

2008 Revisions to the Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) was first adopted in 1992 by the National Conference of Commissioners on Uniform State Laws (now the Uniform Law Commission), and amended in 1996, 2001, and 2008. UIFSA 2008 builds on the 2001 amendments and focuses on international child support, in particular implementation of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

2008 Revisions to the Uniform Interstate Family Support Act is a technical assistance tool for state and local child support agencies. This resource discusses those changes that will have the most significant impact on IV-D child support caseworkers and attorneys.

This resource updates the technical assistance document *2001 Revisions to UIFSA* that the federal Office of Child Support Enforcement (OCSE) issued on January 22, 2003 (IM-03-01) and discusses:

- Key Definitions
- Expansion of Duties of the Support Enforcement Agency
- Changes to Modification Jurisdiction
- Redirection of Payments
- Revisions to the Nondisclosure of Information
- Direct Income Withholding
- Provisions Applicable to International Cases
- Determination of the Controlling Order
- Consolidation of Arrears

All references to UIFSA in this resource are to the official Uniform Law Commission version of UIFSA 2008 amendments, with 2015 revisions to the prefatory note and comments, as posted on the Uniform Law Commission website:

[http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20\(2008\)](http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008))

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Introduction

The IV-D child support program involves cooperation of federal, state, local, and tribal governments. The program began in 1975 when Congress amended Title IV of the Social Security Act to include the child support enforcement program as a new Part D. Today, all states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam participate in the IV-D program, as well as more than 60 tribes.

The Office of Child Support Enforcement (OCSE) is the federal agency responsible for providing oversight of this federal program. In addition, OCSE is responsible for providing technical assistance to IV-D child support agencies, in order to coordinate an efficient, effective, and uniform implementation of the nation's child support program. OCSE also will serve as the United States Central Authority, to facilitate support enforcement under both the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Family Maintenance Convention) and bi-lateral arrangements entered into between the United States and a foreign country.

Interstate child support cases are complex because they involve different states' laws, procedures, and agencies. Historically they were also frustrating for parents because each time one parent moved, the new state often established a new support order with a different support obligation. The development of the Uniform Interstate Family Support Act (UIFSA) offered a solution to the problem of multiple conflicting orders. Most critically, this new model law changed interstate child support enforcement to a "one-order" world, establishing rules that restricted when a tribunal could establish a new order and limited the authority of a tribunal of one state to modify a valid support order entered by the tribunal of a sister state. These jurisdictional rules are consistent with the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. §1738B (enacted in 1994).

As a condition of funding under title IV-D of the Social Security Act, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) required states to enact UIFSA, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted by the National Conference of Commissioners on Uniform State Laws before January 1, 1998. In other words, states had to enact the 1996 version of UIFSA. When UIFSA was amended in 2001, OCSE allowed states to seek a waiver in order to enact UIFSA 2001.¹ Although tribes fall within UIFSA's definition of a state, federal law and regulations do not require tribes to enact UIFSA in order to receive federal funding for its IV-D program. Tribes are required, under 45 CFR 309.120, to extend the full range of services available under their IV-D plans to all requests from a state or another tribal IV-D entity.

As complex as interstate support cases can be, international cases are even more complicated. From 2002 to 2007 more than 60 countries participated in negotiation of a new Hague

¹ See OCSE-AT-02-02: *Requesting an Exemption from the Mandatory Law and Procedure in Section 466(f) of the Social Security Act* (May 17, 2002).

Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The United States played a key role in ensuring that the 2007 Family Maintenance Convention provides for child support services that are prompt, accessible, and cost-free in the majority of cases. The United States signed the Convention on November 23, 2007, representing our commitment to make a good faith effort to bring it into force in the United States. Almost three years later, on September 29, 2010, the Senate gave its advice and consent to ratify the 2007 Family Maintenance Convention.

The Uniform Law Commissioners (ULC) revised UIFSA “in order to integrate the appropriate provisions of the new Convention into state law.”² UIFSA 2008 builds on UIFSA 2001, although in some instances the 2008 amendments delete or change some of the 2001 amendments to UIFSA. Improving international child support enforcement is the primary focus of the 2008 amendments.

On September 29, 2014, President Obama signed Public Law 113-183, the Preventing Sex Trafficking and Strengthening Families Act. This law amends section 466(f) of the Social Security Act, and requires a state to have in effect any amendments to UIFSA “officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws.”³ As a result, the same version of UIFSA will be in effect in all states in 2016. Once all states have enacted UIFSA 2008, upon signature by the President, the United States will be able to deposit its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depositary for the 2007 Family Maintenance Convention. The 2007 Family Maintenance Convention will go into effect between the United States and all other countries that have ratified or acceded to the Convention on the first day of the month following the expiration of three months after the instrument of ratification is deposited.

This resource summarizes the major changes in UIFSA 2008, including the 2001 amendments that UIFSA 2008 incorporates.

Key Definitions

In the 1996 and 2001 versions of UIFSA, the definition of “state” included foreign nations that met certain qualifications. UIFSA 2008 changes this approach by having one definition for “state” and a separate definition for “foreign country.”

Under section 102 (Definitions) of UIFSA 2008, the definition of “state” now includes U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or “any territory or insular possession under the jurisdiction of the United States. The term also includes an Indian nation or tribe.”

² Unif. Interstate Family Support Act 2008, Prefatory Note, 43 Fam. L.Q. 85 (Spring 2009).

³ Pub. L. No. 113-183, § 301(f), 128 Stat. 1919, 1944 (2014) (codified at 42 U.S.C. § 666(f)).

The new definition of “foreign country” in section 102 includes many, but not all, foreign nations. “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

- has been declared under U.S. law to be a foreign reciprocating country;
- has established a state reciprocal arrangement for child support as provided in section 308 of UIFSA;
- has enacted law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under UIFSA; or
- in which the 2007 Family Maintenance Convention is in force with respect to the United States.

It is useful to think of countries that fall within this definition as qualified foreign countries. UIFSA 2008 also adds a new term “outside this state,” which means “a location in another state or a country other than the United States, whether or not the country is a foreign country.”

UIFSA 2008 defines “Convention” to mean the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007” (also referred to in this resource as the “2007 Family Maintenance Convention”).

There are a number of additional definitions that the ULC added or amended in 2001 and/or 2008. Two that are particularly important for child support caseworkers and attorneys are “record” and “support order.” UIFSA 2001, section 102, replaced references to written communications and information with the word “record.” It defines “record” as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” According to the section’s official comment, the phrase “in a record” replaces the terminology “in writing” in recognition that electronic transmissions and signatures are increasingly appropriate substitutes for more traditional documentation. UIFSA 2008, section 102, amends the definition of “support order” to clarify that the term includes retroactive support, automatic adjustment, and “reimbursement for financial assistance provided to an individual obligee in place of child support.”

Expansion of Duties of Support Enforcement Agency

For the first time, UIFSA 2008 requires a state to identify the public official, government entity, or private agency that is the support enforcement agency in the state (see section 103). In most states, the IV-D child support agency is the support enforcement agency. However, because UIFSA covers spousal support as well as child support, and private cases as well as IV-D cases, it may also be appropriate for a state to identify more than one entity serving as a support enforcement agency.

The overall UIFSA duties of the support enforcement agency appear at section 307. Section 307(a) requires the support enforcement agency to provide services, upon request, to a petitioner. The petitioner may be the obligee or the obligor, either of whom may request

services for establishment of paternity or a support order, enforcement of an existing child support order, or modification of the order, upward or downward. Subsection (f) avoids the issue of whether an attorney-client relationship is formed between a IV-D attorney and an individual receiving agency services by stating that UIFSA does not create or negate such a relationship. The agency must, among other obligations, facilitate the UIFSA process and keep the service recipient informed of notices and communications.

UIFSA 2001 required the state's support enforcement agency to provide services to a UIFSA petitioner, regardless of where the petitioner resided. UIFSA 2008 adds flexibility. Amended section 307(a) allows a state legislature to choose between two alternatives when enacting UIFSA. Alternative A continues the longstanding requirement that the support enforcement agency must provide services to any UIFSA petitioner, including petitioners who reside outside of the United States. Under a new Alternative B, the state's support enforcement agency must provide services to a petitioner residing anywhere in the United States (in a "state" as defined by UIFSA) and to a petitioner applying for services through the central authority of a foreign reciprocating country or a Convention country. However, under Alternative B, the support enforcement agency has discretion about whether it provides services to any other individual who is not residing in a state (as defined by UIFSA).

UIFSA 2008 retains the concept of controlling order. The controlling order in a case is the order that governs current support prospectively. If there are older cases with more than one support order involving the same obligor and child(ren), there must be a determination of controlling order. UIFSA 2008 retains 2001 amendments to section 307:

(c) A support enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

- (1) to ensure that the order to be registered is the controlling order; or
- (2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

The amendments prohibit an initiating agency from requesting registration of the highest support order, rather than ensuring that a determination of controlling order is made.

UIFSA 2008 incorporates the 2001 amendments to section 307, which address international cases. The new section 307(d) requires the initiating support enforcement agency that is seeking registration and enforcement of a support order, arrears, or judgment stated in a foreign currency, to convert the amounts into the equivalent amounts in dollars under applicable exchange rates. See also the discussion on international cases below.

Finally, UIFSA 2008 incorporates the new section 307(e) that was added to UIFSA in 2001. This provision requires a support enforcement agency to cooperate with a request from another support enforcement agency, pursuant to section 319, to issue, or request a tribunal to issue, a

child support order and an income withholding order that redirect payment of current support, arrears, and interest to the support enforcement agency in the state in which the obligee is receiving services. Section 319 only applies when neither the obligor, nor the obligee, nor the child resides in the state that issued the controlling support order. See the discussion on Redirection of Payments.

Jurisdiction to Modify

Amendments to Clarify Continuing, Exclusive Jurisdiction

Section 205 is one of UIFSA's most crucial provisions. It introduces the concept of continuing, exclusive jurisdiction. The 2001 amendments to section 205 contained some clarifications, as well as a major substantive change from UIFSA 1996. UIFSA 2008 incorporates these 2001 amendments.

Because some people incorrectly had used the terms "continuing, exclusive jurisdiction" (CEJ) and "controlling order" interchangeably, amendments to both the section title and to section 205(a) clarify that continuing, exclusive jurisdiction is a concept that applies to the jurisdiction to modify a child support order. In 2001 and 2008, the bases upon which a state may possess CEJ to modify the order have been expanded, as explained below. The initial basis has not changed; a state that issued a controlling order under UIFSA has CEJ to modify the order as long as the state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued. The amendment of section 205(a)(1) clarifies that the residence of the parties at the time of the filing of the request for modification is considered when determining whether CEJ exists.

Amendment to Expand Modification Jurisdiction Based on Consent

The 2001 amendments made a substantive change to modification jurisdiction based on consent; UIFSA 2008 incorporates this change. As amended, section 205(a)(2) authorizes a tribunal to modify a controlling order even if the state is not the residence of the obligor, the individual obligee, or the child, if the parties "consent in a record or in open court" that the tribunal may continue to exercise jurisdiction to modify its order. The amendment was in response to questions about why a tribunal could not modify its own order, if the parties were agreeable to such modification, although they no longer lived in the issuing state. The most common examples are where the parties want the same state to have jurisdiction over both spousal and child support, or where the parties have moved just across the state line and continue to have a strong affiliation with the issuing state, perhaps through employment. Additionally, just as section 205(a) addresses the retention of CEJ to modify, there is also an amendment to section 205(b) that addresses the circumstances under which an issuing tribunal may lose CEJ when the parties consent to have another state modify the order.

Amendment to Expand Continuing Jurisdiction to Modify

UIFSA 2008 added a new section 611(f) to address modification when the obligor, individual obligee, and child have left the issuing state and one party resides outside the United States. Normally, when there is no tribunal with CEJ, the party seeking modification must register the order in a state with jurisdiction over the other party. The additional requirement is that it must be a state where the registering party does not reside, leading to the phrase “play away.” The new section 611(f) allows the issuing state—even though it no longer has CEJ—to retain modification jurisdiction when one party resides outside the United States. According to the official comment to this new subsection:

The play-away principle makes sense when the tribunals involved have identical laws regarding continuing, exclusive jurisdiction to modify a child-support order. . . . If one party resides in a foreign country, a pure play-away rule would deny modification in a forum subject to UIFSA rules to the party or child who has moved from the issuing state, but continues to reside in the United States.

Under this situation, new section 611(f) designates the tribunal that issued the controlling order as the forum to hear the modification. The official comment notes:

This exception to the play-away rule provides assured personal jurisdiction over the parties, which in turn enables the issuing tribunal to retain continuing jurisdiction to modify its order. Of course, the party residing outside the United States has the option to pursue modification in the state where the other party or child currently reside[s].

Evidentiary Provisions

In both UIFSA 2001 and 2008, provisions that were formerly in sections 202 and 206(b) are combined into a new section 210. Section 210 ensures the effective implementation of continuing, exclusive jurisdiction providing that a tribunal “exercising personal jurisdiction over a nonresident in a proceeding under [UIFSA], under other law of [the] state relating to a support order, or recognizing a foreign support order may receive evidence from outside [the] state pursuant to section 316.” Accordingly, a nonresident party in a support proceeding—either the petitioner or the respondent—may present evidence using section 316’s enhanced evidentiary provisions. The tribunal also may communicate with a tribunal outside the state pursuant to section 317 and obtain discovery pursuant to section 318.

According to the official comment to section 210, “absent this provision, the ordinary intrastate substantive and procedural law of the forum would apply...without reference to the fact that one of the parties is a nonresident.” Because of this provision, however, sections 316, 317, and 318 apply to intrastate support proceedings: “In sum, the parties and the tribunal in a one-state case may utilize those [two-state] procedures that contribute to economy, efficiency, and fair

play.” It is clear that the tribunal cannot require the nonresident party’s physical presence in the proceeding and must accept evidence via “telephone, telecopier, or other electronic means that do not provide an original record,” as noted in section 316(e).

Inapplicability of Long-Arm Provision

In order to address some case law that was developing, the 2001 UIFSA Drafting Committee made several changes to emphasize that jurisdiction to modify can only be based on provisions within Article 6. First, the 2001 amendments to section 201 (Bases for Jurisdiction over Nonresident) deleted any reference to modification in order to clarify that the long-arm jurisdiction provisions do not apply to proceedings to modify an order. To further emphasize the point, the ULC added a new section 201(b) that explicitly states that the bases of personal jurisdiction set forth in subsection (a) or in any other law of the state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of sections 611 are met. UIFSA 2008 expands this to also reference section 615 in the case of a foreign support order. According to the 2008 official comment to amended section 201:

Subsection (b) elaborates on the principle by providing that modification of an existing child-support order goes beyond the usual rules of personal jurisdiction over the parties. Amended in UIFSA (2001), subsection (b) makes clear long-arm personal jurisdiction over a respondent, standing alone, is not sufficient to grant subject matter jurisdiction to a responding tribunal of the state of residence of the petitioner for that tribunal to modify an existing child-support order. See the extended commentaries to Sections 609 through 616. The limitations on modification of a child-support order provided by section 611 must be observed irrespective of the existence of personal jurisdiction over the parties.

For tribunals of the United States, these sections integrate the concepts of personal jurisdiction and its progeny, continuing jurisdiction, and controlling orders.

Modifying Another State’s Child Support Order

The 2008 amendments to UIFSA reorganize the modification provisions to make it clearer which apply to state orders and which apply to orders of foreign countries. Section 609 of UIFSA allows a party or support enforcement agency to register a child support order issued by one state in another state for the purpose of modification. Sections 611 and 613 address the three circumstances under which a tribunal has authority to modify the registered support order.

Jurisdiction to modify another state’s order when parties live in the same state.

Section 613 was not amended in 2001 or 2008. It provides that if all of the individual parties reside in the same state and the child does not reside in the issuing state, the state where the parties reside has jurisdiction to modify the order once a party registers the order for modification in that state.

Jurisdiction to modify another state’s order when parties live in different states.

Section 611, which was amended in 2001 and 2008, addresses how a tribunal obtains authority to modify another state’s child support order when the parties live in different states. Pursuant to section 611(a)(1), if a party or support enforcement agency has registered an order for modification, the registering tribunal may modify the other state’s order if the tribunal finds that all three of the following prerequisites are met:

- neither the child, the individual obligee, nor the obligor reside in the issuing state (if one of them did reside in the issuing state, that state would have CEJ for modification);
- the petitioner is a nonresident of the state in which modification is sought; and
- the registering tribunal has personal jurisdiction over the respondent.

In addition, section 611(a)(2) allows a tribunal to modify another state’s order and assume continuing, exclusive jurisdiction when:

- the registering state is the residence of the child or an individual party who is subject to the personal jurisdiction of the registering tribunal; and
- all of the individual parties have filed consents in a record in the issuing tribunal for a tribunal of the registering state to modify the support order and assume CEJ.

Modifying a Foreign Support Order

Both 2001 and 2008 amendments to UIFSA facilitate modification across international borders. These provisions are discussed in the section on International Cases.

Duration of Support

In 2001, the ULC changed section 611 by amending subsection (c) and adding a new subsection (d). Both amendments address duration of support. Prior to the 2001 amendments, one needed to read the official comment to this section of UIFSA to learn that duration of support is an example of a nonmodifiable term under most state laws. With the 2001 amendments incorporated into UIFSA 2008, subsection (c) now specifically provides that a state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, “including duration of the obligation of support.” The new subsection (d) makes it

clear that the law of the initial controlling order governs the duration of the support obligation. According to the 2008 official comment to section 611:

Subsection (c) provides the original time frame for support is not modifiable unless the law of the issuing state provides for its modification. After UIFSA (1996) was universally enacted, some tribunals...[held] that completion of the obligation to support a child through age 18...did not preclude the imposition of a new obligation to support the child through age 21, or beyond.

Subsection (d) prohibits imposition of multiple, albeit successive, support obligations. The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of Sections 609 through 614. But, the duration of the child support obligation remains constant, even though other aspects of the original order may be changed.

Child support workers and attorneys should pay close attention to the words “initial controlling order.” In cases with multiple orders issued before FFCCSOA (October 1994), it is not the first order issued that establishes duration. Rather, it is the first order determined to be controlling that locks in duration. Thereafter, the initial controlling order may be modified, but the duration will remain the same unless the initial controlling order’s state law allows the duration of the order to be modified. For more information about determination of controlling order, see the later discussion.

Redirection of Payments under UIFSA Section 319

UIFSA has always required that amounts received pursuant to a support order be disbursed “promptly” by the support enforcement agency or tribunal receiving them. Section 319 (Receipt and Disbursement of Payments) also requires the agency or tribunal to provide to a requesting party or tribunal of another state a “certified statement by the custodian of the record of the amounts and dates of all payments received.” In 2008, this provision was amended to allow a request for a certified statement of payments by a party or tribunal of a foreign country.

In 2001, the ULC amended section 319 to address concerns about the burden of receiving and disbursing support payments when no individual party or child resides in the state that issued the controlling order. In that limited circumstance, section 319(b) provides that, upon the request of a support enforcement agency, either the support enforcement agency of the issuing state or a tribunal of the issuing state—depending upon state law—must, “(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and (2) issue and send to the obligor’s employer a conforming income withholding order or an administrative notice of change of payee, reflecting the redirected payments.” In effect, the amendment provides a procedure under which the support enforcement agency in the state where the custodial parent is receiving services may take over

the accounting and payment processing functions on behalf of the issuing tribunal. The controlling order remains an order of the issuing state and the issuing tribunal remains responsible for ensuring an accurate accounting of the obligor's payments.

It is important to note that section 319(b) only applies to requests for redirection from a support enforcement agency when no individual party or child resides in the state that issued the controlling order. A private entity may not request section 319 redirection.

In order to ensure that tribunals are informed of how much money has been collected, section 319(c) requires the support enforcement agency receiving such redirected payments, if requested, to furnish to a party or tribunal of the state that issued the order a certified statement by the custodian of the record of the amount and dates of all payments received.

The new definition of "state" in the 2008 amendments clarifies that section 319(b) and (c) do not apply to international cases.

Nondisclosure of Information

Section 312 of UIFSA has always addressed the need to protect information in cases where there is a risk of domestic violence or child abduction. The 2001 amendments to the section, which were incorporated into UIFSA 2008, changed the language to make it consistent with section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act. As amended, section 312 now reads:

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Direct Income Withholding

One of the implementation issues that had arisen under UIFSA 1996 was how to challenge a direct income withholding order. Under UIFSA 1996, section 506 authorized an obligor to challenge the validity or enforcement of a direct income withholding order in the same manner as if the order had been issued by his or her employer's state. The problem was that states had procedures for contesting immediate withholding, but many states lacked procedures for challenging a withholding order once it had already been issued. Therefore, section 506 referenced a procedure that did not exist in some states.

A 2001 amendment to section 506, which was incorporated into UIFSA 2008, recognizes that a simple, efficient, and cost-effective method for an employee/obligor to file a contest is to allow

the obligor to register the withholding order using the registration process provided in Article 6 of the Act, and to seek protection from that tribunal pending resolution of the contest. In the alternative, the obligor may still use any method that would be available for challenging an intrastate income withholding.

The definition changes in section 102 of UIFSA 2008 have an impact on section 501. Because UIFSA 2008 has separate definitions for “state” and “foreign country,” the continued reference to “state” in section 501 means that direct income withholding provisions no longer apply to foreign income withholding orders. However, UIFSA 2008 amended section 507 so that administrative enforcement remains available to enforce a state support order, a state income withholding order, or a foreign support order.

International Cases

From its earliest incarnations, UIFSA has applied to international cases, primarily by defining state to include foreign jurisdictions.⁴ Amendments in 2001 addressed international cases more comprehensively. Many of these amendments are incorporated into UIFSA 2008. Most importantly, UIFSA 2008 includes a new Article 7 that integrates the 2007 Family Maintenance Convention into state law. This section of the resource highlights 2001 and 2008 amendments to UIFSA that are specific to international cases.

Definitions

As noted earlier, UIFSA 2008 contains one definition for “state” and a separate definition for “foreign country.” As noted earlier, foreign country is defined as a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

- has been declared under U.S. law to be a foreign reciprocating country;⁵
- has established a state reciprocal arrangement for child support as provided in section 308 of UIFSA;⁶
- has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under UIFSA; or

⁴ Unif. Interstate Family Support Act 1992, Section 1(19), 9 U.L.A. 15 (Supp. 1993): “The term state includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this [Act].”

⁵ Pursuant to federal law, the Department of State and the Department of Health and Human Services may enter into agreements with foreign countries for child support enforcement. *See* 42 U.S.C. § 659A (2012). The OCSE website has useful information on processing cases with a foreign reciprocating country. Start at *Foreign Reciprocating Countries*, Office of Child Support Enforcement, <http://www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries>. From this page one can link to information on processing cases to or from any FRC, copies of the declarations between the U.S. and each FRC, and Caseworker’s Guides.

⁶ Federal law permits individual states to establish or continue existing reciprocating arrangements with foreign countries when there has been no federal declaration. 42 U.S.C. § 659A (2012).

- in which the 2007 Maintenance Convention is in force with respect to the United States.

As of May, 2016 the United States has declared that the following jurisdictions are foreign reciprocating countries for child support enforcement: Australia; the Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland/Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island (PEI), Saskatchewan, and Yukon; the Czech Republic; El Salvador; Finland; Hungary; Ireland; Israel; Netherlands; Norway; Poland; Portugal; Slovak Republic; Switzerland; and The United Kingdom of Great Britain and Northern Ireland.

Reciprocal Arrangements

The 2001 amendments to UIFSA amended section 308 to authorize an appropriate state official or agency to determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with the state. This authority was previously left up to the states and was generally found in the state's family or civil statutes. The 2008 amendments to UIFSA retain the amendment to section 308.

Road Map

UIFSA 2008 adds a new section 105, which acts essentially as a road map for applying UIFSA requirements. It explains that a tribunal **must** apply Articles 1 through 6 and, as applicable, Article 7 to a proceeding involving a foreign support order; a foreign tribunal; or an obligor, an obligee, or a child residing in a foreign country. A tribunal that has been asked to recognize and enforce a support order on the basis of comity **may** apply Articles 1 through 6 to the proceeding. The new Article 7 applies **only** to a support proceeding under the 2007 Maintenance Convention. If a provision of Article 7 is inconsistent with Articles 1 through 6, then Article 7 controls.

Choice of Law

As in interstate cases, under UIFSA section 303, the general rule regarding choice of law in international cases is that the responding state's law controls. The same exceptions under section 604 apply to international cases—the nature, extent, amount, and duration of the current support and other obligations of support (including the payment of arrears) are governed by the law of the state or foreign country issuing the controlling order. And, the choice of law in determining which statute of limitations to apply is easy to remember—always apply the law of the state or foreign country with the longest statute of limitations available.

Modification

UIFSA 2008 addresses modification of a foreign support order in three main provisions.

Jurisdiction to modify a support order of a foreign country when the foreign country lacks or refuses to exercise jurisdiction to modify.

The 2001 amendments added section 615, which expands upon a provision in UIFSA 1996. The new section is further amended by UIFSA 2008. Pursuant to section 615, if a child support order was issued by a foreign country, as defined by UIFSA, and that country “lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws,” a tribunal of the registering state may assume modification jurisdiction and bind all parties subject to its personal jurisdiction. The consent of both parties is not necessary. Nor does it matter whether the petitioner is a resident of the registering state or of the foreign country. The example that the official comment to section 615 provides is:

[T]he conundrum posed [is] when an obligor has moved to the responding state from the issuing country and the law of that country requires both parties to be physically present at a hearing before the tribunal in order to sustain a modification of child support. In that circumstance, the foreign issuing tribunal lacks jurisdiction to modify under its law. Ordinarily, under section 611 the responding state tribunal is not authorized to issue a new order, in effect modifying the foreign support order, because the child or the obligee continues to reside in the issuing country. To remedy the perceived inequity in such a fact situation, this section provides an exception to the rule of section 611.

Procedure for modifying a support order of a foreign country not under the Hague Convention.

The 2008 amendments to UIFSA add a new section 616. Pursuant to this section, a party or support enforcement agency seeking to modify a foreign child support order not under the 2007 Family Maintenance Convention may register that order for modification. The petition must specify the grounds for modification.

Procedure for modifying a Convention child support order.

UIFSA 2008 also contains a new Article 7 that only applies to orders issued by countries that have ratified the 2007 Family Maintenance Convention. Sections 706 and 711 govern registration and modification of a Convention child support order. The procedures for registration for modification in that Article are slightly different than those that apply to registration of an order issued by a state or a foreign country that is not a Hague Convention country. For information about registration for modification under Article 7, see the discussion below.

Currency Conversion

As noted earlier, UIFSA 2008 incorporates 2001 amendments to section 307 that address international cases. The new section 307(d) requires the initiating support enforcement agency that is seeking registration and enforcement of a support order, arrears, or judgment stated in a foreign currency, to convert the amounts into the equivalent amounts in dollars under applicable exchange rates. Tribunals in the United States have a similar responsibility under 304(b) and 305(f), if they receive a request for currency conversion.

Article 7 Key Provisions

Effective Date of Article 7

Since all states have enacted UIFSA 2008, the next steps toward ratification of the Convention are for the President to sign the Convention and for the United States to deposit the instrument of ratification. Three months later, the Convention goes into effect for the U.S. and the United States will be able to work cases under the 2007 Family Maintenance Convention using procedures set out in Article 7 of UIFSA 2008.

Definitions.

Section 701 contains definitions that only apply to 2007 Family Maintenance Convention cases. The Convention uses the term “application” so UIFSA defines that term. “Application” means “a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.” The “central authority” is the entity designated by the United States or a foreign country, as defined under section 102(5)(D) of the Act, to perform Convention functions. In the United States, the central authority is the Secretary of the United States Department of Health and Human Services and associated operations are within the federal Office of Child Support Enforcement. “Convention support order” is limited to a support order of a tribunal of a foreign country in which the Convention is in force with respect to the United States. Because of this narrowed definition, the provisions of Article 7 have no application to a support order from a non-Convention foreign country, as defined in UIFSA section 102(5)(A)–(C), or to a support order entitled to comity.⁷

Availability of proceedings.

Section 704 is important because, in line with the Convention, it narrows the availability of services that are usually available in the United States to both obligees and obligors. Under the 2007 Family Maintenance Convention, the following support proceedings are available to an obligee:

⁷ See official comment to Unif. Interstate Family Support Act 2008, Section 701. The exception to this exclusion of non-Convention country support orders is “to the extent that a Convention country may request enforcement of a non-Convention support order that has been recognized in the United States under some other procedure.”

- recognition or recognition and enforcement of a foreign support order;
- enforcement of a support order issued or recognized in the forum state;
- establishment of a support order if there is no existing order, including, if necessary, determination of parentage;
- establishment of a support order if recognition of a foreign support order is refused under section 708(b)(2), (4) or (9);
- modification of a support order of a tribunal in the forum state; and
- modification of a support order of a tribunal of another state or foreign country.

The following support proceedings are available under the Convention to an obligor:

- recognition of an order suspending or limiting enforcement of an existing support order issued by a tribunal of the forum state;
- modification of a support order issued by a tribunal of the forum state; and
- modification of a support order of a tribunal of another state or foreign country.

Direct requests.

As defined in section 701, a “direct request” means a petition or comparable pleading filed directly to a state tribunal in a proceeding involving an obligee, an obligor, or a child residing outside the United States. Such a request does not involve the assistance of a central authority or support enforcement agency. The new section 705 states that a petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage, as well as a direct request for recognition and enforcement of a Convention support order or foreign support agreement. According to the official comment to section 705:

Given the variety of legal systems that may be involved under the Convention, this freedom of choice is explicitly protected. A person residing in a Convention country, whether a citizen or a noncitizen of the United States, may apply to a tribunal in the United States for establishment, recognition, and enforcement of a child support order, for enforcement of a spousal support order, for recognition and enforcement of a foreign support agreement, and in some situations, for modification of an existing support order....[I]mplicit in the right of access to a tribunal,...representation may be pro se or by private counsel.

In such a proceeding, the law of the forum state applies.

Registration of a Convention support order.

As noted in 707(a), except as otherwise provided in Article 7, UIFSA sections 605 through 608 apply to a contest of a registered Convention support order. The major differences between registration of a domestic or foreign support order and registration of a Convention support

order under Article 7 are the documents required, the timeframes for challenging the registration, and the permissible defenses.

Documents. Section 706(b) provides that a request for registration of a Convention support order must be accompanied by the following documents:

- a complete text of the support order (or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended and published by the Hague Conference on Private International Law);
- a record stating that the support order is enforceable in the issuing country;
- if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;
- a record showing the amount of arrears, if any, and the date the amount was calculated;
- a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and
- if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

Timeframes. Whereas a respondent has 20 days to challenge the registration or validity of a non-Convention support order, there is a longer challenge period in Convention cases. Pursuant to section 707(b), a party contesting a registered Convention support order must file a contest not less than 30 days from notice of the registration. If the contesting party does not reside in the United States, that time period is extended to 60 days.

Defenses. Pursuant to section 706(d), there is one limited circumstance in which a state tribunal may vacate the registration of a Convention support order even if a respondent has not filed a challenge under section 707. On its own motion, a tribunal may vacate the registration if it finds that “recognition and enforcement of the order would be manifestly incompatible with public policy.” According to the official comment, this would be an exceptional circumstance.

Otherwise, section 708 requires a respondent to raise one of the following defenses to registration of a Convention support order. Note that these are slightly different from those listed in section 607, which addresses defenses to registered support orders issued by a state or a non-Convention foreign country.

- Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.
- The issuing tribunal lacked personal jurisdiction consistent with section 201 of UIFSA, which is the long-arm provision.

- The order is not enforceable in the issuing country.
- The order was obtained by fraud in connection with a matter of procedure.
- A record transmitted in accordance with section 706 of UIFSA lacks authenticity or integrity.
- A proceeding between the same parties and having the same purpose is pending before a tribunal of the registering state and that proceeding was the first to be filed.
- The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under UIFSA.
- Payment, to the extent alleged arrears have been paid in whole or in part.
- In the case of a default order, the respondent did not have proper notice of the proceedings and an opportunity to be heard in the proceedings or did not have proper notice of the order and an opportunity to be heard in a challenge or appeal, depending upon the law of the Convention country.
- The order was made in violation of section 711 of UIFSA, which restricts modification jurisdiction.

The defense that a respondent is most likely to raise to registration of an order issued by a foreign country is lack of personal jurisdiction. In the United States, due process requires a tribunal to have personal jurisdiction over the respondent in order to issue a support order; personal jurisdiction is based on contacts between the respondent and the forum.⁸ In contrast, most other countries base jurisdiction to establish a support order on the presence of the creditor (obligee) or child in the forum.⁹ If the other country relied solely on the presence of the child or creditor for jurisdiction to enter its order, the order—depending upon the case facts—may not be enforceable in the United States. However, keep in mind that the child support agency must register the order if it appears valid on its face. It is up to the respondent to raise a challenge. The agency or child support attorney cannot make a binding determination that the order is unenforceable; this authority rests with the tribunal.

If an obligor raises the defense of lack of personal jurisdiction under section 708(b)(2), the child support attorney may need to contact the requesting foreign jurisdiction for additional information which may be submitted to the court regarding any facts that would establish jurisdiction of the issuing tribunal if U.S. law had been applied. If the facts of the case support jurisdiction under U.S. laws, regardless of what law the issuing tribunal applied, U.S. courts should recognize and enforce the foreign order. In other words, if a U.S. tribunal acting with the same facts could have entered the order, the order is enforceable. As explained in the official comment to this section:

⁸ *Kulko v. Superior Court of Cal.*, 436 U.S.84, 98 S. Ct. 1690, 56 L.Ed.2d 132 (1978).

⁹ Alegría Borrás & Jennifer Degeling, Explanatory Report of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance 161, para. 452, <http://www.hcch.net/upload/expl38.pdf>.

[T]he foreign tribunal need not, and almost certainly will not, consider whether there is a factual basis for establishing personal jurisdiction over the absent obligor based upon “minimum contacts” with the forum. This is not a part of the jurisprudence of the foreign tribunal. If a challenge to a support order is raised by the obligor when the order is sought for enforcement in a United States tribunal, however, that tribunal shall undertake a determination of whether the jurisdictional bases of section 201 would have been applicable if that issue had been raised in the foreign tribunal. If so, the order is enforceable in this country, notwithstanding that the foreign tribunal based its decision on jurisdiction on the fact that the child or the obligee resided in that forum.

Procedure. If the registered order was issued by a Convention country, UIFSA provides further direction. Section 707(e) provides that in the event of a contest, the registering tribunal is bound by the findings of facts on which the issuing tribunal based its jurisdiction and may not review the merits of the order. Under section 707(g), a challenge does not stay enforcement of a Convention support order unless there are exceptional circumstances. According to the official comment, this substantive provision is required by the Convention: “It does not apply in non-Convention cases, in which domestic law determines whether a stay of enforcement should be granted pending an appeal or other challenge.” Section 707(f) requires the tribunal deciding a contest of registered Convention support order to promptly notify the parties of its decision.

Another area where Article 7 establishes a different procedure for registered Convention support orders is where the respondent has successfully challenged registration. If a U.S. tribunal does not recognize a Convention support order due to lack of personal jurisdiction, procedural fraud, or lack of proper notice and opportunity to challenge, the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order. If the application for recognition and enforcement came through a central authority—in other words, it is a IV-D case—the child support agency **must** “take all appropriate measures to request a child support order for the obligee,” as required by section 708(c)(2). According to the official comment for this provision, “In that case, the tribunal shall treat the request for recognition and enforcement as a petition for establishment of a new order.”

Modification of Convention support order. For orders issued by a Convention country, section 711 contains an important limitation to modification jurisdiction. It provides that a state tribunal may not modify a Convention child support order if the obligee remains a resident of the issuing foreign country unless:

- The obligee submits to the jurisdiction of the state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

- The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

Foreign support agreement. In the United States, a purely private agreement such as a separation agreement is treated as a type of contract, rather than a support order. As such, it is not enforceable under UIFSA. Outside of the United States, many countries recognize and enforce certain types of agreements that are called “maintenance arrangements.” The 2007 Family Maintenance Convention standardizes a process for recognition and enforcement of maintenance arrangements. In order to use a term “more readily understandable for U.S. bench and bar,”¹⁰ UIFSA 2008 calls such an arrangement a “foreign support agreement.” According to section 701, foreign support agreement:

- (A) means an agreement for support in a record that:
- (i) is enforceable as a support order in the country of origin;
 - (ii) has been:
 - (I) formally drawn up or registered as an authentic instrument by a foreign tribunal; or
 - (II) authenticated by, or concluded, registered, or filed with a foreign tribunal; and
 - (iii) may be reviewed and modified by a foreign tribunal; and
- (B) Includes a maintenance arrangement or authentic instrument under the Convention.

Section 710 addresses the recognition and enforcement of a registered foreign support agreement. Most importantly, UIFSA requires that the agreement must be accompanied by a document stating that the foreign support agreement is as enforceable as a support order would be in the country of origin. According to the official comment, if the agreement is enforceable only as a contract, it will not fall within the scope of this section. Another key provision is that under subsection (e), a proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge or appeal of the agreement before a tribunal of another state or a foreign country.

Translation. Pursuant to section 713, a record filed with a state tribunal must be in the original language and, if not in English, must be accompanied by an English translation.

Other Provisions

Rules of Evidence

One of the most important principles underlying UIFSA has been and remains utilitarian evidentiary provisions. The 2001 and 2008 amendments to section 316 further strengthen the intent of this section, “to assure that the tribunal will have available to it the maximum amount

¹⁰ Official Comment to Section 710, Unif. Interstate Family Support Act 2008.

of information on which to base its decision... [and] to eliminate by statute as many potential hearsay problems as possible in interstate litigation.”¹¹ Throughout subsections (b) through (f), these special rules of evidence and procedure are applicable to a party or witness “residing outside of this state,” not just to a non-resident petitioner.

Under amended section 316(a), the physical presence of an individual non-resident party (i.e., the petitioner or the respondent) cannot be required in a tribunal.

UIFSA 2008 amends section 316(b) to eliminate the requirement that an affidavit or other document must be given under oath in order to be admissible in evidence. Rather, it is sufficient if the information is provided under penalty of perjury. According to the official comment, this is a simpler standard and is similar to what is required by the federal income tax form 1040.

UIFSA 2008 also amends section 316(e) to allow the introduction of documentary evidence from outside the state that is transmitted by electronic means that do not provide an original record.

The amendment with the most significant impact is a simple word change initially made in 2001 to section 316(f); the amendment changes the word “may” to “shall.” Henceforth, a tribunal **must** permit a party or witness “residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location.” Testimony by such means is not discretionary with the tribunal. Finally, a 2001 amendment, which was also incorporated into UIFSA 2008, adds a new section 316(j). The subsection authorizes the admissibility of a voluntary acknowledgment of paternity, certified as a true copy, in order to establish parentage of a child.

Temporary Support Order

UIFSA 2008 includes a rewording of section 401(b) that the ULC made in 2001. That provision authorizes a tribunal to issue a temporary support order if appropriate and if the individual ordered to pay is one of the following: a presumed father; petitioning to have his paternity adjudicated; identified as the father through genetic testing; an alleged father who has declined to submit to genetic testing; shown by clear and convincing evidence to be the father of the child; an acknowledged father as provided by state law; the mother of the child; or an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated. This list is consistent with the bases for a temporary support order under the Uniform Parentage Act (2002).

¹¹ Official Comment to Section 316, Unif. Interstate Family Support Act 2008.

Choice of Law

An order registered for enforcement never becomes an order of the registering state. Therefore section 604 establishes choice of law rules for the registering tribunal to follow. In 2001, there were a number of amendments to section 604. UIFSA 2008 incorporates these amendments and ensures they are applicable to orders of foreign countries—as defined by UIFSA—as well as state orders. As a result, section 604 provides that the law of the issuing state or foreign country governs the “nature, extent, amount, and duration of current payments;” the computation and payment of arrears and accrual of interest on the arrears; and the existence and satisfaction of other obligations under the support order. The statute of limitations of the forum state or of the issuing state or foreign country—whichever is longer—applies. Further, the forum state should use its own procedures and remedies to enforce current support and collect arrears and interest due on a registered support order of another state or a foreign country.

Under section 604(d), if there are multiple support orders, prior to a determination of controlling order (DCO), the arrears—***including interest***—under each order should be calculated using the law of the state or foreign country that issued that order. However, once there has been a DCO and a consolidation of arrears, all tribunals must prospectively apply the law of the state or foreign country that issued the controlling order, “including its law on interest on arrears, on current and future support, and on consolidated arrears.” That means the law of the state or foreign country that issued the controlling order will determine the interest rate not only on arrears that had accrued under it, but also the prospective interest rate on the balance of consolidated arrears. Therefore, if the state or foreign country that issued the controlling order does not require interest and a state or foreign country that issued one of the “old” orders does, the interest rate of the issuing state or foreign country will apply in the initial determination of arrears; however, once the arrears have been consolidated and the controlling order determined, no further interest will accrue.

Determination of Controlling Order

One of UIFSA’s most important concepts is its “one-order system” to resolve the problems associated with URESA’s multiple orders. Under UIFSA, once a support order is entered, that order controls the child support obligation regardless of whether the parents or child later move to another state. This “one order” is called the controlling order.

In order to address the problem of multiple support orders in interstate cases under URESA, UIFSA contains rules for a tribunal to apply in determining which existing support order will control ***current support*** prospectively. This process is called the determination of controlling order (DCO). The 2001 amendments to UIFSA did not change the DCO rules found in section 207(a) and (b). Instead, they amended other provisions in section 207 to address a number of implementation issues that had arisen since 1996. UIFSA 2008 includes these changes.

The need for a DCO is waning. It applies only when there are multiple valid current support orders, and since the effective date of FFCCSOA¹² in October 1994, a tribunal has been precluded from entering a new order when a support order entitled to recognition already exists. That means we are fast approaching a time when children under “old” orders will have “aged out” and no longer will receive current support. Until such time, it is important for the child support caseworker and attorney to know how to address the following issues.

Jurisdiction

Section 207(c) of UIFSA 2008 now clearly states that the tribunal must have personal jurisdiction over both the obligor and the individual obligee in order to determine which order controls. In order for a state to have personal jurisdiction over a party, the party must have received notice of the proceeding and the party must have sufficient minimum contacts with the state conducting the hearing so that due process is satisfied.

Requesting a DCO

Section 207(c) clarifies that the potential requesters can include a support enforcement agency. In fact, amendments to section 307 place greater responsibility on the support enforcement agency to seek a determination of controlling order in an effort to prevent the agency’s registering the highest support order rather than determining the controlling order.

According to section 207(c), a request for a DCO may be made in the context of a registration for enforcement or registration for modification proceeding, as well as in the context of a “stand-alone” proceeding where there are multiple orders and one of the parties seeks a DCO.

Type of Notice

Section 605 (Notice of Registration of Order) recognizes the possible need to determine the controlling order in conjunction with a registration proceeding. According to section 605(c), if the registering party asserts that two or more orders are in effect, the notice of registration must:

- identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;
- notify the nonregistering party of the right to a determination of which is the controlling order;
- state that the procedures provided in section 605(b) apply to the determination of which is the controlling order; and

¹² FFCCSOA contains the same rules as UIFSA for determining the controlling order.

- state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

Child support professionals should ensure that their state's notice of registration complies with this provision. The ULC also amended section 607(a)(8) to provide that proof that the alleged controlling order is not the controlling order is a valid defense to registration.

Findings in a DCO

Another issue concerns what findings a tribunal must make in determining the controlling order. Section 207(f) requires that the order specify the amount of prospective support and consolidated arrears and accrued interest, as follows:

- (f) A tribunal of this state that determines by order which is the controlling order under subsection (b)(1) or (2) or (c), or that issues a new controlling order under subsection (b)(3), shall state in that order:
- (1) the basis upon which the tribunal made its determination;
 - (2) the amount of prospective support, if any; and
 - (3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 209.

Conclusion

Since its original promulgation in 1992, UIFSA has been amended three times. Like the 1996 amendments, the 2001 and 2008 amendments clarify case processing issues. They also address foreign support orders in a more comprehensive fashion. UIFSA 2008 is significant because it also implements the 2007 Family Maintenance Convention. Through this resource, OCSE hopes to enhance the child support community's understanding of UIFSA 2008 and highlight the importance of improved intergovernmental child support enforcement.