

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

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



September 7, 2011

CSS LETTER: 11-12

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

SUBJECT: CREDITING FEDERAL DERIVATIVE BENEFIT PAYMENTS

REFERENCE: CSS LETTER 05-13 ASSEMBLY BILL 2669 AND CSS LETTER
 05-13 ERRATA

<u>Reason for this Transmittal</u>
<input type="checkbox"/> State Law or Regulation Change
<input type="checkbox"/> Federal Law or Regulation Change
<input type="checkbox"/> Court Order or Settlement Change
<input checked="" type="checkbox"/> Clarification requested by One or More Counties
<input type="checkbox"/> Initiated by DCSS

The purpose of this letter is to provide direction to the Local Child Support Agencies (LCSAs) regarding the crediting of derivative benefits towards a non-custodial party's (NCPs) child support obligation. This direction is intended to ensure that these benefits are applied consistently and in a manner that minimizes the potential for erroneous accounting, reporting, and enforcement actions.

An NCP's dependent child may be receiving, or eligible to receive, federal derivative benefit payments under the authority of the Social Security Act, the Railroad Retirement Act, or the Department of Veterans Affairs as a result of the NCP's retirement or disability. NCPs are to receive credit for derivative benefits sent directly to the custodial party (CP) on behalf of the NCP's dependent child(ren) who is receiving, or is eligible to receive, derivative benefit payments.

In some instances the court may have already taken the derivative benefits into consideration when establishing the amount of the child support obligation (Family Code 4504(b)). If this is the case, no action on behalf of the LCSA is necessary as the Child Support Enforcement (CSE) system charging instructions will reflect the court ordered amount. However, future court order modifications will be necessary in the event that the eligibility or payment amount changes (i.e., cost of living adjustments), unless the court order includes a provision that considers such changes. LCSAs should consider including such a provision in court orders at the time they are established to reduce the need for future modifications. Please refer to Attachments I and II "Sample Language – Derivative Benefit Modification." Although this provision may eliminate the need for additional court order modifications it is still necessary to adjust the CSE charging instructions each time the derivative amount changes.

If the court did not take the derivative benefit amount into consideration when the obligation was ordered; the LCSA, upon receipt of verification of eligibility or payment of benefits, must credit the NCP's child support obligation by reducing the CSE charging instructions by the derivative amount and documenting the action taken in the activity log. If there is a change in the benefit payment amount it may be necessary to modify the CSE charging instructions as a result of the new derivative amount. Derivative payment credits cannot be applied to spousal support (current or arrears).

If the LCSA receives verification that a dependent child has been receiving, or has been eligible to receive derivative benefits in past months, the LCSA shall credit the derivative payment towards the current support for past months by posting the Non-State Disbursement Unit (SDU) direct payment with a verified date of collection as of the date the CP actually received the payment. This includes any lump sum payments received by the CP. Lump sum payments are to be credited for the month in which the lump sum payment was received; not retroactively credited for each month in which they were owed.

Cases for which derivative benefit payments were paid, or eligibility established, prior to conversion to CSE will require that the LCSAs complete an audit due to the inability to apply Non-SDU direct payments retroactively in the legacy systems.

As outlined in CSS letter 05-13 and the Errata 05-13, derivative benefit payments received on or after January 1, 2005 shall be credited toward the current monthly court ordered support amount with any "excess" derivative benefit payment amount above the current monthly support amount credited to the existing arrearages. If there is no arrears balance, the NCP shall not receive any credit for the amount of the derivative benefit payment in excess of the current monthly court ordered support amount. Prior to December 31, 2004, derivative benefit payments could only be credited toward the current monthly court ordered support amount, not to an existing arrears balance. In no instance shall the credit of a derivative benefit payment result in an overpayment to an NCP.

In CSE each LCSA has the ability to generate the CDM 207- *Locate Social Security Administration (SSA) Payments Title II Report*. This report identifies participants by county who are receiving or have received SSA benefits within a prior twelve month period. LCSAs may choose to review this report in order to identify cases in which credit should be applied for derivative payments.

For specific procedures regarding the crediting of derivative benefit payments, LCSAs may refer to Table 2 in the "*Processing a Non-SDU Payment*" Quick Reference Guide located at <https://central.dcss.ca.gov/>.

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A Training Coordinator call will be held on this policy and procedures
September 8, 2011.

If you have any questions or concerns regarding this matter, please contact
Michelle Tedrow at (916) 464-5883.

Sincerely,

/os/

BILL OTTERBECK
Deputy Director
Child Support Services Division

Attachments I & II

ATTACHMENT I

SAMPLE LANGUAGE (I) DERIVATIVE BENEFIT MODIFICATION

The minor child(ren) is receiving, or is eligible to receive, derivative benefit (family) payments in the amount of \$ XXXX. The guideline support amount is \$ XXXX. Pursuant to Family Code Section 4504, the obligee shall apply for, and obligor shall receive credit for, derivative benefit payments paid to dependent child(ren).

(Use one of the bulleted paragraphs below as applicable.)

- The derivative benefit payment amount is greater than the guideline support amount. The monthly current support obligation is fully satisfied by the derivative benefit payment amount. The excess derivative benefit payment amount of \$ XXXX (the monthly guideline support amount minus the monthly derivative benefit payment amount) shall be credited toward existing arrears. If no arrears exist no credit shall otherwise be given (i.e., no overpayment of support shall be created).
- The derivative benefit amount is less than the guideline support amount. The Local Child Support Agency (LCSA) shall enforce the amount of the difference of \$ XXXX per month so as to satisfy the monthly current support obligation.

Derivative benefit payments received on behalf of the minor child(ren) prior to the effective date of this modification shall be applied towards any previous court ordered amount as required by law. Should either party provide documentation of a change in the derivative benefit payment amount, the LCSA will administratively adjust the amount of current support enforced, and/or the amount of credit toward any accrual of arrears. Adjustments made by the LCSA to the enforceable child support obligation shall include Cost of Living Adjustments (COLAs), or any other adjustment, to the derivative benefit payment amount.

Both the obligor and the obligee are required to contact the LCSA within 10 days of receiving information that the obligor and/or minor child(ren) will no longer be eligible to receive derivative benefits.

ATTACHMENT II

SAMPLE LANGUAGE (II) DERIVATIVE BENEFIT MODIFICATION

The minor child(ren) is receiving, or is eligible to receive, derivative benefit payments. Pursuant to Family Code Section 4504, the obligee shall apply for, and the obligor shall receive credit for, derivative benefit payments paid to dependent child(ren).

Derivative benefit payments received on behalf of the minor child(ren) prior to the effective date of this modification shall be applied towards any previous court ordered amount as required by law. Should either party provide documentation of a change in the derivative benefit payment amount, the Local Child Support Agency (LCSA) will administratively adjust the amount of current support enforced, and/or the amount of credit toward any accrual of arrears. Adjustments made by the LCSA to the enforceable child support obligation shall include Cost of Living Adjustments, or any other adjustment, to the derivative benefit payment amount.

Both the obligor and the obligee are required to contact the LCSA within 10 days of receiving information that the obligor and/or minor child(ren) will no longer be eligible to receive derivative benefits.