

***Questions and Answers Regarding  
the Implementation of Administrative Directive 17-ADM-11***

**New York State  
Office of Temporary and Disability Assistance  
Division of Child Support Services**

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**Questions and Answers  
Regarding the Implementation of Administrative Directive 17-ADM-11**

**General Questions**

**1. Question: What is the purpose of these regulatory amendments?**

**Response:** The State regulations were amended to reflect 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.

**2. Question: If the district child support enforcement unit and support collection unit (collectively CSEU) files a petition on behalf of the recipient of services without his or her knowledge or direction, what protects the recipient from any domestic or family violence issues that may be unknown to the CSEU?**

**Response:** As this question implies, the CSEU is not always privy to the development of domestic or family violence situations involving the recipient of services. However, in both Temporary Assistance (TA) and Medicaid (MA) cases, local district TA and MA staff are required to promptly report to the CSEU all cases in which good cause has been claimed regardless of the method by which such claim is made (refer to Title 18 New York Codes, Rules, and Regulations [NYCRR] §§ 360-3.2[f][3] and 369.2[b][6]). Thus, through the LDSS-2859, *Information Transmittal*, or OHIP-0030, *Medicaid Medical Support Transmittal*, the CSEU may become informed of domestic or family violence situations resulting in a good cause claim. A good cause claim may be made at any time in the life of the TA or MA case.

Prior to filing a petition, the CSEU may wish to contact the recipient of services to confirm that the recipient continues to have no safety concerns regarding the noncustodial parent (NCP). It is important to note that the recipient of services may choose to request address confidentiality from the Family Court at any time through the completion and filing of Family Court *General Form 21, Address Confidentiality Affidavit*, which is available at [www.nycourts.gov](http://www.nycourts.gov). The Family Court will issue an *Address Confidentiality Order* if the request for address confidentiality is accepted, and the order will contain information regarding the person designated as the agent for service of process of all papers in the case.

Finally, non-TA recipients of services may request closure of his or her case at any time when there is no assignment to the State of medical support or support arrears/past due support which accrued under an order of support.

**Incarcerated NCPs**

**3. Question: Is the *Notice of Your Right to Seek a Modification of Your Child Support Order* sent from the New York State Child Support Processing Center (CSPC) as it has the CSPC address at the top of the notice? Or, is the notice sent by the CSEU?**

**Response:** Pursuant to 17-ADM-11, issued December 28, 2017, titled *Adoption of New York State Regulatory Amendments Impacting the Child Support Program (18 NYCRR § 347.8, et al.)*, the CSEU must complete, send, and document the mailing of the *Notice of Your Right to Seek a Modification of Your Child Support Order*. The notice is available on

the Automated State Support Enforcement and Tracking System (ASSETS) as a template in the State Folder of the Local Correspondence tab under the Document Generation module, and it may be saved to the Document Log. The notice is also available on the *Forms* page of the Electronic Resource System (ERS). If the notice is printed from ERS, completed, and mailed, the CSEU must document the mailing of the notice in the remarks of the case record. It is important to note that use of the CSPC return address, rather than the district address on a pre-printed envelope, permits utilization of United States Postal Service electronic address updates/forwarding. When this notice and envelope is returned to the CSPC, it will be imaged and then supplied to the CSEU through the Electronic Communication System (ECS) Local Correspondence for appropriate action.

4. **Question: If the ordered current support obligation is already \$25 monthly, should the CSEU send the *Notice of Your Right to Seek a Modification of Your Child Support Order*? Is the intent to lower the child support obligation or to eliminate it while the NCP is incarcerated?**

**Response:** Yes. The CSEU must send the *Notice of Your Right to Seek a Modification of Your Child Support Order* to the parties regardless of the amount of the ordered current support obligation. The intent is to advise both parties of their right to seek a modification of the child support order based upon the incarceration of the NCP for more than 180 days.

5. **Question: Does the CSEU need to send the *Notice of Your Right to Seek a Modification of Your Child Support Order* to custodial parents (CPs) and NCPs on its existing caseload if the CSEU is already aware that the NCP is incarcerated for more than 180 calendar days?**

**Response:** Yes. When the CSEU is already aware that an NCP on an existing case will be incarcerated for more than 180 calendar days and a review of the terms of the order of support indicate that the current support obligation is greater than \$0, the CSEU must send the parties the *Notice of Your Right to Seek a Modification of Your Child Support Order*.

6. **Question: If the CSEU needs to send the *Notice of Your Right to Seek a Modification of Your Child Support Order* as described in Question 3, may the CSEU request a Data Analysis Unit (DAU) report for a list of NCPs with a correctional facility mailing address?**

**Response:** Yes. The CSEU may request a DAU report identifying NCPs with a correctional facility address on its existing caseload but the report will not provide the length of the remaining incarceration period. Note that the CSEU is not precluded from sending the *Notice of Your Right to Seek a Modification of Your Child Support Order* to each parent when an incarcerated NCP has 180 or fewer days remaining in incarceration.

7. **Question: Does the CSEU have standing to file a downward modification for an incarcerated NCP in a Department of Social Services (DSS) case without the NCP applying for child support services?**

**Response:** No. However, the CSEU would have standing to bring a modification petition in its own right seeking a guidelines order. In the alternative, the NCP would need to apply for child support services in order to receive assistance with such filing.

The regulation minimally requires the CSEU to notify both parties of their right to seek a modification of the order of support upon receipt of information that the NCP will be incarcerated for more than 180 calendar days (18 NYCRR § 347.8[c][3][iii]).

**8. Question: How does the CSEU handle a modification for an incarcerated NCP in a child support services (CSS) case?**

**Response:** The CSEU may file a petition on behalf of the NCP when the NCP applies for child support services. NCPs can apply for services in the same way CPs do – by filing an application for services. This includes NCPs who request services when a case already exists for a CP (refer to the *Dear Colleague* letter dated September 22, 2010, concerning services available to NCPs). The CSEU and its legal counsel are not expected to support modifications that are not warranted by the facts. The modification petition must be signed by the recipient of services as he or she is the Petitioner in CSS cases.

### Financial Investigations

**9. Question: If the CSEU does not case conference with the NCP prior to court, is it appropriate to send the NCP the *Financial Disclosure Affidavit* that is available in the ASSETS Document Generation module to complete and return? Should we be contacting every case on the calendar?**

**Response:** The newly adopted regulation does *not* mandate specific forms, or specific steps, to be included as a part of the financial investigation. Rather, the regulation requires that the CSEU take reasonable steps to determine the NCP's income, financial circumstances, and ability to pay support by conducting a financial investigation. The CSEU *should always* review the case record, including electronic databases (such as Welfare Management System, State and national directories of new hires), information gained from the CP or application, or results of prior investigations. The CSEU *may*, if appropriate, conduct case conferencing with the parties, legal discovery methods (subpoenas, demands for discovery), questionnaires, online search services, etc. Districts should determine the steps to be included in the financial investigation based on the facts of the case and circumstances of the parties. For more information, refer to 18 NYCRR § 347.8(a)(2) and 17-ADM-11, Section V.A.2.

There is nothing that would preclude the CSEU from sending the Financial Disclosure Affidavit to the NCP; however, the court should provide a copy of the Financial Disclosure Affidavit to every noncustodial parent and require that the Affidavit be submitted (Family Court Act [FCA] § 424-a).

**10. Question: Does the taking of the following actions by the CSEU fulfill the requirement to take reasonable steps to determine the NCP's income, financial circumstances, and ability to pay support?**

- **Send the ASSETS *Financial Disclosure Affidavit* to the NCP at the same time the petition is filed in hopes it will be completed and returned to the CSEU before the court date; and**
- **Request a copy of all Wage and Health Benefit Reports (WHBRs) sent by the CSEU.**

**Response:** See Response 9, above. There is no single list of actions that will be appropriate in every case. Districts should determine the steps to be included in the financial investigation based on the facts of the case and circumstances of the parties. For more information, refer to 18 NYCRR § 347.8(a)(2) and 17-ADM-11, Section V.A.2.

- 11. Question: The NCP must complete a financial affidavit for the court, and the CSEU typically provides the court with information about the employment of the NCP, any health insurance benefits that may be available for the child, and the receipt of assistance benefits by the party and the child. What other information should we be providing to the court pursuant to the Final Rule?**

**Response:** If the financial investigation, as described in Response 9 and 10, does not provide sufficient direct evidence of the NCP's income or financial circumstances to use as the measure of the NCP's ability to pay, the CSEU must consider the specific circumstances of the NCP (refer to 17-ADM-11, Section V.A.2.a.iv. for examples of these circumstances).

- 12. Question: Does the CSEU wait until all the financial information is obtained before filing any petition (establishment, modification, or enforcement)? For example, consider a foster care case where the CSEU is unable to contact either NCP, the mother or the father, and there is no information available through ASSETS, the Welfare Management System, or automated searches (e.g., the Federal Parent Locator Service [FPLS]).**

**Response:** No. The CSEU must take *reasonable* steps to determine the NCP's income, financial circumstances, and ability to pay support *before* commencing a proceeding to establish, modify, or enforce a support obligation. Determining what level of financial investigation is appropriate and reasonable depends on the facts of the case and the parties' circumstances. In some cases, the CSEU will not have sufficient information to determine what additional steps are reasonable until after the first court appearance. The circumstances or facts (or lack of facts) of the case may merit further action.

In the foster care example noted, presumably the CSEU would appear by legal counsel or court liaison at each court appearance. Counsel or the CSEU would obtain the mandatory financial disclosure (FCA § 424-a) and other information at the initial appearance to guide decisions about further discovery or investigation into the parents' ability to pay support.

- 13. Question: What recourse does the CSEU have when an NCP does not complete the discovery demands?**

**Response:** If formal interrogatories or demands to produce are served on the NCP and the NCP does not provide a response, the district's legal counsel should make a motion to compel a response (Civil Practice Law and Rules [CPLR] § 3124). Alternatively, counsel should move to prevent the NCP from testifying and providing any evidence at trial (CPLR § 3126).

- 14. Question: Does the financial investigation information need to be provided to court only when we are requesting an order based on NCP's ability to earn?**

**Response:** No. Pursuant to 18 NYCRR § 347.8(a)(4), in any proceeding to establish, modify, or enforce an order of child support, the CSEU shall review the record for information obtained from the financial investigation conducted on the NCP which may assist the court in making a factual determination regarding the NCP's ability to pay child support in accordance with the child support standards and provide such information to the court. In enforcement proceedings, the CSEU must also provide the court with information from the case record regarding the NCP's ability to otherwise comply with the child support order, which may assist the court in making a factual determination regarding the NCP's

ability to pay a purge amount or comply with any conditions set in a hearing pursuant to FCA §§ 454 or 455.

If the case record contains information that may assist the court, the CSEU must consult with its legal counsel regarding how to provide the information in admissible form.

**15. Question: At what point in the process should evidence be submitted to the court?**

**Response:** Generally, evidence is only submitted to the court if there is a hearing. Therefore, evidence should be submitted before any hearing or fact-finding by the court.

**16. Question: How does the CSEU submit evidence when it is not a party to the action (i.e., non- DSS cases)?**

**Response:** If the CSEU is providing child support services, the CSEU is always a party to the action. Social Services Law (SSL) § 111-c(4) provides that “a social services district may appear in any action to establish paternity, or to establish, modify, or enforce an order of support when an individual is receiving services.” The federal and State regulation require the CSEU to provide the court with information obtained from the NCP’s financial investigation, where appropriate, relevant, and available.

There are many ways that documents from the financial investigation can be put into evidence. For example, the CSEU could work with its counsel to provide the information in an admissible form (i.e., provide the court with certified documents that can be admitted without foundational testimony [certified “self-authenticating” documents]). Alternatively, the CSEU could work with the recipient of services to help him or her get the information into evidence. Finally, if the recipient of services has an attorney, the CSEU could provide the information to that attorney to put it into evidence.

**17. Question: Please confirm that the legal counsel of the district should be present at certain court appearances where the CSEU does a financial investigation, even if none of the situations requiring counsel to be present apply.**

**Response:** The fact that the CSEU has done a financial investigation standing alone does not require the presence of legal counsel at a court appearance. If the district’s counsel is present, then counsel can put the results of the financial investigation into evidence. If the district’s counsel is not present, then the CSEU can put the results of the financial investigation into evidence by other means. Refer to Response 16 for information about other ways that documents from the financial investigation can be put into evidence.

**18. Question: If we adopt the *Financial Investigation Desk Aid* attached to 17-ADM-11, is information included in the completed desk aid considered federal tax information (FTI) if the source of that information was FTI obtained from the child support automated system?**

**Response:** The Financial Investigation Desk Aid does not ask for FTI. FTI is any return or return information *received from the Internal Revenue Service* (IRS) or secondary source, such as the Social Security Administration, the federal Office of Child Support Enforcement, or the Bureau of Fiscal Service. If the NCP provides a copy of his or her tax return, it is not FTI. As part of the federal tax refund offset process, the CSEU receives the following information that the IRS classifies as FTI: 1) the amount of the offset; 2) information that the return was filed jointly; and 3) the name of the joint filer. This information should *not* be provided to the court. If a payment history or other document

includes a payment by federal tax refund offset, the sources of all payments should be redacted.

- 19. Question: Resources available to the CSEU for financial investigations pursuant to 17-ADM-11 include the New Hire information available through FPLS. Can the CSEU disclose that information to the court, or is that information the CSEU must “independently verify” such as through a WHBR?**

**Response:** Yes, the CSEU can disclose that information to the court in a child support proceeding. Federal law limits access to information in the FPLS, including the National Directory of New Hires, to “authorized persons” (Title 42 United States Code § 653[b]) for authorized purposes. “Authorized persons” include, but are not limited to, courts which have the authority to issue orders for the support and maintenance of a child, or to issue an order for child custody or visitation rights, or any agent of such court. Information may be provided for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations.

- 20. Question: With our FTI training, it is drilled into us that we cannot release “wage data.” What standard forms contain “wage data” that cannot be released due to FTI? We have been advised previously that a WHBR is not FTI.**

**Response:** The Office of Temporary and Disability Assistance, Division of Legal Affairs, is not aware of any training sanctioned by the Office of Temporary and Disability Assistance that discusses “wage data” in the context of FTI. New York State does not receive wage data associated with a return or return information directly from the IRS or an authorized secondary source. (See Response 18 for examples of secondary sources.) Since any wage data in the case record is not FTI, it may be provided to the court in the course of child support proceedings.

- 21. Question: Pursuant to 17-ADM-11, the CSEU is to furnish the court with financial information from the case record that could assist the court in determining the NCP’s ability to pay. In addition, the CSEU must provide the parties with copies of any information that is being shared with the court. Can the CSEU provide the court with WHBRs given that both parties would also have to receive the information? Can the CSEU certify printed copies of WHBRs that have been stored electronically?**

**Response:** In general, any communication with the court regarding a specific case must be shared with all parties or it is an improper ex-parte communication. If the CSEU provides evidence in the form of a WHBR to the court, both of the parties should be permitted the opportunity to review the document in accordance with court/evidentiary procedures.

The CSEU can certify printed copies of WHBRs that have been stored electronically or any other document. However, the court may not accept the WHBR as it is not an actual business record of the employer but is made at the request of the CSEU. If the court will not accept the WHBR into evidence, then the CSEU should take steps to provide the information in another form (i.e., subpoena certified employer records) after consultation with its legal counsel.

**22. Question: Can the CSEU certify the following types of records for submission to the court:**

- **Public assistance records of the NCP; or**
- **Information obtained from federal data bases (e.g., FPLS, Directory of New Hires)**

**Response:** As noted in Response 21, public records can be certified. Public assistance records of the NCP may be certified pursuant to CPLR § 2307, the rule for certification of a public record.

Regarding information from federal databases found on the automated child support system, counsel for the CSEU should consider whether the substantial familiarity rule can be used to provide a foundation for admission of information received from other governmental entities. Recent case law has allowed admission into evidence of business records where a private or governmental entity submits records that contain information provided by another business or governmental entity, without violating the hearsay rule. *People v. Cratsley*, 86 N.Y.2d 81 (1995); *People v. DiSalvo*, 284 A.D.2d 547 (2<sup>nd</sup> Dept., 2001); *Portfolio Recovery Assoc. v. Lall*, 127 A.D.3d 576 (1<sup>st</sup> Dept., 2015); *Deutsche Bank v. Monica*, 131 A.D.3d 737 (3<sup>rd</sup> Dept., 2015).

**23. Question: Can an administrative subpoena issued to, and returned from an employer, be used as direct evidence? This information could prove especially important in a violation proceeding (e.g., where the CSEU seeks to prove there was a former ability to pay and the subpoena states that the individual quit).**

**Response:** Yes, however the recommended course of action would be to issue the subpoena for certified business records *returnable to the court*, on notice to the parties. A form affidavit setting out the required foundation for admission as business records should be sent with the subpoena, executed by the employer, and attached to the documents sent to court. In some cases, the business records may need to be supplemented with testimony from the employer.

**24. Question: Where should information from the financial investigation be stored?**

**Response:** To create a record of the information or documents obtained from the financial investigation, the CSEU must summarize the information obtained regarding the NCP's income, financial circumstances, and ability to pay support in the remarks of the case record and/or on a document electronically saved on ASSETS. To that end, Child Support Services *highly recommends* that the CSEUs 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 then be retained in the case records and/or the ASSETS Document Log.

**25. Question: Does the CSEU need to update the ASSETS Respondent Financial record and complete the ASSETS Child Support Standards Act calculator? These actions seem unnecessary when the CSEU is not the one determining the court order; all the cases go to court and the Support Magistrate determines the terms of the order. In many districts, the CSEU receives a Findings of Fact attached to every order (and this information is typically found in ASSETS as well).**

**Response:** Pursuant to 17-ADM-11, the CSEU must update the ASSETS Respondent Financial record as appropriate. If the financial investigation yields information that can be

entered on the *Respondent Financial* record, then the financial record should be updated. Note: The ASSETS *Case Update* security role is necessary to update the *Respondent Financial* record.

17-ADM-11 requires completion of the ASSETS Child Support Standards Act Calculator with respect to the creation of a record of the financial investigation and the NCP's ability to pay support. Once the CSEU has entered the appropriate information (e.g., income, allowable deductions, child support percentage, etc.) into the ASSETS Child Support Standards Act Calculator, the approximate support obligation can be computed. Thus, the CSEU has an estimated current child support obligation to compare against the court-ordered current child support obligation.

Receipt of the *Findings of Fact* with every order fulfills federal and State requirements to maintain the factual basis for the support obligation in the automated case record.

### **Enforcement of Orders of Support**

**26. Question: What is the definition of “ability to pay” within the context of an enforcement proceeding? For example, consider:**

- **An NCP who had the proven earning capacity to pay a one-hundred dollar (\$100) weekly order and then lost his or her job for cause; or**
- **An NCP who has all real property, bank accounts, and other assets listed only in the name of his or her current spouse.**

**A violation is filed for nonpayment of support. What would the likely result be? Would the court still consider the NCP to have the ability to pay the existing support obligation?**

**Response:** The regulatory amendments did not change the case law regarding voluntary or involuntary reductions in income or an individual who loses his or her job for cause. All child support obligors have an obligation to seek employment commensurate with his or her education, training, and skills. The fact that the individual does not have any income or resources at the time of the enforcement hearing does not prevent the court from entering, modifying, or enforcing a support order, as the NCP may have the ability to obtain income or resources, or otherwise pay support through diligent efforts. Therefore, the individual could be found in willful violation of the order of support.

Regarding the second example where the NCP's assets are listed only in the name of another person, FCA § 413(1)(b)(5) provides for the imputation of income where a relative or other person is routinely paying for the expenses, or providing gifts for, an NCP. The court has wide discretion to impute income so long as the CSEU can put facts in the record to support that determination. For more information, refer to *Imputing Income – A Case Law Overview*, which provides information about court decisions and examples of different types of imputation situations. This document is accessible on the following pages of ERS: [Final Rule](#), [Support Establishment](#), and [Videos](#), along with other information ([slides](#), [text](#), [handouts](#)). In addition, transfers of property to avoid paying a debt may be voided as fraudulent (Debtor and Creditor Law § 270, et. seq.).

**27. Question: How does the “ability to pay” rule impact the presentation of evidence at a violation hearing?**

**Response:** The Child Support Standards Act has always required the court to base the support obligation on the ability of the NCP to pay or otherwise comply with the order of

support where such information is available. The NCP is still presumed to have the means to support his or her child (FCA § 437). Pursuant to the regulatory amendments, the SCU now has a duty to conduct a financial investigation and to provide financial information to the court of the NCP's ability to pay when it is available and relevant.

The financial investigation will assist the CSEU in determining whether to bring a violation in the first place, particularly in low income cases. If the NCP is not paying and neither the investigation nor the case record provides evidence of the NCP's ability to pay or otherwise comply with the order of support, the CSEU might file the violation petition as part of a discovery process to find out whether the NCP has income, an ability to pay, or to determine the financial circumstances of the NCP, to require that the NCP conduct a diligent job search, to engage in discovery to find assets or resources to pay support, to order the NCP to engage in work activities, etc. However, if the case record indicates that the NCP is, for example, completely disabled and has no ability to earn or assets with which to satisfy the support order, the CSEU generally should forego the filing of a violation petition. It is important to note that any determination on whether to file a violation petition should also consider the strength and reliability of the evidence.

The regulatory amendments do not change the fact that an NCP who fails to pay the court-ordered obligation is in violation of the order of support. The court has certain powers in addressing a non-willful violation which may justify filing a violation petition (FCA § 454 [1], [2]). If there is evidence in the case record of an inability to pay or otherwise comply with the court order, however, then the court is unlikely to make a finding of willful violation and the remedies for willfulness will not be available (FCA § 454 [3]).

- 28. Question: Should the CSEU discontinue the filing of violation petitions against NCPs whose only income is Supplemental Security Income (SSI) or public assistance given the new regulatory requirement that the CSEU review the case record for information regarding the NCP's ability to pay or otherwise comply with the order? If yes, does this include minimum orders with a current support obligation of \$25 monthly?**

**Response:** Pursuant to the 18 NYCRR §§ 347.8(c)(3)(i) and 347.9(d), the NCP's inability to pay child support as ordered is a defense to a finding of a willful violation or contempt. Therefore, the CSEU must take reasonable steps to determine the NCP's income, financial circumstances, and ability to pay support and review the available information about the ability of the NCP to pay support prior to the filing of a violation petition.

If the CSEU determines there is no ability to pay, the filing must be discontinued. In contrast, the petition should be filed if the CSEU determines that: 1) the NCP can pay but has failed to do so (even if there is a minimum order with a current support obligation of \$25 monthly or less); 2) the NCP would benefit from an employment or work experience plan in improving his or her ability to pay; or 3) if there is insufficient information to make a determination of ability to pay.

Eligibility for SSI or Social Security Disability (SSD), standing alone, is not determinative of inability to pay support. It is important to note that the NCP need not have a medically verified total and permanent disability to be eligible for SSI and therefore could have income or assets with which to pay support.

29. **Question: Can the CSEU file a violation petition on behalf of the CP if no money is owed to the district?**

**Response:** Yes. Pursuant to SSL § 111-c(4), the district has standing to appear in any child support proceeding involving an individual in receipt of child support services (refer to Response 7). There are a number of districts that follow this practice with great success. Note: Because the petition was not filed by the CP, the CP does not need to appear at the initial court appearance. However, some courts will require the CP to appear regardless of the law.

### Modifications

30. **Question: If the CP requests a modification, does the CSEU conduct the financial investigation and advise the CP that the CSEU cannot file the petition until it receives sufficient information to warrant a modification? Would the same hold true for initial support petitions? The CP would be waiting for a filing date, and this does not seem like an efficient way of doing things.**

**Response:** For the first question regarding *modifications*, the answer depends on the grounds for the modification. The CSEU should not file a modification petition under any circumstances without a review of the terms of the order of support and conducting a financial investigation (18 NYCRR § 347.8[c][2][ii]).

For a modification on the grounds of a change in circumstances or a 15% change in the party's gross income, the CSEU and its legal counsel should not submit petitions without information of a change in the parties' financial or factual circumstances supporting the petition.

A petition to modify due to the passage of three (3) years may be filed without proof of a change in the party's financial circumstances. However, a modification will not be granted unless application of the CSSA guidelines to the parties' income results in a different obligation.

Regarding petitions to *establish* support, there is no precondition or threshold to filing a petition to establish. As support must ultimately be based on the NCP's earnings, income, and ability to pay, the regulation requires the CSEU to take reasonable steps in conducting a financial investigation prior to filing. For more information, see Response 9.

31. **Question: In a DSS case, if the CSEU completes a financial review and determines that the order of support should be reduced based on the NCP's current income, may the CSEU file a downward modification petition?**

**Response:** Yes, if the CSEU determines that modification of the support obligation is appropriate. Pursuant to 18 NYCRR § 347.8(c)(2)(ii), the CSEU must immediately petition or otherwise assist the recipient of child support services to petition for modification of the order of support if the review of the terms of the order of 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. For DSS cases, the CSEU may also choose to file a modification petition based on its determination that a modification is appropriate and in the best interests of maintaining consistent collections of support for the child (e.g., where a support obligation is excessive and does not reflect the NCP's current ability to pay).

- 32. Question: In a CSS case, if the CSEU completes a financial review on a child support services CSS case and determines that the order of support should be reduced, may the CSEU advise the parties that they should file a modification petition to reduce the current support obligation?**

**Response:** In a CSS case, the CSEU should notify the recipient of services (e.g., the person who applied for child support services) that modification of the order may be appropriate. In doing so, the recipient of services may either reveal additional information pertinent to the financial investigation or confirm the CSEU's determination. The recipient of services is the Petitioner in CSS cases, and the modification petition must be signed by the recipient of services. It should also be noted that where the NCP applies for child support services, the CSEU may file a downward modification (signed by the NCP) with the court.