDA from 30 calendar days to 10 days from the date of the request, and to make technical updates.

Subpart 398-7:

Amend § 398-7.1 to make clarifying revisions regarding eligibility to participate in the SSP or otherwise be eligible for SSPNA, and to make technical updates.

Subpart 398-8:

Amend § 398-8.1(a) to reference “recipients of SSP benefits or SSPNA” and to make technical updates.

Amend § 398-8.1(b) to make technical updates and to eliminate from “the office has received an unequivocal, written statement signed by the recipient indicating that he or she no longer wishes to receive SSPNA or SSP benefits” from the list of circumstances under which only an adequate notice of action will be issued to recipients of SSP benefits or SSPNA.

Subpart 398-9:

Amend §§ 398-9.1–398-9.3 to replace references to “payments” with references to “benefits”.

Subpart 398-10:

Amend §§ 398-10.1–398-10.4 to reference “SSP benefits or SSPNA” and to make technical updates.

Subpart 398-11:

Amend § 398-11.1 to clarify that no SSP retroactive benefits or underpayment adjustments will be paid to individuals who are not in active receipt of SSI benefits.

Amend § 398-11.2 to reference “SSP benefits or SSPNA” and to make technical updates.

Amend § 398-11.3 to repeal existing regulatory language and replace it with a formula for calculating an underpayment and to clarify that corrective action will be taken if an underpayment occurs and that underpayments may only be issued to currently active SSP recipients.

Subpart 398-12:

Amend § 398-12.1 to replace references to “payments” with references to “benefits” and to reference “SSP benefits or SSPNA”.

Amend § 398-12.2 to replace references to “SSD” with references to “district”.

Amend § 398-12.3 to make technical updates.

Subpart 398-13:

Amend § 398-13.1 to replace a reference to “SSD” with a reference to “district”.

Amend § 398-13.2 to make technical updates.

Amend § 398-13.3 to make a technical update.

Amend § 398-13.4 to remove references to “applicant” in favor of “recipient” and to make technical updates.

Subpart 398-14:

Amend § 398-14.1 to reference “SSP and SSPNA programs” and to make technical updates.

Part 398 of Title 18 NYCRR is amended to read as follows:

Subpart 398-1 of Part 398 is amended to read as follows:

§ 398-1.1 Scope and purpose.

The [Federal] Supplemental Security Income (SSI) program, as enacted under title XVI of the [Federal] Social Security Act, provides benefits to aged, blind and disabled individuals and couples based upon uniform [Federal] eligibility standards and a national base payment level for SSI benefits. [The] Pursuant to title XVI of the Social Security Act, SSI [program] is a federally funded program [and is] administered by the Social Security Administration (SSA).

[Title XVI of the Federal Social Security Act requires States to provide supplementary payments under the SSI program to maintain the levels of payment for individuals and couples who were recipients of the predecessor programs to SSI, including Old Age Assistance, Assistance to the Blind, Aid to the Disabled or the combined program of Aid to the Aged, Blind and Disabled persons as of December 31, 1973.] States [also] have the option to provide additional payments to supplement the basic [Federal] federal SSI payment.

New York State (NYS) chose to establish such [an optional] a program of [additional State payments] State benefit issuances. NYS provides eligible individuals and couples such State benefit issuances to help support their current needs. Such benefit issuances are intended to support current and ongoing needs and are not intended to otherwise retroactively redress any claimed need for support with regard to past periods of SSI eligibility where such individual or couple is no longer eligible for such benefit issuance. There are two categories of [additional] such State [payments] benefit

issuances: the [State Supplemental Personal Needs Allowance (SSPNA), and the State Supplement Program (SSP) benefit] State Supplement Program (SSP) benefits, and the State Supplemental Personal Needs Allowance (SSPNA).

[Federal law allows the State to contract with the SSA to administer its supplemental benefits. If there is no agreement in effect for the Federal administration of the SSP, the] The Commissioner of the [New York State] NYS Office of Temporary and Disability Assistance (hereafter referred to as the [office] Office) is responsible for the administration of all [additional] State benefits.

[SSP provides monthly benefits to individuals and couples who are in receipt of Federal SSI benefits, or who would be in receipt of Federal SSI benefits except for countable income, and who meet all other eligibility criteria for SSP benefits.] NYS provides monthly benefits to individuals and couples who are in active receipt of federal SSI benefits as defined in section 398-2.1 of this Part and who meet all other eligibility criteria to receive current ongoing SSP benefits as of the time that the federal SSA electronic data file containing such individual's or couple's relevant SSI eligibility determination is transmitted to NYS via the State Data Exchange (SDX) with federal payment status codes as defined in section 398-2.1 of this Part. SSP benefits may not be issued to, or assigned on behalf of, deceased individuals, their payees, relatives, heirs, estates or on behalf of any debt, including any debt owed to a congregate care facility where such individual may have been provided care, room and board, or any other private or public entities to whom the deceased SSP recipient may owe any debt or legal obligation.

Individuals or couples who meet the eligibility criteria for active receipt of SSI benefits as

defined in section 398-2.1 of this Part, but who reside in a residential health care facility regulated pursuant to the provisions of article 28 of the Public Health Law may receive [a] SSPNA. [This benefit is provided to meet the additional personal needs of individuals who are receiving or are eligible to receive Federal SSI and/or SSP benefits and who are residing in a residential health care facility regulated pursuant to the provisions of article 28 of the Public Health Law.]

Subpart 398-2 of Part 398 is amended to read as follows:

§ 398-2.1 Definitions.

The following words and terms, when used in this Part, shall have the following meanings, unless the context clearly indicates otherwise:

(a) [Additional State payments.

Additional State payments are benefits made by New York State to aged, blind, or disabled persons who are receiving, or who would but for their countable income be eligible to receive Federal SSI benefits in accordance with title XVI of the Federal Social Security Act. (*United States Code Annotated*, title 42, sections 1381-1383f; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, MN 55123. An electronic location for the United States Code, title 42, sections 1381-1383f is available from the Office of the Law Revision Counsel, United States House of Representatives, H2-308 Ford House Office Building, Washington, DC 20515 at <http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter7/subchapter16&edition=prelim>. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, NY 12243-0001.) Additional State payments include both SSPNA and SSP benefits.]

Active receipt of SSI. Active receipt of SSI shall mean an individual or couple for whom SSA has established an eligible federal SSI payment status code as defined in this Part, who is in current pay status for federal SSI benefits, or who would be in current pay status for federal SSI benefits except for countable income. Such individual or couple must also meet all other State eligibility criteria for current ongoing SSP benefit issuances as of the time that the federal SSA electronic data file containing such individual's or couple's relevant SSI eligibility determination is transmitted to NYS via the SDX with federal payment status codes as defined in section 398-2.1 of this Part.

(d) *Aid continuing.* *Aid continuing* means the right to have SSP benefits or SSPNA continue unchanged until a fair hearing decision is issued. Specific criteria for aid continuing are listed in 398-10.2 of this Part.

(e) *Blind person.* A *blind person* is a person determined blind in accordance with federal regulations at 20 CFR part 416, subpart I, and as defined pursuant to pursuant to section 208 of the Social Services Law. (*Code of Federal Regulations*, title 20, part 416, subpart I, sections 416.901 - 416.999d; U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001. An electronic location is available from the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/pkg/CFR-2014-title20-vol2/pdf/CFR-2014-title20-vol2-part416-subpartI.pdf>. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, NY 12243-0001.)

Subdivision (f) of § 398-2.1 of Subpart 398-2 of Part 398 is REPEALED and subdivisions (g)–(p) of § 398-2.1 of Subpart 398-2 of Part 398 are relettered subdivisions (f)–(o) and amended to read as follows:

[(h)] (g) *Countable income.* *Countable income* is all of a person's income, in cash or in kind, earned and unearned, which is not excluded by [Federal] federal law or regulation in determining eligibility for SSI. [Retroactive SSPNA and SSP benefits are not considered countable income.] The restoration of any SSP benefit and/or SSPNA to an individual eligible for current ongoing SSP benefits and or SSPNA on account of an underpayment shall not be considered countable income for purposes of SSP or SSPNA eligibility.

[(i)] (h) *Countable resources.* *Countable resources* are cash, or other liquid assets, or any real or personal property that an individual, or couple owns and could convert to cash to be used for support and maintenance which is not excluded by [Federal] federal law or regulation in determining eligibility for SSI. [Retroactive SSPNA and SSP benefits are not] The restoration of any SSP benefit and/or SSPNA to an individual eligible for current ongoing SSP benefits and or SSPNA on account of an underpayment shall not be considered a countable resource for [SSP] purposes of SSP and/or SSPNA in the month of receipt and in the nine calendar months following the month in which the individual receives the benefits.

[(j)] (i) *Designated representative.* A *designated representative* is a person or organization [who is] authorized to perform certain specified functions associated with [receipt and] receiving information regarding an individual or couple, or the management of the recipient's SSP benefit issuances. A designated representative may only access case-specific information for periods where they are clearly listed in the SSP system as the recipient's designated representative.

[(k)] (j) *Disabled person.* A *disabled person* is a person who is disabled in accordance

with [Federal] federal regulations at 20 CFR part 416, subpart I, and as defined by § 208 of the Social Services Law. (Code of Federal Regulations, title 20, part 416, subpart I, sections 416.901 - 416.999d; U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001. An electronic location is available from the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/pkg/CFR-2014-title20-vol2/pdf/CFR-2014-title20-vol2-part416-subpartI.pdf>. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, NY 12243-0001.)

[(l)] (k) *Earned income.* *Earned income* is wages and earnings, including earnings from self-employment, in accordance with [Federal] federal law and regulations.

[(m)] (l) *Eligible couple.* An *eligible couple* consists of two persons [both of whom are eligible for SSP benefits, reside], both of whom the SSA has established with an eligible federal SSI payment status code as defined in section 398-2.1 of this Part, who are in active receipt of SSI as defined in this Part, live together in the same [household] residence, and are legally recognized as married under the laws of [New York State] NYS, or are unmarried but are administratively recognized by the SSA as married.

[(n)] (m) *Eligible individual.* An *eligible individual* is a person [who meets all the requirements of the SSI, SSP or SSPNA programs] whom SSA has established with an eligible federal SSI payment status code as defined in section 398-2.1 of this Part, who is in active receipt of SSI as defined in section 398-2.1 of this Part.

[(o)] (n) *Eligible spouse.* An *eligible spouse* is a person who; meets all [of the] eligibility criteria of the [SSI,] SSP [,] or SSPNA program; [and] is the spouse of [the] an SSP-eligible individual; and [who] is living in the same household with that person. The

individual must be legally recognized as married under the laws of NYS or be unmarried but administratively recognized by the SSA as married.

[(p)] (o) Federal Benefit Rate (FBR). The *FBR* is the maximum amount of SSI payable to an individual or couple with no countable income.

A new subdivision (p) of § 398-2.1 of Subpart 398-2 of Part 398 is added to read as follows:

(p) Federal payment status codes potentially eligible for SSP benefits.

Those federal payment status codes potentially eligible for SSP benefits, as defined herein, shall be the exclusive federal payment status codes reviewed for participation in SSP provided by the SSA to New York State via the SDX:

(1) C01 – Current pay

(2) E01 – Eligibility for federal and/or state benefits based on the eligibility determination, but no payment is due

(3) E02 – Eligible for benefits but not payable in the first month

(4) M02 – Force Payment

(5) N01 – Non-pay – recipient countable income exceeds Title XVI federal benefit rate

(q) *Good cause.* *Good cause* for failure or refusal to comply, as set forth in Subpart 398-7 of this Part, includes, but is not limited to, circumstances beyond the [applicant's or] SSP recipient's control.

(r) *Interim assistance reimbursement (IAR) process.* [The *IAR* process] Section 1631 of the Social Security Act establishing IAR authorizes the recovery of [payments made] assistance benefits issued to individuals from State and local funds for basic needs [of

individuals whose application] while their applications for [Supplemental Security Income (]SSI[)] are pending, or whose SSI benefits are retroactively reinstated after a period of suspension or termination[.] from the individual's initial retroactive payment of SSI benefits. The IAR process is set forth in Part 353 of this Title.

Subdivision (s) of § 398-2.1 of Subpart 398-2 of Part 398 is REPEALED and subdivision (t) of § 398-2.1 of Subpart 398-2 of Part 398 is relettered as subdivision (s) and amended to read as follows:

[(t)] (s) Medical Assistance Program. The Medical Assistance Program, administered by the New York State Department of Health, provides medical assistance payments for medically necessary services and supplies for needy persons pursuant to title 11 of article 5 of the Social Services Law and Part 360 of this Title.

New subdivision (t) of Subpart 398-2 of Part 398 is added to read as follows:

(t) Minor Child. A minor child is a person under age 18, or under age 22 and a student regularly attending school, college, or vocational training and who is neither married nor a head of a household.

(u) *Notice of action.* A *notice of action* is a communication from the [office] Office advising [an applicant for or] a recipient of SSP benefits or SSPNA [or SSP benefits] of any action that the [office] Office intends to take, or has taken, [on an SSPNA or SSP case] with respect to a currently-eligible individual's SSP or SSPNA case.

(v) *Office.* The [office] Office is the New York State Office of Temporary and Disability Assistance.

Subdivision (w) of § 398-2.1 of Subpart 398-2 of Part 398 is REPEALED and subdivisions (x)–(z) and (aa)–(af) of § 398-2.1 of Subpart 398-2 of Part 398 are

relettered as subdivisions (w)–(ae) and amended to read as follows:

[(x)] (w) *Overpayment*. An *overpayment* is the difference between the actual amount of SSP benefits or SSPNA issued to or on behalf of the recipient and the lesser amount of benefits that the recipient was eligible to receive in any given month.

[(y)] (x) *Parental control*. *Parental control* is the authority of the parent(s) to make decisions on the minor child's behalf, regardless of whether or not [the] such control is actually exercised.

[(z)] (y) *Public institution*. A *public institution* is an institution that is operated or controlled by the [Federal] federal or [State] state government, or a political subdivision of the State such as a city or county. The term *public institution* does not include a publicly operated community residence which serves 16 or fewer residents.

[(aa)] (z) *Representative payee*. A *representative payee* is an individual or organization appointed by SSA to receive SSI benefits for a person who cannot manage [his or her] their benefits.

[(ab)] (aa) *Retroactive benefits*. *Retroactive benefits* are [payments issued after the calendar month during which the SSPNA or SSP recipient was eligible for such benefits.] SSP benefits, or SSPNA, issued for specific past period(s) of eligibility for which the recipient received SSI benefits between the month of initial federal SSI eligibility and active receipt of SSI as defined in section 398-2.1 of this Part or for any period in which the SSP or SSPNA benefit is reinstated after a period of suspension or termination. Retroactive SSP benefits, or SSPNA, may only be issued to an individual or couple currently eligible for SSP benefits or SSPNA. Retroactive benefits may not be issued to, or assigned on behalf of, deceased individuals, their payees, relatives, heirs,

estates, or on behalf of any debt, including any debt owed to a congregate care facility where such individual may have been provided room and board, or any other private or public entities to whom the deceased SSP recipient may owe any debt or legal obligation.

[(ac)] (ab) Social Security Administration (SSA). The SSA is the [Federal] federal agency that administers the SSI program.

[(ad)] (ac) State benefit rate. The *State benefit rate* is [the difference between the FBR and the State standard of need for determining eligibility for and the amount of the SSP benefit.] equal to the State standard of need for the recipient's applicable State Living Arrangement minus the FBR or a recipient's monthly Countable Income, whichever is greater.

[(ae)] (ad) State [living arrangements] Living Arrangements.

State [living arrangements] Living Arrangements are categories of community living situations or congregate care settings which are criteria used to establish SSP eligibility and the SSP benefit level of individuals or couples. Where an SSP recipient receives both SSP and Supplemental Nutrition Assistance Program (SNAP) benefits and there is an observed discrepancy between the living arrangement information reported to SSP by the SSP recipient and the SNAP case record, the information as regards household composition contained in the SNAP record shall be determinative for SSP purposes.

[(af)] (ae) State standard of need. The *State standard of need* is the maximum level of countable income that an individual or couple may have and [remain] still be eligible [for additional] to receive State [payments] benefit issuances as set forth in section 209 of the Social Services Law. The term as used in this Part applies solely to the program of

[additional] State [payments] benefit issuances and has no application to any other [Federal] federal or State program or benefit.

A new subdivision (af) of § 398-2.1 of Subpart 398-2 of Part 398 is added to read as follows:

(af) State Supplement Program (SSP). SSP is the NYS benefit issuance program by which SSP benefits and SSPNA are administered and issued.

(ag) [*State Supplement benefit levels. State Supplement benefit levels are the various levels of SSP benefits based on State living arrangement, county of residence and whether the recipient is an individual or a member of a couple.*]

State Supplement Program benefit. The SSP benefit is provided in accordance with NYS law and rules to individuals or couples, for whom SSA has established with an eligible federal SSI payment status code as defined in this Part, and who are in active receipt of federal SSI benefits or who would be in active receipt of federal SSI benefits except for countable income, and who meet all other State eligibility criteria for receipt of prospective SSP benefits as of the time the SSA electronic data file containing such individual or couple's SSI eligibility determination is transmitted to NYS via the SDX with federal payment status codes as defined in section 398-2.1 of this Part.

(ah) [*State Supplement Program benefit. Benefits made by New York State to aged, blind, or disabled persons who are receiving, or who would but for their countable income be eligible to receive, Federal SSI benefits in accordance with title XVI of the Federal Social Security Act.*]

State Supplement Program benefit levels. State Supplement Program benefit levels are the various levels of SSP benefit issuances based on State Living Arrangement, county

of residence and whether the recipient is an individual or a member of a couple.

(ai) [*State Supplement Program.* The New York State program through which State supplement program benefits are administered.]

State Supplement Program benefit issuances. State Supplement Program benefit issuances are paid by NYS to aged, blind, or disabled persons who are in active receipt of SSI as defined in 398-2.1 of this Part.

(aj) *SSP-only recipient.* An *SSP-only recipient* is an individual or couple who is ineligible for federal SSI benefits solely because [of] their countable income [equal to] equals or [exceeding] exceeds the FBR but who is eligible to receive SSP benefits based on the State standard of need and [other SSP eligibility factors] who meets all other State criteria in order to participate in the SSP.

(ak) *State Supplemental Personal Needs Allowance (SSPNA).* *SSPNA* is a monthly State benefit to [meet additional] help address personal needs of individuals who [receive or are eligible to receive Federal SSI payments and/or SSP benefits] are in active receipt of federal SSI benefits and who otherwise meet the State criteria necessary in order to receive SSPNA and who are residing in a residential health care facility regulated pursuant to the provisions of article 28 of the Public Health Law.

(al) *Supplemental Security Income (SSI) application effective date.* [The] An individual's SSI application effective date is the first day of the month following the later of the date the: SSI application is filed; or the individual becomes eligible for such benefits.

(am) *Supplemental Security Income (SSI) program.* *SSI* is a federally-funded program which provides benefits to aged, blind and disabled individuals based on uniform [Federal] federal eligibility standards and a national base payment level pursuant to title

XVI of the Federal Social Security Act and which is administered by the SSA.

(an) *Temporary absence.* A *temporary absence* is any absence from [New York State] NYS that does not exceed three consecutive months, provided that the recipient does not leave the United States for an entire calendar month during such three consecutive months and does not evidence intent to establish residence elsewhere. A minor child may be temporarily absent without time limit if he or she is away from [his or her] their permanent residence to attend school and intends to return to [his or her] their permanent living arrangement during the summer or extended holidays, or upon graduation or completion of training and remains under parental control.

(ao) *Timely notice.* A *timely notice* is a notice of action issued by the [office] Office that is sent at least 10 days before the effective date of the proposed action.

Subdivisions (ap)–(aq) of § 398-2.1 of Subpart 398-2 of Part 398 are relettered as subdivisions (aq)–(ar) and a new subdivision (ap) is added to read as follows:

(ap) Timely reporting. Timely reporting means the reporting of change in circumstances and/or any factors which effect eligibility and benefit amount, as listed in section 398-5.2 of this Part, to the Office by SSP or SSPNA recipients, or their designated representatives, payees, or other parties authorized to provide such information in a time period not to exceed 10 days after the change occurred.

[(ap)] (aq) Underpayment. An *underpayment* is the difference between the amount of benefits that the recipient was eligible to receive [in any given month and the lesser actual amount of benefits issued to or on behalf of the recipient] while in active pay status for SSP or SSPNA and the lesser amount of benefits which were actually issued to or on behalf of the recipient. Restored SSP benefits on account of underpayments

may only be issued to eligible individuals in active receipt of SSP benefits. SSP underpayments may not be issued to, or assigned on behalf of, deceased individuals, their payees, relatives, heirs, estates or on behalf of any debt, including any debt owing to a congregate care facility where such individual may have been provided room and board, or any other private or public entities to whom the deceased recipient may owe a debt or legal obligation.

[(aq)] (ar) *Unearned income.* *Unearned income* is all income, other than that defined as earned income, in accordance with [Federal] federal law and regulation.

Subpart 398-3 of Part 398 is amended to read as follows:

§ 398-3.1 [Single application] Eligibility for SSPNA.

[(a) Individuals or couples residing in New York State who apply to the SSA for Federal SSI benefits are deemed to have concurrently filed for SSPNA benefits, provided the individual or each member of the couple has cooperated with SSA in establishing eligibility for SSI benefits.] No separate application for SSPNA shall be required or accepted by [New York State] NYS. Eligibility for SSPNA is contingent upon an individual or couple residing in NYS being found eligible for federal SSI benefits who meets all other State eligibility criteria for receipt of a prospective SSPNA benefit as of such time that the federal SSA electronic data file containing such individual's or couple's relevant SSI eligibility determination is transmitted to NYS via the SDX with federal payment status codes as defined in section 398-2.1 of this Part. [(b)] Eligibility for SSPNA benefits will be deemed to [begins] begin the same month in which ongoing SSI eligibility was established. [(c)] SSPNA benefits are payable as of the month that SSI [payments] benefits begin.

§ 398-3.2 Eligibility requirements for SSPNA.

To be eligible for SSPNA, an individual or couple must:

- (a) reside in [New York State] NYS;
- (b) be [eligible for or] in active receipt of SSI [and/or SSP] benefits;
- (c) reside in a residential health care facility regulated under article 28 of the Public Health Law; and
- (d) have no countable income, earned or unearned, other than the [Federal] federal SSI benefit provided to residents of medical facilities for whom the Medical Assistance Program pays at least 50 percent of the cost of care.

§ 398-3.3 Eligibility determinations for SSPNA.

[The office shall determine each] An individual's or couple's initial and ongoing eligibility for SSPNA [on the basis of] is established based upon the data supplied by the [Federal] federal SSA through the [State Data Exchange (SDX)] SDX and information available to the [office] Office. The [office] Office is bound by the [decision] decisions and [action] actions taken by SSA on the SSI eligibility determination.

Subpart 398-4 of Part 398 is amended to read as follows:

§ 398-4.1 [Single application] Eligibility for SSP.

(a) [Individuals or couples residing in New York State who apply to the SSA for Federal SSI benefits are deemed to have concurrently filed for SSP benefits, provided the individual or each member of the couple has cooperated with SSA in establishing eligibility for SSI benefits.] No separate application for SSP shall be required or accepted by [New York State] NYS. Participation in SSP is contingent upon an individual or couple residing in NYS for whom SSA has established an eligible federal

SSI payment status code as defined in section 398-2.1 of this Part, who is in current pay status for federal SSI benefits, or who would be in current pay status for federal SSI benefits except for countable income, and who meets all other State eligibility criteria for receipt of prospective SSP benefits as of such time that the federal SSA electronic data file containing such individual's or couple's relevant SSI eligibility determination is transmitted to NYS via the SDX with federal payment status codes as defined in section 398-2.1 of this Part and remains eligible for the duration of the mandatory 90-day waiting period.

(b) The individual or each member of the couple shall cooperate with SSA in establishing initial and ongoing eligibility for SSI benefits.

(c) Eligibility for SSP benefits begins [on the SSI application effective date; or for SSP only recipients, eligibility begins] the first full month following the month in which all SSP eligibility criteria are met.

[(d) SSP benefits are payable as of the month that SSI payments begin. For SSP-only eligible recipients, SSP benefits are payable as of the first full month following the month in which the SSI application was filed provided that all SSP eligibility criteria are met.]

§ 398-4.2 Eligibility requirements for SSP benefits.

(a) To be eligible for SSP benefits, an individual or couple must:

(1) be aged, blind or disabled in accordance with the requirements of this Part and Title XVI of the [Federal] federal Social Security Act (*United States Code Annotated*, title 42, sections 1381—1383f; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, MN 55123. An electronic location for the United States Code,

title 42, sections 1381—1383f is available from the Office of the Law Revision Counsel, United States House of Representatives, H2-308 Ford House Office Building, Washington, DC 20515 at:

<http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter7/subchapter16&edition=prelim>. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, NY 12243-0001.);

(2) [be in receipt of Federal SSI benefits or be eligible to receive SSI benefits except for reasons of income;] be in active receipt of federal SSI benefits as defined in section 398-2.1 of this Part, as of such time that the federal SSA electronic data file, containing such individual's or couple's relevant SSI eligibility determination is transmitted to NYS via the SDX with federal payment status codes as defined in section 398-2.1 of this Part;

(3) have monthly countable income less than the State standard of need as set forth in section 209 of the Social Services Law; and

(4) be living in [New York State] NYS with the intention of making [his or her] their home in [New York State] NYS, but is not required to maintain a permanent residence or fixed address. This includes individuals placed by [New York State] NYS agencies into facilities in other [States] states, and individuals who are considered temporarily absent from [New York State] NYS, but excluding [an] [individual] individuals placed in a [New York State] NYS facility by agencies of other [States] states.

(b) A person is not eligible for SSP benefits if, on the first of the month, the individual is:

(1) an inmate of a public institution; or

(2) a resident of a medical facility which is receiving medical assistance for the individual at a level exceeding 50 percent of the cost of the individual's care.

§ 398-4.3. Eligibility [determinations] for SSP benefits.

[The office shall determine each individual's and couple's initial and ongoing eligibility for] An individual or couple is eligible to receive SSP benefits on the basis of the data supplied by the [Federal] federal SSA through the [State Data Exchange () SDX ()], information provided by the [applicant or] recipient pursuant to Subpart 398-5 of this Title, and other information available to the [office] Office. The [office] Office is bound by the [decision] decisions and [action] actions taken by SSA on the SSI eligibility determination[.] , but only as of such time the federal SSA electronic data file, including such individual's or couple's relevant SSI eligibility determination, is transmitted to NYS via the SDX with federal payment status codes as defined in section 398-2.1 of this Part. Individuals or couples may only participate in SSP when their SDX data file includes one of the federal payment status codes potentially eligible for SSP benefits as defined in section 2.1 of this Part. Notices, letters or other written or electronic communications issued by the SSA regarding federal SSI eligibility which are presented to the Office by recipients, their legal representatives, or advocates for individuals or couples claiming SSP eligibility shall not be considered in determining eligibility to participate in SSP unless the information is received directly from SSA to SSP. It shall be the responsibility of the individual or couple to contact and resolve any claimed discrepancy with the SSA. No SSP benefits will be paid to individuals who are not in active receipt of federal SSI benefits as defined in section 398-2.1 of this Part, with an eligible federal payment status code as defined in section 398-2.1 of this Part as of such

time that the federal SSA electronic data file, containing such individual's or couple's relevant SSI eligibility determination, is transmitted to NYS via the SDX with federal payment status codes as defined in section 398-2.1 of this Part.

§ 398-4.4 [Benefit levels for] SSP [benefits] benefit levels.

(a) The [office] Office will administer and pay SSP benefits to all eligible individuals and couples in active receipt of federal SSI benefits as defined in section 398-2.1 of this Part, with an eligible federal payment status code as defined in section 398-2.1 of this Part as of such time that the federal SSA electronic data file, containing such individual's or couple's relevant SSI eligibility determination, is transmitted to NYS via the SDX and who meet all SSP eligibility criteria.

(b) The monthly SSP benefit amount equals the State [standard of need] benefit rate minus the greater of the [Federal benefit rate () FBR ()] or countable income.

(c) The State [standard of need] benefit rate will be established based on the individual's or the [couples'] couple's State living arrangement on the first day of the month [, except that a supplemental benefit will be issued when a move to a new living arrangement after the first day of the month is financially advantageous to the SSP recipient].

§ 398-4.5 New York State living arrangements.

When the SSP recipient receives both SSP and SNAP benefits, and there is an observed discrepancy between the state living arrangement information reported to SSP by the recipient and that information contained in the recipient's SNAP case record, the information with regard to household composition in the SNAP case record will be used to determine the state living arrangement for SSP purposes.

The five categories of State living arrangements are:

(a) *Living alone.* *Living alone* means living in a private household composed of one SSP-eligible individual or one SSP-eligible couple.

(1) An individual or couple is considered to be living alone, if the individual or couple:

(i) rents a room in an apartment or a private home, but pays a flat fee and takes the majority of their meals during the month outside the dwelling unit or prepares the majority of their meals during the month separately;

(ii) pays a fixed, pre-established flat fee for both room and board in a commercial establishment which meets no other SSP living arrangement criteria (e.g., not licensed as a congregate care facility and not a public emergency shelter);

(iii) lives with others, but takes the majority of their meals during the month outside the dwelling;

(iv) lives with others, but separately prepares, or has someone separately prepare, the majority of [his or her] their meals during the month;

(v) receives a fixed, pre-established flat fee for room and board from all others in the dwelling;

vi) lives with only a foster child;

(vii) lives with only a homemaker authorized by a social services district [(SSD)] (district);

(viii) lives with only a family care resident placed by: the New York State Office of Mental Health (OMH), the New York State Office for Persons with Developmental Disabilities (OPWDD), or [an SSD] a district;

(ix) lives with only an aide paid for under the Medical Assistance program; or

(x) has no permanent living arrangement (e.g., a transient person or homeless person) and is not living with an ineligible spouse or a minor child for whom they have primary responsibility.

(2) An individual or couple is not considered to be living alone if:

(i) the individual lives with an ineligible spouse;

(ii) the individual or couple lives with a minor child for whom they have primary responsibility (unless the minor child is a foster child);

(iii) the individual is a minor child; or

(iv) the individual or couple resides in a dwelling with others and prepares food in common with at least one other person in the dwelling.

(b) *Living with others.* *Living with others* means living in a private household composed of an eligible individual or couple and at least one other person. It includes a person who:

(1) resides in a dwelling with others and prepares food in common with at least one other person in the dwelling. An individual or couple which meets one of the following requirements is considered to be living with others:

(i) an individual living with an ineligible spouse, despite the separate preparation of food; or

(ii) an individual or couple living with a minor child for whom he or she has primary responsibility (unless the minor child is a foster child).

(2) is a minor child who is not living in a congregate care facility.

(3) is a minor child living in a congregate care level III facility.

(4) is living in a religious community and room and/or board is provided in full or in part by the religious community.

(5) has no permanent living arrangement (i.e., transient person or homeless person), but is with an ineligible spouse or minor child for whom they have primary responsibility.

(6) is categorized by the SSA as Living in the Household of Another for purposes of SSI benefits.

(c) *Congregate care level I.* [Congregate care level I] *Congregate care level I* benefits are provided to persons receiving family care in a family type home for adults which is certified by the New York State Office of Children and Family Services (OCFS) and supervised by a [SSD] district in accordance with applicable provisions of law and regulations, or a family care home certified by OMH in accordance with applicable provisions of law and regulations. An individual or couple is receiving family care if he, she or they have been placed in a family type home certified by OCFS and supervised by a [SSD] district. A minor child is receiving family care if placed in a family type home by OMH or OPWDD, or by [his or her] their parents.

(d) *Congregate care level II.* [Congregate care level II] *Congregate care level II* benefits are provided to persons receiving residential care in a residence for adults or in a privately operated community residence, residential substance abuse treatment program or a community residential facility for alcoholism, certified by the appropriate Office of the Department of Mental Hygiene or a residential care center for adults certified by OMH in accordance with applicable law and regulations. For purposes of this subdivision, a person receiving care in an intermediate care facility certified by the appropriate office of the New York State Department of Mental Health or receiving respite services shall not be deemed to be receiving residential care. A minor child can receive congregate care level II SSP benefits only if the minor child is residing in and

receiving residential care in a facility certified by OMH, OPWDD, or the New York State Office of [Alcoholism and Substance Abuse] Addiction Services and Supports (OASAS). After the month of entry into a congregate care level II facility that is classified as an institution for purposes of [Federal] federal SSI benefits, couples are treated as consisting of two individuals, since couple status can exist only in households, not institutions.

(e) *Congregate care level III.* [Congregate care level III] Congregate care level III benefits are provided to persons receiving enhanced residential care in a privately operated school for the mentally retarded and developmentally disabled which is certified by OPWDD in accordance with the applicable provisions of law and regulations or an adult home or enriched housing program certified by the New York State Department of Health (DOH) in accordance with applicable law, rules and regulations to the extent permitted by [Federal] federal law, rules and regulations. Enhanced residential care facilities include: adult homes and enriched housing programs certified by the DOH or schools for the mentally retarded certified by OPWDD. A minor child residing in a congregate care level III facility is considered to be living with others. After the month of entry into a congregate care level III facility that is classified as an institution for purposes of [Federal] federal SSI benefits, couples are treated as consisting of two individuals, since couple status can exist only in households, not institutions.

§ 398-4.6 Payment of [State supplement program] SSP benefits.

(a) To the extent feasible, the [office] Office will issue SSP benefits to persons [receiving] in active receipt of SSI as defined in section 398-2.1 of this Part, with an

eligible federal payment status code as defined in section 398-2.1 of this Part as of such time that the federal SSA electronic data file, containing such individual's or couple's relevant SSI eligibility determination, is transmitted to NYS via the SDX by the same manner in which such persons receive SSI benefits.

(b) The [office] Office will issue SSP-only benefits using a method determined by the [office] Office.

(c) The minimum monthly [amount] benefit issuance for SSP [benefits] is \$1.

§ 398-4.7 Designated representatives.

(a) *SSI and SSP recipients.* (1) Any individual or couple receiving both SSI and SSP benefits for whom the SSA has assigned a representative payee or for whom the SSP recipient has voluntarily designated a representative payee shall retain the same federally appointed or voluntarily designated representative payee for purposes of [his or her] their SSP benefits and such individual shall be deemed a designated representative with payee authority for [New York State] NYS purposes.

(2) Any changes to SSA representative payees appointed or assigned at the [Federal] federal level must be processed through SSA.

(b) *SSP-only recipients.* Individuals or couples receiving SSP-only benefits may request a designated representative and may grant authority for the designated representative to act as a payee, or to represent the SSP recipient at a fair hearing, or to assist in case management by providing and obtaining information about the case. A designated representative payee is required for a [minors] minor child and for those individuals who have been found to lack capacity under article 81 of the Mental Hygiene Law or where

the need for a designated representative payee is deemed appropriate under procedures established by the [office] Office.

Subpart 398-5 of Part 398 is amended to read as follows:

§ 398-5.1 Determination of continuing eligibility.

Continuing eligibility for SSP benefits shall be established at specific intervals pursuant to procedures developed by the [office] Office, but will be performed no more frequently than provided by the applicable regulations of the SSA, pursuant to [Title] title XVI of the [Federal] federal Social Security Act, and shall include a reevaluation and reconsideration of need and other factors of eligibility. (*United States Code Annotated*, title 42, sections 1381—1383f; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, MN 55123. An electronic location for the United States Code, Title 42, sections 1381—1383f is available from the Office of the Law Revision Counsel, United States House of Representatives, H2-308 Ford House Office Building, Washington, DC 20515 at:

<http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter7/subchapter16&edition=prelim>. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, NY 12243-0001.)

§ 398-5.2 Responsibility for furnishing information.

(a) [Applicants and] SSP recipients who receive both SSI and SSP benefits must comply with requests from the [office] Office to provide information on factors which affect eligibility and the amount of SSP benefits, including but not limited to factors affecting the [New York State] NYS living arrangement. Such information must be provided in a timely manner as defined in section 398-2 of this Part.

(b) [Applicants and] SSP recipients of SSP-only benefits must comply with requests from the [office] Office to provide information on factors which affect eligibility and the amount of SSP benefits, including but not limited to:

- (1) identity;
- (2) residence;
- (3) state living arrangements;
- (4) income and resources;
- (5) marital status;
- (6) disability status, including blindness;
- (7) age;
- (8) receipt of or eligibility for SSI benefits; and
- (9) lawful residence in the United States.

Subpart 398-6 of Part 398 is amended to read as follows:

§ 398-6.1 Changes in circumstances.

[Applicants and] SSP recipients must provide timely notification to the [office] Office of any change that may affect eligibility for and/or the amount of their [SSPNA or SSP benefit] SSP benefit or SSPNA. Notification will be considered timely if made within 10 days of the change.

§ 398-6.2 Documentation.

[Applicants and] SSP recipients must respond to requests for information and/or documentation made by the [office] Office within [30 calendar] 10 days from the date of the request.

Subpart 398-7 of Part 398 is amended to read as follows:

§ 398-7.1 Denial or discontinuance.

(a) [Any failure or refusal to comply with a requirement of this Part without good cause shall result in the denial of SSPNA or SSP benefits for an individual or couple otherwise eligible or the discontinuance of SSPNA or SSP benefits for an individual or couple in receipt of such benefits.] An individual or couple who fails or refuses to comply with a requirement of this Part without good cause shall not be eligible to participate in the SSP or otherwise be eligible for SSPNA, and an individual or couple otherwise eligible for SSP or SSPNA may be subject to termination or denial of their SSP benefits or SSPNA.

(b) The [office] Office is responsible for determining good cause pursuant to subdivision (a) of this section. In determining whether, or not good cause exists, the [office] Office must consider the facts and circumstances, including information submitted by the [applicant or] recipient subject to the requirements of this Part.

(c) The [applicant or] recipient is responsible for notifying the [office] Office of the reasons for failing to comply with a requirement of this Part and for furnishing evidence to support any claim of good cause.

Subpart 398-8 of Part 398 is amended to read as follows:

§ 398-8.1 Notice.

(a) The [office] Office will issue a notice of action advising [applicants for or] recipients of SSP benefits or SSPNA of any action that the [office] Office intends to take or has taken on their SSP or SSPNA [or SSP] case.

(b) A timely and adequate notice of action will be provided, except that only an adequate notice will be issued in the following circumstances:

(1) the [office] Office has received reliable information reporting the death of a recipient;

(2) the [office] Office has received an unequivocal, written statement signed by the recipient or their designated representative that requires the [office] Office to discontinue or reduce the [SSPNA or] SSP benefit or SSPNA and the recipient has indicated in the statement that he or she understands that such action will be taken as a consequence of the action reported;

[(3) the office has received an unequivocal, written statement signed by the recipient indicating that he or she no longer wishes to receive SSPNA or SSP benefits;]

[(4)] (3) the [office] Office has received reliable information that the recipient has been committed to an institution or prison which renders the recipient ineligible for [SSPNA or] SSP benefits or SSPNA;

[(5)] (4) the recipient's current residence is unknown to the [office] Office and mail addressed to the [applicant or] recipient's last known address has been returned by the U.S. Postal Service with an indication that there is no known forwarding address;

[(6)] (5) the recipient has been placed in a Medicaid institution certified under title XIX of the Social Security Act (*United States Code Annotated*, title 42, sections 1396—1396w-5; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, MN 55123. An electronic location for the United States Code, title 42, sections 1381—1383f is available from the Office of the Law Revision Counsel, United States House of Representatives, H2-308 Ford House Office Building, Washington, DC 20515 at <http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter7/subchapter19&editio>

n=prelim. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, NY 12243-0001);

[(7)] (6) The [office] Office has [deemed] determined that an individual or couple is eligible for [SSPNA or] SSP benefits or SSPNA;

[(8)] (7) The [office] Office has increased the amount of the recipient's [SSPNA or] SSP benefits or SSPNA; or

[(9)] (8) The [office] Office has changed an item used to calculate the amount of [SSPNA or] SSP benefits or SSPNA, the method of payment, or information in the case record, but the amount of [SSPNA or] SSP benefits or SSPNA has not changed.

Subpart 398-9 of Part 398 is amended to read as follows:

§ 398-9.1 Checks.

A reported lost or stolen check for [additional] State [payments] benefits that has been confirmed as uncashed and has not been sent to unclaimed funds will be replaced by SSP benefits or SSPNA [benefits].

§ 398-9.2 Direct deposits.

A confirmed direct deposit of [additional] State [payments] benefit issuances will not be replaced with SSP benefits or SSPNA [benefits].

§ 398-9.3 Cash.

Cash from [additional] State [payments] benefit issuances that has been lost, stolen or mismanaged will not be replaced by SSP benefits or SSPNA [benefits].

Subpart 398-10 of Part 398 is amended to read as follows:

§ 398-10.1 Requests for fair hearings.

An individual or each member of a couple [applying for or] receiving [SSPNA or] SSP benefits or SSPNA has the right to request an administrative fair hearing to appeal an action of this [office] Office pursuant to section 22 of the Social Services Law and Part 358 of this Title. A request for a fair hearing must be made within 60 days after the office's determination, action, or failure to act about which the individual or member of the couple is complaining.

§ 398-10.2 Right to aid continuing.

In certain circumstances, the SSP or SSPNA [or SSP] recipient has the right to have SSP benefits or SSPNA [payments or SSP benefit] continued unchanged until the fair hearing decision is issued. The [Office's] Office of Administrative Hearings (OAH) will determine whether the recipient is entitled to aid continuing and will advise the [office] Office and the recipient of its decision.

(a) Where this [office] Office is required to give timely and adequate notice before it can take an action in the case, a recipient will have the right to aid continuing for [SSPNA or] SSP benefits or SSPNA until the fair hearing decision is issued if the recipient requests a fair hearing before the effective date of the proposed action as contained in the notice of action.

(b) Where this [office] Office is required to give adequate, but not timely notice and has discontinued, reduced, restricted or suspended [SSPNA or] SSP benefits or SSPNA, the recipient has the right to have [SSPNA or] SSP benefits or SSPNA reinstated and continued until a fair hearing decision is issued only if the recipient requests a fair hearing within 10 days of the date of the notice of action issued by the [office] Office

and if OAH determines that the action upon the [SSPNA or] SSP benefit or SSPNA did not result from the application of, or change in, State or federal law or policy.

§ 398-10.3 General hearings provisions.

All provisions of Part 358 of this Title which are not inconsistent with the specific provisions of this Part[,] shall apply to hearings conducted under this Part.

§ 398-10.4 Federal [jurisdiction] jurisdiction.

Determinations made by the [Federal] federal SSA affecting eligibility for [Federal] federal SSI benefits shall be exclusively subject to SSA jurisdiction and shall not be hearable by OAH under this Part or Part 358 of this Title.

§ 398-10.5 Telephone hearings.

Fair hearings may be conducted by telephone, pursuant to section 358-5.12 of this Title.

Subpart 398-11 of Part 398 is amended to read as follows:

§ 398-11.1 Adjustments or recoveries.

Whenever the [office] Office finds that more or less than the correct amount of benefits has been paid to an individual or couple actively receiving SSP benefits or SSPNA, proper adjustment or recovery will be made. Proper adjustments will be made consistent with sections 398-11.2 and 398-11.3 of this Part to those individuals in active receipt of SSP as defined in section 398-2.1 of this Part.

§ 398-11.2 Recovery of overpayments.

(a) The [office] Office will recover any overpayments, including overpayments resulting from aid continuing provided, pursuant to Part 358 of this Title.

(b) The [office] Office will recover overpayments for current recipients through repayment or by reducing the amount of any future [SSPNA or] SSP benefit or SSPNA by no more than 10 percent of each month's State benefit rate until the overpayment is repaid.

(c) In cases where there are multiple overpayments made to a recipient, the order of recovery will be the longest outstanding overpayment followed by the others in chronological order.

(d) If the individual is no longer [a] an SSP recipient, the recovery shall be made by appropriate legal authority against any income and resources of the former recipient, except that the [office] Office will discontinue recovery efforts of an overpayment from an individual who is no longer a recipient of [SSPNA or] SSP benefits or SSPNA if the amount of the overpayment is less than \$125 and the overpayment was not a result of fraud on the part of the recipient of [SSPNA or] SSP benefits or SSPNA. Recovery may be reinstated if the individual is subsequently found eligible for [SSPNA or] SSP benefits or SSPNA.

(e) Recovery of an SSP overpayment will be suspended during the time period when a recipient is in receipt of SSPNA benefits only.

(f) In cases where both an underpayment and an overpayment have occurred, the [office] Office must offset one against each other and make the appropriate adjustment.

(g) The [office] Office may elect to discontinue recovery of the overpayment for current recipients if it is determined that the cost of recovery is greater than the cost of collection and reasonable efforts to recover the overpayment have been made, provided that the overpayment was not the result of fraud by the recipient. Reasonable efforts

must include notification of the amount of the overpayment, the reason for the overpayment, and that repayment is required.

(h) All individuals who are liable for the repayment of such overpayment have the right to:

(1) appeal the determination of the overpayment as well as their liability for the overpayment;

(2) at any time, request that the repayment of [all of] the overpayment be waived, or the rate of repayment be changed, provided that the overpayment was not the result of fraud; and

(3) offer a compromise settlement to repay a substantial amount of the overpayment if the [office] Office agrees to waive recovery of the remaining balance, provided that the overpayment was not the result of fraud.

§ 398-11.3 Underpayments.

[When the payment issued is less than the correct amount of SSP or SSPNA benefits, the office will correct the underpayment to the individual or couple, except that no payment will be made to an individual or couple who is ineligible to actively receive prospective SSP or SSPNA pursuant to this Part.] An underpayment is the difference between the amount of SSP benefits that a SSP recipient was eligible to receive while currently receiving SSP benefits and in active pay status for federal SSI benefits as defined in section 398-2.1 of this Part, with an eligible federal payment status code as defined in section 398-2.1 of this Part as of such time that the federal SSA electronic data file, containing such individual's or couple's relevant SSI eligibility determination is transmitted to NYS via the SDX and the lesser amount of SSP benefits actually issued

to or on behalf of the SSP or SSPNA recipient. When the Office determines that an underpayment has occurred, appropriate corrective action will be taken.

Underpayments may only be issued to currently active SSP recipients. Underpayments will be limited to the month the change was reported and three prior consecutive months when due to untimely reporting, by a recipient, as defined in section 398-2.1 of this Part. SSP underpayments may not be issued to, or assigned on behalf of, deceased individuals, their payees, relatives, heirs, estates or on behalf of any debt, including any debt owing to a congregate care facility where such individual may have been provided room and board, or any other private or public entities to whom the deceased SSP recipients may owe payment.

Subpart 398-12 of Part 398 is amended to read as follows:

§ 398-12.1 Equivalent benefits.

(a) [Payments] Benefits issued for basic needs [made] exclusively from State and/or local funds and provided to or on behalf of an applicant for [SSPNA or] SSP benefits or SSPNA during the period which the SSI application is pending, or to a recipient or former recipient of [SSPNA or] SSP benefits or SSPNA for any period in which the [SSPNA or] SSP benefits or SSPNA is reinstated after a period of suspension or termination which has not otherwise been recovered under the IAR process in Part 353 of this Title, are considered equivalent benefits when such [payments] benefits are issued for the same period of time for which the recipient of [SSPNA or] SSP benefits or SSPNA is also eligible for [SSPNA or] SSP benefits or SSPNA.

(b) Equivalent benefits are subject to recovery from retroactive SSP benefits or retroactive SSPNA.

§ 398-12.2 Calculation of equivalent benefits.

The [SSD] district must calculate the amount of equivalent benefits in accordance with this subpart. The [SSD] district must calculate interim assistance in accordance with Part 353 of this Title.

§ 398-12.3 Reimbursement to [SSDs] districts.

The [office] Office will issue any reimbursement for equivalent benefits owed to the [SSD] district with respect to the district having provided such individual or couple State or locally-funded assistance benefits to cover basic needs pending the individual's or couple's federal determination of eligibility for SSI benefits by first determining if the [SSD] district has been fully reimbursed through the [Federal] federal SSI IAR process for such interim assistance provided. If a deficit remains after the [Federal] federal payment has been applied, or if there is no [Federal] federal SSI IAR payment, the [SSD will receive] district shall be provided reimbursement from any retroactive SSP [payment] benefits or SSPNA, including benefits owed to a deceased individual eligible for SSP benefits or SSPNA prior to the date of death.

Subpart 398-13 of Part 398 is amended to read as follows:

§ 398-13.1 Confidentiality.

Officers, employees or designees of the SSP will safeguard and maintain the confidentiality of data and information obtained as the result of administering the SSP and shall not reveal such data or information for purposes other [that] than those directly connected with the administration of SSP, except when the appropriating body or social services official has authorized their disclosure to an agency or person deemed entitled to it pursuant to section 136 of the Social Services Law and Part 357 of this Title. Part

357 of this Title shall apply to SSP and to disclosures by OTDA employees to the same extent that Part 357 of this Title applies to disclosures of public assistance information by employees and officers of the [SSDs] district.

§ 398-13.2 Transferring information between the [office] Office and other agencies.

State departments or State or local agencies, including OCFS, DOH, OMH, OASAS, and OPWDD shall furnish such information as the [office] Office may require for its administration of the [SSPNA and] SSP and SSPNA programs. State departments or State agencies may request such information of the [office] Office as such department or agency may require for the proper discharge of its duties. Such departments and agencies shall safeguard the confidentiality of such information, records and reports in the manner that they are prescribed to under their governing regulations.

§ 398-13.3 Medical information.

All medical information solicited by or provided to the [office] Office for the purpose of determining a person's disability will be treated as confidential, and this information must not be disclosed except as prescribed by the regulations of the Secretary of the United States Department of Health and Human Services.

§ 398-13.4 Disclosure to [applicant,] recipient or person acting on the [applicant's or] recipient's behalf.

(a) The [applicant,] recipient or person acting on the recipient's behalf, as authorized by the recipient, can access information and report changes to the case record over the phone after [office] Office staff has verified [his or her] their identity.

(b) The case record shall be available for examination at any reasonable time by the [applicant or] recipient or [his or her] their authorized designated representative upon reasonable notice to the [office] Office. The only exceptions to access are:

(1) those materials to which access is governed by separate statutes or regulations.

(2) those materials being maintained separately from public assistance files for purposes of criminal prosecution and referral to the district attorney's office; and

(3) the county attorney's or welfare attorney's files.

(c) Information may be released to a person, a public official, or another social services agency from whom the [applicant or] recipient has requested a particular service when it may properly be established that the client has requested the inquirer to act on [his or her] their behalf and when such information is related to the particular service requested.

Subpart 398-14 of Part 398 is amended to read as follows:

§ 398-14.1 File retention and maintenance.

Information and data collected in the [office's] Office's administration of the [SSPNA and] SSP and SSPNA programs will be maintained for the appropriate time period as determined by the State archives and in a manner, that supports the [office's] Office's operational needs and internal controls, protects privacy, and meets [Federal] federal and State requirements.

Revised Regulatory Impact Statement

1. Statutory authority:

Social Services Law (SSL) § 17(a)-(b) and (k) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall “determine the policies and principles upon which public assistance, services and care shall be provided within the state both by the state itself and by the local governmental units ...,” shall “make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers ...,” and shall “exercise such other powers and perform such other duties as may be imposed by law.”

SSL § 20(3)(d) authorizes OTDA to promulgate regulations to carry out its powers and duties.

SSL § 22 (8) requires OTDA to promulgate regulations as may be necessary to administer its fair hearings process.

SSL § 207 establishes an independent New York State (NYS) program of additional State payments for eligible aged, blind and disabled persons to assist them with basic needs conditioned upon their current receipt of federal Supplemental Security Income.

SSL § 209 sets forth the requirements under which an individual who applies for, and is determined to be eligible for current ongoing receipt of Supplemental Security Income (SSI) benefits shall be eligible to receive additional State payments, and the State Supplement benefit payment levels thereunder as determined by NYS.

SSL § 212 provides that OTDA shall be responsible for providing such additional State payments to eligible residents of NYS if there is no agreement in effect with the Social Security Administration (SSA) for federal administration and shall take all “actions necessary to effectuate the provisions of this title.”

2. Legislative objectives:

It was the intent of the Legislature in enacting SSL §§ 20 (3) (d), 207, 209 and 212 that OTDA establish rules, regulations and policies to effectuate the purposes of the State Supplement Program (SSP), which will administer SSI additional State payments. SSL §§ 20 (3) (d) and 22 (8) also enable OTDA to establish rules in order to help ensure that the due process rights of recipients are protected in connection to OTDA’s fair hearings process.

3. Needs and benefits:

The regulatory amendments are intended to provide clarification and consistency in the continuing operation of the SSP and to align State regulations with current SSP policies and procedures.

On October 1, 2014, OTDA assumed administrative and programmatic responsibility for the SSP from the federal SSA. The primary reason for this change in administration was to reduce the administrative costs associated with the operation of the SSP, and the administrative change has resulted in significant savings to taxpayers. In accordance with the provisions of NYS’s previous agreement with the SSA, SSA operated and administered the SSP on behalf of NYS under the same federal rules which applied to the federal SSI program, thereby facilitating SSA’s operation of both programs from an administrative standpoint.

NYS is not obligated, either by statute or regulation, to administer the SSP under the same federal rules applied under SSA administration of the SSP; however, ongoing participation in SSP is limited to those individuals/couples who either are in receipt of federal SSI benefits or who would be in receipt of SSI benefits except for reasons of countable income. As such, NYS is permitted to apply additional rules and conditions for participation in SSP. The regulatory amendments will clarify that participation in SSP is extended only to those individuals/couples whose SSA record, as transmitted electronically from the SSA via the State Data Exchange (SDX) file transfer process, provides that the relevant SSA eligibility determination is either: that the individual/couple is currently in active receipt of federal SSI benefits; or that the individual/couple is ineligible for SSI benefits solely because the individual/couple's countable income exceeds the federal benefit rate (FBR), but does not exceed the state standard of need as calculated based on the applicable state living arrangement category. The regulatory amendments will further clarify that only those individual/couples who are active SSP recipients may receive retroactive benefits and/or underpayments. An additional clarification regarding underpayments adds language that an underpayment may be issued only to an active SSP participant, and that eligibility to receive a restored payment of SSP benefits on account of such underpayment is conditional upon continuous and uninterrupted active pay status for SSP or State Supplemental Personal Needs Allowance (SSPNA) during the underpayment period.

The regulatory revisions provide additional clarification regarding issuance of SSP or SSPNA benefits after a participant's death. The regulatory amendments will also address timely reporting by SSP participants and a mandatory 90-day processing period prior to initial issuance of benefits.

The regulatory amendments to 18 NYCRR § 398-2.1 will add the following definitions: “active receipt of SSI”; “federal payment status codes potentially eligible for SSP benefits”; “minor child”; “State Supplement Program benefit issuances”; “State Supplement Program benefit levels”; and “timely reporting”. The following definitions have been removed: “additional state payments”; “child”; “mandatory SSP benefit”; and “optional SSP benefit”. In addition, revisions were made to the definitions of: “aid continuing”; “countable income”; “countable resources”; “designated representative”; “eligible couple”; “eligible individual”; “eligible spouse”; “good cause”; “interim assistance reimbursement process”; “Medical Assistance program”; “notice of action”; “office”; “overpayment”; “parental control”; “public institution”; “representative payee”; “retroactive benefits”; “State benefit rate”; “State living arrangements”; “State standard of need”; “State supplement program benefit”; “State supplement program”; “SSP-only recipient”; “State supplemental personal needs allowance”; “Supplemental security income program”; “temporary absence”; “timely notice”; and “underpayment”. The regulatory amendments will provide more concise definitions that more closely align with current SSP policies and procedures than those currently contained in existing State regulations.

The regulatory amendments will also effectuate technical revisions to current State regulations, including, but not limited to: changing references to “federal” from capital to lower-case; replacing the term “payment” with the term “benefit”; and repeal of several terms including “applicant”, “additional”, “mandatory” and “optional” to render the State regulatory language clearer and more concise.

4. Costs:

There will be no new cost associated with the regulatory amendments for the State Government, including OTDA, or for the local governments, insofar as the regulatory amendments will be largely consistent with and are intended merely to clarify past practices and existing policy.

5. Local government mandates:

The regulatory amendments will not require any new resources, procedures, or expertise to support implementation. The SSP is entirely administered by OTDA and does not require social services districts (districts) to operate any portion of the program.

6. Paperwork:

There will be no additional reporting requirements or additional paperwork required to support the regulatory amendments.

7. Duplication:

The regulatory amendments will not duplicate, overlap or conflict with any existing State or federal regulations.

8. Alternatives:

An alternative is to leave all sections of the current 18 NYCRR § 398 intact. However, the regulatory amendments are needed to provide consistency and clarity to current State regulations and to align State regulations with current SSP policies and procedures; consequently, OTDA does not consider inaction as a viable alternative to the regulatory amendments.

9. Federal standards:

The regulatory amendments will not conflict with federal standards for use of resources.

10. Compliance schedule:

The regulatory amendments will become effective upon publication of the Notice of Adoption in the *New York State Register*.

Statement in lieu of a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG)

Changes made to the published rule do not necessitate revision to the previously published statement in lieu of a RFASBLG. The revisions made to 18 NYCRR Part 398 at §§ 398-2.1(e), (i), (j), (l), (aa), (af), (ag), (ao) and (ap), 398-3.1, 398-3.3, 398-4.1(a), 398-4.2, 398-4.2(a)(1) and (a)(2), 398-4.3, 398-4.4(a), 398-5.1, 398-8.1(b)(5) and (8), 398-11.3 and 398-14.1 are non-substantive in nature and do not materially alter the purpose, meaning, or effect of the enumerated regulatory sections and do not necessitate modification of the analysis contained in the previously published statement in lieu of a RFASBLG.

Statement in lieu of a Revised Rural Area Flexibility Analysis (RAFA)

Changes made to the published rule do not necessitate revision to the previously published statement in lieu of a RAFA. The revisions made to 18 NYCRR Part 398 at §§ 398-2.1(e), (i), (j), (l), (aa), (af), (ag), (ao) and (ap), 398-3.1, 398-3.3, 398-4.1(a), 398-4.2, 398-4.2(a)(1) and (a)(2), 398-4.3, 398-4.4(a), 398-5.1, 398-8.1(b)(5) and (8), 398-11.3 and 398-14.1 are non-substantive in nature and do not materially alter the purpose, meaning, or effect of the enumerated regulatory sections and do not necessitate modification of the analysis contained in the previously published statement in lieu of a RAFA.

Statement in lieu of a Revised Job Impact Statement (JIS)

Changes made to the published rule do not necessitate revision to the previously published statement in lieu of a JIS. The revisions made to 18 NYCRR Part 398 at §§ 398-2.1(e), (i), (j), (l), (aa), (af), (ag), (ao) and (ap), 398-3.1, 398-3.3, 398-4.1(a), 398-4.2, 398-4.2(a)(1) and (a)(2), 398-4.3, 398-4.4(a), 398-5.1, 398-8.1(b)(5) and (8), 398-11.3 and 398-14.1 are non-substantive in nature and do not materially alter the purpose, meaning, or effect of the enumerated regulatory sections and do not necessitate modification of the analysis contained in the previously published statement in lieu of a JIS.

Summary of Assessment of Public Comments Regulatory Amendments to 18 NYCRR Part 398

The comments received have been summarized below and all comments have been duly considered in an assessment of public comments which is posted at the following Office of Temporary and Disability Assistance (OTDA) website:
<http://otda.ny.gov/legal/regulatory-activities.asp>.

OTDA received comments asserting that the Regulatory Impact Statement (RIS) in support of the regulatory amendments is deficient pursuant to State Administrative Procedure Act (SAPA) § 202-a(3)(a) because it neither includes an analysis of the statutory authority for the regulatory proposal nor identifies the legislative objectives of the regulatory amendments. Section 1 of the Revised RIS contains an updated analysis of the statutory authority. The legislative objectives are detailed in § 2 of the Revised RIS, specifically that OTDA, “establish rules, regulations and policies to effectuate the purposes of the [State Supplement Program]” (SSP).

OTDA received comments asserting that 18 NYCRR §§ 398-3.2(b) and 398-3.3 are inconsistent with the eligibility requirements under Social Services Law (SSL) § 209(1)(b), which states that “[a] person who is properly receiving [SSI] benefits shall be deemed to have met the eligibility criteria contained in ... this subdivision”. OTDA complies with SSL §209. SSP benefits are provided to recipients who are blind, disabled, and/or over the age of 65, have countable income less than the standard of need established by their living arrangement, have countable resources that do not exceed the limitations of Title XVI of the federal Social Security Act, and are residents of New York State (NYS), meeting citizenship requirements.

OTDA received comments asserting that 18 NYCRR § 398-6.2 would shorten the timeframe for SSI recipients to respond to requests for information/documentation made by OTDA from 30 days to 10 days, and would be inconsistent with the 30-day period provided in the federal SSI program per 20 *Code of Federal Regulations* (CFR) § 416.714(b); insofar as responses to these requests may require gathering, copying and returning written documentation and may involve actions by both the applicant and a representative payee, the longer 30-day time frame is more appropriate and should be retained. While OTDA uses information provided by SSA to determine eligibility for SSP benefits, the program is administered by OTDA, and OTDA is authorized to establish policies and procedures that differ from those of SSA (see SSL §§ 17(a)-(b) and (k), 20(3)(d), 209 and 212). The regulatory amendments align the SSP with other OTDA programs and standardizes the time limits across the SSP program, regardless of whether someone is reporting a change or responding to a request from the office for information/documentation.

OTDA received comments asserting 18 NYCRR §§ 398-1.1, 398-2.1(a), (g), (u), (aa), and (aq), 398-3.2, 398-4.2, 398-4.3, 398-4.4(a), 398-4.6(a), 398-11.1, 398-11.1 and 398-11.3 – which would limit retroactive SSP benefit payments to only “active participants” – would adversely impact beneficiaries, and suggests that the regulatory amendments “be revised to provide that SSP retroactive benefits be made to any individual currently eligible for SSI or to any individual awarded only retroactive SSI benefits, without regard to that individual’s current eligibility for SSI.” OTDA refutes this comment. Participation in SSP is limited to those individuals and couples who either are in active receipt of federal SSI benefits or who would be in receipt of SSI benefits except for reasons of countable income. Retroactive benefits are intended for and paid to these eligible recipients with current and ongoing needs pursuant to SSL § 209 and 18 NYCRR Part 398.

OTDA received comments asserting that the regulatory amendments’ limitation on retroactive payments to only “active participants” would conflict with prior legal precedent and OTDA-generated fair hearing determinations directing OTDA to pay benefits to persons who were eligible for SSI for a closed period, and represents an overreach of OTDA’s authority. The regulations are made within OTDA’s authority under current law and merely clarify, not contradict, longstanding interpretation of policy and practice

OTDA received comments suggesting revisions of 18 NYCRR §§ 398-1.1, 398-2(aa), 398-2(aq), and 398-11.3 to include language consistent with 20 CFR § 416.20145(b) permitting underpayments to spouses of deceased SSI/SSP beneficiaries. SSP benefits are not paid to deceased individuals and cannot be reassigned to their heirs, estates, or any other persons after death. Eligibility for SSP is determined on an individual basis, including for members of couples, and ceases upon death. In cases where an underpayment adjustment is warranted due to agency error, SSP will correct such an error irrespective of the individual’s death.

OTDA received comments suggesting revision of 18 NYCRR § 398-2.1(u) to retain language providing that a notice of action be sent to applicants for, as well as recipients of, SSP, and the removal of language restricting the application of notice provisions to those “currently eligible”. In order to participate in SSP individuals or couples residing in New York State must apply to the SSA and be found currently eligible for ongoing SSI benefits, or not eligible due to income. This is the triggering and sole determinative event for potential participation in SSP benefits. In this context, 18 NYCRR § 398-1.1 states that SSP benefit issuances are intended to support current and ongoing need. SSP’s noticing procedure is designed to adhere to that regulation, and to notice recipients or potential SSP recipients regarding their eligibility and current and/or ongoing need. If a potential recipient’s case status changes from inactive to active for ongoing SSI benefits, SSP will send them a notice at that time, as well as any time there is any subsequent change to their case or eligibility status. Any person, currently

eligible or not, can request an SSP fair hearing; submitting an SSP notice is not a requirement when requesting a fair hearing, so SSP's policy of only sending notices to active recipients does not prohibit individuals from exercising their right to request a fair hearing. Where the Office is provided information from the SSA regarding a potential SSP recipient whose income is above federal SSI standards for receipt of ongoing SSI benefits, such potential SSP recipient is provided a notice including fair hearing rights as regards their eligibility for SSP based upon State income criteria for SSP.

OTDA received comments suggesting revisions of 18 NYCRR §§ 398-2.1 and 398-4.5 to include language clarifying that, regarding living arrangements, in the event of a discrepancy between a current report from a recipient and the recipient's Supplemental Nutrition Assistance Program (SNAP) case record, and where reliance on the latter would result in a lower benefit rate, OTDA will contact the recipient or their authorized representative directly in order to resolve said discrepancy. If a recipient is reporting all their current information and updates to the SNAP and SSP programs, there should not be a discrepancy. Where SSP effects a change in a recipient's benefits in light of discrepant living arrangement information reflected by SNAP the recipient is provided a notice reflecting the change in benefits including fair hearing rights. Any discrepancy that could arise may indicate a discrepancy in the information reported to the two programs, which would require the recipient to contact SNAP and/or SSP to provide updated or corrected information

OTDA received comments asserting that the regulatory amendments' methodology of determining living arrangement – which “[relies] upon household composition information in an SSP recipient's SNAP case record as determinative of the living arrangement” – could “deprive significant benefits [of] SSP recipients who are properly categorized living alone under SSP.” The commenter suggests that OTDA “use SNAP records ... [to identify] one person in SNAP households with an SSI/SSP income code to ensure that their SSP benefits are ... [accurately distributed to persons with a 'living alone' arrangement].” SNAP recipients should be reporting any changes in their household within the required time limit for change reporting. Any time they provide information that would change their SSP living arrangement, they should also report that information to SNAP, which should assure that the recipient's SNAP record is up-to-date and eliminate potential for discrepancies with the information in the recipient's SSP record.

OTDA received several comments suggesting revisions of the timely reporting requirements in 18 NYCRR §§ 398-2.1(ap), 398-5.2, and 398-6.1 – 398-6.2, including: (1) adding language consistent with federal regulations and SSA's *Program Operations Systems Manual*; and (2) providing an additional five-day grace period and removing the reduced time limitations to render them less burdensome to elderly, blind and disabled individuals. In response, (1) OTDA receives updates on SSP recipient cases directly from SSA through the SDX. Changes to these cases made at the federal level which include but are not limited to the restoration, suspension, discontinuance, or termination of benefits are acted on in the order they are received from SSA. Actions taken by OTDA on these cases mirror actions taken at the federal level by SSA.

Therefore, no additional language is required as this practice is clearly set forth elsewhere in the regulations; and (2) per 18 NYCRR § 398-7, OTDA will consider circumstances of specific cases that may affect a recipient's timely response to requests for information and/or submission of forms and/or documents if good cause, as defined in § 398-2.1(q), is established for delays in timely reporting. OTDA notes that recipients or their representatives can contact the SSP Customer Support Center to address specific concerns, which may include, but are not limited to, review of their eligibility, instruction on how to complete forms, and contact information for other federal and/or state agencies that provide services or benefits. OTDA uses a 10-day period for other means-tested assistance programs that serve similar populations. The use of the 10-day period for SSP brings the program into alignment with other OTDA program areas. For purposes of 18 NYCRR 398-6.2 OTDA uses a 10-day period for compliance with requests for information and/or documentation made by the office.

OTDA received comments suggesting revision of 18 NYCRR § 398-11.3 to remove language limiting underpayments to the month the change was reported and three prior consecutive months if the underpayment was caused by untimely reporting, as defined in 18 NYCRR § 398-2.1. OTDA clearly states the reporting responsibilities of SSP recipients and their representatives, both in regulations (18 NYCRR §§ 398-5.2 and 398-6) and on OTDA's website (<https://otda.ny.gov/programs/ssp/#reporting>). OTDA maintains that setting a statute of limitation on retroactive underpayments of four calendar months when the underpayments are the result of a recipient or representative failing to report changes in a timely manner is a reasonable enforcement of program rules.

OTDA received comments suggesting revision of 18 NYCRR § 398-4.1(a) by (1) removing language indicating that "[no] separate application for SSP will be accepted or required by New York State", asserting that the creation of a separate application process for SSP, apart from SSI, "will be unduly burdensome to SSP applicants and recipients, and hinder benefits access"; and (2) clarifying the "mandatory 90-day waiting period" referenced in this subdivision. In response, (1) per 18 NYCRR § 398-4.1, no separate application is required or accepted by NYS to apply for SSP benefits; an individual must submit an application for federal SSI benefits to the SSA. The SSI application is the triggering and sole determinative event for participation in SSP. SSA shares this information with NYS, which then determines eligibility for SSP benefits; and (2) SSP's 90-day processing period establishes a standard to identify recipients with current and ongoing needs, and also prevents applicants who eventually become eligible for Social Security benefits from incurring a potential overpayment or duplicate benefits issuance, which would then require recoupment of the overpayment and pose potential hardship to the applicant.

OTDA received comments suggesting revision of 18 NYCRR § 398-4.3 to add language requiring OTDA to contact the SSA directly for verification purposes in cases where the applicant or recipient, or their legal representative or advocate, presents information, notices, letters or other written or electronic communications issued by the SSA regarding federal SSI eligibility that have not been received directly from the SSA. SSP is bound by the decision SSA makes regarding eligibility; therefore, discrepancies in

information provided by SSA via the SDX should be resolved with SSA, as they may affect an applicant's eligibility for both SSI and SSP benefits. Per 18 NYCRR § 398-4.1, when a recipient reports a discrepancy in information to SSP, SSP's first procedural step is to refer the recipient back to SSA directly to report the information and/or resolve the discrepancy with SSA. If the recipient reports to SSP that they followed the procedure and attempted, unsuccessfully, to correct the discrepancy with SSA, SSP will contact SSA on behalf of the recipient to resolve the discrepancy.

OTDA received comments asserting that 18 NYCRR § 398-4.1(a) and (c) would delay payment of benefits, and that 18 NYCRR § 398-4.3 "places the burden squarely on the elderly, blind, or disabled applicant to 'contact and resolve any claimed discrepancy with the SSA.'" SSP is bound by SSA's eligibility decision; therefore, discrepancies in information provided by SSA via the SDX should be resolved with SSA as it may affect an applicant's overall eligibility for both SSI and SSP benefits. SSP's 90-day processing period identifies potential recipients who have a current and ongoing need that the SSP benefit was designed to address, and would help applicants determined eligible for Social Security benefits to avoid a potential overpayment of double benefits issuance, which would require recoupment and pose potential hardship to the applicant.

Assessment of Public Comments

The Office of Temporary and Disability Assistance (OTDA) received public comments relative to the State Supplement Program (SSP) regulations following their publication in the July 1, 2020 issue of the *New York State Register*. The following represents a summary and analysis of such comments.

Comment 1:

The Regulatory Impact Statement (RIS) in support of the regulatory amendments is deficient pursuant to State Administrative Procedure Act (SAPA) § 202-a(3)(a) because it neither includes an analysis of the statutory authority for the regulatory proposal nor identifies the legislative objectives of the regulatory amendments.

Response 1:

Section 1 of the Revised RIS contains an updated analysis of the statutory authority. The legislative objectives are detailed in § 2, specifically that OTDA, “establish rules, regulations and policies to effectuate the purposes of the [State Supplement Program]”.

Comment 2:

The regulatory amendments would conflict with state law. 18 NYCRR § 398-3.2(b) would require that an individual or couple must be in “active receipt” of SSI [Supplemental Security Income] benefits in order to be eligible for State Supplemental Personal Needs Allowance (SSPNA) benefits – and, the commenters suggest, per 18 NYCRR § 398-3.3, “only as of such time that the relevant federal SSA [Social Security Administration] electronic data file is transmitted to [New York State] via the State Data Exchange (SDX).” The regulatory amendments are inconsistent with the eligibility requirements set forth in Social Services Law (SSL) § 209(1)(b), which states that “[a] person who is properly receiving [SSI] benefits shall be deemed to have met the eligibility criteria contained in ... this subdivision”. It is impermissible for OTDA to promulgate regulations that are inconsistent with state law.

Response 2:

OTDA is in compliance with SSL §§ 207 and 209. SSP benefits are provided to recipients who are blind, disabled, and/or over the age of 65, have countable income less than the standard of need established by their living arrangement, have countable resources that do not exceed the limitations of Title XVI of the federal Social Security Act, and are residents of New York State, meeting citizenship requirements. OTDA guidelines are supported as codified in 18 NYCRR Part 398.

Comment 3:

18 NYCRR § 398-6.2 would shorten the timeframe for SSI recipients to respond to requests for information/documentation made by OTDA from 30 days to 10 days; however, the reduction would be inconsistent with the 30-day period provided in the federal SSI program per 20 *Code of Federal Regulations* (CFR) § 416.714(b) insofar as responses to these requests may require gathering, copying and returning written documentation and may involve actions by both the applicant and a representative payee, the longer 30-day time frame is more appropriate and should be retained.

Response 3:

While OTDA uses information provided by SSA to determine eligibility for SSP benefits, the program is administered by OTDA, and OTDA is authorized to establish policies and procedures that differ from those used at SSA (see SSL §§ 17(a)-(b) and (k), 20(3)(d), and 212). Income eligibility programs such as the Home Energy Assistance Program (HEAP), the Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance (TA) use a standard minimum of 10 days for submission of requested documentation. The addition of a definition of timely reporting brings SSP into alignment with other OTDA programs as previous versions of the regulations contained no such definition. The change also standardizes the time limits across the SSP program, regardless of whether someone is reporting a change or responding to a request from the office for information/documentation.

Comment 4:

18 NYCRR §§ 398-1.1, 398-2.1(a), (g), (u), (aa), and (aq), 398-3.2, 398-4.2, 398-4.3, 398-4.4(a), 398-4.6(a), 398-11.1, 398-11.1 and 398-11.3 – which would limit retroactive SSP benefit payments to only “active participants” – would adversely impact beneficiaries, including, but not limited to, those individuals or couples who would only be eligible for SSP during the five-month waiting period for Title II (Social Security Disability Insurance [SSDI]) benefits, or those whose SSI benefits were suspended due to “technical reasons either before or very shortly after they were put into pay.” The comment recommends that the regulatory amendments “be revised to provide that SSP retroactive benefits be made to any individual currently eligible for SSI or to any individual awarded only retroactive SSI benefits, without regard to that individual’s current eligibility for SSI.”

Response 4:

Participation in SSP is limited to those individuals and couples who either are in active receipt of federal SSI benefits or who would be in receipt of SSI benefits except for reasons of countable income. Retroactive benefits are intended for and paid to these eligible recipients with current and ongoing needs pursuant to SSL § 209 and the 18 NYCRR Part 398 regulations.

Comment 5:

Adoption of the regulatory amendments' limitation on retroactive payments to only "active participants" would conflict with prior legal precedent and OTDA-generated fair hearing determinations directing OTDA to pay benefits to persons who were eligible for SSI for a closed period, and represents an overreach of OTDA's authority.

Response 5:

The regulations are made within OTDA's authority under current law and merely clarify, not contradict, longstanding interpretation of policy and practice.

Comment 6:

Recommends revising 18 NYCRR §§ 398-1.1, 398-2(aa), 398-2(aq), and 398-11.3 to include language consistent with 20 CFR § 416.20145(b) permitting underpayments to spouses of deceased SSI/SSP beneficiaries.

Response 6:

SSP benefits are not paid to deceased individuals and cannot be reassigned to their heirs, estates, or any other persons after their death. In cases where an underpayment adjustment is warranted due to agency error, SSP will correct such an error irrespective of the individual's death. Eligibility for SSP is determined on an individual basis, including for members of couples, and ceases upon death.

Comment 7:

Recommends revising 18 NYCRR § 398-2.1(u) to retain language providing that a notice of action be sent to applicants for, as well as recipients of, SSP and that the language restricting the application of notice provisions to those "currently eligible" be removed.

Response 7:

In order to participate in SSP individuals or couples residing in New York State must apply to the SSA and be found currently eligible for ongoing SSI benefits, or not eligible due to income. This is the triggering and sole determinative event for potential participation in SSP benefits. In this context, 18 NYCRR § 398-1.1 states that SSP benefit issuances are intended to support current and ongoing need. SSP's noticing procedure is designed to adhere to that regulation, and to notice recipients or potential SSP recipients regarding their eligibility to participate in SSP, and their current and/or ongoing need. If a potential recipient's case status changes from inactive to active for ongoing SSI benefits, SSP will send them a notice at that time, as well as any time there is any subsequent change to their case or eligibility status. Where the Office is provided information from the SSA regarding a potential SSP recipient whose income is above federal SSI standards for receipt of ongoing SSI benefits, such potential SSP recipient

is provided a notice including fair hearing rights as regards their eligibility for SSP based upon State income criteria for SSP.

Any person, currently eligible for ongoing SSP or denied such eligibility due to being over-income for SSP based upon State criteria will receive notice of any change or denial of benefits including fair hearing rights.

Comment 8:

Recommends revising 18 NYCRR §§ 398-2.1 and 398-4.5 to include language clarifying that, regarding living arrangements, in the event of a discrepancy between a current report from a recipient and the recipient's SNAP case record, and where reliance on the latter would result in a lower benefit rate, OTDA will contact the recipient or their authorized representative directly in order to resolve said discrepancy.

Response 8:

If a recipient is reporting all their current information and updates to the SNAP and SSP programs, there should not be a discrepancy. The living arrangement categories of both programs are designed to align, so a recipient who would be categorized as "living alone" for SSP would have their own SNAP case, whereas a recipient who SSP would categorize as "living with others" would have other household members listed on their SNAP case. Where SSP effects a change in a recipient's benefits in light of discrepant living arrangement information reflected by SNAP the recipient is provided a notice reflecting the change in benefits including fair hearing rights. Any discrepancy that could arise may indicate a discrepancy in the information as reported to the two programs, which would require the recipient to contact SNAP and/or SSP to provide updated or corrected information.

Comment 9:

The regulatory amendments' methodology of determining living arrangement – which "[relies] upon household composition information in an SSP recipient's SNAP case record as determinative of the living arrangement" could "deprive significant benefits [of] SSP recipients who are properly categorized living alone under SSP." Additionally, "SNAP records are not updated frequently and so the information is often outdated"; moreover, the restrictions on underpayments in the regulatory amendments "would limit or eliminate recovery based on such error." The commenter suggests that OTDA "use SNAP records ... [to identify] one person in SNAP households with an SSI/SSP income code to ensure that their SSP benefits are ... [accurately distributed to persons with a 'living alone' arrangement]."

Response 9:

SNAP recipients should be reporting any changes in their household within the required time limit for change reporting. Any time they provide information that would change their SSP living arrangement, they should also report that information to SNAP, which

should assure that the recipient's SNAP record is up-to-date and eliminate potential for discrepancies with the living arrangement information in the recipient's SSP record.

Comment 10:

Regarding timely reporting:

(a) Recommends revising 18 NYCRR §§ 398-2.1(ap) and 398-6.1 –398-6.2 to add language clarifying the timely reporting requirements, including (1) the methodology for calculating the 10-day period; (2) for mailed responses, clarification as to whether OTDA will be required to retain envelopes for postmarks; (3) for telephone responses, clarification as to whether OTDA will be required to maintain a telephone log documenting an applicant's or recipient's unsuccessful attempts to respond timely; and (4) adding language providing protection for applicants/recipients who timely report information to the SSA instead of to OTDA.

(b) Recommends revising 18 NYCRR §§ 398-2.1(ap) and 398-6.2 to include language providing a five-day grace period from the date of mailing of documents between SSP applicants/recipients and OTDA, consistent with 20 CFR § 416.1401 and § 2103(b)(2) of the Civil Practice Law and Rules (CPLR).

(c) Recommends the same revision to the regulatory amendments at 18 NYCRR § 398-6.1, regarding reporting of changes in circumstances, and that this section be further revised to include language consistent with the federal SSI regulation requiring the reporting of such changes in circumstances within 10 days after the close of the month in which the subject change occurs (see 20 CFR § 416.714[a]).

(d) Recommends that each of the aforementioned sections be revised to incorporate language consistent with the federal SSA's *Program Operations System Manual* (POMS) regarding offering SSI recipients assistance, as necessary, in complying with requests for necessary information (see POMS Subchapter SI 02301.200, *Suspensions, Stop Payments, Terminations, and Reestablishing Eligibility – General*), and language consistent with 18 NYCRR §§ 351.5–351.6.

(e) Asserts that the reduced time limitations set forth in 18 NYCRR §§ 398-2.1(ap), 398-5.2 and 398-6.2 would be unduly burdensome to elderly, blind and disabled individuals and should be removed.

Response 10:

(a): (1) The 10-day period references calendar days. (2) OTDA scans and attaches a copy of all written correspondence and documentation received into the SSP recipient's electronic case file. The SSP System maintains a permanent record of the date each document is entered and attached to the case file. (3) All calls to the SSP Customer Support Center in which a recipient or their representative provides identifying information are automatically logged and date-stamped in that recipient's electronic case file. Maintaining a separate log of telephone contacts represents a duplication of effort. (4) OTDA receives updates on SSP recipient cases directly from

SSA through the SDX. Changes to these cases made at the federal level which include but are not limited to the restoration, suspension, discontinuance, or termination of benefits are acted on in the order they are received from SSA. Actions taken by OTDA on these cases mirror actions taken at the federal level by SSA. Therefore, no additional language is required as this practice is clearly set forth elsewhere in the regulations.

(b): As set forth in 18 NYCRR § 398-7, OTDA will consider circumstances of specific cases that may affect a recipient's timely response to requests for information and/or submission of forms and/or documents if good cause, as defined in § 398-2.1(q), is established for delays in timely reporting.

(c): OTDA will consider circumstances of specific cases that may affect a recipient's timely response to requests for information and/or submission of forms and/or documents to determine if good cause, as defined in § 398-2.1(q), is established for delays in timely reporting.

(d): Recipients or their representatives can contact the SSP Customer Support Center to address specific concerns, which may include, but are not limited to, review of their eligibility, instruction on how to complete forms, and contact information for other federal and/or state agencies that provide services or benefits.

(e): OTDA uses a 10-day period for other means-tested assistance programs that serve similar populations. The use of the 10-day period for SSP brings the program into alignment with other OTDA program areas.

Comment 11:

Recommends revising 18 NYCRR § 398-11.3 to remove language limiting underpayments to the month the change was reported and three prior consecutive months if the underpayment was caused by untimely reporting, as defined in 18 NYCRR § 398-2.1.

Response 11:

OTDA clearly states the reporting responsibilities of SSP recipients and their representatives, both in regulations (18 NYCRR §§ 398-5.2 and 398-6) and on OTDA's website (<https://otda.ny.gov/programs/ssp/#reporting>). Setting a statute of limitation on retroactive underpayments of four calendar months when the underpayments are the result of a recipient or representative failing to report changes in a timely manner is a reasonable enforcement of program rules.

Comment 12:

Recommends revising 18 NYCRR § 398-4.1(a) by:

(a) removing the provision contained in the subdivision indicating that "[no] separate application for SSP will be accepted or required by New York State." The

commenters maintain that the creation of a separate application process for SSP, apart from SSI, “will be unduly burdensome to SSP applicants and recipients, and hinder benefits access.”

(b) Clarifying the “mandatory 90-day waiting period” referenced in this subdivision.

Response 12:

(a): Per 18 NYCRR § 398-4.1, “Individuals or couples residing in New York State who apply to the SSA for Federal SSI benefits are deemed to have concurrently filed for SSP benefits provided the individuals or each member of the couple has cooperated with SSA in establishing eligibility for SSI benefits. No separate application is required or accepted by New York State.” Therefore, an individual must submit an application for federal SSI benefits to the SSA. The SSI application is the triggering and sole determinative event for SSP. SSA shares this information with New York State, which then determines eligibility for SSP benefits based upon State criteria.

(b): SSP’s 90-day processing period establishes a standard to identify recipients with current and ongoing needs back to the recipient’s initial date of SSI eligibility. SSP’s 90-day processing period also prevents applicants who eventually become eligible for Social Security benefits from incurring a potential overpayment or duplicate benefits issuance, which would then require recoupment of the overpayment and pose potential hardship to the applicant.

Comment 13:

Asserts that 18 NYCRR § 398-4.3, relative to the duty to investigate discrepancies in data used to determine eligibility for SSP benefits, “would put the entire burden of determining why an official notice from the SSA is inconsistent received by OTDA via the SDX on the applicant or recipient” – a situation that “is simply not feasible for most applicants or recipients.” Specifically, the commenter suggests removing the following language:

Notices, letters or other written or electronic communications issued by the SSA regarding federal SSI eligibility which are presented to the Office by recipients, their legal representatives, or advocates for individuals or couples claiming SSP eligibility shall not be considered in determining eligibility to participate in SSP unless the information is received directly from SSA to SSP. It shall be the responsibility of the individual or couple to contact and resolve any claimed discrepancy with the SSA.

The commenter suggests incorporating the following language in 18 NYCRR § 398-4.3:

Where the applicant or recipient, or their legal representative or advocate presents information, notices, letters or other written or electronic communications issued by the SSA regarding federal SSI eligibility that has

not been received directly from SSA by the [Office], the [Office] shall contact the SSA to verify the information received from the applicant or recipient.

Response 13:

18 NYCRR § 398-4.1 states that individuals or couples residing in New York State who apply to the SSA for federal SSI benefits are deemed to have concurrently filed for SSP benefits provided the individuals or each member of the couple has cooperated with SSA in establishing eligibility for SSI benefits. In order to participate in the SSP, an individual must submit an application for federal SSI benefits to the SSA. This serves as the triggering and sole determinative event for potential participation in SSP benefits. SSA shares this information with New York State, which will then determine an SSI applicant's eligibility for SSP benefits. SSP is bound by the decision SSA makes regarding eligibility; therefore, discrepancies in information provided by SSA via the SDX should be resolved with SSA, as they may affect an individual's overall eligibility for both SSI and SSP benefits. Because of 18 NYCRR § 398-4.1, when a recipient reports a discrepancy in information to SSP, SSP's first procedural step is to refer the recipient back to SSA directly to report the information and/or resolve the discrepancy with SSA. If the recipient reports to SSP that they followed the procedure and attempted to correct the discrepancy with SSA but were unsuccessful or could not resolve the discrepancy with SSA directly, SSP will contact SSA on behalf of the recipient to assist in clearing up the discrepancy.

Comment 14:

18 NYCRR § 398-4.1(a) and (c) would tether initial SSP eligibility to the date of data to the SDX, followed by a mandatory 90-day waiting period during which eligibility must be maintained, with SSP benefit payments commencing the first full month following the month of eligibility. This would inevitably delay payment of benefits insofar as the "SDX is not regularly or consistently updated and often contains inaccurate information, including entirely omitting individuals receiving SSI." 18 NYCRR § 398-4.3 "places the burden squarely on the elderly, blind, or disabled applicant to 'contact and resolve any claimed discrepancy with the SSA.'"

Response 14:

Pursuant to 18 NYCRR § 398-4.1, "SSA shares information [via the SDX] with New York State, which then determines an applicant's eligibility for SSP benefits. SSP is bound by SSA's eligibility decision; therefore, discrepancies in information provided by SSA via the SDX should be resolved with SSA as it may affect an applicant's overall eligibility for both SSI and SSP benefits." SSP's 90-day processing period assists in identifying potential recipients who have a current and ongoing need that the SSP benefit was designed to address. The 90-day processing period also exists to help applicants who would go on to become eligible for Social Security benefits avoid a potential overpayment of double benefits issuance, which would then require recoupment of the overpayment and pose potential hardship to the individual.



Office of Temporary and Disability Assistance

ANDREW M. CUOMO
Governor

MICHAEL P. HEIN
Commissioner

BARBARA C. GUINN
Executive Deputy Commissioner

CERTIFICATION

I hereby certify that the attached amendments to Part 398 of Title 18 of the *Official Compilation of Codes, Rules, and Regulations of the State of New York* are duly adopted by me, Commissioner Michael P. Hein, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance (OTDA) by Social Services Law §§ 17(a)-(b) and (k), 20(3)(d), 22(8), 207, 209 and 212. 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 July 1, 2020, under I.D. No. TDA-26-20-00007-P.

No other publication of prior notice is required by statute.

/s/ Michael P. Hein

Michael P. Hein
Commissioner

12/28/20

Date