

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064

Reason for this Transmittal

- State Law or Regulation Change
 Federal Law or Regulation Change
 Court Order or Settlement Change
 Clarification requested by One or More Counties
 Initiated by DCSS

March 8, 2002

CSS LETTER: 02-07

ALL IV-D DIRECTORS
 ALL DISTRICT ATTORNEYS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: OPERATION ENDURING FREEDOM – REVIEW AND ADJUSTMENT REQUESTS

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT – RESTRICTIONS ON INTEREST

As a result of the incidents of September 11, 2001, many custodial parties (CPs) and non-custodial parents (NCPs) are being called to active military duty. Active military personnel are accorded certain specific protections that may impact child support under the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940, as amended, 50 U.S.C. Appendix § 501 et seq. The SSCRA of 1940, as amended, was passed by Congress to provide protection for individuals entering or called to active duty in the military service. Among other things it is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty. Reservists and members of the National Guard get the benefits of the SSCRA while on active duty. The protection begins on the date of entering active duty and terminates within 30 to 90 days after the date of discharge from active duty. Appendix § 526 of the Act was designed to protect service members who were called to active duty and had incurred obligations prior to entry. If a service member incurred an obligation after entry into active duty, Appendix § 526 of the Act is not applicable to that obligation.

Review and Adjustments

The mobilization of reservists and National Guard members to full time military status may result in a reduction of these individual's total monthly income. Thus, local child support agencies (LCSAs) shall give requests for review and adjustment the highest priority and flexibility allowed under state law.



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www.childsup.cahwnet.gov

The LCSAs must allow the CP and the NCP to request a review of his/her current support order if either one of these individuals are called to active duty. These requests for a review and adjustment of an existing child support order must be processed in accordance with Family Support Division Letter No. 94-02, dated January 14, 1994.

The review process and court review may result in an upward, downward, or no modification to a child support order. Once the review process and court review has been completed, both parents must receive a notice when 1) an adjustment, either an increase or decrease, to the child support order is ordered or 2) it has been determined that an adjustment to the child support order is not warranted. The notice must inform each parent of his/her right to initiate proceedings to challenge the adjustment or determination within 30 days.

Restrictions on Interest

Section 526 of the SSCRA permits a service member to obtain a reduction in the interest rate on the service member's debts to six percent only if those debts were created before the service member came onto active duty or if the service member had a break in service before the service member's current period of active duty. This impacts the child support program by providing an opportunity for a CP or NCP to request an LCSA to reduce the interest rate charged on arrearages accumulated prior to the date of entry into active duty from the statutory amount of ten percent to six percent. This section states:

§ 526. No obligation or liability bearing interest at a rate in excess of six percent per year incurred by a person in military service before that person's entry into that service shall, during any part of the period of military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of six percent per year is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability.

If an LCSA receives a request from a service member for a reduction in the interest rate being charged on the arrearages, the LCSA must have the following information in order to determine if a reduction will apply:

- (1) The service member must request the reduction in writing asserting the service member's entitlement to relief under the act.

- (2) The service member must provide documentation of active duty status and provide a date when the service member attained that status.

A service member qualifies for the reduced interest rate once the LCSA verifies that the service member has met the above requirements; however, the LCSA has the right to petition the court to maintain the ten percent interest rate if the LCSA discovers that the service member has not experienced a substantial reduction in income as a result of being called to active military duty. Following the qualification of the service member, the LCSA should take the following actions:

- (1) Flag the case and adjust any interest being charged prospectively to six percent per year to arrearages that accumulated prior to activation of a service member to full time status and a ten percent rate for arrearages accumulated thereafter.
- (2) Send a notice to advise the service member of the change in interest being charged and the need for the service member to inform the LCSA of any change in the active duty status. Also, a notice must be sent to the CP advising of any change to the interest being charged the NCP.
- (3) Include adequate documentation in the case to support the position taken by the LCSA regarding the request for a reduced interest rate.
- (4) Continue to monitor the payment history in these cases to ensure that, once a service member is released from active duty, the interest rate is changed back to ten percent.

While it is the responsibility of the service person to advise the LCSA when he or she is no longer on active duty, monitoring the payment history may be a good way of alerting the LCSA that there has been a change in circumstances that needs to be investigated.

- (5) Change the interest rate charged prospectively on all arrearages back to ten percent effective the day after the service member's last day of full time military service.

It is quite likely that many of these requests will be combined with requests to change the service member's support order(s) when a service member experiences a substantial reduction in gross income as a result of being called to active military status.

Additionally, CPs who are activated may also be affected in their ability to meet their children's needs. The LCSAs shall give all requests for modifications due to being called to active military duty the highest priority.

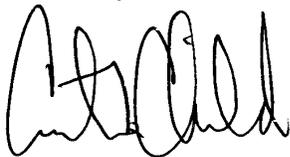
The majority of LCSAs will be required to make the necessary adjustments to arrearage accounts manually, since most county automated systems do not have the ability to accommodate such changes. Since the volume is anticipated to be extremely low in most counties, the department does not foresee any operational problems associated with implementing this requirement.

LCSAs must provide notice to all CPs and NCPs of the provisions of the SSCRA. Language for a notice providing the minimal information has been attached. Counties must, at a minimum, use the language on the attached notice and may add additional information if they feel it is necessary or beneficial.

LCSAs must send an initial notice to all CPs and NCPs within 60 days of receipt of this letter. This may be accomplished by including it as a stuffer in the monthly billing notice for NCPs. A separate mailing will be required for CPs as it may not be included with the Barnes Notice. For ongoing notification, the notice should be included in all intake packets and provided to all CPs and NCPs when LCSAs receive a request for modification of support.

Shortly after the release of this letter the Department of Child Support Services will be issuing a news release to further publicize the potential impact of various provisions in the Soldiers' and Sailors' Civil Relief Act on CPs and NCPs. If you have any questions or concerns regarding this matter, please contact Michael Fishel at (916) 464-5234.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis L. Child". The signature is stylized with a large initial "C" and "L".

CURTIS L. CHILD
Director

Attachment

NOTICE TO ALL CUSTODIAL PARTIES AND NON-CUSTODIAL PARENTS

SUBJECT: OPERATION ENDURING FREEDOM – REVIEW AND ADJUSTMENT REQUESTS

SOLDIERS AND SAILORS CIVIL RELIEF ACT – RESTRICTIONS ON INTEREST

This is to tell you about a federal law called the Soldiers' and Sailors' Civil Relief Act (SSCRA). This Act offers certain benefits to a parent who has recently been called to active duty as a result of the event of September 11, 2002 and our War on Terrorism. If you are covered by this act you may be eligible for the following benefits:

- If your income has gone down since you were called to active military service, you may be able to have your current child support amount changed.
- A lower interest rate charged on any past due child support you owed before you were called to active military service.

Changes To Child Support Orders

If you were called to active military service, your local child support agency (LCSA) must allow a Custodial Party or a Non-custodial Parent to request a review of his/her current support order. The review process may result in an upward or downward change or no change. Once the review has been completed, both parents must receive a notice.

Lower Interest Rate On Past Due Support

A parent called to military service may also ask for a lower interest rate on child support arrearages under the SSCRA. The interest rate on unpaid child support is usually ten percent in California. However, a service member may request an LCSA to lower the interest rate from ten percent down to six percent charged on past due support that was owed before the date of entry into active service.

Your request for a lower interest rate must be in writing and say that you are asking because of the Soldiers' and Sailors' Relief Act. You must also provide documentation of active duty status and provide the date when active duty began.

If you believe you should get any of the benefits of this Act, you should contact your Local Child Support Agency at:

Address & phone #