

#### SUPERSEDES

[New section]

#### REFERENCES

MCA §§ 37-2-306, 40-5-255, 40-5-202(3), 53-2-201

#### POLICY

##### Scope of Action

This section contains policy and procedure for obtaining a lump sum settlement for arrears debt.

##### Applicability

In the instance that an NCP has funds available due to a gift or loan and wishes to settle the arrears for an amount that is less than the outstanding balance, the CSSD has the authority to settle arrears involving Montana TANF and Foster Care arrears and medical fines.

The caseworker may suggest the NCP attempt to secure a loan through a relative, bank, credit union or other financial institution in order to settle the arrears debt. However, the caseworker **must not** suggest a specific company for the source of a loan.

There is a cost in maintaining each case, and a lump sum settlement may preclude the need for hearings, reduce the time cases are open, reduce caseload size, and return monies to the family or state more quickly.

##### Execute upon the Assets

Before negotiating a lump sum settlement, all executable assets should be identified. When no executable assets are identified, a lump sum settlement may be negotiated. However, if the CSSD knows the source of the NCP's funds, such as a savings account with a large balance, negotiation of a lump sum settlement is **not** appropriate, instead execute on the bank account.

##### Lump Sum Settlement Negotiation

Important factors in a lump sum settlement negotiation are the type of arrears owed and the CP's willingness or ability to negotiate. For example, a CP with only Non-TANF arrears can agree to a lump sum settlement. However, when the case includes both Non-TANF and TANF arrears the CP must agree to the lump sum settlement *before* the State can negotiate for the TANF arrears. The following scenarios address an NCP with one or more open cases and the types of debt that may be incurred.

#### Definitions

**Administrative Default Support Order:** Prior to 1997, this support order occurred when the NCP did not timely respond to the Notice of Financial Responsibility. The notice may have been based either on the Montana Child Support Guidelines or on an AFDC grant amount.

**Notice of Financial Responsibility (NFR):** Prior to July 1, 1997, the NFR was the action used by the CSSD for establishing an Administrative Child Support Order. It was replaced by the Notice and Order Concerning Support (NOCS).

**Notice of Intent to Vacate a Default Support Order (NOIV):** The action used by the CSSD to replace an Administrative Default Support Order when the amount for current support was not based on a guidelines calculation.

**Lump Sum Settlement Worksheet:** A worksheet used to calculate the lowest acceptable full or partial settlement of child support arrears. The worksheet uses the U.S. Treasury 10-year constant maturity interest rate to determine acceptable lump sum settlement amounts by calculating the present value of monthly payments to be received in the future. Based on the time value of money, a dollar has more value today than it will have in the future. The interest rate is updated each January.

#### Negotiation tables below

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#### Lump Sum Negotiation--Non-Custodial Parent has one open case

Table 1

Type of debt	Custodial Parent (CP) is willing to settle	Negotiation of arrears
CP is owed Non-TANF debt	Yes	Negotiate a settlement between NCP and CP
The state of Montana is owed TANF/IV-E arrears only. The CP's portion of the case is closed or the accounts are satisfied	N/A	Negotiate a settlement directly with NCP on the TANF/IV-E arrears
CP is owed Non-TANF arrears and the state of Montana is owed TANF/IV-E arrears	No	*A settlement between NCP and CP <i>cannot</i> be negotiated. <i>Nor</i> can a settlement between NCP and the state of Montana be negotiated.
CP is owed Non-TANF arrears and the state of Montana is owed TANF/IV-E arrears	Yes	Negotiate a settlement between the NCP & CP on the non-TANF arrears. If a settlement on the Non-TANF arrears is successful negotiate a settlement on the TANF/IV-E arrears

**Prepare *all* lump sum settlements with appropriate accounting procedures in step five.**

#### Lump Sum Negotiation--Non-Custodial Parent has one open case (CP ability to settle arrears due to temporary arrears)

Table 2

Type of debt	Custodial Parent (CP) ability to settle arrears	Negotiation of arrears
Temporary arrears, there is a temporarily assigned account in the case	<b>No</b> , if the CP is <b>presently</b> receiving a TANF grant	A settlement between NCP and CP cannot be negotiated. <i>Nor</i> can a settlement between the NCP & the State Montana be negotiated
Temporary arrears, there is a temporarily assigned account in the case	<b>Yes</b> , if the CP is <b>not presently</b> receiving a TANF grant	A settlement between NCP and CP can be negotiated. The settlement can include amounts from the Temporarily Assigned arrears account

**Prepare *all* lump sum settlements with appropriate accounting procedures in step five.**

\*All negotiations for a lump sum settlement must stop if a CP refuses to negotiate the non-TANF debt. For the purposes of settlement negotiations, it is the policy of the CSSD to prioritize the arrears owed to the family over the arrears owed to the state. If an NCP has multiple open cases with the CSSD and wishes to negotiate a settlement for TANF arrears, any non-TANF arrears must first be successfully negotiated.

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#### Lump Sum Negotiation Non-Custodial-Parent has multiple open cases

Table 3

Type of debt	Multiple open cases	Negotiation of arrears
CPs in multiple cases are owed Non-TANF arrears	<p><b>CASE A:</b> CP is owed Non-TANF arrears and is willing to negotiate</p> <p><b>CASE B:</b> CP is owed Non-TANF arrears, but is NOT willing to negotiate</p>	Negotiate a settlement between the NCP & the CP who is willing to negotiate
The state of Montana is owed TANF/IV-E arrears in multiple cases where <b>all CPs</b> are closed, or the accounts are satisfied	N/A	The CSSD may proceed to negotiate a settlement
<p><b>Case A CP (01):</b> Only non-TANF arrears owed</p> <p><b>Case B CP (02):</b> State of Montana owed TANF/IV-E on a case and the CP (s) is/are closed, or the accounts satisfied</p>	<p>Settlement negotiations between the NCP and the CP are <b>NOT</b> successful</p> <p style="text-align: center;">N/A</p>	*If a settlement between the NCP & the CP cannot be negotiated the CSSD does not proceed to negotiate a settlement for TANF/IV-E arrears until the non-TANF/IVE- arrears are satisfied

**Prepare *all* lump sum settlements with appropriate accounting procedures in step five.**

\*All negotiations for a lump sum settlement must stop if a CP refuses to negotiate the non-TANF debt. For the purposes of settlement negotiations, it is the policy of the CSSD to prioritize the arrears owed to the family over the arrears owed to the state. If an NCP has multiple open cases with the CSSD and wishes to negotiate a settlement for TANF arrears, any non-TANF arrears must first be successfully negotiated.

#### Settlement Offer

Use the Lump Sum Settlement Worksheet to calculate the absolute lowest acceptable amount for TANF arrears, Foster Care arrears and medical fines. The settlement offer must be a time-limited offer, not be extended for more than thirty days, and should be documented in writing with all parties' signatures.

In *unusual* cases, a caseworker may request that the regional manager allow a special waiver to accept less than the amount calculated in the worksheet. It is recommended that if the obligor cannot pay the settlement amount in full with a one-time payment a partial lump sum settlement may be appropriate.

#### **Partial Lump Sum Settlement**

In a limited number of cases, a NCP may have funds available to negotiate down the arrears and make scheduled monthly payments thereafter. In this instance, a Partial Lump Sum Settlement might be an option. The caseworker should create a settlement agreement outlining the terms for payment of the remaining arrears.

The settlement offer and follow up agreement must be approved by a regional manager or team lead.

#### **Authorization of Lump Sum Settlements**

When a NCP wishes to settle the arrears for an amount that is less than the outstanding balance, ask for a proposed settlement amount. Asking a NCP to make an offer oftentimes results in a higher amount than will be generated by the Lump Sum Settlement Worksheet. Caseworkers should negotiate for the largest possible settlement. All settlement offers must have approval of the regional manager or team lead. A Custodial parent (CP) **must** authorize **all** settlement offers of the non-TANF arrears debt.

#### **Interstate Responding**

In cases where Montana is the Responding State, the Initiating State is required to authorize settlement of CP non-TANF, TANF and Foster Care arrears.

#### **Foster Care**

The CSSD can settle Foster Care arrears when current support for Foster Care is not owed to the State. If Foster Care is continuing and arrears are owed to the State it will be handled on a case-by-case basis. Refer those cases to a regional manager and legal staff.

#### **Native American**

Closely review all Native American cases. It may be necessary to check with the Tribal IV-D system to ensure that prior arrangements with that agency are not already in place.

#### **Non-TANF Lump Sum Settlement Agreement**

Once a settlement amount is agreed to the parties must sign a CSSD Settlement Agreement. If the parties create their own settlement agreement, approval by the District Court (not merely filing the document in court), is required. Approval of the settlement agreement by the District Court is in the best interest of the children, the parties and the State.

**Procedures for Caseworker**

1. Determine the arrears debt and the monthly arrears payment. Unless the NCP has been paying an arrears amount, it may be necessary to determine a monthly arrears payment. If the NCP pays sporadically or not at all, gather sufficient financial information to perform a hardship calculation. CSSD policy defines "sufficient financial information" as any information that can be used to reasonably approximate the obligor's income or ability to earn income. This policy presumes that all other information needed for a hardship determination can be obtained or approximated based on knowledge of the case. Use the \$25.00 minimum payment option in the Lump Sum Settlement Worksheet when there is no other alternative.
2. Calculate a settlement offer. In the Lump Sum Settlement Worksheet, enter the debt amount and the monthly arrears payment. The worksheet will calculate the absolute lowest acceptable amount for TANF arrears, Foster Care arrears, and medical fines.

Calculate a Partial Lump Sum Settlement. Use the Lump Sum Settlement Worksheet to calculate a partial settlement amount. Per procedures above, determine the arrears debt and the monthly arrears payment. Complete the Lump Sum Settlement Worksheet by entering the debt amount, and the monthly arrears payment. Complete the Partial Lump Sum Settlement portion of the worksheet by entering the cash amount available to the NCP in line nine.

Create a follow up settlement agreement outlining the terms for payment of the remaining arrears.

3. Approval by regional manager or team lead. All lump sum settlements and follow up agreements require approval of the regional manager or team lead. Any changes proposed to a standard settlement agreement must be approved by the regional attorney.
4. Non-TANF and TANF/IV-E Settlement offers. A settlement offered to the NCP must be documented in writing with all parties' signatures:

TANF Case: CSSD and NCP signatures

Non-TANF Case: CP and NCP signatures

(Possibly the CSSD although not absolutely required)

Settlement offers must be time limited and documented in case notes. Note the date the settlement offer expires. It is recommended that a settlement offer not be extended for more than thirty days.

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5. Follow up with appropriate accounting procedures. In order for the lump sum payment to be applied to the correct case(s) and account(s) the following accounting procedures are recommended:

- 1) Request Manual Payment Instructions (MPI) on the obligor's PAR number. This will allow the lump sum payment to apply correctly to all targeted cases and accounts.
- 2) After the entire lump sum payment has been distributed to the correct accounts, request lump sum adjustments to the arrears account(s).

Lump sum adjustment requests should be separated by the arrears that accrued in the prior Federal Fiscal Year and those that have accrued in the current Federal Fiscal Year (October 1 - September 30).