



## CHILD SUPPORT SERVICES DIVISION CASE MANAGEMENT

### Identifying Unenforceable Cases

CS 201.7

## SUPERSEDES

CS 201.7 Identifying Unenforceable Cases, July 14, 2017

## REFERENCES

45 CFR 303.11; ARM 37.62.1122

## Introduction

The purpose of this section is to provide Child Support Services Division (CSSD) policy and procedure for identifying arrears-only cases that qualify as unenforceable. A case is unenforceable and can be closed when it meets all criteria in ARM 37.62.1122 and all enforcement actions have been exhausted.

## Definitions

**Arrears Only Case:** A IV-D case that remains open only to collect child or medical support arrears.

**Unenforceable Case:** An arrears-only case is unenforceable when it meets all criteria in ARM 37.62.1122 and has been an open case with the CSSD for at least two years.

## POLICY

### Unenforceable Closure Criteria

#### ARM 37.62.1122 DETERMINING UNENFORCEABLE CASE STATUS

- (1) This rule establishes the criteria which a IV-D case must satisfy to be categorized as unenforceable. All of the following criteria must be met:
  - (a) No payments have been posted to the case in the last 12 months, and payments are not expected to be posted in the immediate future.
  - (b) No payments from the federal offset program have been received during the past two years.
  - (c) No payments from the state offset program have been received during the past two years.
  - (d) If payments have been made in the past two years, collected by methods other than federal or state offset, those payments do not exceed \$1,000.00.
  - (e) The CSSD has not identified any attachable financial institution accounts belonging to the non-custodial parent.
  - (f) The CSSD has not identified any executable assets belonging to the non-custodial parent.
  - (g) A credit bureau report accessed within the past six months indicates that income or asset information is unavailable.
  - (h) In a case involving Title IV-E funds, all of the children of the case have been emancipated, or parental rights of the non-custodial parent have been terminated.



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#### **A Case Closed Under Unenforceable Closure Criteria**

A case that is closed as unenforceable is eligible to be reopened and retains the accrued debt. For this reason, accounts should be closed with a closure code that leaves in the remaining balance.

#### **Intergovernmental Responding Cases**

A non-TANF or intergovernmental responding case may be considered for closure under Montana's unenforceable criteria. Sixty days prior to closure, the initiating agency must receive notice of the CSSD's intention to close the case. If the initiating agency supplies new information that will lead to enforcement of the obligation and requests the case remain open, it is the policy of the CSSD to grant the request and not close the case.

#### **Cases that do not meet Unenforceable Case Criteria**

##### **Locate status**

A case in locate status should not be considered unenforceable and should not be closed under 45 CFR 303.11(b).

##### **Obligor is incarcerated, institutionalized, or Disabled**

When payments aren't being made because the obligor is incarcerated, institutionalized, or disabled the case should not be closed as unenforceable. These cases may be considered temporarily unworkable cases or possibly qualify for case closure. Refer to CS 201.4 Temporarily Unworkable Cases and CS 201.5 Identifying Closed Case Status.

##### **Native American Cases**

Cases involving Native American participants are subject to all CSSD actions and services, as long as the CSSD has jurisdiction. A Native American case where the CSSD lacks jurisdiction to proceed is not automatically considered unenforceable.

Before determining that a Native American case is unenforceable, residence, employment, and other sources of income or assets should be investigated. If there is a possible seizure of assets, guidance is obtained from an attorney at the Office of Legal Affairs (OLA). An intergovernmental action may be needed if the CSSD lacks jurisdiction to proceed.

##### **Cases Involving a Tribal Employer**

In accordance with policy in CS 250.1 Native American Jurisdiction, if an obligor is not a tribal member but is employed by a tribal employer, an income withholding order (IWO) should not be issued, and the case should not be closed as unenforceable. This is a jurisdictional issue preventing payment and the case does not qualify for unenforceable case closure.



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#### **Policy Related to Specific Case Circumstances**

Caseworker discretion is necessary when reviewing a case for unenforceable case closure. The following are instances in which discretion is necessary:

##### **Multiple Cases**

When an obligor has multiple cases that include an arrears-only case, check for the last payment received on any of the cases. If the CSSD has received a support payment within the last two years that applied to any of the obligor's cases, none of the cases should be considered unenforceable.

##### **Financial Institution Data Match (FIDM)**

A FIDM is an effective tool for locating financial assets. A case is unenforceable if there are no identifiable executable assets belonging to the obligor. Identification of assets includes investigation and follow-up of FIDM information. When a FIDM interface is received, the account balance may display as \$0. That is because some financial institutions do not provide a balance; accounts frequently contain funds.

##### **Intergovernmental Initiating Cases**

These cases should not be closed as unenforceable until it is proven that the responding agency has been given reasonable opportunity to enforce the child support obligation.

##### **Foster Care**

ARM 37.62.1122 "...(h) In a case involving Title IV-E funds, all of the children of the case have been emancipated, or parental rights of the obligor have been terminated refers specifically to IV-E Foster Care. However, all foster care cases (IV-E and CWS) should be closed as unenforceable only when the criteria in paragraph (h) are met.



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## **PROCEDURES**

### **Reviews Case**

#### **Caseworker**

1. Reviews arrears-only case for unenforceable case closure criteria in ARM 37.62.1122 and Additional CSSD Unenforceable Case Closure Criteria.
2. Completes CS 201.7A Unenforceable Case Review Checklist.
  - If the case does not qualify for unenforceable case closure, continues to work the case as per policy and procedure.
  - If the case qualifies for unenforceable case closure, proceeds to Documents Findings in Case Notes.

### **Documents Findings in Case Notes**

1. Documents that the case meets all unenforceable closure criteria, and all enforcement actions have been exhausted. Remedies should include consideration of the following:
  - Real or personal property liens
  - Motor vehicle liens
  - Warrant for distraint (writ of execution)
  - Contempt
  - Suspension of driver's license and/or professional license
2. Documents that contact has been made at least once in the last six months with the non-TANF obligee or the initiating agency (TANF and non-TANF cases) for new information.
3. Submits case and completed Unenforceable Case Review Checklist to supervisor for approval.



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#### **Issues 60-Day Closure Letter**

Circumstances for Issuing 60-day Closure Letter:

- If no debt is owed to the obligee, immediately proceeds with case closure. Refers to CS 201.5 Identifying Closed Case Status
- If debt is owed to the obligee issue CS 201.5B 60-Day Closure Letter.
- If no locate, employment, or income information is received for the obligor by the end of the sixtieth day the case can be closed.
- If the obligee supplies new information that will lead to enforcement of the obligation and requests that the case remain open, the case cannot be closed.

#### **Intergovernmental Responding Cases**

When debt is owed in an intergovernmental responding case, sends the 60-Day Closure Letter to the initiating agency sixty calendar days prior to closing the case.

- If no new information is received in response to the 60-Day Closure Letter by the end of the sixtieth day, the case can be closed.
- If new information is received in response to the 60-Day Closure Letter on or before the sixtieth day, or if the initiating agency supplies new information that will lead to enforcement of the obligation and requests that the case remain open, the case cannot be closed.

#### **Outstanding CSSD Actions or Proceedings**

Upon case closure, review the file for any outstanding administrative actions or judicial proceedings that must be terminated prior to closure. Examples include but are not limited to canceling of stale dated warrants, releasing liens, terminating withholding orders and orders to enroll, dismissing health insurance penalties (restrictions apply), releasing clerk-of-court redirections, and terminating license suspension actions.