

# ENFORCING A SUPPORT ORDER

## License Suspension

CS 530.2

### SUPERSEDES

CS 530.2 License Suspension, October 28, 2010

### REFERENCES

MCA §§ 87-2-201; 40-5-701 et seq.

### Policy

#### Applicability

The CSSD may initiate license suspension proceedings in cases where the obligor owes a support debt equal to or greater than six months' support obligation, or against any individual who fails to comply with a CSSD subpoena. Procedures in this section apply specifically to suspensions based on support debt.

When the basis for suspension is failure to comply, the procedures must be adapted to substitute compliance for debt payment. See Special Rules for Noncompliance (below) for guidance in these cases.

License suspension proceedings are initiated through entry into a payment plan or issuance of a Notice of Intent to Suspend License (NOITSL). Resolution of the NOITSL consists of two parts, a 60-day response period that begins with service of the notice, and the 30 days following the response period in which the NOITSL must be resolved. A NOITSL must be resolved within this 90-day period, and is considered lapsed if unresolved after that time. Once a NOITSL has lapsed, a new NOITSL must be issued.

After a payment plan is entered into or the NOITSL is resolved, the CSSD undertakes procedures for monitoring such as, adjusting license suspension status, monitoring payments and under certain circumstances, processing requests for relief from default.

It is not necessary to issue a NOITSL for a licensee to enter into a payment plan. A license suspension warning letter can be effective in obtaining the licensee's agreement to enter into a payment plan.

#### Scope of Action

This section contains procedures for determining whether license suspension is appropriate, for initiating a license suspension action, for resolving a NOITSL, and for monitoring and adjusting the license suspension status.

#### Required Annual Review

A license suspension financial hardship payment plan does not expire, but a review is required on an annual basis. The payment plan should be updated based on current licensee financial information meaning no older than the preceding 12 months' financial information. In addition, the declining balance of the noticed debt must be reviewed, and the case monitored for changes in circumstance. If the payment plan has already expired, the CSSD no longer has authority to suspend the license. Further details involving the required annual review are found later in this section.

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#### Suspension of Wildlife Conservation License Eligibility

Wildlife conservation license eligibility is suspended for the entire license year. It is automatically returned for the next license year, unless an order staying the suspension is in effect or the caseworker issues a new NOITLS to pursue suspension for the upcoming year. Driver, professional, or occupational licenses remain suspended.

The CSSD annually submits to Fish Wildlife and Parks (FWP) a list of licensees whose wildlife conservation license eligibility has been suspended.

Suspending only wildlife conservation license eligibility is available when it is not possible to suspend any other type of license, when other license suspension options are deemed to have a lesser impact or to suspend for subsequent license years. Caseworker discretion should be applied.

#### Special Rules for Noncompliance

When the procedures in this section are used to enforce compliance with a CSSD subpoena, the following adjustments apply:

1. Target of action. The licensee in the procedures is not limited to the obligor, but may be any individual who is subject to a CSSD subpoena.
2. Use of remedy. License suspension is appropriate only if it is needed to gain and likely to result in the licensee's compliance with the subpoena.
3. Forms. In generating the license suspension warning letter, notice, and motion and order documents used in these procedures, the user must select the special noncompliance language available on SEARCHS. (The documents addressed to the licensing authority already contain the necessary language and do not need selection of a variable.)
4. Full compliance. Compliance with the subpoena at any time during these procedures is equivalent to paying the support debt in full at the same point in the procedures.
5. Compliance plan. The option for a payment plan does not apply, but the caseworker may work with the licensee to extend the noticed response time, where necessary, based on the licensee's good-faith arrangements to comply with the subpoena as soon as external factors allow.
6. Multiple bases. Multiple allegations of noncompliance may be included in one notice. However, if the CSSD is alleging a delinquency and a noncompliance, two separate notices are required.
7. Hearings. At a hearing on the NOITSL, the issues include whether the licensee has complied with the CSSD subpoena, or has been afforded a reasonable opportunity to comply. If the licensee appears at the hearing, he or she may raise the issue of a resultant hardship, or may request that the ALJ determine an appropriate compliance plan.

### Definitions

The definitions of terms used in the remainder of this section are provided in CS 530.1 License Suspension Overview.

### Procedures for Caseworker

#### 1. Determining a delinquency

Upon identifying a support delinquency greater than or equal to six months' support payments, proceeds as follows:

- Determines the monthly current child support, and if applicable, spousal support amount.
- Divides the support debt by the monthly current child support amount, and spousal support debt by the current spousal support amount.

If either the child support or spousal support debt is equal to or greater than six months (does not need to be six consecutive months), proceeds in this section to determine whether license suspension is appropriate.

#### 2. Factors opposing license suspension

Determines if any of the following factors opposing license suspension apply, and takes action as indicated.

- Regular payments

The licensee's payment pattern indicates a likelihood of continued adequate regular payments, including amounts toward the arrears debt. These could be voluntary, income withholding, or other types of payments. At this time continues with existing collection efforts and does not initiate license suspension activities.

- Employer is identified

CSSD policy allows initiation of license suspension in cases where an employer is identified only if (1) the ordered withholding is not producing an acceptable level of payments (reported employment is part-time, seasonal, or short-duration), or (2) the CSSD does not have jurisdiction to order withholding.

- No source of income

The licensee currently has no source of income, is not expected to have one in the future, and the lack of income is involuntary or beyond control of the licensee.

A search should be conducted before determining there is no source of income. The search should include, but is not limited to contact with the custodial parent, review of the system locate screens, and review of the Unemployment Insurance Tax (UIT) database.

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The fact that CSSD has been unable to locate a source of income through electronic means, however, does not mean that the licensee is without income. Use of additional resources such as, regional locate personnel should be utilized. Locate personnel are able to contact the Federal Parent Locator Service (FPLS) for quarterly wage information that may not have appeared on an interface.

It is important to confirm and document that the lack of income is involuntary or beyond control of the licensee. In most instances, information located in the public assistance system can help with the confirmation. Continue to monitor the case for an income source. Do not initiate license suspension activities.

- Disputed debt amount

The CSSD is currently litigating the amount of the support debt in either a court or administrative proceeding wait for the outcome of the litigation; begin at Step 1 Determining a delinquency.

- Bankruptcy

The licensee has filed a bankruptcy petition. Consult with a supervisor to determine whether license suspension is appropriate. If appropriate, proceeds to Step 3.

#### **Other determining factors**

Other factors may exist which indicate a license suspension is not an effective enforcement tool, or is not appropriate in a particular situation. Review the facts with a supervisor to determine if license suspension activities should be initiated or deferred.

Examples:

A licensee is suffering from a terminal illness, and suspension of his or her professional license would lead to loss of employment and, as a consequence, loss of health insurance benefits.

The CSSD has already taken license suspension action in the case against the same licensee for a previous delinquency or noncompliance, and there is a suspension, stay, or payment plan in effect. A new action, although legally supportable, would not produce any additional enforcement benefit at this time.

### 3. License suspension actions may be appropriate in the following instances:

A licensee has multiple cases. When a suspension action already exists in another case, the CSSD should continue to pursue license suspension even if the license has already been suspended. If the existing suspension is stayed or terminated in one case, the net effect on the person's license will depend upon whether a suspension is still in effect in any other case.

Multiple actions should be coordinated, not combined, by alerting the Office of Fair Hearings (OFH) of the multiple actions, and where possible, issuing multiple notices or multiple motions at the same time. (Alerting the OFH of the multiple actions can be done by securely attaching a note to the initial documents).

Suspension actions against the licensee already exist by another authority. The CSSD is not the only authority who can suspend a license. If a license has already been suspended by another authority, continue with the CSSD license suspension process. Continuing with the suspension process ensures that the CSSD suspension is in place once the other suspension has passed, and the licensee will be aware of the CSSD's intention to suspend.

### 4. Identification and Verification of licenses for suspension

Identifies licenses for suspension by accessing electronic and non-electronic sources. Electronic sources include the Driver's License (DLC) screen in SEARCHS, the Department of Justice (DOJ) Driver Licensing system, and the On-line Licensee Look-Up System. Non-electronic sources include regional office lists of state licensing authorities, and the types of licenses each authority controls. When searching for professional or occupational licenses, it is important to note the license number for use in future documents.

Methods for verifying a license:

- Mail CS 530.2A, Inquiry to Licensing Authority.
- Telephone the licensing authority to obtain information otherwise requested in CS 530.2A. Telephoning the licensing authority should be done only when the facts of the case justify it i.e., action is urgent, or the existence of a license is reasonably certain.

A follow-up call to the licensing authority may be necessary if the written response indicates that the authority has additional locate, asset, or income information, or to clarify the information provided.

#### Further Identification of licenses related to one another.

Some licenses are closely related to other types of licenses. For example, in Montana a person must have a liquor license in order to obtain a gambling license. If only the liquor license is suspended, the gambling license becomes void, even though the CSSD did not suspend it. The Licensee Look-Up System is a good resource for finding a license and any license related to it.

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#### **Report a disregarded professional/occupational license suspension**

Reports to the appropriate licensing authority a licensee who continues to practice a profession or an occupation after the license has been suspended. A disregarded driver's license suspension may be excluded from this practice.

#### **Renewal of suspended licenses**

If the licensee contacts the caseworker regarding renewal of a suspended driver's license, the caseworker explains that a suspended driver's licenses can be renewed. However, the license remains suspended until the suspension is lifted or terminated. A driver who allows the license to expire (90 days past the expiration date) is subject to a re-test of the driver's exam.

Individuals who are interested in renewing a suspended professional or occupational license should contact the respective licensing authority directly. Each board of licensing has its own renewal process.

#### **License suspension against a license to practice law**

Consult with a supervisor for initiation of appropriate district court procedures when seeking a suspension against a license to practice law.

#### **Suspension of Wildlife Conservation License Eligibility**

Wildlife conservation license eligibility is automatically included in the NOITSL, and is suspended whenever any type of license is selected for suspension.

An action against only wildlife conservation license suspension eligibility can be initiated. However, in most cases it may be appropriate when suspension eligibility has been suspended in the prior year.

After the first year of a license suspension, wildlife conservation license eligibility is restored; the caseworker issues a new NOITLS to pursue suspension for the upcoming year.

Caseworkers receive a tickler the first of July each year as a reminder to review the case for suspension of wildlife conservation license eligibility for the upcoming year. The tickler appears in July to allow enough time for the NOITSL process to be completed before the cut-off date in January.

#### **Wildlife Conservation Eligibility one-year restriction**

The suspension must, by law, remain in effect for one complete conservation year. However, if the licensee signs and complies with a payment plan, pays the debt in full, or if case closure proceedings are initiated while the wildlife conservation license eligibility is suspended, the suspension should be stayed or terminated.

**NOTE:**

**Compliance with a payment plan.** Compliance with a payment plan generally means making at least one payment in accordance with the terms of the plan. If circumstances so justify, such as a long history of defaulting on payment plans or other enforcement remedies, or avoiding service of process, a case worker could require a longer period of compliance, not to exceed three consecutive months, before moving for a stay of wildlife conservation license eligibility suspension. The circumstances justifying an exception must be summarized in a case note regarding compliance with the payment plan.

#### **5. Review for other enforcement options**

Reviews the information obtained from the licensing authority to determine if the information can lead to other enforcement options such as those below. If so, proceeds with other enforcement options as appropriate.

Example 1: A livestock dealer/broker sells cattle through certain stockyards. The CSSD can obtain a writ of execution or issue an Income Withholding Order to those stockyards.

Example 2: A licensee has a gambling operator's license and owns electronic poker machines. The licensee does not run a bar, but leases the machines to bars. The Department of Revenue knows to whom the licensee has leased the machines. The CSSD can obtain a writ of execution, or issue an income withholding order to the lessee (bar owner) to intercept the lease payments due to the licensee gambling machine owner.

#### **6. Sending the License Suspension Warning Letter**

CS530.2B License Suspension Warning Letter applies to suspension of all license types. This letter can be generated automatically by the system and manually by the caseworker. The system automatically generates the letter when the driver's license interface receives a match and if an obligor meets the license suspension criteria. Manual generation by the caseworker occurs when the caseworker determines it is appropriate to send.

Sends the License Suspension Warning Letter even if an obligor's driver's license is invalid. This letter applies to ALL types of licenses a person may hold. It is appropriate to send if it is likely to encourage the licensee to enter into a payment plan without the need for a NOITSL.

If the caseworker determines it is not appropriate to send the Warning Letter (i.e., there is reason to believe the licensee will flee or hide assets), proceeds to Step 7.

The licensee has 30 days to respond to the License Suspension Warning Letter. During the 30 days, the licensee may respond by paying the noticed debt in full or entering into a payment plan. If this occurs, takes no further action. If the licensee does not respond by paying the noticed debt in full or entering into a payment plan sends a NOITSL.

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#### Suppressing the automatic generation

Under certain conditions, automatic generation of CS530.2B License Suspension Warning Letter can be suppressed by using the suppression indicator on the Case Information (CAS) screen.

Examples:

- licensee is incarcerated
- licensee has filed bankruptcy
- support debt is being litigated
- license suspension action is pending
- reason to believe the licensee will flee or hide assets
- the licensee has no potential to earn income in verified cases

#### 7. Notice of Intent to Suspend License (NOITSL)

If the License Suspension Warning Letter is not appropriate, or if a satisfactory response is not received, prepares a NOITSL Package:

- CS 530-2C Notice of Intent to Suspend License
- CS 501-1B Debt Computation Worksheet
- CS 404-6A Financial Affidavit
- CS 530-2D Request for License Suspension Hearing

Along with one of the following service documents:

- \*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. The original and one copy of the Acknowledgement form must be sent with a self-addressed stamped envelope for the licensee's return. If the licensee 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.



#### **Additional license**

If an additional license is discovered after, the NOITSL is served, but before it is resolved or a payment plan is entered, determines whether action against the additional license is likely to produce an enforcement benefit in the case. If so, proceeds against the additional license as appropriate by amending the NOITSL to include the additional license, or issuing a separate NOITSL for an additional license only, or including the additional license in any payment plan. The signed payment plan takes the place of the NOITSL for an additional license.

If additional debt accrues, or is discovered after the NOITSL is served, the additional amount cannot be used to increase the total amount payable under the initial action. To enforce the additional debt by license suspension action will require issuing a new NOITSL or entering the licensee into a payment plan, which includes the additional debt.

If a payment plan is already in place, the caseworker may wish to refrain from taking any default action on the new NOITSL, as long as the licensee is making payments under the existing payment plan.

#### **Amending the NOITSL for any other reasons**

If the licensee disputes the amount of the support debt alleged in the NOITSL, verifies the payments made. If, after verification, the noticed arrears amount is below six months, dismiss the notice. If corrections to the arrears amount are made and the balance remains above six months in arrears, amends the NOITSL.

#### **8. Service of NOITSL**

Service of the NOITSL is obtained by acknowledgement, certified restricted mail, or personal service through a sheriff or civil process server.

If service cannot be obtained by any of the above methods, attempts to obtain an updated address for service on the licensee. If the attempt fails, evaluates the case for possible deemed service as described below.

The CSSD may deem service of the NOITSL if all of the following requirements are met:

- The licensee 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.
- The CSSD sends the NOITSL by regular mail to the licensee's last known personal or employment address (complete form CS-405.1B, Effort to Locate for Service, for the case file).
- The notice is considered served by regular mail as long as it is not returned as undeliverable. The existing support or paternity order carries the deemed service of process warning required by MCA sections 40-5-226(12) and others.

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*Deemed service is available if the Notice and Order Concerning Support (NOCS) or Modification Notice and Order (MONO) contains the necessary language. NOCS and MONO documents issued before October 1, 1997 did not contain deemed service language. Generally, documents issued after October 1, 1997 do contain deemed service language. District Court orders do not contain deemed service language.*

If deemed service is not appropriate, monitors for an opportunity to obtain service, and takes no further action until the licensee is successfully served. After service, monitors for a timely response in accordance with the time periods in resolution of the NOITSL, step 10.

#### **Service of an amended NOITSL, or a separate NOITSL**

An amended NOITSL can be sent by regular mail, however a separate NOITSL issued for an additional license must be served by acknowledgement, certified restricted mail, or by personal service through a sheriff or civil process server.

#### **9. Contact with licensee**

The caseworker is highly encouraged to discuss the license suspension process and to seek a resolution of the issues with the licensee. The goal of license suspension is to obtain regular monthly payments. A caseworker should negotiate an appropriate payment plan with the licensee that addresses the licensee's circumstances. Contact may be made by the licensee at any time during the license suspension process, or the caseworker may choose to make contact with the licensee by proposing a payment plan prior to taking the licensee's default without contact by the licensee. The caseworker needs to make clear to the licensee that informal talks or negotiations do not extend the time allowed to request a hearing.

If the licensee contacts the CSSD at any time prior to resolution of the NOITSL, discuss the options to resolve the notice with the licensee, especially entering into a payment plan. See Step 10 for further explanation of resolution of a NOITSL.

If the licensee disputes the amount of the support debt alleged in the NOITSL, verifies the payments made. If, after verification, the noticed arrears amount is below six months, dismisses the notice. If corrections to the arrears amount are made and the balance remains above six months in arrears, amends the NOITSL.

If the licensee timely requests a hearing, proceeds to the explanation on hearings latter in this section.

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The NOITSL is resolved when one of the following occurs:

- The licensee timely enters into an approved payment plan; see explanation on payment plans.
- The CSSD issues an order dismissing the NOITSL; see explanation on dismissing the NOITSL.
- The licensee pays the support debt in full; see section on Motion and Order for License Suspension Action (MOLSA).

The CSSD issues an order suspending the license for default or following a hearing on the NOITSL; see section on a MOLSA.

Resolution of the NOITSL consists of two parts, a 60-day response period that begins with service of the notice and the 30 days following the response period in which the NOITSL must be resolved. A NOITSL must be resolved within this 90-day period, and is considered lapsed if unresolved after that time. Once a NOITSL has lapsed, a new NOITSL must be issued.

Once a NOITSL has been resolved, monitors the case for change(s) that may require further action including, but not limited to, monitoring the payment plan, staying, lifting, or terminating license suspension.

If licensee contacts the CSSD after the NOITSL has been resolved, explains the options for relief of suspension and refers to the MOLSA chart to determine the appropriate motion. Relief may include, among other things, the licensee agreeing to and signing a payment plan, the licensee paying the debt in full or the CSSD staying or terminating the suspension of the license. Refer to explanations on payment plans and on MOLSA's.

If the licensee disputes the noticed debt amount and requests a stay of license suspension, the licensee has a right to request a resultant hardship. A determination by a CSSD administrative law judge is required. Inform the licensee that relief may be requested by sending a written request to the OFH stating the reasons a license suspension default order should be set aside.

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### Payment Plans

If the licensee agrees the support debt is greater than six months' support payments and wishes to enter into a payment plan discuss licensee's financial circumstances and obtain additional financial information as required. File must contain appropriate financial documentation to substantiate monthly payment amount. Propose one of the following payment plans depending on applicability.

#### Standard payment plan

A standard payment plan is current support (if applicable) plus 1/24th of arrears. This payment plan does not have any expiration date, and the arrears are paid off in a 2-year time frame. No financial affidavit is required.

#### Standard Payment Plan

- The payment is current support + 1/24th of the noticed arrears. The notice debt is paid in 2 years.
- A debt computation must match the debt computation in the signed payment plan.
- Authorize income withholding on the license suspension debt, for details refer to CS 510.1 Withholding Action.
- No financial affidavit is required.
- No expiration date.

#### Financial Hardship payment plan

A financial hardship payment plan is current plus an amount to be paid towards arrears based on a hardship adjustment. This payment plan does not have any expiration date, but an annual review of the hardship is required. A financial affidavit is required.

To enter into a financial hardship payment plan, the licensee must submit CS 404-6A Financial Affidavit. Using information contained in the financial affidavit and information available from regular CSSD sources, caseworker completes performs a hardship calculation to arrive at the monthly amount to be paid toward the arrears.

Oftentimes asking what the licensee can afford to pay on a monthly basis will result in a higher payment amount than the calculated hardship; this is acceptable. If the licensee does not agree to the amount of the financial hardship calculation, the case may be reviewed for an alternative payment plan.

For the annual review, current financial information, meaning no older than the preceding 12 months' financial information, must be reviewed, and documented. A new payment plan should be prepared based on the licensees' current updated financial information. In addition, the declining balance of the noticed debt should be reviewed, and the case monitored for changes in circumstance.

**Financial Hardship Payment Plan**

<ul style="list-style-type: none"><li>• Payment is current support + noticed arrears based on the hardship calculation.</li></ul>
<ul style="list-style-type: none"><li>• An annual review is required.</li></ul>
<ul style="list-style-type: none"><li>• A debt computation must match the debt computation in the signed payment plan.</li></ul>
<ul style="list-style-type: none"><li>• Authorize income withholding on the license suspension debt, for details refer to CS 510.1 Withholding Action.</li></ul>
<ul style="list-style-type: none"><li>• Requires completion of CS 404-6A Financial Affidavit.</li></ul>
<ul style="list-style-type: none"><li>• Not expiration date.</li></ul>

**Alternative payment plan**

An alternative pay plan agreement requires supervisor approval. An alternative payment plan may be proposed only in highly unusual situations where it is clear the licensee cannot meet the monthly payments of a financial hardship payment plan, where no other enforcement tools are available for collecting support, and where it is likely the licensee will abide by the terms of the agreement. The duration of the agreement should be limited to the time necessary for the licensee to improve the licensee’s payment position, typically six months or less.

A suitable monthly payment amount may be obtained by using information from the CS 404.6A Financial Affidavit to perform a guideline calculation to determine an appropriate amount to be paid based on the licensee’s circumstances (with the understanding that this does not in any way modify the underlying support order). The agreed monthly payment may be any amount up to the amount calculated for financial hardship; in certain situations the amount may be even less than current support. All information used to make this determination should be documented.

When necessary, the agreement should include additional terms requiring the licensee to demonstrate a good-faith effort to work with the CSSD; for example, the agreement may require the licensee to contact the caseworker on a regular basis to report on progress of their financial situation or to confirm payment intentions, require mandatory job searches or request modification of the underlying order.

Since license suspension is governed by separate requirements, an alternative payment plan can be for less than the current support amount; however, once an employer is identified, an alternative payment plan cannot be used as the basis of income withholding.

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#### Alternative Payment Plan

- Payment is current support + less than hardship amount or in extreme circumstances less than current. This may require additional terms refer to Alternative Payment Plan below.
- Debt computation must match the debt computation in the signed payment plan.
- Requires completion of CS 404.6A Financial Affidavit and a guidelines calculation.
- No income withholding allowed on an alternative payment plan amount.

#### Preparing a Payment Plan

##### Prepares CS-530.2E Payment Plan based on the type of payment plan used:

- Specifies the licenses to which the agreement applies, including the license number and the type of license for a professional or an occupational license. The payment plan must include all licenses for which the licensee has been noticed. If the licensee agrees, the payment plan may also include unnoticed licenses.
- Ensures the certificate of mailing lists the name and address of the licensee and licensee's attorney and the CSSD caseworker.
- Prepares and attaches the debt computation worksheet. The amount of debt in the payment plan must match the amount of debt in the debt computation worksheet.
- Sends by regular mail to the licensee. Monitors for 30-day return.

##### Once a payment plan is signed and returned by the licensee:

- Makes a copy of the agreement for the file
- Assembles stuffers, the original payment plan, and a copy of the debt computation worksheet that matches the debt in the payment plan. Sends original packet to OFH
- Sends CS 510-8B CP Action Letter or an Interstate Responding Update Status (IRUP).
- For a Standard or Hardship Payment Plan, notifies the custodian, the custodian's attorney, or the other state that the obligated parent has entered into a payment plan for \$X per month, which will continue until the noticed debt is paid, or until circumstances change. For an Alternative Payment Plan, send notification of the amount per month for the limited time period.

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Upon entry of a payment plan, monitors for compliance with the terms of the plan and for changes in circumstances involving the licensee. In addition, monitors the declining balance of acknowledged debt. For cases involving an alternative payment plan also, monitors the expiration date.

If licensee fails to abide by terms of payment plan (defaults), reviews the circumstances of the default. If necessary, contacts the licensee to clarify or negotiate situation, and takes action to waive default or suspend the license. See MOLSA below for an explanation on waiver of default and issuing MOLSA.

#### **Subsequent Payment Plans**

A license suspension financial hardship or an alternative payment plan should still be in effect while the caseworker prepares a new payment plan and attempts to obtain licensee's signature.

Review case and circumstances for a possible new payment plan if a payment plan dollar amount becomes inappropriate due to:

- a support order is modified
- CSSD authority to enforce current support changes
- licensee's financial condition improves or declines

Discuss any new or changed circumstances with licensee, obtain an updated financial affidavit or other financial information as appropriate, determine plan type, and calculate monthly payment amount.

A reduction in the current support obligation does not necessitate a new payment plan. Amounts in excess of the new current support amount will be distributed to arrears according to the distribution rules and is provided for in the payment plan.

#### **Special terms for missed payments**

A new payment plan may require special terms for missed payments, such as a payment made in addition to the regular payments under the new payment plan, or a required lump sum of missed payments. It may also require the licensee to repay some or all of the total payments missed under the original payment plan. It may be necessary to add special terms for repayment, in writing, to the payment plan agreement, consult a supervisor.

#### **Information in financial affidavit not provided**

If the licensee fails or refuses to provide information in the financial affidavit when specifically requested to do so by the caseworker, the refusal may be deemed a refusal to enter into an approved payment plan. If the existing payment plan is still in effect, suspension may be appropriate unless it is in the best interest of support enforcement, as described below. If the payment plan has already expired, a new NOITSL must be issued in order to take a license suspension action.

#### **Best interest of support enforcement**

In its discretion, the CSSD may allow continuation of any existing payment plan. If the licensee refuses a new payment plan, collection under the existing plan would be in the best interests of support enforcement. Best interests are presumed when the monthly payment amount in the new plan is lower than the amount in the existing plan. If an existing payment plan is retained, the caseworker should document basis for the retention. If the licensee signs, monitor payment plan for compliance.

#### **Misc. Payment Plan Information**

##### **Licensee disagrees with language in the payment plan due to:**

- Payment plan due. If the licensee wishes to enter into a payment plan, but is reluctant to do so because of the language requiring payment by the 15th of every month, the caseworker may revise the payment plan document to specify a different monthly payment date for the licensee.
- Additional support debt. If the licensee wishes to enter into a payment plan, and additional support debt has accrued since the date of the notice, the caseworker should attempt to obtain the licensee's agreement to the total amount. However, if the licensee will not agree to the additional amount, the amount specified in the notice, or shown to be correct after considering proof of payments and other information, should be used. The caseworker should not request a default on the NOITSL solely because the licensee will not sign a payment plan that includes support debt accrued subsequent to the date of the NOITSL.
- Waiver of rights. If the licensee disagrees with any of the waiver of rights language, explain the rights being waived and attempt to resolve misunderstandings. This language may not be modified.

##### **Option for Use of Assets in Place of (or to Determine) Payment Plan**

In certain rare situations where the licensee holds substantial assets that are not reasonably available to the CSSD, the CSSD may choose not to offer one of the payment plans, but to request the licensee make use of the assets to pay the noticed debt in full. For example, the licensee may hold assets that are outside the CSSD's jurisdiction (such as property on a Reservation), or that are difficult for the CSSD to convert to cash (such as a liquor license). If the licensee can liquidate these assets, or use them as collateral to obtain a loan for cash, the CSSD may wish to pursue this option instead of accepting smaller payments under an extended payment plan. If the licensee demands a payment plan and will not make any attempt to use the assets as described above to obtain and pay the full amount, the CSSD may choose to offer a plan that requires the entire amount be paid within a few payments. The licensee may dispute any CSSD request to liquidate assets or pursue a loan, or any payment plan proposed under this option, at a hearing requested in response to the notice. In all situations of this kind, the caseworker should consult a supervisor before declining to offer a payment plan.



### Dismissing the NOITSL

#### Motion and Order to Dismiss Administrative Notice CS-401.3F

This document dismisses the NOITSL if contact with the licensee reveals the following:

- The identity of the person served is verified not to be the licensee.
- The licensee provides proof that the support debt did not equal or exceed six months' support at the time the notice was served.
- At caseworker's discretion, the decision is made that there is good reason to drop the action based on the licensee's expected full cooperation with income withholding and associated payment of the noticed support debt.
- The CSSD determines license suspension would be inappropriate and not effective.
- Forward the Motion and Order to Dismiss Administrative Notice to the OFH.

#### Motion & Order for License Suspension Action (MOLSA) CS 503.2F

MOLSAs are issued for the situations listed in the table below, but are not limited to those situations only. A single MOLSA may be entered that lists all of the licenses and satisfies all due process requirements for the same case.

##### Suspend a license

- The obligor defaults on a NOITSL or a payment plan.
- The obligor does not provide new financial information or does not enter into a new payment plan.

##### Lift a stay of license suspension, i.e., re-suspend a license

- Licensee defaults on a payment plan after a suspension has been stayed.
- Terms of the stay no longer apply (hearing decision).
- Licensee fails to abide by the condition of the stay.
- Licensee does not provide new financial information or does not enter into a new payment plan.

##### Stay or reinstate a suspended license

- Licensee enters into a payment plan, or a plan for compliance with a subpoena.
- A reasonable possibility of irreparable harm exists before the matter can be determined.
- Continued license suspension would be detrimental to income withholding.
- CSSD suspends a driver's license in error and wishes to maintain license suspension action.
- An emergency requires an immediate stay pending further investigation or hearing.

## ENFORCING A SUPORT ORDER

### License Suspension

CS 530.2

#### Terminate a license suspension when the *license has already* been suspended

- The notice debt is paid in full, or has complied in full with the subpoena.
- The case is being prepared for case closure.
- Upon discovery of improper service of the NOITSL.
- License has been suspended in error and the CSSD does not want to continue with license suspension.

#### Terminate a license suspension when paid in full or when the licensee has *never* been suspended

- The notice debt is paid in full, or the obligor has complied in full with the subpoena.

### Suspending a License

#### Subsequent NOITSL

If a subsequent NOITSL is issued to a licensee (a re-notice), the appropriate MOLSA action under the subsequent NOITSL should be a first time suspend regardless of the underlying status of the license. For example, if the licensee has been suspended and stayed in a case in the past and a subsequent NOITSL is issued in the same case, the appropriate MOLSA, if the licensee defaults for any reason, would be a first time suspend based on the subsequent NOITSL and not a MOLSA to lift the stay.

#### Licensee defaults on a NOITSL

If by the end of the 60-day response period the licensee has not paid the noticed debt in full, entered into a payment plan, complied with the subpoena, or requested a hearing, a MOLSA requesting license suspension based on default can be issued. See preparing a MOLSA below.

CS 405.4 Notice of Default may be sent before the MOLSA to suspend. The Notice of Default can be sent if the caseworker believes that further formal contact would prompt the licensee to pay the support debt in full, enter into a payment plan, or comply with the subpoena.

If the decision is made to send the Notice of Default, the language in the notice should be adjusted for license suspension and a tickler set 10 working days plus an additional three calendar days. If the licensee does not timely respond to the notice by paying the noticed debt in full, entering into a payment plan, or complying with the subpoena, prepare the MOSLA to suspend. A notice of default does not extend the time period for the caseworker to resolve the notice under Step 10 above.

If, after the date of service of the NOITSL, a partial payment is received and the payment applies to the noticed debt reducing it to less than six months' arrears, license suspension may be appropriate.

## ENFORCING A SUPORT ORDER

### License Suspension

CS 530.2

#### **Default on a payment plan**

A default on a payment plan does not exist until the end of the month in which the payment or other required licensee action is due and system month-end processing reveals no payment has been received. To determine whether the licensee has defaulted on a payment plan, review the circumstances of the missed payment. Take into account the date and due date of the last payment received.

Contact the licensee by telephone or letter for clarification regarding the payment. When contacting the licensee, explain that the licensee is in default of the payment plan and the license may be suspended unless the full amount of the missed payment is received by a specified date. The caseworker may require repayment in one payment or in installments. The repayment amount can be limited to the amount of a missed payment currently at issue or it may include amounts of earlier missed payments for which default was waived.

If licensee responds to the phone call or letter by sending the missed payment(s) as agreed upon, take no further action, but continue to monitor for payments received.

If licensee does not send the missed payments, at caseworker discretion, waive the default or submit a MOLSA to suspend license.

When issuing a MOLSA to suspend for failure to make a payment under a payment plan, specify the month(s) in which payments have been missed.

#### **Waiving a default**

When a MOLSA is not issued upon default of an existing payment plan, the default is waived. Waiving a default may be considered when a waiver will allow for or aid in the continued regular collection of payments under the existing payment plan. A caseworker waives a default on a payment plan by taking no action (suspending or lifting the stay) by the end of the month following the month in which the payment was due.

#### ***Delayed Action on Default Not Permitted***

Once a particular default is waived, any later action to suspend the license based solely on that default is prohibited by CSSD policy. For example, if a licensee misses a payment in May but pays June, the caseworker cannot suspend the license in July because the licensee failed to make May's payment.

Factors in the decision to waive a default may include:

- Length of time licensee abided by order before failing to pay.
- Past payment history.
- Good cause for failing to make payments, for example, a medically verifiable temporarily disabling injury that prevents the licensee from earning income.
- Whether licensee is still engaging in licensed activity or will return to licensed activity.
- Effect of federal Consumer Credit Protection Act limits on income withholding payments if applicable.
- Potential CSSD error in processing payment.

### Staying a License Suspension

#### Suspended in error circumstances

When preparing a MOLSA, include language that the driver's license was suspended in error and ask that the \$100.00 reinstatement fee with Driver's Control be waived. The OFH will undertake separate procedures to ask Driver's Control to remove the suspension from the licensee's driver's license record.

#### Emergency conditions

At the discretion of the caseworker, an emergency exists if suspension of a license has had a sudden practical and adverse effect, and if pursuing relief of the suspension through regular CSSD procedures would be unreasonable under the circumstances.

Possible emergency conditions:

- There is reason to believe CSSD should not have suspended the license, based on identity, debt amount, or compliance facts.
- There is reason to believe licensee may qualify for stay or termination based on findings by the ALJ (resultant hardship) and licensee agrees to request hearing if necessary.

Any other circumstances where a temporary stay of suspension will facilitate the collection of support debt or compliance with a subpoena, for example:

- The licensee is a truck driver who has been stopped en route in another state, and is being held for driving without a license. The licensee cannot arrange to enter into a payment plan until he or she can return home to assemble and submit the necessary financial information.
- The licensee is the only physician or only applicable specialist in a geographical area and a replacement is not immediately available.

### Termination of license suspension

#### Payment in full

For purposes of license suspension, payment in full occurs when the licensee has paid the noticed debt or the amount contained in the approved payment plan.

#### Collection types

Some collections may not reduce the amount of the noticed or acknowledged debt. Collections such as tax offsets, warrants for distraint, or writs of execution are tied to specified debt periods and may not match the period of the noticed or acknowledged debt.

### Preparing a MOLSA

Licenses listed in a MOLSA can be from different notices or payment plans as long as all the NOITSLs or payment plans were issued on the same basis of action--delinquency or noncompliance. All NOITSLs or payment plans should be listed individually at the appropriate places in the MOLSA, and the exact same motion will apply to all the licenses for the exact same reason.

MOLSA should include:

- Certificate of mailing listing name and address of licensee, and licensee’s attorney
- The license number and the type of license for a professional or an occupational license. (Most license numbers can be found at the state Licensee Look-Up System.)
- Attach any documents specified in the MOLSA
- Provide necessary stuffers and send package to the OFH
- Retain all copies of MOLSA and any attachments in case file and monitor for return.

Upon return of the MOLSA from the OFH, send the CP Action Letter or an IRUP to notify the custodian, the custodian’s attorney, or the other state of the status of the obligated parent’s license. Examples are:

- The Obligated Parent’s license has been suspended because
- The suspension of the Obligated Parent’s license has been stayed because
- The Obligated Parent’s license has been re-suspended because
- The license suspension process against the Obligated Parent has been terminated because of...

### For an Emergency Stay

When preparing the MOLSA for an emergency stay, an appropriate end date must be included. The end date specifies the date in which the OFH automatically re-suspends the license. An end date listed as “indefinite” is not appropriate.

Contact the OFH when preparing a MOLSA to stay the suspension. The OFH will need to expedite the MOLSA and CS530.2G Notice to Licensing Authority. This may involve extra steps by fax, telephone, or hand-delivery.

Upon obtaining an emergency (temporary) stay, work with licensee to pay the debt in full or enter into a payment plan. If efforts are successful and the licensee enters into a payment plan, issue a MOLSA TO STAY that permanently reinstates the license. If licensee pays the debt in full, issue a MOLSA TO TERMINATE to terminate the license suspension action. If efforts are unsuccessful, allow the stay to expire and license to be re-suspended.

### Coordination with Income Withholding

If an employer or payor is identified before the NOITSL is resolved, proceed with income withholding as applicable. Coordinate procedures in this section according to the guidelines in 1 through 5 below:

1) Use of payment plan.

A standard or financial hardship payment plan may be used to initiate income withholding rather than a Notice of Withholding or Voluntary Withholding Authorization. Amounts used in the payment plan must be based on the support debt listed in the NOITSL, unless the licensee agrees to additional debt in a standard or financial hardship payment plan.

An alternative payment plan cannot be used to initiate income withholding.

2) Administrative Law Judge (ALJ) authority. At a hearing on the NOITSL, the ALJ may take the following action at the request of the caseworker:

- Require continued participation in ordered income withholding as a condition of a stay imposed at hearing
- In the absence of an income withholding order, seek the obligor's voluntary agreement to a payment plan containing amounts that include additional debt. (If the obligor does not agree, the ALJ is limited to amounts based on the NOITSL debt).

3) Coordination for payment purposes. When an income withholding order is in place:

- Take no action on an expired NOITSL
- The notice may be dismissed before the NOITSL is resolved if the income withholding is for the total amount of the alleged debt and the licensee is likely to cooperate
- Take no action against the licensee for failure to comply with a payment plan if existing income withholding payments meet the payment plan amounts

**NOTE:**

**A NOITSL must be resolved within 90 days of service.** The notice is considered lapsed if unresolved after 90 days, and a new NOITSL must be issued.

4) Condition under which CSSD loses authority to withhold.

The CSSD loses its authority to withhold when the noticed debt has been paid and the income withholding was based solely on a standard payment plan, a financial hardship payment plan, or a payment plan imposed at hearing.

In order to continue withholding the CSSD must either obtain a new payment plan or initiate an appropriate withholding action, see CS 510.1 Withholding Action—With Notice or CS 510.3 Withholding Action—Without Notice.

## ENFORCING A SUPORT ORDER

### License Suspension

CS 530.2

- 5) Time frames for income withholding. The time frames for income withholding apply regardless of the status of any license suspension payment plan. If a payment plan is used in place of an income withholding notice, the plan must be entered within two (2) working days after an employer or payor is identified, or 15 days after a Letter of Delinquency is issued.

If, at the time a payor is identified and the licensee has not agreed to standard or financial hardship payment plan, refer to CS 510.1 and CS 510.3 Withholding Action—With/Out Notice to obtain withholding for entire support debt.

If the licensee enters into an approved standard or financial hardship payment plan authorizing income withholding or agrees to withholding at a license suspension hearing where the payment plan was imposed, issues an Income Withholding Order.

Once a license has been suspended, license suspension cannot be stayed or terminated based solely on income withholding collections; likewise, under a payment plan or other stay, the license can be suspended for default regardless of whether withholding is in place.

Indirect effects due to license suspension:

- Payments collected through withholding are credited to any existing payment plan.
- An existing suspension may be detrimental to continued collection through income withholding. For example, if the licensee will lose his job if his driver's license remains suspended, the caseworker may move for a stay. The conditions of the stay must include continued participation in income withholding, and the caseworker must move to lift the stay if employment ceases.

If a new payment plan is agreed to, modify income withholding if necessary. If an existing payment plan is retained and it does not meet current income withholding requirements, the CSSD should continue withholding income only if immediate income withholding applies, or withholding is based on adjudicated arrears. In order to continue withholding the CSSD must obtain a new payment plan or initiate an appropriate withholding action as in CS 510.1 Withholding Action—With Notice or CS 510.3 Withholding Action—Without Notice.

### Hearings

#### Procedures for Caseworker

If a Request for License Suspension Hearing is received in the regional office, immediately fax the request to the OFH, make a copy for the case file and send the original to the OFH with evidence of the date received. A suspension is delayed pending the outcome of a timely requested hearing.

#### Preparing for hearing

The OFH will provide the caseworker with a copy of the hearing request. Contact licensee and attempt to resolve the issue(s) without the need for a hearing, including entering into a payment plan agreement. If hearing proceeds, review the hearing request to determine the issues. If the hearing request is not specific enough to allow for collection of appropriate evidence to prepare for hearing, the caseworker should contact the licensee and attempt to obtain as much information and documentation as possible about the licensee's claim(s) in the request for hearing. If the licensee will not provide the caseworker with a specific reason for the request for hearing, the caseworker should consult a supervisor on a motion for discovery or other necessary action.

Generally, the burden is on the licensee to prove a mistake of fact in a license suspension hearing. However, in a license suspension stay hearing, the CSSD is required to rebut (or support) the licensee's basis for a stay. Evidence presented by the CSSD must relate to the licensee's claim, and the caseworker must prepare for the hearing accordingly.

Prepare witness and exhibit list CS 405.11A the list must include:

- Names and telephone numbers of witnesses and a summary of testimony they will provide.
- A list of the exhibits along with copies of the exhibits

Send original witness and exhibit list to OFH by the exhibit due date and a copy to all participants. Retain a copy for the case file. Arrange for the witnesses' appearance at the hearing.

If the licensee signs a payment plan in a case where a hearing has been requested or scheduled, the OFH will dismiss the hearing request or the scheduled hearing. Include a notation about the pending hearing/hearing request when submitting the payment plan for entry as an order.

If in a previous conversation, the licensee has indicated the intent to claim a financial or resultant hardship, prepare additional testimony, exhibits, etc. to rebut or support the hardship as appropriate. If the licensee introduces a hardship claim at hearing without prior indication, determine whether additional time is necessary to prepare for the hardship case; if so, move for a continuance to prepare the case.



## ENFORCING A SUPPORT ORDER

### License Suspension

CS 530.2

If a stay hearing occurs, requests the ALJ take one of the following actions as appropriate depending on the status of income withholding in the case:

- Require continued participation in income withholding as a condition of any stay resulting from hearing.
- Seek licensee's voluntary agreement to income withholding for any payment plan imposed at hearing where amounts in the payment plan meet Montana income withholding requirements. If the licensee refuses to agree to income withholding in this situation, the CSSD cannot compel it within the license suspension process.

#### Procedures for Office of Fair Hearings (OFH)

Upon receipt of a request for a license suspension hearing submitted by the licensee, determine whether the request is timely (received within 60 calendar days after the date of service). If so, obtain a determination from the Administrative Law Judge (ALJ) on whether the request contains issues that may be determined in a license suspension hearing as outlined in MCA §40-5-703(3). If a hearing request is untimely, the ALJ may review to determine if any hardship issues are present, pursuant to MCA§40-5-710.

- If the request is not timely, or if the request does not contain issues that may be determined in a license suspension hearing, deny the request according to standard OFH procedures

If the request is timely and contains issues that may be addressed, send a copy of the request for hearing to the caseworker, and identify any dates the caseworker is unavailable for hearing

A suspension is automatically stayed pending the outcome of a timely requested hearing. An order specifically entering a stay in this situation is not required.

If the OFH receives and approves a signed payment plan in a case where a hearing is requested and granted, the OFH will dismiss the hearing. If a date has been set for the requested hearing, the OFH dismisses the hearing date.

Prepare and issue a Notice and Order for Hearing, HR-14, setting the date and time for hearing and exhibits due date. Copy the hearing notice and order, file the original, and mail copies with hearing instructions attached to the licensee, the licensee's attorney, and the caseworker.

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

##### Conduct the administrative hearing

Connects all parties by telephone and put witnesses under oath. In all cases, determine whether the licensee owes a support debt in an amount greater than or equal to six months' support obligation and, at the licensee's request, determine whether a financial or resultant hardship applies. If the licensee has raised an issue of financial or resultant hardship, the ALJ may hear testimony and arguments, including testimony and information from the other parent or the custodian, and receive other evidence of the licensee's hardship claim. If applicable, determine an appropriate payment plan.

## ENFORCING A SUPPORT ORDER

### License Suspension

CS 530.2

If the licensee's reason for requesting a stay has already been considered for the same incident, or if the circumstances upon which the request is based existed at the time of the original hearing, the request must be denied.

If the licensee does not appear for hearing, the ALJ may dismiss the hearing request for the licensee's failure to appear or determine whether the licensee owes a support debt in an amount greater than or equal to six months' support obligation. (Consider any hardship defenses or requests for payment plan by the licensee to be without merit).

Following the close of the hearing, issue and sign a proposed decision and order. If within 20 days after service by mail of the proposed decision and order, the licensee files a motion to review the order setting out any of the grounds for review in ARM 37.62.951, consider the motion. Order a briefing schedule if necessary, affirm, correct, amend, or modify the proposed order. Issue a final decision and order or enact the proposed decision and order as a final order. If the licensee does not file a motion, enter a final order. Enter appropriate case notes in system.

#### Procedures for OFH Hearing and for Non-Hearing

##### OFH processes proposed and final decision and order

For any proposed or final decision and order post hearing, send copies to the caseworker, the licensee, and obligee (including third-party) by regular mail; enter a case note in system for the order mailed, and retain the original for the file. In the case of a proposed decision and order, monitor for receipt of a motion to review within 20 calendar days plus 3 mailing days after the date the proposed decision and order is mailed.

##### Non-hearing decision and order

Upon receipt of a MOLSA or a signed payment plan, review the document, obtain ALJ signature, and enter the decision and order as appropriate.

**The following applies for both hearing and non-hearing actions.**

##### Notice to licensing authority

If the decision and order changes the license status with the licensing authority, prepare the appropriate version of CS-530.2G, Notice to Licensing Authority (see below), and obtain the signature of the ALJ. Identify the applicable licensing authority and address from the list kept by the OFH. For a professional or occupational license, enter the license number along with the license type on the SEARCHS form. Mail a certified copy to the licensing authority by certified mail, return receipt requested or by acknowledgment, and file the original.

The appropriate version of the Notice to Licensing Authority will depend on the status of any license suspension action ongoing in any of the licensee's other cases(s). When a license is suspended in any case, it must remain suspended with the licensing authority until the suspension is stayed or terminated in all the cases against that licensee. A stay of the suspension or a termination of a suspension is not sent to the licensing authority if the license remains suspended in any other cases.

## ENFORCING A SUPORT ORDER

### License Suspension

CS 530.2

#### **Determine if licensee has a reason for staying a suspension due to financial or resultant hardship.**

Upon receipt of a request to stay the license suspension after the license has been suspended, review the request to determine if the licensee has alleged a valid reason for a stay concerning financial or resultant hardship. If not, issue order denying request, mail copies to licensee, licensee's attorney, and caseworker, and take no further action. If so, grant hearing on motion.

#### **Ten-Day Hold Period**

When a MOLSA to suspend a license or lift a stay on a suspension is based on a finding that the licensee failed to comply with the terms of a payment plan or stay order, the CSSD allows a period of 10 days during which the licensee may challenge the finding and if applicable request a hearing.

If the licensee submits a challenge, the OFH may Allow the challenge and grant a hearing. The hearing is conducted in the same way as a stay hearing or Disallow the challenge and deny the hearing. If the licensee does not contest the suspension decision and order, it becomes final 10 days after entry.

The ten-day hold period is not the same as the 20-calendar day request for review following the proposed decision and order of the ALJ from a license suspension hearing.

If the licensee makes a payment within the 10-day hold period, the caseworker may issue a MOLSA to stay license suspension. If done within the 10-day hold period, no notice to licensing authority will be generated.

#### **Procedures for Caseworker**

##### **License suspension follow-up**

Following receipt of a signed MOLSA, payment plan, or any hearing decision and order, document receipt of the order and monitor for compliance. If noncompliance occurs or terms of MOLSA no longer apply, prepare appropriate MOLSA.

Set ticklers needed to monitor payment plan compliance and for annual review of the financial hardship payment plan. Set tickler for 60 days to send CS 530-3B license suspension Work with Us Letter if appropriate. Proceed with income withholding if applicable. Monitor license suspension declining balance and, in cases involving an alternative payment plan, monitor the expiration date.

It is recommended that upon receipt of the motion and order to suspend a license that the license suspension status is verified on the Department of Justice (DOJ) licensing system.

Where the suspension is based on a default on the NOITSL, and the licensee contacts the CSSD claiming good reason to set aside the default, or making any equivalent comment or assertion consult a supervisor. If it is appropriate to set aside the suspension, use a MOLSA to stay. Refer to section above on MOLSA to stay.