CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES
P.O. Box 419064, Rancho Cordova, CA 95741-9064

Reason for this Transmittal

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

November 2, 2004

CSS LETTER: 04-24

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

SUBJECT: THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

REFERENCE: CSS LETTER 03-10, COMPLIANCE ISSUES REGARDING CHILD SUPPORT AND MILITARY PERSONNEL; CSS LETTTER 02-07, A CASEWORKERS GUIDE TO CHILD SUPPORT ENFORCEMENT AND MILITARY PERSONNEL; LCSA LETTER 03-03, LOCAL CHILD SUPPORT AGENCY WEB SITE LINKS – MILITARY ACTIVATION

Effective December 19, 2003, the Servicemembers Civil Relief Act (SCRA) [Public Law 108-189, 50 United States Code (U.S.C.) Appendix Section 501 et seq.] replaced the Soldiers and Sailors Civil Relief Act. This letter provides information regarding procedures for implementing SCRA, including a Notice to All Custodial Parties (CP) and Non-Custodial Parents (NCP). This letter supersedes CSS Letter 02-07 regarding provisions under the Soldiers and Sailors Act of 1940.

For a comprehensive legal review of the SCRA and its effect on child support enforcement proceedings, please see Attachment B.

Active duty military personnel have specific protections that may impact child support under the SCRA. SCRA 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 specific civil obligations to enable servicemembers to devote full attention to their military duty. Reservists and members of the National Guard also get the benefits of the SCRA while on active duty. The protection begins on the date the individual enters active duty and terminates within 90 to 180 days after the date of discharge from active duty. SCRA was designed to protect servicemembers who were called to active duty and had incurred obligations prior to entry. If a

servicemember incurred an obligation after entry into active duty, 50 U.S.C. Appendix Section 527 is not applicable to that obligation.

Eligibility for SCRA Protections

Any person who is a member of the armed or uniformed services of the United States on active duty or a member of the National Guard who is called to active duty for a period of more than 30 consecutive days is eligible for SCRA protections.

Review and Adjustments

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

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 is called to active duty. These requests for a review and adjustment of an existing child support order must be processed in accordance with CSS Letter 04-09, dated May 6, 2004.

Restrictions on Interest

According to 50 U.S.C. Appendix Section 527, Maximum Rate of Interest on Debts Incurred Before Military Service, a servicemember may obtain a reduced interest rate on the servicemember's debts created before the servicemember's active duty. If the servicemember had a break in service, the servicemember may obtain a reduced interest rate on the debts created before the servicemember's current period of active duty. This Section allows a CP or an NCP to request an LCSA to reduce the interest rate charged on arrearages accumulated prior to the date of active duty or the current period of active duty (as described above) from the statutory amount of 10 percent to six percent. This reduction will continue until the servicemember is released from active duty. SCRA also provides that interest above six percent per year is to be forgiven.

LCSA Process

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

1. The servicemember must request the reduction in writing asserting the servicemember's entitlement to relief under the Act.

2. The servicemember must request the reduction during his/her period of military service or up to 180 days after termination of service.

3. The servicemember must provide documentation of the date of active duty status.

A servicemember qualifies for the reduced interest rate once the LCSA verifies that the servicemember has met the above requirements. However, the LCSA has the right to petition the court to maintain the 10 percent interest rate if the LCSA discovers that the servicemember has not experienced a substantial reduction in income as a result of being called to active military duty.

Following the qualification of the servicemember 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 servicemember to full-time active duty status and a 10 percent rate for arrearages accumulated thereafter.

2. Send a notice to advise the servicemember of the change in interest being charged and the need for the servicemember 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 to the NCP.

3. Include adequate documentation in the case file to support approving a reduced interest rate.

4. Continue to monitor the payment history to ensure that once a servicemember is released from active duty, the interest rate is changed back to 10 percent.

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

5. Change the interest rate charged prospectively on all arrearages back to 10 percent effective the day after the servicemember's last day of full-time active duty military status.

It is quite likely that many of these requests will be combined with requests for a review and adjustment to modify the servicemember's support order(s) when a servicemember experiences a substantial reduction in gross income as a result of being called to active duty military status.

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 significant operational problems associated with this requirement.

Notification and Outreach

LCSAs must provide notice to all CPs and NCPs of the provisions of the SCRA in all intake packets and when a request for modification of support is received. Language for a notice providing the minimal information has been attached. LCSAs must use the language on the attached notice, but may add additional information as the LCSA deems necessary.

Finally, LCSAs are requested to update hyperlinks and reference material on their websites to reflect this letter and SCRA. This should include the links listed below, as well as a reference and link to this CSS letter and the attached Notice to all Custodial Parties and Non-Custodial Parents.

The Office of Child Support Enforcement (OCSE) has published "A Caseworkers Guide to Child Support Enforcement and Military Personnel." This guide provides caseworkers with the tools and resources necessary to provide child support services to military personnel. Please note that this guide was printed prior to the new Servicemembers Civil Relief Act. You may access the guide at OCSE's website at:

http://www.acf.hhs.gov/programs/cse/fct/militaryguide2000.htm

OCSE has additional information at:

http://www.acf.dhhs.gov/programs/cse/new/reserve_activation.html

If you have any questions or concerns regarding this matter, please contact Tonya Crawford-Comage, Manager, Financial Management Policy Unit, at (916) 464-5055. However, if you have any questions regarding the attachment to this letter, please contact Gabor Morocz, Senior Counsel of the Office of Legal Services at (916) 464-5181 or e-mail at: gabor.morocz@dcss.ca.gov.

Sincerely,

Sandra Poole

SANDRA O. POOLE
Deputy Director
Child Support Services Division

Attachment

NOTICE TO ALL CUSTODIAL PARTIES AND NON-CUSTODIAL PARENTS

SUBJECT: OPERATION ENDURING FREEDOM – REVIEW AND ADJUSTMENT REQUESTS

THE SERVICEMEMBERS CIVIL RELIEF ACT – RESTRICTIONS ON INTEREST

This is to tell you about a federal law called The Servicemembers Civil Relief Act (SCRA). This Act offers certain benefits to a parent who has recently been called to active duty as a result of our War on Terrorism, the war in Iraq, or any other United States action that deploys servicemembers into active military duty.

- 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.

- You may also receive 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 and you are a Custodial Party or Non-Custodial Parent, your local child support agency (LCSA) must allow you to request a review of your 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

As a parent called to military service you may also ask for a lower interest rate on child support arrearages under the SCRA. The interest rate on unpaid child support is usually ten percent in California. However, as a servicemember you may request the LCSA to lower the interest rate from ten percent down to six percent charged on past due support that was owed before the date you entered into active duty military service.

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

To request a change to your child support order or a lower interest rate on past due support as allowed in the Servicemembers Civil Relief Act, contact your local Child Support Agency at:

Address and phone number

Analysis of Servicemembers Civil Relief Act

On December 19, 2003, the President signed into law the Servicemembers Civil Relief Act ("**SCRA or Act"**), a major amendment to the earlier version of the law named: Soldiers' and Sailors' Civil Relief Act. *Public Law No. 108-189; 50 USC Appx § 501 et seq.* The SCRA serves as a source of important protections for armed servicemembers, active and reserve, especially in time of war and national emergencies. The newly passed legislation made the Act easier to read and incorporated into the Act many years of judicial interpretations. This letter is intended to alert child support professionals to the most important provisions of the legislation that affects child support procedures. Citations refer to the sections of ***Title 50, United States Code Service, Appendix at sections 501 and thereafter***.

Purpose of the SCRA

The general policy behind the Act is <u>to provide protection for servicemembers</u> whose military duty affects the servicemember's ability to appear and respond in civil matters. Invoking the rights under the SCRA cannot defeat the child support establishment or enforcement proceeding but can delay it and alter it to accommodate the servicemember. The benefits and protections of the Act generally are not automatic; they must be invoked by the servicemember. However, courts are also given authority to use protective measures on their own motions.

Persons Entitled to SCRA Protection

A servicemember is a member of the uniformed services. The definition of military service has been broadened to include not only the traditional active duty but also the service of a National Guard member exceeding 30 days in responding to a national emergency. Protection also extends to dependents of the servicemembers under certain circumstances. *Section 511(1), (2), and (4).* US citizens serving with the forces of an allied nation and performing military service are also within the protection of the Act. *Section 514.*

Time To Invoke SCRA Protection, And Duration

A servicemember can invoke the protection of the Act during military service and shortly thereafter. The period of military service begins when the servicemember enters military service and ends when the servicemember is discharged, released, or dies. *Section 511(3).*

Jurisdiction and Applicability of SCRA

The protection of the Act applies to <u>any judicial or administrative proceeding</u> commenced in any court or agency in any jurisdiction of the nation including federal, state, local, or any subdivision of those. As a new amendment, jurisdiction has been expanded to include administrative proceedings and the term "court" also includes

administrative agencies of any government entity. The Act applies to civil matters only and does not apply to criminal proceedings. *Sections 511(5)-(6) and 512.* With this expansion of jurisdiction, child support matters are affected in not only court proceedings but in agency proceedings in any of the phases of the case flow, or in other administrative proceedings such as workers' compensation and unemployment insurance hearings.

Waiver of Rights

A servicemember may waive the rights and protections provided by the SCRA. A waiver is effective in any form except if it applies to a contract, lease, bailment, mortgage, trust, deed, lien, other security, or repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is a security for an obligation. Such waiver must be in writing and specific reference in the waiver must be made to the specific instrument to which the waiver applies. For example: if the waiver relates to a contract, lease mortgage, deed, and lien, that specific instrument must be referenced in the written waiver. *Section 517.*

Legal Representatives

One of the protections provided under the SCRA to servicemembers is that they can have legal counsel appointed or retained who appears on their behalf in any civil proceeding. Appointed attorneys' duties include locating servicemembers, advising them of proceedings, and requesting stays if the military duties materially affect their ability to participate in cases. If appointed counsel cannot locate the servicemember, actions by the attorney in the case shall not waive any defense the member has or shall not otherwise bind the member. *Section 521(b)(2).* From the provisions describing appointed counsel's duties, it seems clear that an appointed attorney's involvement in a matter is limited to communicating with the servicemember, advising the servicemember and obtaining a stay in the proceeding; however, it is not extended to representing the service member on the merits of the matter. *Sections 521 and 522.*

A legal representative could also be another individual as attorney in fact possessing a power of attorney. *Section 519.* However, such attorney in fact cannot appear in court or administrative proceedings. Such person's acting on behalf of the servicemember appears to be limited to insurance matters. *Sections 542 and 543.*

Protection Against Default Judgments

In an action where a servicemember did not appear, there are significant protections for such individual's rights and correspondingly significant burdens for an LCSA acting in a plantiff's role. LCSAs should not knowingly obtain a default judgment from an active duty service member unless the substantive requirements of the SCRA are met. The rules applicable to default judgments are the following:

- A plaintiff is required by the court to file an affidavit stating whether or not the

defendant is in military service or that the plaintiff is unable to determine whether the defendant is in military service. *Section 521(b)(1).*

- If it appears that the defendant is in military service, the court may not enter a default judgment until after appointing an attorney to represent the defendant. *Section 521(b)(2).*
- If the court is unable to determine whether the defendant is in military service, it may require the plaintiff to file an indemnity bond before entering a default judgment. *Section 521(b)(3).*
- Appointed counsel may request and the court must grant a stay of proceeding for a minimum period of 90 days if a defense cannot be presented without the presence of the defendant or counsel cannot contact the defendant. *Section 521(d).*
- A court may reopen proceedings on a default judgment based on the petition of the servicemember within 90 days after the termination of military service. The defendant could be allowed to defend the action and the court could vacate or set aside the earlier default judgment. *Section 521(g).*

Stay of Proceedings

In an action where a servicemember received notice of the proceeding the servicemember still has significant protections and the LCSA must prepare for delays in the action as follows:

- The court on its own motion may or by application of the servicemember must stay the action for at least 90 days if the defendant provides written proof that he or she is unable to appear. *Section 522(b).*
- Written proof must include a) a letter or other communication stating the manner in which military duties materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear, and b) a letter or other communication from the commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter. *Section 522(b)(2).*
- An additional stay beyond the initial 90 days could also be also granted when the servicemember is unavailable to prosecute or defend an action. *Section 522(d)(1).*
- If the court refuses to grant an additional stay, counsel must be appointed. *Section 522(d)(2).*
- The additional stay could be ordered for the entire duration of military service and 90 days thereafter or for any part of it. *Section 525(a).*
- An application for stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense. *Section 522(c).*

Stay of Judgments, Attachments, Garnishments

If a servicemember is materially affected by his military service in complying with a court judgment or order, the servicemember has very strong protection and the LCSA enforcement could be delayed significantly.

- The court on its own motion may and upon application of the servicemember must stay the execution of a judgment and vacate or stay an attachment or garnishment of property, money or debt. *Section 524(a).*
- This provision applies to an action or proceeding that commenced before or during the military service. *Section 524(b).*
- The stay could be ordered for the entire duration of military service and 90 days thereafter. *Section 525(a).*

Statute of Limitation Extended

The period of a servicemember's military service may not be included in computing any period limited by law, regulation or order for the bringing of any action in any legal forum. This provision tolls the statute of limitation for the bringing of any action in court or administrative procedure by or against the servicemember. *Section 526(a).*

Maximum Rate of Interest on Debts Incurred Before Military Service is Limited

The interest rate charged to a servicemember during military service is limited, barring collection of interest above the legal rate. These rules are applicable to child support arrears:

- An obligation or liability bearing interest at a rate in excess of 6% incurred by the servicemember before entering military service cannot bear interest beyond the 6% rate during military service. *Section 527(a)(1).*
- Interest debt above the legal limit is forgiven by law, and periodic payments during military service must be reduced accordingly. *Section 527(a)(2) and (3).*
- The rate reduction benefit is triggered by an application by the servicemember to the creditor with copies of the military orders proving length of service. *Section 527(b)(1).* Hence, the servicemember must submit such a written application to the LCSA.
- The servicemember could request this relief during military service and within 180 days after termination of service. *Section 527(b)(1).*
- The creditor is mandated to grant the relief and treat the debt according to these provisions. *Section 527(b).* Upon receipt of an application for interest rate reduction relief supported by sufficient proof of military service, the LCSA must grant the relief.
- Upon granting the rate reduction relief to the servicemember, the LCSA must treat the debt in accordance with these provisions and reduce the amount of periodic payments by the amount of the interest forgiven. *Section 527(a)(3).*

The interest rate reduction is retroactive to the date the servicemember was called to military service. *Section 527(b)(2)*.

- Creditors may petition for relief from the rate reduction to court and the court can provide such relief from these limitations if the ability of the servicemember to pay interest in excess of 6% is not materially affected by reason of the servicemember's military service. *Section 527(c).* LCSAs or custodial parents may use this vehicle to allow the state to charge its normal judgment rate.
- Since the limitation applies to obligations incurred before entering military service, arrearages incurred during the military service are not subject to this limitation and could be charged at the normal judgment rate. *Section 527(a)(1).*

Right to Anticipatory Relief

Servicemembers enjoy the right to obtain anticipatory type relief. A servicemember during military service or 180 days thereafter may apply to a court for relief from any obligation or liability incurred before military service and from tax assessments falling due before or during military service. *Section 591.*

Other SCRA Provisions Indirectly Affecting Child Support

Although these provisions may not be directly relevant to the child support process, practitioners should be aware of other relief provisions of the SCRA that may affect a party in a child support action that is in military service:

- A landlord may not evict a servicemember or his or her dependents during military service, and a court could stay an eviction. *Section 531.*
- Installment contracts for the purchase, lease, or bailment of real or personal property may not be rescinded or terminated after the servicemember enters military service. The court may provide protection and remedies if needed. *Section 532.*
- Enforcement actions on mortgages and trust deeds originated before military service could be stayed and sales or foreclosures could be invalidated through court proceedings. *Section 533.*
- Servicemember lessees, leasing motor vehicles and premises for residential, professional, or business purposes are permitted to terminate the leases upon entering military service following special procedures described by the SCRA. *Section 535.*
- The assignee of a life insurance policy of a servicemember who was assigned before military service cannot exercise his rights during military service without court permission. *Section 536.*
- A person holding a lien for storage, repair, or cleaning on personal property of a servicemember may not foreclose or enforce such lien during military service without court permission. The servicemember can move to stay the proceeding and can ask for adjustment of the obligations. *Section 537.*
- There are significant protections for the life insurance policy of a servicemember that protects both the holder of the policy and the beneficiary. There are

prohibitions against rate change and coverage change during military service. Protection is triggered by an application of the servicemember to the Secretary of Veteran Affairs. The U.S. Government will step in and prevent lapse of the policy for the benefit of the survivor beneficiaries by guaranteeing the payment of premium and interest during military service and two years thereafter. *Sections 541-549.*

- The rights of a servicemember to lands owned or controlled by the U.S. cannot be forfeited or prejudiced because of failing to complete work or improvements on the land as a result of military service. *Sections 562 and 563.* Similar protection exists for mining claims and mineral permits held by servicemembers. *Sections 564 and 565.*
- Professional servicemembers enjoy special protection of their professional liability insurance during military service. *Section 593.*
- Upon termination or release from military service, servicemembers are entitled to a reinstatement of their health insurance that was in effect before entering military service. *Section 594.*