

## Notice of Proposed Rule Making

Temporary and Disability Assistance, Office of  
(SUBMITTING AGENCY)

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

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

1. A. *Proposed action:*

Repeal of	§ 347.8 of	Title <u>18</u>	NYCRR
Addition of	§ 347.8 to	Title <u>18</u>	NYCRR
Amendment of	§ 347.9(d) of	Title <u>18</u>	NYCRR
Repeal of	§ 347.10 of	Title <u>18</u>	NYCRR
Repeal of	§ 347.26 of	Title <u>18</u>	NYCRR
Amendment of	§ 422.3 of	Title <u>18</u>	NYCRR

- B.  This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C.  This rule was previously proposed as a consensus rule making under I.D. No. \_\_\_\_\_ . Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D.  This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

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

Social Services Law §§ 17(a)-(b) and (j), 20(3)(d), 111-a and 111-i; Title 42 of the United States Code §§ 651-657, 660, 663-664, and 666-667; Title 45 of the Code of Federal Regulations §§ 303.4, 303.6, and 303.8.

3. *Subject of the rule:*

Support obligations

4. *Purpose of the rule:*

See attached Addendum

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

- A public hearing is not scheduled. (*SKIP TO ITEM 8*)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 45 days **after** publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

Time:	Date:	Location:

6. *Interpreter services* (check only if a public hearing is scheduled):

- Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. *Accessibility* (check appropriate box only if a public hearing is scheduled):

- All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
- Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):

- A.  The full text of the rule is attached because it does not exceed 2,000 words.
- B.  A summary of the rule is attached because the full text of the rule exceeds 2,000 words.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

<http://otda.ny.gov/legal/regulatory-activities.asp>

- C.  Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

9. *The text of the 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

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

Agency contact \_\_\_\_\_

Agency name \_\_\_\_\_

Office address \_\_\_\_\_

Telephone \_\_\_\_\_ E-mail: \_\_\_\_\_

11. *Public comment will be received until:*

- 45 days after publication of this notice (MINIMUM public comment period).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).
- Other: (specify) \_\_\_\_\_.

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

13. *Expiration date* (check only if applicable):

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

14. *Additional matter required by statute*:

Yes (include below material required by statute).

No additional material required by statute.

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

This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*:  
01/18/2017 \_\_\_\_\_.

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

Not applicable.

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

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

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

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

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

Not applicable.

17. **Regulatory Impact Statement (RIS)**

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

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

subject to a consolidated RIS printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_; issue date: \_\_\_\_\_.

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

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

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

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

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

A. The attached RFA contains:

 The full text of the RFA. A summary of the RFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated RFA, because this rule is one of a series of closely related rules.

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

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

is subject to a consolidated RFA printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_; issue date: \_\_\_\_\_.

 is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is exempt, as defined in SAPA §102(11) [Consensus Rule Making].**19. Rural Area Flexibility Analysis (RAFA)**

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

A. The attached RAFA contains:

 The full text of the RAFA. A summary of the RAFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated RAFA, because this rule is one of a series of closely related rules.

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

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

is subject to a consolidated RAFA printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_; issue date: \_\_\_\_\_.

 is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

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

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

A. The attached JIS contains:

 The full text of the JIS. A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

\_\_\_\_\_

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

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

 A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: \_\_\_\_\_ - \_\_\_\_\_ issue date: \_\_\_\_\_.

 is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is proposed by the State Comptroller or Attorney General.**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)**

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

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

Name 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 09/18/2017

**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), should be e-filed via the Department of State website.

4. *Purpose of the rule:* To amend State regulations concerning support obligations to reflect federal statutory requirements and current terminology used by the child support program, and to conform regulatory citations with federal and State laws.

## Summary of the Proposed Rule

The Office of Temporary and Disability Assistance (OTDA) proposes to amend 18 NYCRR §§ 347.8 – 347.9, and 422.3 and to repeal 18 NYCRR §§ 347.10 and 347.26. The proposed regulatory amendments would amend State regulations concerning the establishment, modification, and enforcement of support obligations to reflect federal statutory requirements, update State regulations to reflect current terminology used by the child support program, and correct regulatory citations in accordance with federal and State laws. The full text of the proposed regulatory amendments is posted at the following OTDA website: <http://otda.ny.gov/legal/regulatory-activities.asp>.

Section 347.8 would clarify the procedures for general case processing and the establishment, modification, and enforcement of support obligations to provide consistency with federal requirements. Section 347.8 would be retitled as “Establishment, modification and enforcement of support obligations” to more accurately reflect the new provisions.

Section 347.8(a)(1)(i) would reflect federal and State requirements to establish paternity if necessary pursuant to 18 NYCRR § 347.6 and establish an order of support pursuant to the child support standards set forth in Domestic Relations Law (DRL) § 240 and Family Court Act (FCA) § 413.

Section 347.8(a)(1)(ii) would reflect federal and State requirements to modify and/or enforce an existing order of child support.

Section 347.8(a)(1)(iii) would reflect the federal requirement to document the factual basis for the support obligation.

Section 347.8 (a)(2) would conform the State regulation with federal and State requirements to take reasonable steps to determine the noncustodial parent’s income, financial circumstances, and ability to pay support.

Section 347.8 (a)(2)(iv) would reflect the federal requirement to base the support obligation on available information about the specific circumstances of the noncustodial parent when earnings and income information is unavailable or insufficient to use as a measure of the noncustodial parent’s ability to pay.

Section 347.8 (a)(4) would comply with federal rules requiring the child support enforcement unit to review the record for information obtained from the financial investigation conducted on the noncustodial parent and provide the court with information regarding the noncustodial parent’s ability to pay or otherwise comply with the order of support for its use in establishment, modification or enforcement proceedings.

Section 347.8(b) would clarify procedures for the establishment of support obligations in accordance with federal and State laws.

Section 347.8(b)(1)(iv) would align the State regulation with the requirement to obtain and maintain health insurance benefits as set forth in FCA § 416 and DRL § 240, in conformance with Chapter 215 of the Laws of 2009.

Section 347.8(b)(1)(v) would conform the State regulation with State law regarding cash medical support pursuant to FCA § 413 and DRL § 240.

Section 347.8(b)(1)(vii) would include a reference to Article 5-B, the “Uniform Interstate Family Support Act,” of the FCA.

Section 347.8(b)(2) would clarify procedures for voluntary agreements to support in accordance with federal and State laws.

Section 347.8(c) would clarify procedures for the modification and enforcement of support obligations in accordance with federal and State laws.

Section 347.8(c)(1)(i) would reflect the change in the child support change in payee process set forth in FCA § 571 to conform State regulations with federal law by requiring that notice be sent to the parties advising that the order of support is payable to the support collection unit even if no request for such notice has been made.

Section 347.8(c)(2)(ii) would clarify that an order of support may deviate from the child support standards if it is determined that the standards are inappropriate based on the financial or factual circumstances of the case.

Section 347.8 (c)(2)(iii) would conform the State regulation with federal rules requiring the child support enforcement unit to provide notice to both parties of the right to seek modification of the order of support upon receipt of information that a noncustodial parent will be incarcerated for more than 180 calendar days.

Section 347.8 (c)(3)(i) would conform the State regulation with the federal requirement to provide clear notice to the noncustodial parent that his or her inability to pay child support as ordered is a defense to a finding of willful violation or contempt.

Section 347.8 (c)(3)(ii) would render the State regulation compliant with federal rules requiring the child support enforcement unit to review the case and provide the court with information regarding the noncustodial parent’s ability to pay or otherwise comply with the order of support for its use in a hearing pursuant to FCA §§ 454 or 455.

Section 347.8 (d) would provide clarification regarding the services available to a noncustodial parent who has applied for child support services pursuant to 18 NYCRR § 347.17.

The proposed rule would also amend 18 NYCRR § 347.9(d) to ensure the State’s compliance with the federal rules regarding the use of civil contempt proceedings to enforce support obligations.

The proposed rule would repeal 18 NYCRR § 347.10, which sets forth a child support standards chart, to conform the State regulations with Social Services Law § 111-i.

The proposed rule would repeal 18 NYCRR § 347.26 to conform the State regulations with State law by reflecting the replacement of the review and adjustment of child support orders process by the cost of living adjustment process set forth in FCA § 413-a and Chapter 398 of the Laws of 1997.



The proposed rule would amend 18 NYCRR § 422.3 to reflect the repeal of 18 NYCRR § 347.10.

**The Section Index for Part 347 of Title 18 of the NYCRR is amended to read as follows:**

Sec.  
347.8            Establishment, modification, and enforcement of support obligations.

**Section 347.8 of Title 18 of the NYCRR is REPEALED and a new § 347.8 is added to read as follows:**

**§ 347.8 Establishment, modification, and enforcement of support obligations.**

*(a) General case processing procedures.*

1. In any case receiving child support services in which the location of the noncustodial parent or putative father is known, the child support enforcement unit must:
  - i. if there is no order of child support, establish paternity if necessary pursuant to section 347.6 of this Part and establish an order of support pursuant to the child support standards set forth in section 240 of the Domestic Relations Law (DRL) and section 413 of the Family Court Act (FCA) as set forth in subdivision (b) of this section.
  - ii. if there is an order of child support, modify and/or enforce the order as set forth in subdivision (c) of this section.
  - iii. maintain in the automated case record any information from new or modified orders of support, including the factual basis for the support obligation.
2. Prior to any proceeding to establish, modify, or enforce an order of child support, the child support enforcement unit shall take reasonable steps to determine the noncustodial parent's income, financial circumstances, and ability to pay support in accordance with the child support standards set forth in section 240 of the DRL and section 413 of the FCA, by conducting a financial investigation pursuant to the following guidelines:
  - i. Review available local, State, and federal information sources pursuant to section 347.7(b) of this Part, including, as appropriate, electronic data from other governmental agencies, State and national directories of new hires, and State and other tax information.

- ii. Obtain information by case conferencing, interviews with either or both parties, mandatory financial disclosure, or questionnaires, as appropriate.
  - iii. Obtain information from the noncustodial parent or third parties using subpoenas or requests pursuant to sections 111-p, 111-r, and 111-s of the Social Services Law or article 31 of the Civil Practice Law and Rules, as appropriate.
  - iv. If there is insufficient evidence of the noncustodial parent's income or financial circumstances to use as the measure of the noncustodial parent's ability to pay, then any recommendation by the child support enforcement unit regarding the support obligation shall be based on available information about the specific circumstances of the noncustodial parent, including assets, residence, employment and earnings history, job skills, education, literacy, age, health, criminal record or other employment barriers, record of seeking work, job market conditions, the availability of employers willing to hire the noncustodial parent, prevailing earnings level, and other relevant background factors in the case to the extent such information is available and relevant.
  - v. Create a record of the information or documents obtained as a result of the financial investigation.
3. In any proceeding to establish or modify an order of child support, the child support enforcement unit shall provide the individual receiving services with a copy of the child support standards chart as published annually by the commissioner pursuant to section 111-i(2) of the Social Services Law and advise such individual of the amount derived from the application of the child support percentages, as defined in section 240 of the DRL and section 413 of the FCA, to the noncustodial parent's income.
4. In any proceeding to establish, modify, or enforce an order of child support, the child support enforcement unit shall review the record for information obtained from the financial investigation conducted on the noncustodial parent which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay child support in accordance with the standards set forth in section 240 of the DRL and section 413 of the FCA and provide such information to the court.
5. The attorney or other person appearing on behalf of the social services district must become thoroughly familiar with the case and the financial

circumstances of both parents. If it appears that the basic child support obligation, determined in accordance with the child support standards as set forth in section 240 of the DRL and sections 413 and 416 of the FCA, is other than the amount ordered by the court, the attorney or other person appearing on behalf of the social services district must consider and, if appropriate, submit written objections to the court and, if necessary, ensure that an appeal is filed within the statutory time period. The social services district's representative also must ensure that any support payments are payable to the support collection unit.

6. If the court or administrative authority dismisses a petition to establish, modify, or enforce a support order without prejudice, the child support enforcement unit must, at the time of the dismissal, examine the reasons for dismissal and determine when, in the future, it would be appropriate to petition for an order of support, and, at that time, again file a petition for such order.

(b) Establishment of a Child Support Order.

1. Elements of a guidelines order. A child support order must include the following elements, where appropriate, pursuant to the child support standards as set forth in section 240 of the DRL and section 413 of the FCA:
  - i. a support amount derived from application of the appropriate child support percentage to the noncustodial parent's income in accordance with the child support standards including the establishment of the amount of retroactive support, if any;
  - ii. reasonable child care expenses incurred by the custodial parent, if the custodial parent is working or receiving elementary or secondary education, or if the custodial parent is receiving higher education or vocational training which will lead to employment, and order that the noncustodial parent's share of such expenses be in the same proportion as his or her income is to the combined parental income;
  - iii. reasonable child care expenses incurred by the custodial parent when seeking work and order that the noncustodial parent's portion of such expenses be in the same proportion as his or her income is to the combined parental income;
  - iv. a direction for either or both parents to obtain and maintain health insurance benefits as defined in section 416 of the FCA and section 240 of the DRL, including the execution and delivery of any forms, notices, documents or instruments necessary to

ensure timely payments of any health insurance claims for the person on whose behalf the petition is brought, where such health insurance is available;

v. cash medical support pursuant to section 240 of the DRL and section 413 of the FCA either in addition to, or in lieu of, health insurance benefits;

vi. expenses necessary for the provision of present or future post-secondary, private, special, or enriched education for the child(ren), where appropriate; and

vii. other requirements, as directed by the Office and as provided by articles 4, 5 and 5-A, and 5-B of the FCA.

2. Voluntary agreements to support. Where appropriate, the child support enforcement unit may seek to obtain a written voluntary agreement to support from the noncustodial parent using forms provided by the Office, and in accordance with the following requirements:

i. the noncustodial parent shall be advised, orally or using digital, audio or video recording, and in writing, of the consequences of such agreement;

ii. the parties may enter a written voluntary agreement or stipulation to support for a support obligation greater than, equal to, or less than the presumptively correct child support obligation computed pursuant to the child support standards as set forth in section 240 of the DRL and section 413 of the FCA provided that the agreement or stipulation complies with the provisions of subparagraph (iii) of this paragraph and is approved in writing by the court; and

iii. in all cases in which a validly executed support agreement or voluntary stipulation between the parties is obtained and presented to a court for incorporation in an order or judgment, the recipient of services must be provided with a copy of the child support standards chart as published annually by the commissioner pursuant to section 111-i(2) of the Social Services Law. In addition, the agreement or stipulation must state that the parties have been advised of the child support standards as set forth in section 240 of the DRL and section 413 of the FCA and that the basic child support obligation provided for therein would be the presumptively correct amount of child support to be awarded by the court. In the event that any such agreement or stipulation deviates from the basic child support obligation, the

agreement or stipulation must also specify the amount that the basic child support obligation would have been and the reason or reasons that the agreement or stipulation does not provide for payment of that amount.

3. In all other cases, the child support enforcement unit shall petition the Family Court for an order of support pursuant to paragraph (1) of subdivision (b) of this section and
  - i. within 90 calendar days of locating a noncustodial parent or putative father regardless of whether paternity has been established, establish an order of support or complete service of process necessary to commence proceedings to establish an order of support and, if necessary, paternity, or document on the automated case record the unsuccessful diligent efforts to serve process as defined in section 347.7(b) of this Part; and
  - ii. advise the custodial parent that all payments received from the noncustodial parent must be transmitted to the support collection unit for crediting to the noncustodial parent's account and for distribution and disbursement as necessary.

(c) *Modification and Enforcement of a Child Support Order.*

1. *General Provisions.*

- i. Pursuant to section 571 of the FCA, the child support enforcement unit must send a notice to the parties advising that the order of support is payable to the support collection unit.
- ii. The child support enforcement unit must advise the custodial parent that all payments received from the noncustodial parent must be transmitted to the support collection unit for crediting to the noncustodial parent's account and for distribution and disbursement as necessary.

2. *Modification.*

- i. If the child support order does not include all of the appropriate elements of support as set out in paragraph 1 of subdivision (b) of this section, including but not limited to provisions mandating health care coverage and/or cash medical support, and such obligations that may be appropriate considering the parties' financial circumstances, the child support enforcement unit must immediately petition the Family Court or the Supreme Court, if the

Supreme Court has retained jurisdiction over support issues in the case, for modification of the order of support.

- ii. If a review of the terms of the order of child support and/or the results of the financial investigation demonstrate a change in the parties' financial or factual circumstances such that modification of the support obligation may be appropriate, the child support enforcement unit must immediately petition or otherwise assist the recipient of services to petition the Family Court or the Supreme Court, if the Supreme Court has retained jurisdiction over support issues in the case, for modification of the order of support.
- iii. Upon receipt of information that a noncustodial parent will be incarcerated for more than 180 calendar days, the child support enforcement unit shall provide notice to both parties informing them of the right to seek a modification of the order of support.

### 3. Enforcement.

- i. Where an order of support payable to the custodial parent is not being complied with, the child support enforcement unit must ensure that any petition to the Family Court or the Supreme Court, if the Supreme Court has retained jurisdiction over support issues in the case, alleges a violation of the order of support, includes a request for the adjudication of the delinquency amount and the award of a money judgment, and provides clear notice to the noncustodial parent that his or her inability to pay child support as ordered is a defense to a finding of willful violation or contempt.
- ii. The child support enforcement unit must review the case file and provide the court with information contained therein regarding the noncustodial parent's ability to pay, or otherwise comply with the child support order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay a purge amount or comply with any conditions set in a hearing pursuant to sections 454 or 455 of the FCA.

#### (d) Child Support Services for a Noncustodial Parent.

Where a noncustodial parent has applied for child support services pursuant to section 347.17 of this Part, the child support enforcement unit shall provide all child support services under this Part and Part 346 of this Title, as appropriate.

**Subdivision (d) of § 347.9 of Title 18 of the NYCRR is amended to read as follows:**

(d) *Additional enforcement action.*

The child support enforcement unit, in addition to following the procedures set forth in subdivisions (a) and (b) of this section, must employ all appropriate statutory support enforcement remedies, within 30 calendar days of identifying a failure to comply with the support provisions of the order, or of locating the absent parent, whichever occurs later. Every petition to find the noncustodial parent in violation or motion to hold a noncustodial parent in contempt of an order to pay child support shall provide clear notice to the noncustodial parent that his or her inability to pay child support as ordered by the court is a defense to a finding of willful violation or contempt. If service of process is necessary prior to initiating an enforcement action, such service must be completed and enforcement action taken or the child support enforcement unit must document in the automated case record unsuccessful diligent efforts to serve process, as defined in section 347.7 of this Part, no later than 60 calendar days after identifying a failure to comply with the support provisions of the order or of locating the absent parent, whichever occurs later.

**Sections 347.10 and 347.26 of Title 18 of the NYCRR are REPEALED.**

**Section 422.3 of Title 18 of the NYCRR is amended to read as follows:**

**§ 422.3 Child support enforcement requirements.**

Upon receipt of a referral, the child support enforcement unit of the social services district will determine which actions are necessary to secure child support, including establishing paternity, if necessary. Where no support order exists, the child support enforcement unit of the social services district will petition the court for an order of support pursuant to the child support standards as set forth in [section 347.10 of this Title] section 240 of the Domestic Relations Law and section 413 of the Family Court Act. Where the basic child support obligation as determined [by section 347.10 of this Title] in accordance with the child support standards exceeds the costs of care as set forth in section 422.5(d)(3)(i)–(iii) of this Part, the child support enforcement unit of the social services district may advise the court that the basic child support obligation is unjust or inappropriate and that the amount of support ordered to be paid should not exceed the actual costs of foster care plus any costs attributable to the costs of medical assistance paid on behalf of the child.



## Regulatory Impact Statement

### 1. Statutory authority:

Social Services Law (SSL) § 17(a)-(b) and (j) provides, 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 [S]tate both by the [S]tate itself and by the local governmental units ....”, shall “make know 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 § 111-a requires OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the federal Department of Health and Human Services by Part D of Title IV of the federal Social Security Act.

SSL § 111-i requires each social services district to ascertain the ability of a noncustodial parent to support or contribute to the support of his or her children, in accordance with the statewide child support standards as set forth in Family Court Act (FCA) § 413.

Title 42 of the *United States Code* (42 U.S.C.) §§ 651-657, 660, 663-664, and 666-667 sets forth authority for the title IV-D program and requires states to, in part, establish and maintain a State plan for child and spousal support, and sets forth guidelines for the

establishment, modification and enforcement of support obligations as well as collection and distribution of child support funds.

Title 45 of the *Code of Federal Regulations* (C.F.R.) § 303.4 provides that for all cases referred to the IV-D agency or applying for child support services, the IV-D agency must: establish paternity pursuant to the standards of § 303.5; use appropriate state statutes, procedures and legal processes in establishing and modifying support obligations; periodically review and adjust child support orders; within 90 calendar days of locating the putative father or noncustodial parent, establish an order for support or complete service of process necessary to commence proceedings to establish a support order, and if necessary, paternity; examine reasons for any dismissal of a petition for a support order without prejudice; and seek a support order based on a voluntary acknowledgment.

45 C.F.R. § 303.6 provides that for all cases referred to the IV-D agency or cases applying for child support services in which the obligation to support and the amount of the obligation have been established, the state must maintain and use an effective system for: monitoring compliance with the support obligation; identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the obligation; and enforcing the obligation.

45 C.F.R. § 303.8 provides that states have required procedures for the review and adjustment of child support orders.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support services are provided to eligible persons to ensure that, to the greatest extent possible, parents provide financial support for their children.

3. Needs and benefits:

The proposed regulatory amendments to 18 NYCRR § 347.8 are being advanced to ensure the State's compliance with the federal rules, to reflect current terminology, and to correct statutory citations in accordance with federal and State law.

The proposed regulatory amendments to 18 NYCRR § 347.9 are being advanced to ensure the State's compliance with the federal rules regarding the use of civil contempt proceedings to enforce support obligations.

The repeal of 18 NYCRR § 347.10, which sets forth a child support standards chart, is proposed to conform the State regulations with SSL § 111-i.

The repeal of 18 NYCRR § 347.26 is proposed to conform the State regulations with State law by reflecting the replacement of the review and adjustment of child support orders process by the cost of living adjustment process set forth in FCA § 413-a and Chapter 398 of the Laws of 1997.

The proposed regulatory amendments to 18 NYCRR § 422.3 would amend the State regulation to reflect the repeal of 18 NYCRR § 347.10.

#### 4. Costs:

The proposed regulatory amendments would not require the social services districts to incur any initial capital costs or annual costs for maintaining compliance with the adopted rule.

#### 5. Local government mandates:

Social services districts would be required to comply with the proposed regulatory amendments by ensuring that all establishments, modifications, and enforcements of support obligations are done in full compliance with federal and State requirements. The proposed regulatory amendments are clarifying in nature and would be consistent with federal and State laws.

#### 6. Paperwork:

The proposed regulatory amendments would not create new paperwork or reporting requirements.

#### 7. Duplication:

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

#### 8. Alternatives:

There are no significant alternatives that would afford greater flexibility to social services districts than the proposed regulatory amendments. The proposed regulatory amendments are necessary to align State regulations concerning the establishment, modification, and enforcement of support obligations with federal and State statutory requirements, to update State regulations to reflect current terminology used by the child

support program, and to correct regulatory citations in accordance with federal and State laws.

9. Federal standards:

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

10. Compliance schedule:

It is anticipated that social services districts would already be in compliance with the proposed regulatory amendments upon the effective date of the proposed regulatory amendments.

## **Regulatory Flexibility Analysis For Small Businesses and Local Governments**

1. Effect of rule:

The proposed regulatory amendments would apply to each of the 58 social services districts in New York State. However, the proposed regulatory amendments would not impact small businesses.

2. Compliance requirements:

Social services districts would be required to comply with the proposed regulatory amendments by ensuring that the establishment, modification, and enforcement of support obligations are performed in full compliance with federal and State requirements. The proposed regulatory amendments would update State regulations to reflect current terminology used by the child support program, correct statutory citations in accordance with federal and State laws, and render the current State regulations consistent with existing federal and State laws and regulations.

3. Professional services:

To the extent social services districts already comply with the current requirements regarding the establishment, modification, and enforcement of support obligations, the proposed regulatory amendments would not require the social services districts to obtain additional professional services.

4. Compliance costs

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

5. Economic and technological feasibility:

Child Support Services within the Office of Temporary and Disability Assistance (OTDA) continues to assume all administrative cost and responsibility for the systematic programming for implementing the state automated child support management system, including the portions which support the establishment, modification, and enforcement functions of the social services districts. Consequently, economic and technological feasibility would not present concerns for social services districts relative to the implementation of the proposed regulatory amendments.

6. Minimizing adverse impact:

The proposed regulatory amendments would not have an adverse economic impact on social services districts or small businesses.

7. Small business and local government participation:

The requirement for social services districts to establish, modify, and enforce support obligations is already established in regulation. The proposed regulatory amendments are clarifying in nature, seeking to update the existing State regulations to reflect terminology currently used by the child support program. The proposed regulatory amendments would ensure that State regulations are consistent with federal requirements.

The statutes upon which the proposed regulatory amendments are predicated have been discussed with the social services districts. On June 12, 2017, OTDA discussed the federal requirements pertinent to the proposed regulatory amendments with the social services districts via conference call. The social services districts provided feedback regarding their current practices relative to these requirements. The proposed regulatory amendments would conform the State regulations with federal and State requirements without placing additional administrative burdens on social services districts.



## **Rural Area Flexibility Analysis**

### 1. Type and estimated numbers of rural areas:

The proposed regulations would apply to the 44 rural social services districts in New York State.

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

Rural social services districts would be required to comply with the proposed regulatory amendments by ensuring that the establishment, modification, and enforcement of support obligations are performed in full compliance with federal and State requirements. The proposed regulatory amendments would update State regulations to reflect the current terminology used by the child support program, correct statutory citations in accordance with federal and State laws, and render the current State regulations consistent with existing federal and State laws and regulations.

### 3. Costs:

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

### 4. Minimizing adverse impact:

The proposed regulatory amendments would not have an adverse economic impact on rural social services districts.

### 5. Rural area participation:

The requirement for social services districts in rural areas to establish, modify, and enforce support obligations is already established in regulation. The proposed regulatory

amendments are clarifying in nature, seeking to update the existing State regulations to reflect terminology currently used by the child support program across all social services districts, including those in rural areas. The proposed regulatory amendments would ensure that State regulations are consistent with federal requirements.

The statutes upon which the proposed regulatory amendments are predicated have been discussed with the rural social services districts. On June 12, 2017, the Office of Temporary and Disability Assistance (OTDA) discussed the federal requirements pertinent to the proposed regulatory amendments with all social services districts, including rural social services districts, via conference call. The rural social services districts provided feedback regarding their current practices in relation to these requirements. The proposed regulatory amendments would conform the State regulations with federal and State requirements without placing additional administrative burdens on rural social services districts.

## **Job Impact Statement**

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments to 18 NYCRR §§ 347.8, 347.9, and 422.3 and the proposed repealing of 18 NYCRR §§ 347.10 and 347.26 that they would have no substantive impacts on jobs and employment opportunities in either the public or private sectors of New York State. The proposed regulatory amendments are necessary to render the existing State regulations consistent with the federal rules, to reflect current terminology used by the child support program, and to correct statutory citations in accordance with federal and State laws. Thus, the proposed regulatory amendments would not have any adverse impact on public or private sector jobs and employment opportunities in New York State.