

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

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



December 31, 2007

CSS LETTER: 07-20

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

<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 type="checkbox"/> Clarification requested by One or More Counties
<input checked="" type="checkbox"/> Initiated by DCSS

SUBJECT: ADMINISTRATION OF THE PASSPORT DENIAL PROGRAM

REFERENCE: REPEALS AND SUPERSEDES CSS LETTER 05-09

This letter restates the Department of Child Support Services (DCSS) policy and procedure in the administration of the federal Passport Denial Program (PDP) and, effective immediately, repeals and supersedes CSS Letter 05-09. This letter also restates federal law and policy direction and its application, and provides California specific policy statements in the few narrow areas allowed by federal policy.

Background

The PDP is a federal program designed to assist states in enforcing the collection of past due support obligations. Support arrears for submission to the Office of Child Support Enforcement (OCSE) include child support, medical support, and family support arrears, as well as spousal support arrears to the extent that spousal support is enforceable under CSS Letter 06-33.

Federal law requires that state child support agencies compile and certify a list of child support obligors with arrears in excess of \$2,500 owed by each obligor and submit the list to OCSE. OCSE uses the list to implement several enforcement tools that fall under the umbrella of the Federal Offset Program: federal income tax refund offset, administrative offset, multi-state financial institution data match, and passport denial.

Obligors certified for support arrears in excess of the required amount are reported by OCSE to the United States Department of State (DOS). The delinquent support obligors are included in a database for individuals ineligible to receive a passport. Passport applications are cross checked against this database. If a passport applicant's name appears in the database as having support arrearages, federal law requires that the passport application be denied. A passport will not be issued to the obligor until the reporting state certifies that the obligor meets the criteria for release from the PDP.

In addition to federal law mandating state participation in the PDP, the program is also federally governed and administered. The DCSS and Local Child Support Agencies (LCSAs) have little discretion in performing their administrative duties. The legal authority for the PDP can be found in Title 42, United States Code Sections 652(k) and 654(31). The federal policy for the PDP can be found in the Federal Offset Program User Guide (November 2005) and in OCSE Action Transmittal #AT-99-14.

Rights and Responsibilities of Obligor Submitted to PDP

Federal law requires that an obligor be notified and given an opportunity to contest the State's determination that the arrears exceed \$2,500 prior to the state certifying the delinquent support obligation to OCSE. However, federal law does not give the obligor the right to contest the submission to OCSE if the arrears balance owed is in excess of \$2,500 or to contest the denial of the passport application by the DOS.

California complies with the above notification requirement by sending the Child Support Warning Notice annually to all obligors with delinquent support obligations. This notice advises the obligor that, if support arrears are owed, his/her name will be submitted to the Federal Offset Program which includes the PDP. In addition, the obligor is advised of his/her right to request an administrative review of the case, within 90 days of receipt of the Child Support Warning Notice.

The LCSA shall conduct an administrative review upon the obligor's request to ensure that the certified arrears balance submitted to OCSE is correct. If the obligor has cases in multiple counties, the LCSA receiving the request is responsible for coordinating the administrative review of the obligor's statewide arrears.

Passport Release Criteria

Federal law also requires that a support obligor with an arrears balance in excess of \$2,500 at any time during his/her account history is subject to passport denial. Reducing the arrears balance below that threshold amount after a passport is denied does not result in an automatic release from the PDP.

Federal policy delegates authority to states to determine their own policies related to satisfactory payment arrangements for passport release. In California, if an administrative review is not requested timely or is denied, an obligor will be continually reported each month to the PDP regardless of any subsequent reductions in arrears until the arrears are paid in full (zero arrears balance) or the obligor qualifies for an emergency release in accordance with federal policy.

Passport Release Process

- **Routine Release**

This occurs in situations as follows:

- An obligor has a zero balance. Once an obligor pays his/her delinquent support obligations in full as a result of the passport denial, he/she will automatically be removed from the PDP once the LCSA submits the arrears data to DCSS Intercept Database (IDB) showing the balance as zero and the passport exclusion is forwarded to OCSE. If the obligor needs to have the routine release of the passport expedited, he/she is responsible for contacting the LCSA. The LCSA shall complete the Child Support Program Passport Release Request form (DCSS 0056) and fax the form to DCSS at (916) 845-0717. If appropriate, DCSS will exclude the obligor from the PDP.
- The obligor did not owe an arrears balance in excess of \$2,500 at any time during which the arrears were certified to OCSE and the obligor requested an administrative review of the amount of arrears within 90 days of receipt of the Child Support Warning Notice. Upon completion of an administrative review, the LCSA shall complete and fax the Passport Release Request form pursuant to the instructions above within two days of determining that the arrears balance was not in excess of \$2,500 at any time during which the certified arrears were submitted to OCSE. If appropriate, DCSS will exclude the obligor from the PDP.

It is important that obligors and LCSA staff understand that the payment of arrears is viewed on a statewide basis. Payment of delinquent support obligations in one county and/or state, or with respect to one case, may not result in the payment of all support arrears. Therefore, an LCSA's recommendation for release may not result in the obligor being removed from the PDP if arrears are owed on a case in another county and/or state. Similarly, if more than one county and/or state has submitted an obligor's name to OCSE as owing arrears in excess of \$2,500, all counties and/or states must remove the obligor from the PDP before the DOS will issue a passport.

- **Emergency Release**

This may occur when an obligor meets one of the three federal emergency release criteria under Section 5.3 of the Federal Offset Program User Guide. The criteria are as follows:

- Life or death situations. This refers to the life threatening illness or death of a member of the obligor's immediate family who lives outside of the United States. Immediate family members are defined as a parent or guardian, child, grandparent, sibling, aunt, uncle, step-child, step-parent, step-sibling, or spouse.

The obligor must contact the LCSA to request exclusion from the PDP and must provide written verification of the death or life-threatening illness of the family member. Written verification may include a death certificate or equivalent certification, or a letter from a doctor or other health care provider.

In addition, the obligor must provide the Passport Application Denial Letter or location of the passport agency where the application was submitted (embassy/consulate).

- Mistaken identity. This occurs when a non-obligor has his/her passport application denied for reasons of delinquent support obligations, even though that individual has never been submitted to the PDP.

The individual must provide the LCSA with a copy of the Passport Application Denial Letter, their date of birth, social security number (SSN), and a daytime telephone number. The LCSA shall follow their internal procedures in determining if the case meets the mistaken identity criteria.

- Erroneous submittal of a non-obligor. This occurs when an individual has his/her passport application denied because an obligor using the same SSN was submitted to PDP for delinquent support obligations.

The individual must provide the LCSA with a copy of the Passport Application Denial Letter or location of the passport agency where the application was submitted (embassy/consulate).

If an obligor (or non-obligor) contacts the LCSA claiming to meet one of the emergency release criteria and requests exclusion from the PDP, the LCSA shall do the following:

Fax a completed Child Support Program Passport Release Request form (DCSS 0056) with all supporting documentation to DCSS at (916) 845-0717. Incomplete DCSS 0056 forms and forms submitted without appropriate supporting documentation will be returned to the LCSA.

Upon receipt of a completed DCSS 0056 and appropriate supporting documentation, DCSS will review the case, make a determination on the eligibility for release, and submit the release documentation to OCSE, if appropriate. The LCSA and the obligor (or non obligor) will be notified by telephone of the final determination of the request for release.

Please note that additional documentation may be required on some requests.

The timeframes in which a routine or emergency release is processed by OCSE and DOS may vary depending on workload. DCSS does not have sole responsibility for the actual timeframes for release of passports.

Appeal Process

DCSS has full authority to deny the request for a passport release if the request and/or supporting documentation does not comply with the federally prescribed requirements or state policy.

The obligor shall submit an appeal of such decision in writing to:

California Department of Child Support Services
Office of Legislation & Constituent Services
Attn: Passport Denial Appeal
P.O. Box 419064, Mail Stop-60
Rancho Cordova, CA 95741-9064

DCSS will review each request for an appeal and provide a determination within 15 business days regarding the release of the obligor's passport. A determination by DCSS to release the obligor from the PDP will only confirm that DCSS has forwarded a release request to OCSE. This does not constitute an issuance or re-issuance of a passport. The timeframes needed to process passport release requests and issue passports are determined by OCSE and DOS.

Court Cases

Child support obligors sometimes seek remedy from the California Family Law Courts in attempting to avoid the federally mandated submission to the PDP or to seek release from the PDP. However, federal law and policy delegates the mandate and authority for administration of the PDP to the State rather than to the LCSAs.

CSS Letter: 07-20
December 31, 2007
Page 6

While a dispute as to the correct amount of arrears is within the jurisdiction of family law courts, review of the administration of the federally mandated PDP is not within the jurisdiction of that court. In the event that LCSAs are served with an action concerning passport denial or release, they are directed to immediately contact the Office of Legal Services at (916) 464-5181.

If you have any questions or concerns regarding this matter, please contact Michelle Tedrow at (916) 464-5883. However, if you have any questions about passport release for a specific case, please contact the Passport Denial Program at (916) 845-4604.

Sincerely,
/os/ by Joan Obert for Wilfrid Otterbeck

WILFRID OTTERBECK
Acting Deputy Director