



# Office of Temporary and Disability Assistance

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## Administrative Directive

### Section 1

<b>Transmittal:</b>	17-ADM-11
<b>To:</b>	Social Services District Commissioners
<b>Issuing Division/Office:</b>	Child Support Services
<b>Date:</b>	December 28, 2017
<b>Subject:</b>	Adoption of New York State Regulatory Amendments Impacting the Child Support Program (18 NYCRR § 347.8, et al.)
<b>Suggested Distribution:</b>	Child Support Enforcement Coordinators Support Collection Unit Supervisors IV-D Attorneys DSS Attorneys
<b>Contact Person(s):</b>	Child Support Services – County Representative: Albany (518-473-0574) or New York City (212-961-8269) Office of Legal Affairs: 518-474-9502
<b>Attachments:</b>	<a href="#">Attachment 1 – Financial Investigation Desk Aid</a> <a href="#">Attachment 2 – Notice of Your Right to Seek a Modification of Your Child Support Order</a>
<b>Attachment Available Online:</b>	<input checked="" type="checkbox"/>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR §§ 347.8; 347.9(d); 347.10; 347.26; 422.3	SSL §111-j; 45 CFR §§ 303.4; 303.6; 303.8		

### Section 2

#### I. Summary

This Administrative Directive (ADM) advises districts of: (1) regulatory amendments to Title 18 New York Codes, Rules and Regulations (NYCRR) §§ 347.8, 347.9, and 422.3; and (2) the repeal of 18 NYCRR §§ 347.10 and 347.26. The State regulations were amended to reflect statutory requirements resulting from the adoption of the federal

*Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* (Final Rule), dated December 20, 2016. In addition, the State regulations were amended to reflect current terminology used by the Child Support Program and to conform regulatory citations with federal and State laws.

Further, this ADM introduces a guidance document titled *Financial Investigation Desk Aid* (**Attachment 1**). The *Financial Investigation Desk Aid* details some of the types of income, assets, and proof of ability to pay support which may be sought as a part of a financial investigation of the noncustodial parent (NCP). Finally, this ADM introduces the *Notice of Your Right to Seek a Modification of Your Child Support Order* (**Attachment 2**), which advises the parties of their right to seek a modification of their order of support based on the incarceration of the NCP for 180 calendar days or more.

## II. Purpose

This ADM informs districts of the recently approved changes to 18 NYCRR §§ 347.8, 347.9, and 422.3; and the repeal of 18 NYCRR §§ 347.10 and 347.26, which became effective December 20, 2017. The amendments to 18 NYCRR 347.8 clarify the procedures for general case processing and the establishment, modification, and enforcement of support obligations consistent with federal requirements. The amendments to 18 NYCRR § 347.9 reflect the federal requirements regarding the use of civil contempt proceedings to enforce support obligations. In addition, the regulatory amendments 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 regulatory amendments also 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 with the cost of living adjustment process set forth in Family Court Act (FCA) § 413-a and Chapter 398 of the Laws of 1997. Finally, the amendments to 18 NYCRR § 422.3 reflect the repeal of 18 NYCRR § 347.10.

## III. Background

Overall, the State regulations were amended to reflect federal statutory requirements resulting from the adoption of the Final Rule and to conform with State law. The Final Rule amended federal regulations to require state child support agencies to:

Conduct a financial investigation and document the factual basis for the support obligation: The Final Rule outlines steps which must be taken, as appropriate, to investigate the NCP's earnings, income, and other evidence of ability to pay. Where there is insufficient proof of income, imputation of income may be based on evidence of the ability to pay such as information about the NCP's assets, residence, employment and earnings history, job skills, education, literacy, age, health, and criminal record or other employment barriers. To that end, the State regulations concerning the establishment, modification, and enforcement of support obligations have been amended to:

- Expand the information about new or modified orders of support to be maintained in the automated case record to include information about the factual basis for the support obligation (18 NYCRR § 347.8[a][1][iii]);

- Provide for the creation of a record of the information or documents obtained as a result of the financial investigation conducted on the NCP (18 NYCRR § 347.8[a][2][v]);
- Require the local district child support enforcement unit and support collection unit (collectively CSEU) to petition or otherwise assist the recipient of services to modify the order of support if the results of the financial investigation and/or a review of the terms of the order demonstrate a change in the parties' financial or factual circumstances such that modification of the support obligation may be appropriate (18 NYCRR § 347.8[c][2][ii]); and
- Require the CSEU to provide the court with any information from the case record which may assist the court in making a factual determination regarding the NCP's ability to pay or otherwise comply with the order of support (18 NYCRR §§ 347.8[a][4] and 347.8[c][3][ii]).

Incarcerated NCPs: The Final Rule requires that a state child support agency (i.e., IV-D agency), within 15 business days of learning that the NCP will be incarcerated for more than 180 calendar days, notify both parties of their right to request a modification of the child support obligation. To that end, the State regulations concerning the establishment, modification, and enforcement of support obligations have been amended to provide that upon learning that the NCP will be incarcerated for more than 180 calendar days, the CSEU shall provide notice to both parties informing them of the right to seek a modification of the order of support (18 NYCRR § 347.8[c][2][iii]).

Enforcement of the support obligation: The Final Rule provides that IV-D agencies must establish criteria for filing civil contempt citations (e.g., violation petitions). The criteria must include requirements that the child support agency: (i) screen the case for information regarding the NCP's ability to pay or otherwise comply with the order; (ii) provide the court with such information regarding the NCP's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the NCP's ability to pay the purge amount or comply with the purge conditions; and (iii) provide clear notice to the NCP that his or her ability to pay constitutes the critical question in the civil contempt action. To that end, the State regulations concerning the establishment, modification, and enforcement of support obligations have been amended to require that:

- The CSEU review the case file and provide the court with any information from the case record which may assist the court in making a factual determination regarding the NCP's ability to pay, or otherwise comply with the order of support, or pay a purge amount or comply with any conditions set in a hearing pursuant to sections 454 or 455 of the FCA. (18 NYCRR §§ 347.8[a][4] and 347.8[c][3][ii]); and
- Every petition to find the NCP in violation, or motion to hold a NCP in contempt, of an order to pay child support provide such clear notice regarding the ability to pay constituting the critical question in contempt proceedings to the NCP (18 NYCRR §§ 347.8 [c][3][i] and 347.9[d]).

## IV. Program Implications

Adoption of the Final Rule necessitated conforming amendments to the associated State regulations (18 NYCRR § 347.8, et al.). As a result of the amendments to State regulation, the CSEU 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 prior to, or as part of, any proceeding to establish, modify, or enforce an order of child support. The case record should reflect the information or documents obtained as a result of that investigation. In addition, the CSEU must provide the court with any information from the case record which may assist the court in making a factual determination regarding the NCP's ability to pay or otherwise comply with the order of support. Further, information about new or modified orders of support maintained in the automated case record must include information about the factual basis for the support obligation.

Upon the receipt of information that the NCP will be incarcerated for more than 180 calendar days, the CSEU must notify both parties to the order of their right to seek a modification of the order of support. This must be done for each account receiving child support services from the CSEU.

Finally, the *Warning* on the violation petitions in the Automated State Support Enforcement and Tracking System (ASSETS) have been revised to include language to provide clear notice to the NCP that his or her ability to pay constitutes the critical question in a civil contempt action in supreme court or a violation proceeding in family court.

## V. Required Action

CSEUs are responsible, in part, for the establishment, modification, and enforcement of support obligations. The following actions are required for purposes of the regulatory amendments to 18 NYCRR § 347.8, et al.

### A. Financial Investigation and Case Records

1. New or modified orders of support: Pursuant to the Final Rule and 18 NYCRR § 347.8(a)(1)(iii), the CSEU is required to maintain in the automated case record the factual basis for the support obligation. For example, information about the factual basis for the support obligation may be found in the order itself or the Findings of Fact. In addition, the CSEU may have information about the income and assets of the NCP from its financial investigation, which was used by the court in determining the amount of the obligation (refer to Section V.A.2.).

Information about the factual basis for the support obligation, must be documented in the remarks of the case records and/or on a document electronically saved on ASSETS (e.g., Findings of Fact). In addition, the CSEU must update the *Child Support Standards Act (CSSA) Information* record in ASSETS to include information about the new or modified order (for more information, refer to the *ASSETS User Guide*).

2. Financial investigation: Pursuant to the Final Rule and 18 NYCRR § 347.8(a)(2), the CSEU must take reasonable steps to determine the NCP's income, financial circumstances, and ability to pay support by conducting a financial investigation. In addition, the CSEU must create a record of the information or documents obtained as a result of the financial investigation.
  - a. Elements of the financial investigation: The CSEU must take reasonable steps to determine the NCP's income, financial circumstances, and ability to pay support, which may include, as appropriate, the following:
    - i. Review available local, State, and federal information sources, including electronic data from other governmental agencies, State and national directories of new hires, and State and other tax information (For more information, refer to the *Location* page of the Electronic Resource System [ERS]);
    - ii. Obtain information by:
      - (a) Case conferencing, where all the parties involved meet with the CSEU;
      - (b) Interviews with either or both parties;
      - (c) Mandatory financial disclosure (e.g., the *Financial Disclosure Affidavit* required pursuant to FCA 424-a); or
      - (d) Questionnaires.
    - iii. Obtain information from the NCP or third parties using subpoenas or requests pursuant to Social Services Law §§ 111-p, 111-r, and 111-s or Civil Practice Law and Rules Article 31 (e.g., Wage and Health Benefits report [refer to the *Support Establishment* page on ERS]). Note: For more information on administrative subpoenas, refer to 99 ADM- 01, dated January 22, 1999, titled *Administrative Issuance of Subpoenas in Child Support Cases*.
    - iv. If there is insufficient direct evidence of the NCP's income or financial circumstances to use as the measure of the NCP's ability to pay, the court may be asked to impute income. Any recommendation by the CSEU regarding imputation of a support obligation shall be based on available information about the specific circumstances of the NCP, to the extent such information is available and relevant including his or her:

- (a) Assets;
- (b) Residence;
- (c) Employment and earnings history;
- (d) Job skills;
- (e) Education;
- (f) Literacy;
- (g) Age;
- (h) Health;
- (i) Criminal record or other employment barriers;
- (j) Record of seeking work;
- (k) Job market conditions;
- (l) The availability of employers willing to hire the NCP;
- (m) Prevailing earnings level; and
- (n) Other relevant background factors in the case.

b. Record of the financial investigation and ability to pay support: To create a record of the information or documents obtained from the financial investigation, the CSEU must:

- i. Summarize in the remarks of the case records the information obtained regarding the NCP's income, financial circumstances, and ability to pay support. This may include information obtained by the district's legal counsel through certain types of discovery or investigation. As such, CSEUs may choose to develop a local protocol for the communication of such information from its counsel to the CSEU.

Note: Child Support Services highly recommends that the CSEU use a checklist of sources of income, assets, and specific circumstances of the NCP to document and record information obtained as a part of the financial investigation. The checklist should be retained in the case records (e.g., the ASSETS Document Log).

An example of the type of income, assets, and specific circumstances of the NCP to be considered as a part of the

financial investigation are detailed in the sample guidance document titled *Financial Disclosure Desk Aid*, which is available on the *Location* page of ERS.

- ii. Complete the ASSETS Child Support Standards Act Calculator. Available in the Document Generation module, the *Local Correspondence* template, titled *CSSA\_Calculation*, includes a Microsoft Excel worksheet object that can be used to calculate the support obligation pursuant to the child support standards (for more information refer to FCA § 413 and Domestic Relations Law § 240). Once the CSEU has entered the appropriate information (e.g., income, allowable deductions, child support percentage, etc.) and calculated the approximate basic obligation amounts, the CSEU must scroll to the top of the page and save the file to the ASSETS Document Log. For more information on the ASSETS Child Support Standards Act Calculator, refer to the *ASSETS User Guide*.
  - iii. Update the *Respondent Financial* record in ASSETS as appropriate. Note: The ASSETS *Case Update* security role is necessary to update the *Respondent Financial* record.
3. Financial review indicates that modification of the order of support is appropriate:

If the results of the financial investigation and/or a review of the terms of the order demonstrate a change in the parties' financial or factual circumstances such that modification of the support obligation may be appropriate, the CSEU must immediately petition, or otherwise assist the recipient of services to petition, for modification of the order of support.

  - a. In Department of Social Services (DSS) cases, the Commissioner of Social Services is the Petitioner/Assignee, and the modification petition is signed by the Commissioner or the Designee for the Commissioner.
  - b. In Child Support Services (CSS) cases (i.e., where the recipient of services has applied pursuant to SSL 111-g), the CSEU should notify the recipient of services that modification of the order of support may be appropriate. This is because the recipient of services is the Petitioner in CSS cases, and the modification petition must be signed by the recipient of services.
4. Information to be provided to the court: Pursuant to the Final Rule and 18 NYCRR §§ 347.8(a)(4) and 347.8(c)(3)(ii), the CSEU must provide the court with any information from the case record which may assist the court

in making a factual determination regarding the NCP's ability to pay or otherwise comply with the order of support.

If the case record contains information which may assist the court, the CSEU must consult with its legal counsel regarding how to enter the information into evidence.

## **B. Incarcerated NCPs**

The Final Rule and 18 NYCRR § 347.8(c)(2)(iii) provide that upon learning that the NCP will be incarcerated for more than 180 calendar days, CSEU must provide notice to both parties informing them of the right to seek a modification of the order of support. This must be done for each account receiving child support services from the CSEU. Therefore, the CSEU should do a statewide search to determine if there are additional accounts associated with the NCP. If there are accounts for the NCP in another district, the CSEU must notify those districts of the NCP's incarceration for more than 180 calendar days. It is recommended that districts so advise the inter-county contacts of the other districts (refer to the *District Contacts* page on ERS).

Note: The timeframe "more than 180 calendar days" is applicable based on the date the CSEU learns the NCP is incarcerated. For example, if the CSEU learns of the NCP's incarceration on day 8 of a 200-day sentence, then the notice requirement would apply since the NCP still has 192 days remaining in his or her sentence. However, if the CSEU learns of the NCP's incarceration on day 178 of a 180-day sentence, then the notice requirement would not apply because the order of support could not be modified before the NCP's release.

To fulfill this requirement, the CSEU must complete the *Notice of Your Right to Seek a Modification of Your Child Support Order*, which is available on the *Forms* page of ERS. The notice advises both parents of their right to seek a modification of the child support order. It also indicates that forms and directions for requesting a modification are available on the New York State Unified Court System website, [nycourts.gov](http://nycourts.gov), and in law libraries of correctional facilities.

To complete the notice, the CSEU must enter the names of the parties, the New York Case Identifier, the name of the local district, and the current date. The CSEU must mail the notice to both parties **within fifteen (15) business days** of when the CSEU learns that a NCP will be incarcerated for more than 180 calendar days.

## **C. Enforcement of the Support Obligation**

1. Case review and information to be provided to the court: Pursuant to the Final Rule and 18 NYCRR §§ 347.8[a][4] and 347.8[c][3][ii], the CSEU must review the case file and provide the court with any information from the case record which may assist the court in making a factual determination regarding the NCP's: 1) ability to pay the support obligation or otherwise comply with the order of support; or 2) ability to pay a purge



amount or comply with any conditions set in a hearing pursuant to sections 454 or 455 of the FCA.

2. Notice regarding the critical question: Pursuant to the Final Rule and 18 NYCRR § 347.8(c)(3)(i) and 347.9(d), the NCP must be provided with clear notice that his or her ability to pay constitutes the critical question in the civil contempt action or violation proceeding. To that end, the CSEU must utilize the petitions available through the Document Generation module of ASSETS. The *Warning* on these petitions has been enhanced to include language providing clear notice to the NCP that his or her ability to pay constitutes the critical question.

## **VI. Systems Implications**

There are no systems implications.

## **VII. Effective Date**

This ADM is effective immediately.

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### **Issued By**

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**Title:** Executive Deputy Commissioner