

# ENFORCING A SUPPORT ORDER

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## Withholding Action—With Notice

CS 510.1

### SUPERSEDES

CS 510.1 Withholding Action—With Notice, July 24, 2020

### REFERENCES

42 USC § 666(b); 45 CFR 308.2; MCA Title 40, Chapter 5, Part 4

### Definitions

**Alternative Arrangement:** An agreement between the parties for payment of support that (1) provides sufficient security to ensure compliance with the arrangement and (2) has been approved by the entity issuing the support order as a basis for exempting the obligor from immediate income withholding.

**Delinquency:** Any amount of unpaid support owed by the obligor on the 8th working day after the last day of the month, in which payment was due.

**Withholding Judgment:** A judgment for past-due support or support-related amounts that specifically authorizes collection by income withholding.

**Withholding Notice:** A Notice and Order for Withholding (NOW); or, if issued prior to May 19, 2003, a Notice of Intent to Withhold Income, or a Supplemental Notice of Intent to Withhold. When referring to a previous notice, a withholding notice may also include a voluntary withholding authorization entered in CS 510.3 Withholding Action—Without Notice.

### Policy

#### Applicability

The procedures in this section apply when the Child Support Service Division (CSSD) takes a withholding action that requires notice and opportunity for hearing, see Conditions for Issuing a NOW below. In cases where notice is not required the procedures in CS 510.3 Withholding Action—Without Notice apply.

#### Withholding Action

The CSSD takes income-withholding action in this section by issuing a NOW and, if an employer or other payor of income is known, simultaneously issuing an Income Withholding Order (IWO). The CSSD uses the NOW to determine the support debt for all enforcement purposes, either by default of the obligor, or by final agency decision and order following a hearing on the notice.

#### Authority over Employer/Payor, Payee Designation

The CSSD must have authority over the employer/payor, and authority to direct income withholding payment to it, refer to Authority Over an Employer/Payor in CS 510.3. For purposes of this authority, personal jurisdiction over the obligor is not required; however, requirements for service of the NOW still apply.

#### Amounts in NOW and IWO

Included in the NOW and the IWO are amounts to be withheld each month for current and noticed arrears. Support debt includes arrears and any support-related judgments for arrears, fees, fines, interest, or medical costs. Workers compensation is an exception to this, special restrictions apply to amounts to be withheld from workers compensation payments. Detailed information is found in CS 510.3 under Determining Withholding from Workers Compensation Payments.

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In an action to add new arrears to the support debt listed in an existing withholding order monthly withholding for support is recalculated at 1/24th of the new total support debt alleged in the NOW. In certain instances, such as annualization, financial hardship or payment plan, the additional noticed arrears might be smaller than the originally noticed arrears, resulting in a lower monthly collection amount. At caseworker discretion, the prior amount from the IWO can be maintained if it would be in the best interest of the case. If there are no new arrears and only the amount of current support is being changed, the existing withholding for support debt is not recalculated.

#### Obligors with Multiple Case Obligations

Effective November 9, 2015 all IWOs both paper and Electronic Income Withholding Order (E-IWO) formats, must be created one case and/or custodian per withholding order. Cases, obligees and amounts cannot be combined into one order. When an obligor has more than one case and/or custodian, a separate order must be issued for each.

Reviewing IWOs with an employer, who receives multiple orders for an employee (obligor), can help ensure that the correct amount is withheld. An employer may combine the amounts to be withheld when those amounts are based upon the company's pay cycle. In addition, an employer can submit the withholdings as a single form of payment; however, a breakdown of the payment should be included.

All IWOs issued before the effective date above remain valid, and employers should continue to honor those orders. If an amended order becomes necessary, a separate IWO for each case and/or custodian must be issued.

#### NOTE:

**IWO for Lump Sum Payment.** When an obligor has more than one case and/or custodian a separate IWO for Lump Sum must be issued for each.

**REMINDER keep debt noticed.** A noticed debt prepares the case for other enforcement actions such as, an IWO for Lump Sum Payment, a Notice of Support Lien or a Warrant for Distraint. Also, noticing the debt before the declining balance debt reaches zero, prevents adjustments due to overcollection.

#### Income Withholding Orders Not Prioritized

When there is more than one order for withholding against the obligor, the employer/payor should honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the garnishment limitations discussed below.

The employer/payor should not favor one IWO over another, and all support obligations must be implemented. When the withholding of current support is less than the amount of current support due to all obligees, the employer/payor must prorate the amount based on the amount of current support due to each. The withholding of arrears support is distributed equally among all of the obligor's cases.

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#### Garnishment Limitations

Montana statutes concerning garnishment limitations work in accordance with the Federal Consumer Credit Protection Act (CCPA), which limits the ability of creditors to garnish earnings of a debtor. In general, only 25% of a debtor's disposable earnings are subject to garnishment. However, exceptions to this limitation apply. For CSSD purposes, the most applicable exception is garnishment for child support. Depending upon circumstances the CCPA allows an individual's disposable earnings to be subject to a 50%-65% garnishment limitation for child support debts. Due to the variety of circumstances that may be involved the CSSD has chosen 50% as a maximum garnishment amount.

#### NOTE:

**Determine whether garnishment limitations are required.** When determining if there are garnishment limitation it is necessary to review the type of money being garnished. Money that does not fit the definition of earnings found in 15 USC 1672(a) is not subject to the garnishment limitation.

#### Types of Withholding

Withholding action for a support order can be immediate withholding, delinquency withholding, or voluntary withholding, depending on the facts of the support case, see Basis for Immediate Income Withholding below or voluntary withholding in CS 510.3.

Regardless of the type of initial withholding, the CSSD can take subsequent withholding action in a case whenever current support or support debt changes, as long as the applicable support order is in effect.

#### Basis for Immediate Income Withholding

Under Montana law immediate withholding applies when the child support order was issued or modified in Montana after January 1, 1990 or a child support order issued in Montana or another state specifically requires income withholding for current support; and the support order does not exempt the obligor from immediate withholding. A support order may specify an exemption based on good cause or an alternative arrangement.

#### NOTE:

**Alternate Basis for Immediate Withholding.** For a support order that does not specifically require income withholding for current support, the CSSD may apply immediate withholding in the case if it is able to timely determine that laws requiring immediate withholding were in effect in the issuing state at the time of the order. In questionable cases, the caseworker should consult the regional legal staff.

#### Basis for Delinquency Income Withholding

Under Montana law delinquency withholding applies when the support order is not subject to immediate withholding based on its date or terms, an exemption from immediate withholding applies, and a delinquency occurs that is not paid in full following a Letter of Delinquency, or for which a Letter of Delinquency is not required, or the obligor has not complied with an alternative arrangement and in a non-public assistance case the obligee requests that withholding begin.

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**SPECIAL REQUIREMENT:** In a case where delinquency withholding applies based on the obligor's failure to comply with an alternative arrangement, and there is no delinquency with respect to the amount due under the support order, the CSSD must serve and resolve the NOW before proceeding with the IWO.

#### Conditions for Issuing a Letter of Delinquency

In a case where immediate withholding and voluntary withholding **do not** apply, the CSSD issues CS-510.3B Letter of Delinquency when **both** of the following conditions are met:

- 1) A delinquency has occurred.
- 2) The CSSD has not previously issued a Letter of Delinquency in the case, or for any previous Letter of Delinquency the delinquency was proven not to exist.

If the obligor does not cure the delinquency pay the amount in full within 8 working days, the CSSD initiates a delinquency withholding action.

#### Conditions for Issuing a NOW

The CSSD issues a NOW for an initial or subsequent withholding action in this section when **any** of the following conditions applies (all previous withholding notices that are not NOWs are assumed to be resolved):

1. Additional arrears, immediate withholding applies, or a previous withholding notice or withholding judgment has been issued, and arrears have accrued that are not included in a withholding notice or withholding judgment, and **either** the
  - new arrears are the only unpaid arrears in the case the arrears balance was \$0 before the new arrears accrued
  - or**
  - new arrears are not the only unpaid arrears in the case other unpaid arrears are included in a previous withholding notice or judgment, and the amount of the additional arrears, or other case facts justify the cost of taking a withholding action.

#### NOTE:

**A support judgment that does not qualify as a withholding judgment requires a NOW** for collection by income withholding; the purpose of the NOW in this situation is not to resolve the amount, but to resolve the use of income withholding as an enforcement remedy.

#### NOTE 2:

**Collection of interest on arrears from initiating states.** When a state requests collection on interest and fees it is given full faith and credit. Upon case opening the debt should be entered as a lump sum due for the month the case was received. Also, annual contact to request a current debt computation showing the balance owed including principal and interest is required.

When issuing a NOW upon case opening or at annual review, it is necessary to attach the initiating state's debt computation to it. This allows the parties their due process rights to contest the arrears balance by requesting a hearing

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If a hearing is requested by either of the parties to dispute the debt shown in the NOW, the initiating state will be required to attend the hearing via telephone to explain their debt balances.

Upon updating the debt, the lump sum adjustment must request the adjustment be made to the **prior period**. Applicable events for the annual review and the updated debt **must** be entered in the system.

2. Delinquency withholding. The obligor has become subject to income withholding based on a delinquency or for failure to comply with an alternative arrangement, see Basis for Delinquency Withholding above.
3. Change in current support. Immediate withholding applies or a previous withholding notice or withholding judgment has been issued, and the CSSD has determined that the amount of current support has changed based on a specific provision of the support order, and the provision relies on external information to determine the time, amount, or applicability of the change.
4. Authority to collect current support. DELINQUENCY WITHHOLDING CASES ONLY. A previous withholding notice has been issued for support debt only, or a withholding judgment has been entered, and the CSSD has now gained or regained the authority to collect current support in the case.

#### IWO for Lump Sum Payment

Unlike an original or amended IWO, which is used to collect periodic payments made on regular paydays, an IWO for Lump Sum is used to attach a one-time collection. It can be used to collect settlement payments from such things as Social Security Income, Disability and Retirement, workers compensation, insurance claims, estates, sale of property, bonuses, commissions, and incentive pay. Other uses include the liquidation of unused sick or vacation pay or leave, and severance pay. In some instances, it can be used in lieu of an out-of-state lien. It is always **necessary to consult** with your regional manager and legal department before using an IWO for Lump Sum.

While useful in the collection of one-time payments, an IWO for Lump Sum **cannot** be used to collect a Financial Institution Data Match (FIDM), or a Montana Lottery win. To collect from those sources, use existing procedures in the following policy sections: CS 500.3 Financial Institution Data Match (FIDM) and Administrative Enforcement in Interstate Cases (AEI), and CS507.5 Lottery Liens.

Put accounts on hold and monitor the case for receipt of the lump sum payment, upon receipt the distribution and pay source is the same as for an original or amended IWO. Once the payment is received the IWO for Lump Sum should be closed in SEARCHS. It is not necessary to send a termination notice since the form is marked as a, "One-Time Order for Lump Sum Payment". However, it is recommended that the employer is reminded of its one-time usage, refer to Best Practice in the procedures below. For collection of a subsequent lump sum payment, even from the same employer, another IWO for Lump Sum is required.

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#### Electronic IWO (E-IWO)

Once an employer chooses to receive an E-IWO, it is CSSD policy to issue all subsequent IWOs to that employer electronically. If a paper IWO is received, the employer can contact the employer liaison to request the CSSD reissue it electronically.

Since an employer may choose to opt-in or out of the E-IWO process at any time the Office of Child support Enforcement (OCSE) twice a month sends the CSSD an employer file. Upon receipt of the file the system automatically updates electronic employers and their contact information. Electronic employers are found in system on the Electronic Employer Name (EEN) and the E-IWO Employer Information (EEI) screens.

**REMINDER.** The Locate Unit must be contacted to add any employer to the Employer Maintenance Update (EMU) screen.

#### Automated Income Withholding (AIW) and E-IWO

The E-IWO process does not affect orders generated by AIW. AIW orders continue to generate, even when an employer has chosen the E-IWO process; therefore, it is necessary to determine which AIW generated order should be sent to the employer. Regional offices must ensure there are procedures in place to review AIW orders daily.

**TIP:** An E-IWO generated through the AIW process does not contain the Acknowledgment of Receipt of Order(s) and Waiver of Service document.

#### AIW and the NOW

The NOW is generated automatically by the system's AIW function when all the following conditions apply:

##### OBLIGOR CONDITIONS

1. Obligor match. A match occurs between an AIW locate source and a SEARCHS obligor. AIW locate sources are the State Directory of New Hires, the National Directory of New Hires, and Unemployment Insurance.
2. New employer. There is no existing IWO to the employer/payor identified by the locate source.
3. Simple structure for fees. If there is more than one open case or subcase for the obligor, there is no fee account balance greater than \$0 for any of them.
4. Non-multiple regions. If there is more than one open case for the obligor, all of the open cases are in the same region.

##### CASE CONDITIONS

5. Not suppressed. The AIW function is not suppressed on the CAS screen.
6. Case characteristics. The case qualifies for AIW by its characteristics; that is the case is open; the case is not assigned to region 90, 95, or 99; the case type on the IST screen is not interstate initiating (account types do not matter); and the case has an open ADMN or CORT order on the SOD screen.

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#### MASTER CONDITIONS

7. No master. There is no AIW master withholding order for the obligor or there is a master order but the account types in the master do not match the open account types on SEARCHS. Details on AIW generation are found in CS 510.3.

#### SUBCASE CONDITIONS FOR THE NOW

8. No in process NOW. There is at least one sub case where there is no in process NOW on SEARCHS. An in-process NOW is one for which there is a served date but no resolved date on the NOI screen.
9. New arrears. For at least one sub case that meets condition in 8) above, both of the following conditions apply:
  - There is an arrears balance due for the sub case account.
  - There is no existing income withholding declining balance (DBD) for arrears for the sub case, or there is an existing income withholding DBD for arrears for the sub case and the DBD amount is \$0 or there is an existing income withholding DBD for arrears for the sub case and the arrears balance for the sub case is greater than the original noticed amount of the DBD.

When all the conditions above apply, the AIW function will generate a NOW for each sub case that meets the specific sub case conditions (new arrears, no in-process NOW).

In addition, AIW does the following:

- Generates an IWO to the employer/payor identified by the locate source as in CS 510.3 for IWO amounts.
- Builds the NOI and IWO records on SEARCHS needed to generate the NOW and IWO documents.
- Generates a Debt Computation Worksheet for each sub case where a NOW is created.
- Creates/updates the DBD for income withholding arrears from the new NOI record in each sub case where a NOW is created.
- Saves the previous amount and account details for any DBD that is replaced in this process and enters a SEARCHS event containing the information.

When any of the AIW conditions in (1) through (8) above does not apply, but a NOW is required by CSSD policy, the caseworker must generate all three documents--the NOW, the IWO, and the Debt Computation Worksheet--using regular SEARCHS document generation processing. In some cases, AIW will generate only an IWO, with no NOW, based on the existence of a qualifying master order. If there are, new arrears in the case the IWO amounts will not reflect them, as amounts taken from a master include only previously noticed arrears.

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#### Suppressing AIW

SEARCHS automatically suppresses the AIW function on the CAS screen whenever the case status code is changed to or entered as a Native American Jurisdiction (NAJ) code. Certain other one-time suppressions were also set by SEARCHS during the September 2003 AIW case conversion process. The caseworker may remove an auto-suppression at any time if case facts indicate that AIW-generated documents would be appropriate.

The caseworker can also manually suppress the AIW function at any time. However, manual suppression is limited by policy to the situations below:

- The support order contains an exemption from income withholding.
- A stay of enforcement issued by an appropriate tribunal is in effect.
- A Letter of Delinquency (8-day letter) applies and the delinquency is not yet subject to withholding.
- The CSSD has not yet obtained authority to redirect payment of withheld income in the case.
- The reason for lifting a previous auto-suppression no longer applies.
- There is reason to believe an AIW action would be inappropriate for example, the debt is uncertain in one or more of the obligor's cases or sub cases; or, complex accounting facts are likely to cause inaccuracies in AIW documents, and the supervisor approves the suppression.

#### Service of the NOW

Montana law requires service of the NOW on the obligor by personal service (acknowledgment, or sheriff's service, private process service) or certified mail; in the case of certified mail CSSD policy requires restricted delivery. However, when the CSSD has previously served a withholding notice on the obligor by one of these methods, or has entered a voluntary withholding authorization in CS 510.3, and the previous withholding notice or voluntary withholding authorization was based on the same support order as the NOW, service of the NOW may be by regular mail. The notice is considered served by regular mail so long as it is not returned undelivered. For purposes of this rule a modified support order is the same support order as the order it modified.

In situations where personal service or certified mail is required a withholding notice or voluntary withholding authorization based on the same support order as the NOW has not been previously served), the CSSD may deem service of the NOW if all the following requirements are met:

1. The obligor cannot be located for service despite diligent efforts by the CSSD; diligent efforts must include an attempt to serve the notice by sheriff's service or private process server.
2. The existing support or paternity order carries the deemed service of process warning required by MCA sections 40-5-226(12) and others.
3. The CSSD sends the NOW by regular mail to the obligor's last known personal or employment address.
4. The NOW is not returned to the CSSD undelivered.



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#### Unserved NOWs

When a NOW is created the notice status on the SEARCHS NOI screen is listed as unserved. The unserved status remains in place until the caseworker enters a served date or manually changes the notice status. For example, the caseworker may change the status to show that a hearing was requested, or the notice was dismissed.

Periodically the CSSD issues a report listing unserved NOWs based on the NOI status. The caseworker is responsible for checking the report and continuing to make reasonable attempts to serve the NOW.

#### Basis for Contesting Withholding

The obligor may contest the withholding or amount of support debt stated in the NOW by requesting a hearing based on a mistake of fact.

Montana law limits a mistake of fact to a mistake:

- Concerning the obligor's identity
- Concerning the existence of the support obligation
- Concerning the amount of current support to be paid
- In the determination that the obligor is delinquent in the payment of support  
(DELINQUENCY WITHHOLDING ACTIONS ONLY)
- In the computation of the support debt
- In the allegation that the obligor is in default of an alternative arrangement  
(DELINQUENCY WITHHOLDING ACTIONS ONLY)

#### Procedures

##### Procedures for Caseworker

1. Initial Case Management. Before taking withholding action in this section, reviews the case for other required activities in step 1a through 1c below.
  - a. Hardship requests. If at any point in these procedures the obligor claims the amount of withholding for support debt is not affordable, proceeds in CS 510.5 Hardship Adjustments concurrently with actions in this section. Explains to the obligor that a hardship review does not extend the time allowed for requesting a hearing on the NOW.
  - b. Redirecting Payments/Interstate Referral. If applicable, takes action as needed to confirm or gain authority for an IWO, or to send an interstate referral to the other state.
  - c. AIW Suppression. Reviews the AIW suppression status on CAS; if applicable, sets or removes a suppression.

**IMPORTANT.** When setting a suppression, sets a tickler for a projected change in the case facts e.g., resolution of the Letter of Delinquency, expiration of the stay, and reviews the suppression at that time. Removes the suppression as soon as the underlying case facts no longer apply.

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2. Letter of Delinquency. Upon identifying a case where the conditions for issuing a Letter of Delinquency apply, immediately sets the AIW suppression on the CAS screen and proceeds in steps 2a through 2d below.
  - a. Generates and sends by regular mail CS-510.3B Letter of Delinquency. Monitors for payment of the delinquency within 8 working days after the letter is issued.
  - b. If the obligor timely cures the delinquency by paying the amount in full, documents the facts on SEARCHS and takes no further action in this section. Does not remove the AIW suppression; the CSSD may initiate withholding in the future only if a new delinquency occurs meanwhile, suppression is needed to prevent AIW from generating an IWO for current support.

If a new delinquency occurs, removes the AIW suppression and proceeds directly to step 3 Identifying a case for notice; a new Letter of Delinquency is not required.
  - c. If the obligor timely contacts the CSSD and proves the delinquency does not exist, documents the facts on SEARCHS and takes no further action in this section. Does not remove the AIW suppression; initiation of any future withholding will require a Letter of Delinquency under the procedures in this step.
  - d. If the obligor does not timely cure or disprove the delinquency, documents the failure on SEARCHS, removes the AIW suppression, and proceeds to step 3.

#### NOTE:

**Partial payment of the delinquency or proof that part of the delinquency is incorrect** does not prevent the CSSD from taking delinquency withholding action in this section; however, the withholding action should reflect the payment or correction.

3. Identifying a Case for Notice. Applying the Time Frames Identifies a case for NOW action in one of 3a through 3d below:
  - a. Upon being notified by SEARCHS that AIW has created a NOW in a case, immediately reviews the NOW and accompanying IWO and Debt Computation Worksheet for accuracy, and proceeds directly to step 4 Generating the NOW and IWO to assemble and issue the NOW and IWO packages within two working days.
  - b. Upon being notified by SEARCHS that AIW has created an IWO but no NOW in a case where the conditions for a NOW apply, immediately reviews the IWO for accuracy. Proceeds directly to step 4 to generate the NOW and Debt Computation Worksheet, and a corrected IWO if necessary, and to assemble and issue the NOW and IWO packages within two working days.

This situation may occur, for example, in cases where a NOW is required to change the withholding amount for current support or where it would be beneficial to notice new arrears even though the arrears withholding amount will not increase.

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- c. Upon manually identifying a case where the conditions for a NOW apply and a Letter of Delinquency is issued in step 2, initiates a withholding action in steps 4 and 5 within 15 calendar days after the Letter of Delinquency is issued and the CSSD identifies an employer or payor of income through new-hire reporting or other means. This time frame is extended as necessary to allow time to receive or process any timely response to the Letter.
- d. Upon manually identifying a case where the conditions for a NOW apply and no Letter of Delinquency is issued in step 2, initiates a withholding action in steps 4 and 5 within two working days after the CSSD receives a new-hire report or learns of an income source subject to withholding from a court, another state, an employer, the FPLS, or another source recognized by the CSSD, and the conditions for issuing a NOW apply.

#### NOTE:

**Timeliness of Information.** In cases where information concerning a possible income source is received three months or more after the information was last known to be true for example, a quarterly wage report for a quarter ending more than three months before the current date, the caseworker may take verification action before sending the IWO. If verification reveals the obligor is no longer receiving income from the employer/payor, the IWO is not required. Verification action includes sending an Employer Verification form or contacting the employer/payor by telephone or e-mail. The action must be initiated within two working days after receiving the information, and prompt follow-up is required.

4. Generating the NOW, IWO, AIW and E-IWO. Determines the amounts to be included in the NOW and method for issuing the withholding order, updates the Notice of Intent to Withhold (NOI) and Order to Withhold (OWI) screens, and generates documents. Updating the NOI screen sets the declining balance for current, arrears or both. Additionally, the withholding order cannot be generated on system unless a notice exists on the NOI screen.

#### 1) Notice of Withholding Package:

- a. CS-510 NOW: signed original and a copy to the sheriff if personal service is required; retains a copy for the casefile.

#### NOTE:

**Customizing NOW for Non-Compliance Basis.** If the withholding action is based on the obligor's failure to comply with an alternative arrangement, and there is no delinquency, the NOW must describe the specific failure. Also, the CSSD may not issue the IWO package below until the NOW is resolved. In this situation the caseworker should consult with the regional legal unit to adapt the NOW document for these differences.

- b. CS-510.1H Notice of Withholding—Hearing Request generated automatically with the NOW.
- c. If NOW includes change in support debt: CS-501.1A Debt Computation Worksheet must be attached to the NOW.

If a NOW applies in more than one of the obligor's cases, issues and includes a separate NOW and Debt Computation Worksheet for each case and/or custodian.

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- d. [If employer/payor is known:] Signs form FED-IW, see IWO package below.
- e. Arranges for service by one of the following service documents, unless regular mail applies:
  - CS 405.1 Acknowledgment of Service\*
  - Certified restricted mail
  - CS 401.3C Sheriff's Praecept or cover letter to private process server if it is believed acknowledgement or certified restricted mail will be ineffective
- \*Special provision for service by acknowledgement. Sends the original acknowledgment form for the obligor's return. If the obligor does not respond in writing to the acknowledgment within 20 calendar days after the date of mailing, the CSSD must issue the package for service by sheriff or private process server only, in accordance with the Montana Rules of Civil Procedure.
- f. Retains one copy of the original signed NOW and the signed Acknowledgment of Service in the case file.

#### 2) IWO PACKAGE IF EMPLOYER/PAYOR KNOW:

- a. Generates form FED-IW and obtains the signature of the Administrator's designee. The form may be generated in the original, amended, lump sum or termination version, according to the conditions upon which it is based. Puts accounts and creates one IWO per case or custodian. Does not combine amounts into one IWO.

#### **Best Practice for IWO Lump Sum:**

**Notification to Employer.** It is considered a best practice to notify the employer by telephone that an IWO for Lump Sum has been issued to the business. A phone call to the employer ensures they are aware of the request for a lump sum *before* the IWO is received. Notifying the employer provides an opportunity to answer questions and can eliminate confusion caused by receiving another IWO. While discussing the IWO for Lump Sum it may be necessary to point out the checked box at the top of the form, indicating it is for a **one-time use only**. After the payment is received **no termination notice is issued**. In addition, remind the employer that if there is an original or amended IWO already in place for the obligor, it is **still necessary to continue issuing payments as per instructions in that order**.

#### **NOTE:**

**Administrator's Designee.** The CSSD Administrator has designated the supervisor or the caseworker who prepared the IWO as the individual authorized to issue (sign) the document.

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#### NOTE 2:

**Unknown Employer/Payor.** If no employer/payor is known, the CSSD proceeds as applicable in this section for service and resolution of the NOW; proceeds concurrently with income locate actions; and issues the IWO package when an employer/payor is identified.

#### NOTE 3:

**Delay for Resolution of Non-Compliance.** If the withholding action is based on the obligor's failure to comply with an alternative arrangement, and there is no delinquency, the caseworker must arrange to delay issuance and service of the IWO package until the NOW is resolved.

b. Arranges for service by one of the following service documents:

- Acknowledgment of Receipt of Order(s) and Waiver of Service\*
- Certified mail
- CS-401.3C Sheriff's Praecipe (original)

\*Special provision for service by acknowledgement. Sends the original acknowledgment form for the employer's return. If the employer does not respond in writing to the acknowledgment within 20 calendar days after the date of mailing, the CSSD must issue the package for service by sheriff or private process server only, in accordance with the Montana Rules of Civil Procedure. Montana law does not allow service of the IWO by regular mail to the employer.

#### NOTE:

An IWO for Lump Sum payment does not require a separate acknowledgment form, nor does SEARCHS Online allow one to be generated.

c. Retains one copy of the original signed IWO and the signed Acknowledgment of Service in the case file. Also, retains a copy of the original IWO Lump Sum in the case file, an Acknowledgment of Service is not required. For an E-IWO retaining an Acknowledgment of Service is not possible

3) Automatic Income Withholding Order. Obtains signatures on and assembles packages as in 1) and 2) above.

#### AIW EXCEPTIONS

EXCEPTION 1: AIW NOW is invalid.

In certain situations, the AIW process may create a NOW for new arrears based on a DBD comparison where the change in withholding would not be appropriate given the facts of the case. For example, new arrears are being added to existing unpaid arrears, and the amount of the new arrears is relatively small; or, the new arrears are solely the result of employer annualization. In questionable cases the guidance given in POLICY, Conditions for Issuing a Now, Additional Arrears, applies. If the notice action is not appropriate, the caseworker should destroy the AIW documents, update SEARCHS as applicable, and proceed in 510.3 with an IWO for previously noticed amounts to the new employer.

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EXCEPTION 2: AIW IWO is invalid.

In other situations, the AIW process may create a NOW with an IWO based on a second, part-time employer for the obligor. If the caseworker can determine within two working days that the new employment is secondary, and that proceeding with both employers may result in withholding for more than the noticed amounts, the caseworker may destroy the IWO updating SEARCHS as applicable, and issue the NOW package for the new arrears, with an amended IWO to the first employer if applicable.

EXCEPTION 3: AIW IWO is invalid.

An AIW is invalid if the order should be sent electronically. Review the OWI screen to determine if the employer accepts E-IWO orders. If the OWI screen indicates the order can be sent electronically uses the E-IWO process.

4) E-IWO:

- a. Uses the E-IWO process when the OWI screen indicates the order should be sent electronically. If a previous E-IWO has been sent to the employer/payor selects amended or terminated as appropriate.
- b. Uses SEARCHS Online to generate all necessary documentation for the obligor and the case file. Obtains signatures, assembles, and serves packages as in 1) and 2) above.

The E-IWO process returns the employer/payor Acknowledgment of Receipt of Order(s) and Waiver of Service electronically. A tickler and an event are received on system upon acknowledgment of receipt of order.

5. Serving the NOW and IWO; notifying the obligee. Simultaneously proceeds in 5a through 5c below to secure service of the packages and to notify the obligee. Note that for purposes of the time frames in step 3 the withholding action is initiated when the IWO is sent for service. In cases where the NOW is being used to determine the debt in the absence of an employer, the time frames for initiating the action do not apply.

- a. Arranges for service of the NOW package by acknowledgment of service, certified restricted mail, sheriff's or private process service or if applicable, regular mail. When service is obtained, enters service information on the SEARCHS NOI screen; for regular mail presumes service on the third day after deposit in U.S. mail, unless the package is returned undelivered.

If service cannot be obtained, continues to make reasonable efforts to locate the obligor and to obtain service by any appropriate means. Except as stated 3 below, does not remove the notice from the unserved report until service is obtained. At least as frequently as the report is issued, reviews the case for an opportunity to obtain service. Meanwhile, proceeds to monitor withholding. Does not delay or discontinue withholding in this section for lack of service of the NOW. If a service opportunity occurs, resumes action in this section; if significant additional arrears have accrued, identifies new withholding amounts, and begins again at step 4.

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**NOW Unserved at Case Closure.** If the case is being closed and the NOW is still unserved, the CSSD must terminate the IWO. The CSSD does not dismiss the NOW in this situation; the NOW will still apply if the case is reopened. At that time the CSSD can either renew attempts to serve the existing NOW or issue a new NOW.

**Removing a NOW from the Unserved Report.** The caseworker may remove a NOW from the unserved report without actually obtaining service only when service of the NOW is no longer necessary—for example, when the CSSD has issued a later NOW in the same sub case.

- b. Arranges for service of the IWO package by acknowledgment, certified mail (return receipt requested), or sheriff/private process service. Upon obtaining service monitors for compliance, if the employer/payor fails to comply with the order, follows procedures in CS 503.5 Administrative Civil Contempt.

Also monitors for any lapse in employment, and takes steps to locate other income or assets, or to pursue other enforcement remedies, as necessary.

**NOTE:**

**Monitor for receipt of lump sum payment.** Put accounts on hold and monitor the case for receipt of payment. Distribution and pay source for the payment is the same as for an original or amended IWO. Once the payment is received close the IWO Lump Sum in SEARCHS. It is not necessary to send a termination notice, since an IWO for Lump Sum is for a one-time use only. For the collection of subsequent lump sum payments, even from the same employer, another IWO for Lump Sum is required.

**NOTE 2:**

**Employer Required to Resume Withholding after Lapse.** If the obligor leaves employment, the IWO requires the employer/payor to retain the order, and to resume withholding if the obligor returns to employment at any time in the future. The CSSD does not issue a new IWO for regained employment unless a withholding action to change the amounts is required in this section or in CS 510.3.

**NOTE 3:**

**Payments Received Prior to Resolution of NOW.** The CSSD does not delay processing of income withholding payments for resolution of the NOW. When the IWO is served, payments received are distributed by SEARCHS and disbursed to the appropriate payee according to regular time frames. If the NOW is later resolved for different withholding amounts, the CSSD will modify the withholding order and adjust accounting as appropriate.

- c. Prepares and sends to each affected obligee:
  - CS-510.8B CP Action Letter, or Interstate Responding Update--Transmittal #2 (CSE-IRUP), informing the obligee of the withholding action.
  - A copy of the NOW
  - A copy of the Debt Computation Worksheet. It is not appropriate to send a copy of the IWO to the obligee.

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**NOTE:**

**When E-IWO is used for issuing the withholding order**, notification of obligee(s) by CP Action Letter is still required.

EXCEPTION: Copies of the NOW and Debt Computation Worksheet are not required in Interstate Responding cases.

6. Resolving the notice upon obtaining service of the NOW in step 5a, monitors for a request for hearing within 10 working days after the date of service, and proceeds in 6a through 6c below.
  - a. Hearing requested. If the obligor timely requests a hearing, proceeds to step 7 Process a Request for Hearing.
  - b. NOW incorrect. If the obligor timely contacts the CSSD and provides proof that the NOW is incorrect, proceeds to amend or dismiss the NOW, as applicable, according to standard CSSD procedures; updates the NOI screen as necessary and proceeds in 6b(i) or 6b(ii) below.
    - i. Dismissing--no hearing requested. In the case of a dismissal, updates the OWI screen and modifies or terminates the IWO to return the withholding to the pre-NOW status. Sends a copy of the dismissal motion and order to each affected obligee; also notifies the obligee of the modified withholding as in step 5c. Monitors the withholding as applicable and takes no further action in this section.
    - ii. Amending--no hearing requested. In the case of an amended NOW, proceeds as follows:
      - A. Amended amount lower. If the combined withholding for current support and support debt in the amended notice is lower than the combined withholding under the original NOW, updates SEARCHS and modifies the IWO to reflect the corrected amounts.
      - B. Amended amount higher. If the combined withholding in the amended NOW is greater than the amount in the original NOW, retains the existing IWO as if for an original NOW; upon resolution modifies the IWO to reflect the correct amounts.
  - c. Default on NOW. If the obligor does not timely request a hearing or prove the NOW is incorrect, updates the NOI screen for the NOW resolved. Monitors for any change in the case that could require withholding action and takes no further action in this section.

**NOTE:**

**Determination of Debt.** In addition to completing due process for the income withholding action, resolution of the NOW also determines the debt for CSSD purposes. Subsequent enforcement actions requiring a sum-certain amount can proceed based on this determination.



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7. Processing a Request for Hearing. Upon learning that the obligor has requested a hearing on the NOW, monitors for notification from the Office of Administrative Law Judge (OALJ) that the hearing has been granted. If the hearing is granted, immediately proceeds to step 8 Staying Withholding. If the hearing is not granted, proceeds as in step 6c above.
8. Staying Withholding. Immediately upon learning that the hearing has been granted, modifies the withholding by proceeding simultaneously in 8a and 8b below, then proceeds to step 9 Preparing for/participating in hearing.
  - a. Declining balances. Except as noted below, processes the NOI screen to modify the declining balance for support debt to the pre-NOW amount, less any payments received after the NOW was issued and retain the declining balance for current support at the NOW amount.

In the case of an amended NOW, the pre-NOW amount for support debt is the amount in place before the original NOW; the NOW amount for current support is the amount in the amended NOW.

EXCEPTION 1: Current Support Contested. If the obligor is contesting the amount of current support, the declining balance for current support should be returned to the pre-NOW amount, if different. If the obligor is contesting only current support, the declining balance for support debt should not be modified.

EXCEPTION 2: Delinquency Withholding. If the withholding action is an initial delinquency action, and special circumstances in the case cause concerns about maintaining withholding while the case is contested, the caseworker should consult with the regional legal staff. It may be advisable to return both the current support and support debt declining balances to \$0 and terminate withholding as in CS 510.3.

EXCEPTION 3: ALJ Stay Upon the request of the obligor the ALJ may stay any increase in current support, support debt, or both by ordering the CSSD to return the withholding to the pre-NOW amounts.

- b. Withholding order. Issues a modified IWO containing the withholding amounts entered in step 8a; serves the modified IWO on the employer/payor as in step 5b and notifies each affected obligee of the new amounts as applicable in step 5c.
9. Preparing for/Participating in Hearing After staying the withholding in step 8, proceeds in steps 9a through 9e below.
  - a. Contacting the obligor. Contacts the obligor and attempts to resolve the issue(s) informally. Discusses any mistakes of fact the obligor is claiming, refer to Basis for Contesting Withholding in the policy above, and explains requirements as necessary. Proceeds in 9b through 9e according to the result of the contact.
  - b. Request withdrawn. If after the discussion the obligor no longer wishes to request a hearing, explains the procedures for withdrawing the hearing request. If the request is withdrawn, enters the resolved date on the NOI screen, modifies the withholding to reflect the noticed amounts, and notifies each affected obligee as applicable in step 5c. Monitors withholding, and takes no further action in this section.

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- c. Dismissing the NOW. If the obligor proves that withholding action is not appropriate, dismisses the NOW according to standard CSSD procedures. Updates the NOI screen, modifies/monitors the withholding as applicable, and notifies each affected obligee of any modified amounts as applicable in step 5c. Takes no further action in this section.
- d. Amending the NOW. If the obligor proves the NOW is incorrect, amends the NOW according to standard CSSD procedures, and updates the NOI screen. If the total withholding in the amended NOW is less than the total withholding in the IWO issued in step 8 or in step 5 if there was no stay, modifies the withholding to reflect the amounts in the amended NOW. Sends to each affected obligee a copy of the amended notice and corresponding debt computation and notifies the obligee of any modified amounts resulting from this step, as in step 5c.
  - i. If the obligor does not withdraw the original hearing request, prepares for hearing on the original request and any subsequent request received on the amended NOW, proceeds to step 9e.
  - ii. If the obligor withdraws the hearing request upon receipt of the amended NOW, resolves the amended NOW as in step 6c; modifies withholding if necessary to reflect the amounts in the amended NOW, and takes no further action in this section.
- e. Proceeding to Hearing. If the matter cannot be satisfactorily resolved in sub steps 9a through 9d above (request withdrawn or NOW dismissed), proceeds in sub steps 9e(i) through 9e(iii) below.
  - i. Preparing evidence and testimony. Prepares testimony, arranges for witnesses, and assembles exhibits needed to present evidence on the prima facie case, see step 11 Conducting the Hearing--Entering the Decision and Order and on any other issues identified. Prepares a witness and exhibit list and submits the original list and exhibits to the OALJ, with copies to the obligor, by the exhibits due date.

If an amended NOW was issued, includes in the hearing exhibits both the original and the amended NOW.
  - ii. Hearing checklist. After the obligor has received the exhibits in 9e(i) above, contacts the obligor and identifies any elements of the CSSD's prima facie case the obligor intends to contest at hearing, using CS-510.1C Hearing Checklist, as a guide. Refers the obligor to the exhibits as necessary. Completes the Hearing Checklist according to the results of the discussion, and sends the original to the OALJ, with a copy to the obligor, before the hearing date; maintains a copy for the case file.

#### **NOTE:**

**Timing of Obligor Contacts.** The caseworker may, at his or her discretion, combine the contact in this sub step, hearing checklist with the contact in sub step 9a issue resolution. However, the requirement to provide the exhibits to the obligor before proceeding with the checklist discussion still applies.

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- iii. Appearing at the hearing. Appears at the hearing as a witness; gives evidence as requested by the ALJ. If applicable, explains which months are included in the portion of the support debt that may be contested. Monitors for receipt of a proposed decision and order, any motion for review, and a final decision and order.

#### Procedure for Office of Administrative Law Judge (OALJ)

10. Processing a Request for Hearing Upon receiving a request for hearing on a Notice of Withholding, determines whether the request is timely received within 10 working days after the date of service. If so, obtains a determination from the ALJ on whether the request contains a mistake of fact under MCA 40-5-412(5), refer to Basis for Contesting Withholding in policy above.

- a. If the request is not timely, or if the request does not contain a mistake of fact, denies the request according to standard OALJ procedures.
- b. If the request is timely and contains a mistake of fact, sends a facsimile copy to the caseworker, and identifies any dates the caseworker is unavailable for hearing. Sets the hearing time and date and other due dates witness and exhibit lists, exchange of exhibits, requests for discovery or subpoenas, and issues a notice of hearing and scheduling order as in ARM 37.62.919. Sends an informational copy of the notice of hearing to the obligee.

If the obligor requests a stay of the withholding for current support, support debt, or both and the caseworker has not already satisfied the request in step 8, obtains a ruling from the ALJ and issues an order granting or denying the stay.

#### Procedure for Administrative Law Judge (ALJ)

11. Conducting the Hearing--Entering the Decision and Order Within 60 days after receipt of the hearing request in step 10. Processing a Request for Hearing, conducts the hearing according to the requirements of ARM 37.62.941 through 945. Limits the hearing to the mistakes of fact alleged by the obligor and the following required elements of the CSSD's prima facie case:

- 1) Whether the CSSD is legally authorized, by application or referral, to act in this case.
- 2) Whether the CSSD served the NOW on the obligor.
- 3) Whether the CSSD has subject matter jurisdiction to enforce support via income withholding. Specifically, whether there is a support order in effect and the CSSD asserts a delinquency or other basis for the withholding action.

Enters a proposed decision and order, reviews and takes necessary action on any motions for review and enters a final decision and order as in ARM 37.62.949 and 951.

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#### Procedure for OALJ

12. Issuing the Hearing Results Sends copies of the proposed decision and order to the obligor, the obligee, and the caseworker. For any motions for review received, schedules due dates or oral arguments as required by the ALJ.

Within 60 days after the hearing in step 11 was conducted, sends copies of the final decision and order to the obligor, the obligee, and the caseworker, retaining the original for the OALJ file. Monitors for any petition for judicial review.

#### Procedure for Caseworker

13. Enforcing the Hearing Results Immediately upon receipt of the final decision and order entered in step 11, updates the SEARCHS NOI screen for the NOW resolved. Modifies withholding in steps 13a and 13b below according to the results of the hearing.

- a. Processes the NOI screen as necessary to change the declining balances for current support and support debt to the amounts determined in the decision and order.

Requests SEARCHS accounting actions as needed, including account adjustments, obligor refunds, or obligee accounts receivable. Note that refunds and receivables are more likely when service of the NOW has been delayed.

If no change is necessary, monitors withholding compliance or, if no withholding is in place, monitors for a change in the case that could require withholding action, and takes no further action in this section.

- b. For any changes entered in step 13a, issues and serves an IWO for the correct amounts as in steps 4 and 5; notifies each affected obligee of the new amounts as applicable in step 5c. Monitors withholding compliance and takes no further action in this section.