

ENFORCING A SUPPORT ORDER
Federal Offset Administrative Review

CS 508.5

SUPERSEDES

CS 508.4 Federal Tax Intercept Administrative Reviews--Overview and Policy, November 1, 1989

CS 508.6 Federal Tax Intercept Administrative Reviews--In-State Reviews November 1, 1989

CS 508.8 Federal Tax Intercept Administrative Reviews--Interstate Requests November 1, 1989

REFERENCES

45 CFR 303.72

Policy

Federal regulations governing the federal offset program require that if the CSED receives a complaint from an obligor concerning the CSED's submission of the obligor's case for federal offset, or concerning an offset that has already occurred as a result of the CSED's submission, the CSED must conduct an administrative review to determine the validity of the complaint. Regulations do not specify the proofs required in, or the opportunities for appeal from, the administrative review. The CSED has chosen to conduct the review at the regional manager level, with appeal available in the form of a federal offset hearing conducted by the Office of Fair Hearings Administrative Law Judge. This section addresses only the regional manager's review--technically the only administrative review required. Policy and procedures for appeal via CSED federal offset hearings are given in section CS 405.20 Federal Offset Hearing.

Regulations also state that if a case is submitted for federal offset by a state that did not issue the support order in the case, the obligor may request the administrative review be conducted by the state that issued the order. If the obligor takes this option, the case becomes a transfer case for purposes of federal offset administrative review. Montana can be involved in a transfer case in two ways: (1) as the state that submitted the case for offset but did not issue the order, and (2) as the state that issued the order but did not submit the case for offset. This section describes both processes.

Federal regulations for transfer cases require the state with the order to conduct the review and make a decision within 45 days of receiving the request from the submitting state. In non-transfer (Montana submitting) cases, CSED policy adopts the same 45-day requirement for a review decision, although there are no federal time frames for these cases.

In non-TANF cases where an administrative review is requested before money from an offset collection is disbursed to the family, the CSED delays disbursement pending the results of the review.

A federal offset administrative review is not considered an adjudication of the debt for purposes of other CSED enforcement actions.

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PROCEDURES

MONTANA CASES (INCLUDING INTERSTATE INITIATING)

Procedures for Caseworker

1. Upon being contacted by an obligor in response to an OCSE Notice, a CSED pre-offset statement (obligor bill), or a Financial Management Service (FMS) offset notice, follows procedures in section CS 508.3 Collection by Federal Offset, for preparing and sending a debt computation worksheet, explaining how the debt was determined, and attempting to resolve the obligor's concerns. (If the obligor is responding to an offset submitted by another state, refers the obligor to the other state for relief. If the obligor is requesting a review in Montana because Montana issued the support order in the case, explains the submitting state must send the referral to Montana to initiate the review.)

If the obligor's concerns are resolved, enters a SEARCHS case note documenting the contact and the resolution. If the obligor's concerns cannot be resolved, proceeds to step 2.

2. Determines whether the federal offset case is eligible for administrative review. Review is available if any of the following circumstances apply:
 - 1) The CSED has never performed an administrative review in the case.
 - 2) The CSED has previously performed an administrative review in the case, but the obligor is now disputing months that occurred after the latest review.

EXAMPLE: The CSED submitted arrears of \$600 in October, and the obligor requested an administrative review at that time. The review determined the amount was correct. The obligor continued to pay current support for the next six months, but made no payment on arrears, so the case was not modified to OCSE. In April, the obligor contested the same \$600, claiming he made a payment on the arrears in January. The obligor must be granted an administrative review, because he is disputing a month that was not included in the previous review.

- 3) In unusual situations, the obligor is disputing the CSED's (or the federal government's) jurisdiction or authority to enforce by federal offset in the case, and there has been no previous administrative review where the obligor could have raised this objection. For example, the obligor is disputing the CSED's authority to enforce against a pay source that is protected by a court-ordered stay on the collections, or that comes under the exclusive jurisdiction of a Native American tribe, and the pay source had not been offset at the time of any previous review. (Note that it should be possible to resolve most of these claims before they get to administrative review.)

If the case is eligible for administrative review, proceeds to step 3. If the case is not eligible for administrative review, explains a review is not available and proceeds in step 2a or 2b below:

- a. If the obligor accepts this determination, enters a SEARCHS case note documenting the denial and the reason, and takes no further action.
- b. If the obligor insists on a review, proceeds to step 3. (Unless new information is provided by the obligor in the written request, the request will be denied in step 6, allowing the obligor to request a hearing on the denial.)

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3. Informs the obligor an administrative review is available, and explains the following aspects of the review process as applicable:
 - The review must be requested in writing, using the Request for Administrative Review provided by the CSED or an equivalent document.
 - Montana law will be used to interpret the support order upon which the offset is based.
 - If the support order was issued by another state, the obligor may request that Montana forward the case to that state for administrative review.
 - Any debt for which the CSED has issued and resolved a notice in another action (such as income withholding) will be automatically confirmed during the administrative review without further examination.
 - In a non-TANF case the CSED will inform the obligee of the time and place of the review.
4. Prepares form CS-508.6A, Response to Inquiry about Federal Offset and Request for Administrative Review. Refers the case, with the prepared form, to the regional manager. (If the caseworker assigned to the case is the regional manager, the regional manager should refer the case to the CSED staff attorney, who becomes the designee.)

Procedures for Regional Manager or Designee

5. Reviews and signs the response letter portion of the form; sends the entire original form (response and request) to the obligor by regular mail and retains a copy in the case file.
6. Upon receipt of a signed Request for Administrative Review, enters a SEARCHS case note for the date received and proceeds as follows:
 - a. If an administrative review is available according to the criteria in step 2, sends a copy of the request to the OFH and retains the original in the case file. Immediately instructs the caseworker to place a hold on disbursement of any offset collections received toward non-TANF arrears.
 - i. If the request is for an administrative review in Montana, proceeds to step 7.
 - ii. If the request is for an administrative review in the state (other than Montana) that issued the support order, refers the case to the caseworker for processing under TRANSFER CASES--OUTGOING, later in this section.
 - b. If an administrative review is not available, prepares form CS-508.6B, Notice Concerning Administrative Review, denying the request and stating the reason. Mails the original to the obligor; sends a copy to the OFH, and retains a copy in the case file. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.
7. Prepares form CS-508.6B, Notice Concerning Administrative Review, granting the request and scheduling the review for a date within 5 to 10 working days after the request was received. Manages the remaining procedures in this process to ensure that an administrative review decision is rendered within 45 calendar days after the written request was received.

Prepares the necessary exhibits. Sends the original Notice Concerning Administrative Review and a copy of each exhibit to the obligor by regular mail. Sends a copy of the notice to the OFH and retains a

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copy of the notice and each exhibit for the case file. In a non-TANF case also sends a copy of the notice to the obligee.

If the obligor requests a postponement for good cause (for example, the obligor needs more time to gather payment receipts), and submits the request in writing, enters a SEARCHS case note and reschedules the review for a later date.

8. On the date scheduled conducts an administrative review by telephone with the obligor. Explains the exhibits, other case documentation, and the CSED position. Accepts arguments, evidence, and documentation from the obligor. Advises the obligor that the CSED will issue a determination in writing within 5 working days after the review.

If the obligor fails to appear for the review and no good cause for postponement has been presented, makes a decision based on the material in the case record.

9. Within 3 working days after the administrative review, evaluates the case record, makes a decision, prepares, and sends a letter to the obligor notifying him or her of the decision. The letter must state how the amount submitted for offset will change, or that the amount will remain in effect as submitted.

Identify the order or judgment on which the amount is based specify the revised or confirmed amount and the period of time it covers, calculated in accordance with Montana law explain how the obligor's arguments, evidence, or documentation did or did not affect the amount determined by the review list the mailing address of the Office of Fair Hearings (OFH), and inform the obligor that he or she may request a hearing on the decision by submitting to the OFH a written request for hearing containing the obligor's case number and social security number, and a copy of the Financial Management Service's Notice of Offset showing that an offset has actually occurred. If an offset has not yet occurred, the letter should further explain that any request for hearing will be denied until an offset has occurred

Sends a copy of the letter to the OFH and retains a copy in the case file. In a non-TANF, case also sends a copy of the letter to the obligee. Returns the case to the caseworker for any subsequent action in section CS 405.20, Federal Offset Hearing.

Procedures for Caseworker

10. Implements the determination from the review as follows:
 - a. If the review determines that no adjustment to the amount submitted for offset is required, and federal offset is proper with respect to the case facts and any applicable pay sources, removes any hold placed on disbursement of offset collections in step 6a, and takes no further action federal offset is not proper with respect to the case facts or certain pay sources, takes the necessary steps to suppress the applicable remedies or pay sources; if the determination creates a refundable amount, also proceeds in step 10b as appropriate.
 - b. If the review determines that an adjustment to the amount submitted for offset is required, takes the following steps:
 - i. Requests the appropriate adjustment from TAPP; includes in the adjustment request the date of the administrative review decision. Does not delay initiation of the adjustment

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process pending receipt of an offset collection from FMS.

- ii. Immediately notifies the Federal Offset Specialist of the review-related adjustment, for purposes of the special weekly update required in section CS 508.3 Collection by Federal Offset.

Procedure for Federal Offset Specialist

11. Upon being notified of an adjustment in step 10, notifies OCSE of the change in the submitted amount within 10 working days after the review decision. (Note that administrative review adjustments are included in the special weekly update in section CS 508.3, despite the slightly longer time frame allowed for reporting these events.)

At the time of this writing an enhancement to automatically identify and report these adjustments to OCSE was not in place; until it is, the caseworker and Federal Offset Specialist must continue to work together to comply with the federal time frames via manual process.

Also, until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment results in a refund of an offset amount, notifies OCSE of the refund within one week of issuance.

Procedure for Caseworker

12. If a written request for a hearing on the denial in step 6b or the decision in step 9 is received in the regional office, immediately forwards the request to the Office of Fair Hearings for processing. Follows the procedures in section CS 405.20 Federal Offset Hearing.

PROCEDURES

TRANSFER CASES--OUTGOING (MONTANA SUBMITTED OFFSET)

Procedures for Caseworker

1. Within 10 calendar days of receiving a request in MONTANA CASES step 6a(ii) for a review by the state (not Montana) that issued the support order, takes action in steps 1a and 1b below.
 - a. Enters the appropriate transfer indicator on SEARCHS, along with the name of the state to which the case is being transferred, and the appropriate local code. (SEARCHS then identifies the case as a transfer case, and includes it in the next special weekly update file sent to OCSE, as described in section CS 508.3.)

At the time of this writing, the enhancement for this indicator was not in place. Until it is, the caseworker must contact the Federal Offset Specialist manually and provide the following information: case number and type (TANF/non-TANF), obligor's name and social security number, name of other state with local code, and submitted amount. The Federal Offset Specialist will notify OCSE as required.]

- b. Notifies the IV-D agency in the other state (transfer state) by initiating a CSENet transaction, preparing and sending to the other state's interstate central registry the following documents:
 - Form CSE-TRAN, Interstate Transmittal, indicating that the action requested is an administrative review for federal offset

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- A copy of the support order and any modifications
 - A copy of the payment record or the obligee's affidavit
 - A debt computation worksheet, showing how the debt certified for offset was determined
 - Copies of any applicable correspondence received from or documents provided by the obligor
 - In non-TANF cases, the obligee's address (if appropriate)
- c. In non-TANF cases also takes the following actions:
- Immediately places a hold on disbursement of any offset collections received.
 - Notifies the obligee that Montana has sent the case to another state for federal offset review, and that the obligee's address is being provided to the IV-D agency in the other state.
 - Before releasing the obligee's address to the other state, checks SEARCHS for any reason to protect the information. If found, attaches a clear warning with the address that release of the information to another party could result in harm to the obligee or children.
- d. Monitors the case for action by the transfer state. If results are not received within 45 calendar days after the interstate referral in step 1b, contacts the transfer state, and proceeds to step 2 when results are obtained.
2. Upon being notified of the results of the review, enters a SEARCHS case note listing the results; in a non-TANF case notifies the obligee of the review results.

If the transfer state has modified or deleted the case as a result of the administrative review, also takes action in steps 2a and 2b below.

- a. Immediately requests an adjustment to implement the change on SEARCHS. (Note that special reporting via Montana's weekly update file (see section CS 508.3) is not required; it is the duty of the state conducting the review to report modifications resulting from the review to OCSE within 10 working days.)
- b. Until the special weekly update required in section CS 508.3 is in SEARCHS production, if the adjustment creates a refundable amount, separately notifies the Federal Offset Specialist of the refund, referencing the adjustment requested in step 2a. Does not delay initiation of the refund process pending receipt of the offset money from FMS.

Special reporting via Montana's weekly update file (see section CS 508.3 Collection by Federal Offset) is required; it is the duty of the submitting state to report refunds of federal offsets to OCSE on a weekly basis.

Montana Bound by Transfer State's Decision

A submitting state must abide by the decision of the state holding the administrative review, and must take all steps necessary for a speedy refund, if one is required because of the decision.

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Procedures

TRANSFER CASES--INCOMING (OTHER STATE SUBMITTED OFFSET)

Procedure for Interstate Intake Unit

1. Upon receiving a request from another state for administrative review in a transfer case (usually in the form of an incoming interstate transmittal), forwards the request to the Interstate Regional Manager.

Procedures for Interstate Regional Manager

2. Upon receiving a request for administrative review from the submitting state in a transfer case, determines whether the support order was issued in Montana. If not, so advises the other state, and takes no further action.

If the support order was issued in Montana, determines whether the information received with the interstate transmittal is sufficient to conduct a review. If not, sends a letter to the submitting state requesting the necessary information, and takes no further action in this section until the information is provided.

Proceeds with the review as described in MONTANA CASES steps 7 through 12, except for the following differences:

- a. Calculates the 45-day time frame for rendering an administrative review decision beginning with the date the CSED received the request and sufficient information from the submitting state.
- b. Uses the documents received from the submitting state as the exhibits for the review.
- c. Sends to the submitting state a copy of the Notice Concerning Administrative Review. Does not send copies to the obligee.
- d. In conducting the review, explains the submitting state's position. Ensures the decision is based only on the accuracy of the arrears, and whether the arrears are legally enforceable under Montana state law. Does not base the review on Montana-specific policy considerations, such as whether Montana would have submitted the case for offset under its own procedures.
- e. Reports the results of the review to the submitting state via form CSE-TRAN, Interstate Transmittal (acknowledgments section), or by sending a copy of the letter to the obligor to the submitting state, or both. Makes sure the submitting state is informed that a federal offset hearing is available to the obligor to dispute the review determination.
- f. If Montana is not a responding state in the case, omits steps 10 and 11 with respect to SEARCHS adjustments.
- g. If the review results in a change in the amount certified by the submitting state, works with the Federal Offset Specialist to submit the modification or deletion to OCSE within 10 working days, listing the other state--not Montana--as the submitting state. (OCSE will accept the one-time modification or deletion from Montana only if (1) the correct submitting state is named in the information submitted by Montana, and (2) the submitting state has previously submitted the case with a transfer transaction type, naming Montana as the transfer state.)

At the time of this writing, the special weekly reporting of administrative review adjustments was not automated; until it is, the Federal Offset Specialist must manually submit these cases.