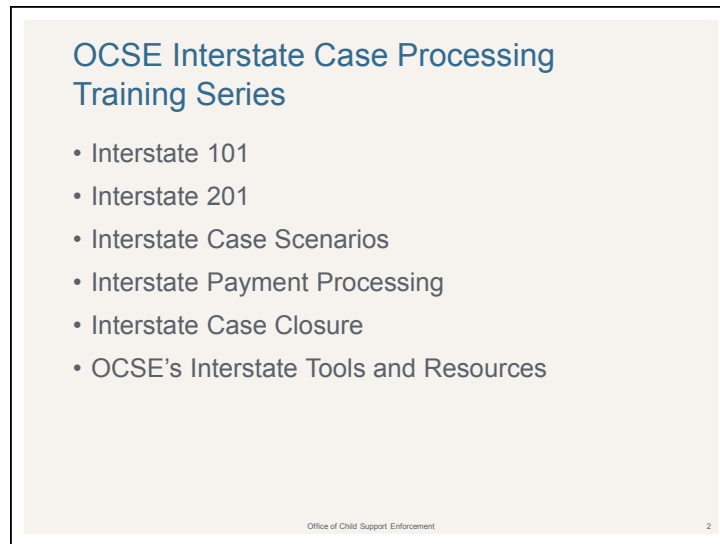




Notes:

Welcome to Interstate 201 training!

This training is on interstate child support case processing with an in-depth look at federal laws, federal regulations, and the Uniform Interstate Family Support Act, which is referred to as "UIFSA." Interstate 201 is more advanced interstate training and has several companion courses on interstate case processing including:

A presentation slide with a light beige background and a black border. The title "OCSE Interstate Case Processing Training Series" is at the top in blue. Below it is a bulleted list of six items. At the bottom, there is a small footer with the text "Office of Child Support Enforcement" and a page number "2".

OCSE Interstate Case Processing Training Series

- Interstate 101
- Interstate 201
- Interstate Case Scenarios
- Interstate Payment Processing
- Interstate Case Closure
- OCSE's Interstate Tools and Resources

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Notes:

- Interstate 101 training with basic materials on the laws and processes for interstate cases
- Interstate case scenarios
- Interstate payment processing
- Interstate case closure and
- Interstate tools and resources

All of these trainings focus on interstate cases and are intended to complement, rather than repeat, OCSE's training on the revised intergovernmental forms and international case processing. Please note that in some instances, UIFSA provides different rules for international cases.

Overview

- In this training, we will discuss:
 - Interstate case processing
 - Registration for enforcement
 - Rules of evidence
 - Choice of law
 - Direct income withholding
 - Impact of modification
- In this training, we will use terms “parent,” “custodial parent,” and “noncustodial parent”

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Notes:

In this training, we first will look at interstate case processing and registering an order for enforcement, including defenses to registration. We will then turn to the special evidentiary rules for interstate cases. We also will discuss which state’s laws apply in interstate cases, direct income withholding, and the impact of modifying another state’s order. At the end of the training, there is a list of the references used in this training, including UIFSA, with hyperlinks to the electronic version of the documents.

We use the term “parent” throughout these trainings because most child support cases involve two parents. It’s important to recognize, however, that some child support cases may not have two parents, such as when there is a guardian for the child or a foster care agency is seeking support. So even though we use the term “parent,” the same interstate rules will apply to cases when it’s not the actual parent of the child pursuing support.

Also, this training will use the terms “custodial parent” and “noncustodial parent,” but OCSE recognizes that there are cases where the parents have shared custody. OCSE also recognizes that the noncustodial parent is sometimes the applicant. For simplicity, this training will assume that the custodial parent is the applicant in our scenarios unless otherwise specified.



Notes:

So let's get started with interstate case processing, which will provide a good opportunity to review the terms and core concepts that we learned in the Interstate 101 training and put those terms and concepts into action.

We will cover how to gather information, what facts are relevant in interstate cases, and the different options that child support caseworkers have in working an interstate case.

Interstate Cases: Origin

- Interstate case where IV-D agency is initiating agency providing services to parent
 - Investigation
 - Interstate communication tools
 - Options
- Interstate case where IV-D agency is responding agency
 - Central registry

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Notes:

There are two ways interstate cases can become a part of your IV-D caseload. The first is where a parent is receiving IV-D services in your state and the other parent resides in a different state. These cases do not come through the central registry; instead, your IV-D agency receives the case after the parent applies or is referred for services. Your IV-D agency is considered the initiating agency because it is responsible for initiating an action such as one-state remedies like direct income withholding or a two-state referral of an interstate IV-D case.

Your IV-D agency will need to know the relevant facts and what options are available to determine the most appropriate course of action to take in the case. We will talk about investigating the facts of cases, available interstate communication tools, and initiating agency options.

The other origin for an interstate case is where a parent has applied for services in another state and that state sends an interstate IV-D case to your state. This type of interstate case comes to your central registry and your IV-D agency is the responding agency responsible for taking action based on the requests of the initiating agency.

References:

Section 454(6) of the Social Security Act

45 CFR 302.33(a)

45 CFR 303.7

Federal Requirements for Initiating Agency

- Upon application, initiating agency must:
 - Open case
 - Establish case record
 - Solicit information from parent and other sources
 - Determine existence of support order
 - Investigate where noncustodial parent lives
 - Determine whether one-state remedies or referral of interstate IV-D case are appropriate

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Notes:

In the next few slides, we will look at cases in the first category of interstate cases, namely, where the parent is receiving services from your IV-D agency. The parent applying for services need not be a resident of your state; instead, a nonresident parent may apply directly to your IV-D agency for services.

Federal regulations require states to accept applications for services. Within 20 calendar days of receiving either an application or a referral from another agency, the IV-D agency must open a case, establish a case record, and solicit “necessary and relevant information” from the parent applying for services and other relevant sources. Relevant information includes determining whether there is a support order that’s already been issued, either in your state or another, and whether any state has an open IV-D case.

The IV-D agency also must investigate where the noncustodial parent resides. If the IV-D agency determines that the other parent resides in another state, the IV-D agency then must determine whether it should use one-state remedies for establishment or enforcement, or whether the agency should refer an interstate IV-D case to the state where the other parent lives. It is the responsibility of the initiating agency to select the best case processing approach given the facts of the case.

References:

Section 454(9) of the Social Security Act
45 CFR 303.2(b)
45 CFR 303.7

Interstate Communication Tools

- OCSE's on-line tools
 - Child Support Enforcement Network (CSENet)
 - Child Support Portal Applications:
 - Federal Case Registry (FCR) Query
 - Query Interstate Cases for Kids (QUICK)

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Notes:

Cooperation among states in interstate child support enforcement is required for IV-D agencies and critical to the success of the child support program. OCSE has provided states with interstate communication tools to facilitate cooperation in interstate cases.

All state IV-D agencies have the Child Support Enforcement Network or “CSENet,” which allows child support professionals to exchange child support information electronically among the 54 states and territories. CSENet was designed to improve intergovernmental case processing in many ways including allowing states to receive matches from the Federal Case Registry or “FCR,” containing case and participant information.

The FCR contains information for IV-D and non-IV-D cases, and serves as a pointer system to assist with case processing. Data on parents in the FCR is matched daily against employment data in the National Directory of New Hires and sent to states to facilitate case processing and increase collections, especially through automated income withholding. These matches can be used for all facets of case processing.

Query Interstate Cases for Kids or “QUICK” is an optional on-line communication tool for states. QUICK offers child support professionals secure real-time access to financial and case activity information for cases in other states participating in QUICK.

Interstate Communication Tools (cont'd)

- OCSE's on-line tools
 - Child Support Portal Applications:
 - Electronic Document Exchange (EDE)
- Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery

Notes:

A child support professional may also use the Electronic Document Exchange or “EDE” to request case documents from or send documents to the other state electronically instead of sending documents through the mail.

To request information from another state that the child support caseworker can't find independently using interstate tools, the worker should use the limited services option on the Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery.

Initiating Agency Options

- One-state remedies available for:
 - Establishment if long-arm jurisdiction is present
 - Enforcement through direct income withholding
 - Enforcement through other means if jurisdiction is present
- Interstate IV-D case available for:
 - Establishment and enforcement if one-state remedies are not available or appropriate

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Notes:

When the IV-D agency learns that the noncustodial parent lives in another state and there is no support order, the agency may use one-state remedies to establish a support order only if long-arm jurisdiction over the noncustodial parent is present. As indicated in the Interstate 101 training, UIFSA provides several bases for long-arm jurisdiction. There are substantial benefits to a state exercising long-arm jurisdiction when the facts establish that the noncustodial parent had the required contact with the state and we will review these benefits in the choice of law section of this training.

If long-arm jurisdiction is not present or appropriate based on the facts of the case, the IV-D agency will refer an interstate IV-D case for establishment to the state where the noncustodial parent resides.


If the IV-D agency learns that a support order has been established but there is no paying income withholding order, the agency may search for an employer for the noncustodial parent and, if an employer is located, may send a direct income withholding order to the employer. Under UIFSA, a state does not need to have personal jurisdiction over the noncustodial parent to collect income earned in another state by sending a direct income withholding order. UIFSA does require, however, that the direct income withholding order contain all of the terms set forth in the issuing state's child support order, including the amount of support and payment location. The other option is to refer an interstate IV-D case to the state where the noncustodial parent resides for enforcement of the order.

References:

UIFSA Sections 201, 204, 205, 210, 304, 305, 611

Practice with Federal Requirements

- What are federal requirements for providing services in interstate cases?



The map shows the states of Nebraska and Missouri. In Nebraska, there is an icon of two adults and a child, with the word "Nebraska" below it. In Missouri, there is an icon of a single adult, with the word "Missouri" below it.

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Notes:

To practice the concepts of investigating and processing an interstate case where the custodial parent has applied for services, let's take a look at a hypothetical case. Here, the custodial parent and child are in Nebraska and have applied there for child support services. The custodial parent tells the caseworker that the noncustodial parent resides in Missouri. What must the Nebraska IV-D agency do under federal regulations?

Federal regulations require that the Nebraska IV-D agency:

- Open a case
- Establish a case record
- Solicit additional information from the custodial parent and other sources
- Determine whether there is a support order in another state and
- Investigate whether the noncustodial parent lives in a different state.

Ultimately the IV-D agency must determine whether one-state remedies or referral of an interstate IV-D case is appropriate.

Practice Investigating Interstate Case

- Relevant facts?
- Communication tools?
- Case processing options?



The map shows the states of Nebraska and Missouri. In Nebraska, there is an icon of two people (a family) with the word "Nebraska" below it. In Missouri, there is an icon of a single person with the word "Missouri" below it.

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Notes:

Let's use the same hypothetical case with the custodial parent in Nebraska and the noncustodial parent in Missouri to practice investigating an interstate case. In order to fulfill the federal requirements for this case:

- What facts does the Nebraska caseworker need to know in order to determine whether the use of one-state remedies or referral of an interstate IV-D case is most appropriate for this case?
- What interstate communication tools are available?
- And finally, what are the options for processing this case?

Answer – If No Order

- If parentage or support needs to be established, does your state have long-arm jurisdiction?
 - If yes, consider using one-state remedies to establish parentage or support order
 - If no, refer interstate IV-D case for establishment to noncustodial parent's state

Notes:

In order to fulfill the federal requirements, you must approach your case like an investigation to determine the relevant facts, using available tools and resources, and ultimately decide on the best case processing option.

The first relevant question is whether parentage or a support order has been established. If parentage or support has not been established, the child support caseworker needs to know whether the noncustodial parent is subject to long-arm jurisdiction in Nebraska. States may use the FCR to establish whether an order exists for a child in another state. If they get an FCR match, they can use QUICK to get additional information about the other state's case.

If Nebraska has long-arm jurisdiction, the caseworker should consider using one-state remedies to establish a support order or parentage. If long-arm jurisdiction is not available or appropriate, an interstate IV-D case for establishment should be referred to the IV-D agency in the noncustodial parent's state, Missouri.

Answer – If Order Exists

- Investigate facts about support order
- Relevant questions include:
 - Where was order issued?
 - What are terms of order?
 - Does any state (including order state) have open IV-D case?
 - Is there paying income withholding order?
 - Can employer for noncustodial parent be located?

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Notes:

If there is a support order, the child support caseworker needs information about that order including where it was issued, the terms of the order, and whether the state that issued the order or any other state has an open IV-D case. The caseworker can answer most of these questions by using the interstate communication tools CSENet and QUICK, or by accessing information from the FCR. The caseworker can get a copy of the order by sending the request through EDE (quickest method) or by sending an Intergovernmental Transmittal #3: Request for Assistance/Discovery to the state that issued the order either through CSENet or by mail. There also is information on the Intergovernmental Referral Guide, commonly called the IRG, question J25, about how to obtain a certified order.

The caseworker also needs to investigate whether there is a paying income withholding order, meaning that there are child support payments currently being withheld by the noncustodial parent's employer.

Answer – If Order Exists (cont'd)

- Case processing options include:
 - Payment forwarding if paying income withholding order
 - Direct income withholding if employer is located
 - Coordinate enforcement if another state has open IV-D case
 - Referral of interstate IV-D case for enforcement

Notes:

If there is a paying income withholding order, the IV-D agency providing services to the custodial parent may be able to simply request payment forwarding from the state collecting support. Payment forwarding is explained in greater detail in the companion training, Interstate Payment Processing.

If there is no paying income withholding order, the child support caseworker should determine whether an employer for the noncustodial parent can be located. If so, direct income withholding should be considered. If another state has an open IV-D case, the caseworker must coordinate enforcement with that IV-D agency to avoid duplicative income withholding notices.

If an employer cannot be located, the caseworker should refer an interstate IV-D case to the noncustodial parent's state for enforcement.

Case Processing as Responding Agency

- Role of central registry
 - Receives interstate IV-D cases from initiating agency
 - Within 10 working days, registry must:
 - Review case and required Intergovernmental forms
 - Acknowledge receipt
 - Request additional documents

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Notes:

We've talked so far about cases where your IV-D agency is providing services to a parent. Remember, however, that your IV-D agency also will have interstate cases as a responding agency. These interstate cases are sent from an initiating agency to the central registry of the responding agency. In most cases, the responding agency will be in the state where the noncustodial parent lives, but sometimes an interstate IV-D case is sent to a state where the noncustodial parent has assets such as property or a bank account.

We discussed the required forms for interstate IV-D cases in the Interstate 101 training, and OCSE has more in-depth training on the 2017 intergovernmental forms on its website. A matrix listing all the relevant forms to use in specific interstate actions also is available on the OCSE website and hyperlinks to both the matrix and intergovernmental forms trainings are provided at the end of this training.

Federal regulations require the central registry to do the following within 10 working days:

- Review the case and confirm presence of all required intergovernmental forms.
- Send the acknowledgement of receiving the case.
- Request any missing documents from the initiating agency.

References:

45 CFR 303.7

Case Processing as Responding Agency (cont'd)

- Role of central registry
 - Within 10 working days, registry must:
 - Send case to State Parent Locator Service if noncustodial parent's address is unknown or
 - Send case to appropriate local office if noncustodial parent's address is known; and
 - Inform initiating agency where case was sent for action
 - A central registry may not “reject” case based on missing information
 - If missing documents, central registry must forward case for actions that can be taken pending response

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Notes:

Also within the same 10 working days timeframe from receiving the interstate IV-D case, the central registry must:

- Send the case for location services if the noncustodial parent's address is not known or
- Send the case to the appropriate local office if noncustodial parent's address is known, and
- Inform the initiating agency where the case was sent.

Even if there are missing documents, the central registry cannot reject the case; instead, it must forward the case on for any action that can be taken while the initiating agency gathers the additional documents. For example, if the child's birth certificate is needed but missing from the referral and the noncustodial parent's address is unknown, the central registry must request the birth certificate from the initiating agency and send the case to the State Parent Locator Service.

References:

45 CFR 303.7

Case Processing as Responding Agency (cont'd)

- Role of responding agency
 - Accept and process interstate IV-D case
 - Provide any necessary services as in intrastate IV-D case
 - Provide services regardless of whether initiating agency elected not to use one-state remedies

Notes:

The role of the responding agency is to accept and process an interstate IV-D case and provide all necessary services as it would in an intrastate case. Federal regulations require the responding agency to provide these services regardless of whether the initiating agency elected not to use remedies that may be available under the law of its state including one-state remedies.

References:

45 CFR 303.7

Case Processing as Responding Agency (cont'd)

- Necessary services as in intrastate IV-D case include:
 - Establishing parentage if necessary
 - Establishing support if necessary
 - Initiating income withholding
 - Monitoring compliance
 - Sending payments to initiating agency's SDU
 - Identifying arrears
 - Taking other enforcement actions as appropriate

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Notes:

The intrastate services that a responding agency must provide include:

- Establishing parentage if needed
- Establishing a support order if needed
- Sending an income withholding notice to the noncustodial parent's employer
- Monitoring compliance with the support order
- Sending payments to the initiating agency's SDU
- Identifying and collecting any arrears through income withholding and
- Other enforcement actions

References:

45 CFR 303.7

Responding Agency Decision

- Responding agency must decide which intrastate actions to take to enforce order
 - Administrative action without registration
 - Register order with tribunal
- Responding agency may enforce administratively initially and register order later if additional enforcement tools are needed

Notes:

The responding agency is responsible for making the decision on whether to process the case using administrative actions such as income withholding, without registering the order for enforcement, or to register the order with a tribunal for enforcement.

Even if the responding agency initially decides to pursue administrative enforcement of the order, it always has the option to register the order later if administrative enforcement is ineffective or if additional enforcement tools available to a tribunal such as civil contempt are necessary.

References:

UIFSA Sections 305, 507

Administrative Enforcement and Contest

- Administrative enforcement without registration
 - Income withholding and other administrative actions except federal tax refund offset
- Noncustodial parent may contest withholding
 - Parent may register withholding order and file contest
- Noncustodial parent may contest validity of order or administrative enforcement
 - Responding agency must register order

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Notes:

If it locates an employer for the noncustodial parent, the responding agency may decide to use administrative enforcement without registration by sending its income withholding notice to the employer. In addition to income withholding, the responding agency may use any administrative remedy available in its state such as a bank lien or driver's license suspension. The only exception is that the initiating agency, not the responding agency, is responsible for submitting the case for federal tax refund offset.

UIFSA permits the noncustodial parent to contest the withholding by registering the income withholding order and filing a contest with a tribunal. The noncustodial parent also may challenge the validity of the other state's order or administrative enforcement, and UIFSA requires the responding agency to register the order with a tribunal for further proceedings. We will look at registering orders and the requirements for contests in interstate cases in the next training topic, registration for enforcement.

References:

UIFSA Sections 506, 507

Nondisclosure of Information

- Where health, safety, or liberty of party or child would be jeopardized:
 - Attach affidavit or pleading under oath
 - Check nondisclosure box on Personal Information Form for UIFSA § 311
- Identifying information must be sealed and not disclosed to other party or public
- Tribunal conducts hearing
 - May order disclosure “in the interest of justice”

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Notes:

In some cases, the enforcement of child support across state lines might have an unintended consequence of putting a party or child at risk of family violence. UIFSA provides a mechanism that preserves confidentiality of personally identifiable information where there is a risk of family violence or child abduction in an interstate IV-D case.

A party must allege in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of specific identifying information. The IV-D agency checks the nondisclosure box on the appropriate intergovernmental forms, such as the Personal Information Form for UIFSA § 311 or the Letter of Transmittal Requesting Registration, and attaches the affidavit or pleading.

All identifying information is sealed and not disclosed to the other party or the public. After a hearing in which the court 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.

References:

UIFSA Sections 311, 312, 602

Limited Services

- Limited services without opening interstate case
- Mandatory limited services include:
 - Quick locate
 - Service of process
 - Assistance with discovery or genetic testing
 - Teleconference hearings
 - Administrative reviews
 - High-volume automated administrative enforcement
 - Copies of court orders and payment records
- Request on Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery

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Notes:

We covered interstate cases as the initiating agency and cases as the responding agency. But it's important to know that there are services that are federally mandated where your IV-D agency is neither an initiating nor responding agency.

Federal regulations require IV-D agencies to perform certain limited services when requested by another IV-D agency without opening an interstate case. These are:

- Quick locate
- Service of process
- Assistance with discovery and genetic testing
- Teleconferenced hearings
- Administrative reviews
- High-volume automated administrative enforcement and
- Copies of court orders and payment records

Requests for other limited services may be honored at the requested IV-D agency's option. All limited services requests, mandatory or discretionary, are made on the Child Support Enforcement Transmittal #3 – Request for Assistance/Discovery.

Limited services can be a very effective tool in interstate case processing; therefore, it is important to work together to take full advantage of these requests.

References: 45 CFR 303.7



Notes:

Next we are going to look at interstate IV-D cases after the responding agency registers an order for enforcement with a tribunal. This section will include the basics of registration and what is required, contests to registration, and enforcement after registration.

UIFSA uses the term “tribunal” to include “a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.” In most states, the tribunal that hears interstate child support cases is a court, and we will use both terms “tribunal” and “court” interchangeably throughout this training.

Registration

- Responding agency may “register” order
 - Process in which order issued by tribunal is filed with tribunal in another state for requested action
- Generally local office registers order by filing it with tribunal in county where noncustodial parent resides
- Types
 - Enforcement
 - Modification
 - Modification and enforcement

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Notes:

As explained earlier, the responding agency has the option when it receives an interstate IV-D case of registering the out-of-state order with a tribunal. Under UIFSA, the registration process is the mechanism to get the order before the tribunal for enforcement. In most cases, the tribunal will be the court in the county where the noncustodial parent resides.

Also remember that UIFSA allows registration of an out-of-state order for enforcement or modification, or both. In this section, we are focusing on registering an order for enforcement.

References:

UIFSA Sections 102(21), 602, 609

Effect of Registration for Enforcement

- Order registered upon filing
 - Anyone may register
- Tribunal must recognize and enforce registered support order
- Tribunal cannot modify order
- Order enforceable in same manner and subject to same procedures as intrastate order
- If not timely and properly contested, order is confirmed by operation of law

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Notes:

Under UIFSA, anyone may register an out-of-state order with a tribunal including either parent and the child support agency. An order is deemed to be registered once it is filed, even though a nonregistering party has a limited period to contest the registration.

The registering tribunal must recognize and enforce the support order unless it vacates or stays the registration. The tribunal cannot modify the order. This follows the “one order at one time” UIFSA rule.

The registered order does not become an order of the tribunal that registered it; instead, it continues to be an order of the tribunal that issued it. But the registered order is enforceable in the same manner, using the same procedures, as an order issued by a tribunal of the registering state.

If the noncustodial parent does not properly and timely contest the registration, the order is confirmed by operation of law.

References:

UIFSA Sections 601, 603

Notice of Registration

- Tribunal must notify nonregistering party
 - Include copy of registered order
- Notice must inform party that:
 - Registered order enforceable
 - Hearing to contest validity must be requested within time period set by registering state's law
 - Failure to timely contest order will result in confirmation of order and amount of alleged arrears

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Notes:

When an order in an interstate case is registered with a tribunal, UIFSA requires notification to the nonregistering party. A copy of the registered order must be provided to the party.

The notice serves to inform the nonregistering party of the registration and that there is a limited timeframe to request a hearing to contest the validity of the registered order. The notice also must inform the noncustodial parent of the amount of the arrears being alleged and that not contesting the order will result in confirmation of the order.

References:

UIFSA Sections 601, 605

Procedure to Contest Registration

- Nonregistering party must contest registration within timeframe set by law
 - Contest filed with registering tribunal
- If filed, registering tribunal must schedule case for hearing
 - Notice of hearing must be provided to parties
- UIFSA limits procedures and defenses

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Note:

The timeframe to file a contest to the registration of an out-of-state order is limited by state law. UIFSA suggests a 20-day timeframe but allows states the option to select a longer or shorter timeframe. Note that for intergovernmental cases involving an order from a Hague Convention country, the timeframe is longer.

The contest must be filed with the registering tribunal. If a contest is filed, the tribunal must schedule the case for a hearing and provide notice of the hearing to the parties. The responding agency must inform the initiating agency of the hearing in case they have additional information that may help resolve the contest or in case the other parent wants to participate in the hearing.

We'll look next at the type of contests allowed under UIFSA and the limited defenses to registration of an out-of-state order.

References:

UIFSA Section 606

Procedure to Contest Registration (cont'd)

- Contest is limited to:
 - Vacate registration
 - Assert defense to noncompliance with order
 - Contest remedies sought
 - Contest amount of alleged arrearages

Notes:

A party challenging a registration may be seeking to vacate the registration altogether or may have a defense as to why they are not complying with the support order. A party also may challenge a specific part of the registration such as one or more of the remedies sought or may disagree with the amount of past-due support being alleged by the party registering the order.

References:

UIFSA Section 606

Valid Defenses to Registration

- Issuing tribunal lacked personal jurisdiction over contesting party
- Order was obtained by fraud
- Order has been vacated, suspended, or modified by later order
- Issuing tribunal has stayed order pending appeal

Notes:

UIFSA lists the types of defenses that a party may raise to registration of an out-of-state order. These defenses include that the tribunal that issued the order lacked personal jurisdiction over a parent. The term “personal jurisdiction” means the tribunal’s authority to make decisions and take action against the parent. If the issuing tribunal did not have personal jurisdiction over a noncustodial parent, the child support order may be set aside by the issuing tribunal or registering tribunal.

Other defenses to registration are:

- The order was obtained by fraud
- The order is no longer in force because it has been vacated, suspended, or modified by a subsequent order
- The issuing tribunal has stayed the order pending appeal

References:

UIFSA Section 607

Valid Defenses to Registration (cont'd)

- There is defense under law of this State to remedy sought
- Full or partial payment has been made
- Statute of limitation under UIFSA section 604 (Choice of Law) precludes enforcement of some or all of alleged arrearage
- Alleged controlling order is not controlling order

Notes:

The other possible defenses include:

- Defenses under state law to the remedy sought by the registration
- The parent has made full or partial payment of the alleged arrears
- Collection on some or all of the arrears is barred by a statute of limitations and
- The order is not the controlling order in the case

References:

UIFSA Section 607

Non-valid Defenses to Registration

- No objection can be made to substantive provisions of order such as:
 - Amount of support
 - Arrearage amount
 - Duration of support
 - Medical insurance coverage
- Nonparentage is not a defense if previously determined or established by law

Notes:

UIFSA's list of defenses to the registration of an out-of-state order is limited and complaints about an order outside of the list are not valid defenses to registration. Frequently a noncustodial parent may believe that the support order is too high or that a judgment for arrears was not calculated correctly.


The parent may also claim that he is not the biological parent of the child and should not have to pay support. These issues, however, cannot be raised in the registering tribunal; instead, the parent must seek relief and make those claims in the issuing tribunal.

References:

UIFSA Sections 315, 604, 607

Practice Responding to Registration Contest

- Illinois issues support order and sends interstate IV-D case for enforcement to Kansas
- Kansas IV-D agency registers Illinois order with court
- Noncustodial parent is provided notice of registration on May 1



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Notes:

Let's see how well you understand registration by practicing with a scenario. Here, the noncustodial parent resides in Kansas and the custodial parent and child live in Illinois. Illinois issued a support order.

The Illinois IV-D agency sends an interstate IV-D case to Kansas, requesting enforcement of its order. The Kansas IV-D agency registers the Illinois order with the court in the county where the noncustodial parent resides and the parent is notified of the registration on May 1.

Practice Responding to Registration Contest (cont'd)

- When must contest be filed?
- Can noncustodial parent file contest claiming:
 - 1) Alleged arrears do not reflect recent payment
 - 2) Judgment for arrears was miscalculated
 - 3) No personal jurisdiction in establishment case
 - 4) Child support amount is too high
 - 5) Child support order was modified recently
 - 6) He's not genetic parent of child

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Notes:

The first question concerns when the contest must be filed. Under most state laws and the timeframe suggested in UIFSA, the noncustodial parent has 20 days after receiving notice to file a contest with the registering tribunal. In our hypothetical case, the noncustodial parent would have until May 21st to file the contest.

The second question involves the valid defenses to the registration for enforcement. Answers 1, 3, and 5 are valid defenses. The nonregistering party may assert that:

- There have been payments on the arrears.
- The parent was not subject to the jurisdiction of the tribunal in the establishment case.
- The child support order had been modified.

Answers 2, 4, and 6 are non-valid defenses. The nonregistering party may not assert that:

- The issuing tribunal miscalculated the arrears in the judgment.
- The child support order was set too high.
- The noncustodial parent is not the genetic father of the child.

References:

UIFSA Section 607

Contest and Confirmed Order

- Contesting party has burden to prove valid defense
- If evidence establishing valid defense, tribunal may:
 - Stay enforcement
 - Permit additional evidence
 - Issue other appropriate orders
- If no valid defense is established, tribunal must issue order confirming order
- Confirmed order by operation of law or after contest precludes further contest of order

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Notes:

In every contest, the burden is on the party contesting the registration to prove a valid defense. For example, if the noncustodial parent is claiming that there were payments not reflected in the arrearage balance alleged in the notice of registration, the parent must prove to the court that the parent made those payments.

If the court finds that the parent has provided proof of a valid defense, the court has the power to:

- Stay enforcement of the order
- Continue the proceeding for additional relevant evidence and
- Issue other appropriate orders

However, if the parent has not provided proof of a valid defense, the court must confirm the out-of-state order. If the order is confirmed by operation of law because no contest was filed or if the court confirms the order because there is no proof of a valid defense, the order cannot be further contested on the basis of any defenses listed in UIFSA.

References:

UIFSA Sections 607, 608

Enforcement After Registration

- After registration, tribunal may enforce order like intrastate order
- Based on state law, tribunal may:
 - Order noncustodial parent to comply with support order
 - Order income withholding
 - Determine amount of arrearages and specify method of payment
 - Enforce order by civil or criminal contempt

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Notes:

Once an out-of-state order is registered, the tribunal will enforce the order as if it were an intrastate order. This slide and the next slide list the specific enforcement actions set forth in UIFSA that the court can take depending on state law.

Such enforcement remedies may include:

- Ordering the parent to comply
- Issuing an income withholding order
- Determining if additional arrearages have accrued since registration and ordering payment of the arrearage and
- Enforcing the order by civil or criminal contempt.

References:

UIFSA Section 305

Enforcement After Registration (cont'd)

- Based on state law, tribunal may also:
 - Set aside property of noncustodial parent to satisfy arrearages
 - Place liens and order execution of parent's property
 - Order parent to keep court informed of current contact and employment information
 - Issue warrant against noncustodial parent for failure to appear

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Notes:

Other enforcement actions include:

- Setting aside property like a bank account or car to satisfy the support order
- Placing a lien against real property like the noncustodial parent's home and ordering the sale of that property to satisfy arrearages

The court may also order the parent to provide notification of any change in contact or employment information, and issue a warrant or body attachment against the parent for failing to appear for court.

References:

UIFSA Section 305

Enforcement After Registration (cont'd)

- Based on state law, tribunal may also:
 - Order parent to seek employment
 - Award attorney's fees
 - Grant any other available remedy
- Responding tribunal may not condition payment of support upon compliance with visitation provisions
- Either parent has right to be represented by private counsel

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Notes:

Finally, the tribunal may order the noncustodial parent to search for employment, pay reasonable attorney's fees, and grant any other remedy available under the law in the responding state.


The court may not condition payment of support on whether the custodial parent complies with a parenting time order. Although many interstate cases involve *pro se* or unrepresented parents, UIFSA allows either parent to be represented by a private attorney.

References:

UIFSA Sections 305, 309

Practice Using Enforcement Principles

- Missouri sends interstate IV-D case for enforcement of its order to Iowa
- Iowa IV-D agency registers Missouri order with court
- Noncustodial parent is notified of registration



The map shows the states of Iowa and Missouri. In Iowa, there is a blue icon of a person. In Missouri, there is a blue icon of a document with two people. The text 'Iowa' and 'Missouri' are written below their respective icons.

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Notes:

Let's use a hypothetical case to practice using enforcement principles. Missouri sends an interstate IV-D case for enforcement of its order to Iowa. The Iowa IV-D agency registers the Missouri order with the court in the county where the noncustodial parent resides. The Iowa IV-D agency provides notice of the registration to the noncustodial parent.

Practice Using Enforcement Principles (cont'd)

- If noncustodial parent does not contest registration or court confirms registration, which of following does UIFSA prohibit court from doing?
 - 1) Find parent in civil contempt
 - 2) Reduce child support amount
 - 3) Issue income withholding order
 - 4) Order parent to find job

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Notes:

If the noncustodial parent does not contest the registration or if their contest is unsuccessful and the registration is confirmed by the court, which of the following is prohibited under UIFSA?

The answer is number 2 – the court may not reduce the child support amount. The rest of the answers are permissible actions. The court may:

- Find the noncustodial parent in civil contempt for not paying support
- Issue an income withholding order or
- Order the noncustodial parent to search for employment



Notes:

We're more than half-way through our training today. Before we move on to rules of evidence, are there any questions about the topics that we have covered so far?



Notes:

Now we are going to look at UIFSA's special rules of evidence that apply to tribunal proceedings for interstate cases.

Tribunal Proceedings – Special Rules

- Physical presence of nonresident parties not required
- Nonresident parties or witnesses must be permitted to testify by telephone, audiovisual means, or other electronic means
- Affidavits and other documents admissible in evidence if given under penalty of perjury
- Certified copy of payment record is evidence and admissible to show payments made

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Notes:

UIFSA has special rules of evidence and procedure to address unique evidentiary challenges in interstate child support establishment and enforcement by incorporating modern methods for gathering and submitting relevant evidence to a tribunal. You should be aware of these rules even if you are not an attorney because parents involved in interstate cases may have questions related to these issues.

First, the tribunal cannot require the physical presence of a nonresident parent in interstate cases. Instead, the tribunal must permit any party or witness who does not reside in the state to testify by telephone, audiovisual means such as Skype, or other electronic means.

UIFSA also provides rules on the admission of documents in interstate cases. A party who resides out-of-state may submit an affidavit, a document substantially complying with federally mandated forms, and other documents as evidence if sworn to under penalty of perjury. Examples include an affidavit or tax return submitted to the court under penalty of perjury as proof of income in a child support establishment case. Certified payment records also are admissible as proof of payments that have been made by the noncustodial parent.

As long as the document would not be excluded on hearsay grounds if given in person, the tribunal must accept the document as admissible evidence.

References: UIFSA Section 316

Tribunal Proceedings – Special Rules (cont'd)

- Certified copy of voluntary acknowledgment is admissible to establish parentage of child
- Documentary evidence transmitted from other state may not be excluded on objection based on means of transmission
 - PIQ-18-01 clarified that UIFSA's special rules include original signatures and certified copies of orders transmitted electronically
- If authenticity is challenged, tribunal may require originals or other evidence of authenticity

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Notes:

UIFSA also provides that a certified copy of a voluntary acknowledgment of paternity is admissible to prove parentage of a child.

On April 26, 2018, OCSE issued PIQ-18-01 to provide further clarification on electronic evidence in interstate cases. Specifically, OCSE clarified that tribunals may not exclude an electronic document with a signature on the basis that the signature is not an original.

OCSE also explained in PIQ-18-01 that the special UIFSA rules do not distinguish between certified copies of support orders, required by UIFSA for enforcement or modification, and other types of documentary evidence. Therefore, tribunals may not exclude an electronically transmitted certified copy of an order from evidence based solely on the fact that it was transmitted electronically. PIQ-18-01 is listed with a hyperlink as a resource at the end of this training.

If a document's authenticity is challenged, however, the tribunal may require a party to produce the original document or other evidence of the document's authenticity.

References:

UIFSA Section 316

PIQ -18-01, <https://www.acf.hhs.gov/css/resource/electronic-documents-and-tribunals-under-uifsa-316>

Tribunal Proceedings – Special Rules (cont'd)

- Petitioner (either parent or agency) not required to pay filing fee or other costs
- Tribunal may assess against noncustodial parent:
 - Filing fees
 - Reasonable attorney's fees and other costs
 - Necessary travel and other reasonable expenses of custodial parent or their witnesses
- Mandatory costs and fees if delay intended
- Payment of support has priority over fees, costs, and expenses

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Notes:

UIFSA provides that the petitioner in an interstate case will not be required to pay a filing fee or any other costs. Remember that either parent or the IV-D agency can be a petitioner in an interstate case.

Costs and fees may be assessed by the tribunal against the noncustodial parent if the custodial parent prevails including filing fees, reasonable attorney's fees and other costs, and necessary travel expenses incurred by the custodial parent or witnesses.

The tribunal *must* order the payment of costs and reasonable attorneys fees if it determines that a hearing was requested primarily to delay the case. That will be the presumption if, in a registration proceeding, a hearing is requested and the registered support order is confirmed or enforced without change.

References:

UIFSA Section 313

Practice Using Interstate Rules of Evidence

- Nebraska sends interstate IV-D case for enforcement to Illinois
- Illinois registers Nebraska support order and order is confirmed by operation of law
- Court hearing is set to address failure to pay support



A map showing the states of Nebraska and Illinois. Nebraska is on the left and Illinois is on the right. Over Nebraska, there is a blue icon of a document with two figures, and the word "Nebraska" is written below it. Over Illinois, there is a blue icon of a single figure, and the word "Illinois" is written below it.

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Notes:

In this next hypothetical case, Nebraska initiates an interstate IV-D case for enforcement of its support order to Illinois, where the noncustodial parent resides. Illinois registers the Nebraska order and the order is confirmed by operation of law. Later, a hearing is set for the court to address the noncustodial parent's failure to pay child support.

Practice Using Interstate Rules of Evidence (cont'd)

- 1) Can court require noncustodial parent to appear?
- 2) Can court require custodial parent to appear?
- 3) Can court refuse to consider certified copy of order based on fact that it was transmitted to Illinois IV-D agency through EDE?
- 4) Can court rely on certified payment record as evidence of noncustodial parent's payment history?

Here are some questions to practice using interstate evidentiary rules. First, can the court require the noncustodial parent to appear? Yes, the court can require the noncustodial parent to appear because he is a resident of Illinois.

Second, can the court require the custodial parent to appear? No, the court cannot require the custodial parent to appear because she is not a resident of Illinois.

Third, can the court refuse to consider an electronic copy of a certified child support order because it was transmitted through EDE? No, the court cannot refuse to consider any document based on the method of transmission alone.

Finally, can the court rely on the certified payment record as proof of the noncustodial parent's payment history? Yes, UIFSA permits the court to accept the certified payment record as evidence of the noncustodial parent's payments.



Notes:

Let's move on to choice of law principles for different types of establishment and enforcement cases. In the following section devoted to modification, we will cover choice of law principles for modification cases because they are a bit more complicated.

Choice of Law Basics

- Choice of law is question of which state's law should apply in given case
- UIFSA dictates law applicable to:
 - Substantive issues, including:
 - Child support amount
 - Duration of support
 - Procedural issues, including:
 - Type of mandatory notice to noncustodial parent
 - Procedure to contest registration of order

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Notes:

The phrase “choice of law” is a legal term that simply refers to the choice of which state’s law applies in a given case or to a particular issue. For interstate cases where parents reside in different states, UIFSA’s choice of law principles dictate which state’s law applies in the case.

Sometimes the applicable state law will depend on whether the court is deciding a substantive issue like the amount of child support or the duration of the support obligation, or whether it’s a procedural issue such as proper service for the noncustodial parent or filing a contest to the registration of an out-of-state order. Even for non-attorneys, choice of law principles are important to know and consider when handling interstate child support cases.

References:

UIFSA Section 604

Choice of Law – Parentage and Support Establishment

- Law of state establishing order applies
 - Parentage laws
 - Support laws including amount of current support, retroactive support, and duration of support
 - Procedural rules including genetic testing laws and default rules

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Notes:

When a court establishes a support or parentage order, or both, the court applies the laws of its state to both the substantive and procedural issues. Therefore, if a court is ruling on a petition to establish parentage and genetic tests reveal a probability of paternity, the court will apply its state's laws in adjudicating paternity including whether the probability of paternity in the case creates a presumption under that state's law.

For support establishment, the court will apply its state's child support guideline to the facts of the case in setting support. The laws of that state also will apply to whether, and how much, retroactive support is ordered in the case. Finally, the issuing state's laws set the duration of support, which can range from 18 years to over 21 years of age.

The court also will apply its procedural rules in the case. For example, if state law or the court's rules provide for how genetic testing is scheduled or costs allocated, those laws and rules would apply in the case. Similarly, if the noncustodial parent fails to appear for court, the court's rules on default will apply.

References:

UIFSA Section 604

Choice of Law – Parentage and Support Establishment (cont'd)

- If using long-arm procedures, law of initiating state applies
- If using interstate IV-D case referral, law of responding state applies

Notes:

Remember that the tribunal establishing an order in an interstate case will vary depending on whether one-state or two-state remedies are used. The law of the initiating state will apply if the tribunal uses long-arm jurisdiction to assert jurisdiction over the nonresident parent.

On the other hand, if the IV-D agency providing services to the custodial parent sends an interstate IV-D case to the IV-D agency in the noncustodial parent's state for establishment, the tribunal in the noncustodial parent's state will apply its substantive and procedural laws to the case.

References:

UIFSA Section 604

Choice of Law – Enforcement

- Law of state that issued support order controls substantive issues like:
 - Nature, extent, amount, and duration of current payments
 - Computation and payment of arrearages and accrual of interest on arrearages
 - Existence and satisfaction of obligations

Notes:

After a support order is established, the issuing state's law will control all aspects of that order going forward. This means that even if the parents move to different states, the issuing state's law will govern the amount and duration of the current support payments and the interest that accrues on unpaid support.

In addition, the tribunal that issued the order will ultimately be responsible for determining the amount of arrears and whether the noncustodial parent has satisfied the support order.

References:

UIFSA Section 604

Choice of Law – Enforcement (cont'd)

- Law of responding state controls:
 - Procedural rules
 - Types of enforcement remedies
- Choice of law rules apply to both courts and responding agency taking enforcement action

Notes:

When a court is enforcing another state's order, the court must abide by the terms of the order and apply the law of the order-issuing state for all substantive issues such as the amount of support, interest and penalties for arrearages, and length of the support obligation. However, UIFSA provides that the court may apply its procedural rules to the enforcement case. For example, a court will apply its rules regarding entering a default order or bench warrant, and its procedures for a civil contempt action.

The court also will apply its laws regarding the types of enforcement remedies that are available to compel payments on a child support order. The comments to UIFSA explain that if the order-issuing state has enacted a wide variety of license suspension statutes, while the responding state has a much narrower list of licenses subject to suspension, local law in the responding state prevails.

If the responding agency is enforcing the order, it must abide by the same choice of law rules as the court.

References:

UIFSA Section 604

Choice of Law – Statute of Limitations

- For collecting arrears, the choice of law depends on which law provides for longer maximum period of time to collect
- Referred to as “statute of limitations”
- Example:
 - Texas issued order and has 10-year statute of limitations on collecting arrears
 - Vermont is responding agency with 20-year statute of limitations
 - Vermont’s law applies

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Notes:

In most states, there is a time limit called a “statute of limitations” on how long someone can continue to collect a money judgment. In child support, when a tribunal is enforcing another state’s order, questions may arise on how long a state can continue to collect past-due support, which is a money judgment by operation of law. UIFSA provides that the choice of law for statutes of limitations in interstate cases depends on which state has the longer limitations period – the issuing state or responding state.

For example, let’s assume Texas is the issuing state and has a 10-year statute of limitations. If Vermont is the responding state enforcing the Texas order and it has a 20-year statute of limitations, Vermont’s law would apply to that case.


The converse also is true. If Vermont as the issuing state has a 20-year statute of limitations and Texas as the responding state has a 10-year statute of limitations, Texas must apply Vermont’s statute of limitations. Texas must continue to collect the arrearage owed on the case beyond the 10 years provided in its law.

References:

UIFSA Section 604

Practice using Choice of Law

- If Iowa sends an interstate IV-D case to Kansas for enforcement, what law governs:
 - Duration of child support?
 - Civil contempt proceedings?
 - Length of time Kansas may collect arrears?



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Notes:

To practice choice of law concepts, let's take a look at a hypothetical case. Here, an Iowa court issued a child support order for current support and a judgment for arrears. Iowa sends an interstate IV-D case to Kansas for enforcement of its order.

The first question is what law governs the duration of child support? Under UIFSA, Iowa's law will decide how long the noncustodial parent must pay current support. Iowa issued the original support order, so Iowa law controls duration.

The second question is what law governs civil contempt proceedings brought against the noncustodial parent. The Kansas court will apply its procedural laws and rules to the contempt hearing.

Finally, what law determines the statute of limitations for collecting the arrearage owed by the noncustodial parent? Well, it depends. If Iowa's law provides for a longer statute of limitations, its law will apply in Kansas. If Kansas' statute of limitations is longer, Kansas law will determine how long the Kansas IV-D agency may continue to collect the arrearage.

References:

45 CFR 303.100

UIFSA Section 604



Notes:

We are down to our last two topics in this training. Let's look briefly at direct income withholding next, including the applicable state laws that employers must follow.

Direct Income Withholding – Employer Duties

- Employer must treat income withholding order issued in other state that appears regular on its face as if issued by instate tribunal
- “Regular on its face”
- Employer must comply with terms of order including:
 - Duration and amount of current support payments
 - Amount of arrearage payments
 - Medical support
 - Ordering parent to provide health insurance coverage or
 - Withholding amount of cash medical support

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Notes:

As we learned in Interstate 101, UIFSA requires an employer to treat an income withholding order sent from another state that is regular on its face as if it had been issued by a tribunal in the employer’s state.

OCSE has explained that “regular on its face” means that any reasonable person would think that the income withholding order is valid. This occurs when the order is payable to the state disbursement unit, the amount to withhold is a dollar amount, the text of the OMB-approved form has not been changed and the OMB-form number is listed on the form, and the order contains all of the necessary information to process the income withholding order. The hyperlink to OCSE’s guidance on direct income withholding is listed at the end of this training.

If the income withholding order meets those standards, employers must comply with the order’s terms including withholding current support, withholding any payments ordered on the arrearages and any provision requiring health insurance coverage or the withholding of cash medical support, up to the applicable limits set by the Consumer Credit Protection Act or state law.

References:

UIFSA Section 502

<https://www.acf.hhs.gov/css/resource/income-withholding-answers-to-employers-questions#iwo-1>

Direct Income Withholding – Choice of Law

- Employer must comply with law of state of parent's principal place of employment for:
 - Employer's processing fee
 - Maximum amount allowed for withholding
 - Note: State may have lower limit than Consumer Credit Protection Act withholding limits
 - Times for implementing withholding and forwarding payments
 - Note: Federal regulations require employers to forward payments within 7 business days

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Notes:

UIFSA requires the employer that is complying with an out-of-state income withholding order to follow the laws of the state of the parent's principal place of employment for the amount that the employer can charge to process the withholding.

The law of the state where the parent is employed also governs the maximum amount that may be deducted from an employee's paycheck. While the Consumer Credit Protection Act sets the maximum amounts for withholding, some states have laws that set the maximum withholding at a lower percentage of the noncustodial parent's income.

UIFSA also provides that the law in the state where the parent is employed will apply to the times for implementing withholding and forwarding payments. But please note that federal regulations set a seven-business-day timeframe for employers to remit payments after they are withheld from a noncustodial parent's paycheck.

References:

45 CFR 303.100

UIFSA Section 502

Direct Income Withholding – Choice of Law (cont'd)

- Employer must comply with law of state of parent's principal place of employment to:
 - Determine priorities for withholding and allocating income withheld for parents with two or more income withholding orders
 - Implement any withholding term or condition not specified in withholding order

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Notes:

UIFSA and federal regulations specify that the law of the employer's state applies when determining priorities for withholding when there are multiple income withholding orders, at least one being out-of-state. Federal regulations also provide that the state law of the employer applies to any withholding term or condition not specified in the withholding order.

It is important to note that for employers who do business in several states, the relevant test under both UIFSA and federal regulations is the state where the noncustodial parent has their principal place of employment.


References:

45 CFR 303.100

UIFSA Section 503

Practice using Direct Income Withholding

- If Kansas sends a direct income withholding notice to the noncustodial parent's employer in Iowa, what law governs:
 - Amount employer must withhold?
 - Employer's fee for processing withholding?
 - Health insurance coverage through employer?



The map shows the states of Iowa and Kansas. Iowa is highlighted in a darker shade of gray and has a blue icon of a person standing. Kansas is highlighted in a lighter shade of gray and has a blue icon of a document with two people. The text 'Iowa' and 'Kansas' are written below their respective icons.

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Notes:

To practice the concepts of direct income withholding, let's take a look at a hypothetical. Here, a Kansas tribunal issued a child support order that includes a provision for the noncustodial parent to carry health insurance. The Kansas IV-D agency locates an employer for the noncustodial parent in Iowa and sends a direct income withholding notice.

The first question is what law governs how much the employer must withhold? Under both UIFSA and federal regulations, the employer must withhold the amount specified on the income withholding notice, including amounts for repayment of arrearages and interest, unless the amount would exceed the maximum amount allowed under the federal Consumer Credit Protection Act or the law in the employer's state. So, in our example, the employer must withhold the support indicated on the withholding notice unless the Consumer Credit Protection Act or the law in Iowa requires a lower amount.

The second question is what law governs the fee that the employer may charge to process the withholding? Under both UIFSA and federal regulations, the employer will apply the law in the state where the parent works to determine what, if anything, the employer may charge the noncustodial parent to process the withholding notice.

The last question is what law will apply to an order for an employer to provide health insurance. Like the first question, the employer is required to comply with the terms of the Kansas order including any provision for the employee to cover their dependents on employer-provided health insurance.



Notes:

The last topic for this Interstate 201 training is modification. We covered the basics on modification in our Interstate 101 training and now we are going to do a deeper dive into modification issues that often arise in interstate cases.

Modification Basics

- Modification rules under UIFSA:
 - 1) If either parent or child lives in issuing state, only issuing state can modify order
 - Exception: Parents consent in record with issuing tribunal to shift modification jurisdiction
 - 2) If neither parent nor child lives in issuing state, issuing state cannot modify order
 - Exception: Parents consent in record or in open court for issuing tribunal to retain modification jurisdiction

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Notes:

As we learned in Interstate 101, there are four basic rules in UIFSA that govern when a state has jurisdiction to modify an order of another state in an interstate case. The first modification rule is that if either parent or the child lives in the issuing state, modification can occur only in the issuing state. The issuing state retains CEJ and no other state will have the authority to modify the order.

The only exception to this rule is when the parents consent to another state modifying the order and assuming CEJ, so long as the consent is filed in a record with the issuing tribunal and the state assuming CEJ has personal jurisdiction over at least one of the parties or is the state where the child resides. This might occur, for example, if only the child lives in the issuing state and the parents live in the same state different from the issuing state.

The second UIFSA modification rule is that if the parents and child now live in states other than the issuing state, modification cannot occur in the issuing state. The issuing state no longer has CEJ to modify the order. The only exception to this rule is if the parents consent in a record or in open court for the tribunal of the issuing state to retain CEJ to modify its order. This might occur, for example, if the parents divorced in the issuing state and there are ongoing spousal support issues that need to be addressed in the issuing tribunal. The parents may want to continue to address child support issues there as well.

References: UIFSA Sections 205, 611, 613

Modification Basics (cont'd)

- Modification rules under UIFSA:
 - 3) If parents live in same state and child does not live in issuing state, new state may register and modify order
 - 4) If neither parent nor child lives in issuing state, and parents live in different states, parent seeking modification must “play away”
 - Order will be registered for modification in other parent’s state

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Notes:

The third UIFSA modification rule applies when the parents move out of the issuing state and now live in the same state and the child does not live in the issuing state. In that case, the new state where the parents live may register and modify the order. Once the order is modified, the state becomes the issuing state and assumes CEJ for any future modification.

The final, but very important, UIFSA modification rule is the “play away” rule. It applies when neither the parents nor child live in the issuing state and the parents live in different states. When that occurs, the parent who wants the modification must seek modification in a state with personal jurisdiction over the other parent, which usually means seeking registration and modification in the non-requesting parent’s state of residence.

References:

UIFSA Sections 611, 613

Modifiable Terms

- State where order is registered for modification may modify:
 - Amount of current child support
 - Determined under registering state's guidelines
 - Computation and payment of arrearages after modification
 - Accrual of interest on arrearages after modification

Notes:

A tribunal with modification authority may modify the amount of current child support according to its guidelines. It also may determine the amount of past-due support owed by the noncustodial parent from the point of modification on. Finally, the tribunal will apply its law related to interest on past-due support going forward.

References:

UIFSA Section 604

Nonmodifiable Terms

- State where order is registered for modification *may not* modify:
 - Arrearage and interest accruing *prior* to modification
 - Certain provisions tied to the original issuing state's law including duration of child support
 - Duration is set by law in state issuing original order
 - In most cases, duration is set by original order
 - In rare cases, duration may be modified under original issuing state's law

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Notes:

There also are some terms of the original order that are nonmodifiable. UIFSA states that “[a] tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support.” One aspect of the order that a court cannot modify relates to the arrears and interest that accrued prior to the modification.

Another aspect involves certain provisions tied to the original issuing state's law including duration of support, which is how long the current support is due. Duration of support is established by the law of the original issuing state and that law always applies, regardless of how many states modify the order and assume continuing, exclusive jurisdiction over the life of the case. In most cases, this means that the duration of support is set by the original order. In rare circumstances, however, a state may modify the duration but only if allowed by the original order state's law.

For example, assume the original order state's law requires payment until the child is 18. In most cases, support will terminate at age 18 regardless of subsequent modifications of the order. However, if the original order state's law allows a party to petition for support to continue beyond age 18 if the child is incapacitated, a responding tribunal with jurisdiction to modify the original order may similarly extend support upon petition and proof of the child's incapacitation by applying the original order state's law. The amount of support ordered, however, will be governed by the responding state's law.

References: UIFSA Section 611

Improper Modification of Order

- Lack of subject matter jurisdiction
 - Nullity from the outset
- Mistake of law
 - May be vacated by trial court or on appeal
 - Must be timely raised
- Procedure if question about validity of subsequent order
 - Ask court to decide

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Notes:

So what happens when a court modifies another state's order in violation of one of UIFSA's rules governing modification jurisdiction? Well, courts are divided on this issue. Subject matter jurisdiction is the court's general authority to hear and decide a particular type of case under the state's constitution or statutes. Any order issued without subject matter jurisdiction is a nullity from the outset, which means that the prior order remains in effect in interstate cases. Some courts have concluded that UIFSA's modification rules establish subject matter jurisdiction.

Other courts have held that while the court was not permitted under UIFSA to modify the order, the court still had subject matter jurisdiction under the state's constitution to hear and decide a child support case. These courts have concluded that any order issued in violation of UIFSA's modification rules is a mistake of law that must be brought to the court's attention by a party within a limited time period.

There may be cases in which you learn that there is an original order entered in compliance with UIFSA in one state and a subsequent order entered in another state for the same noncustodial parent and child in violation of UIFSA's modification rules. It is important for states to work together to correct this situation. If you believe the court issuing the subsequent order did not have the authority to do so under UIFSA, it is important for the IV-D agency to ask the court to rule on the validity of the subsequent order. This is a determination that the court must make, not a child support caseworker or attorney. The important point here is that the noncustodial parent cannot be obligated for current child support more than once for a child.

**Practice Using Modification Principles:
Modifiable Terms of Order**

- Kansas sends interstate IV-D case referral to Nebraska for registration and modification of Illinois order
- What can Nebraska **modify** on Illinois order?




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Notes:

Let's practice using modification principles with a few scenarios. Here, the custodial parent and child are in Kansas, and have applied for child support services. The noncustodial parent resides in Nebraska and the order was entered in Illinois. If Kansas sends an interstate IV-D case to Nebraska for registration and modification of the Illinois order, what can Nebraska modify on the Illinois order?

**Practice Using Modification Principles:
Modifiable Terms of Order – Answer**

- Nebraska can modify current support
- Nebraska law determines interest on arrearages going forward under modified order



The map shows the states of Nebraska, Kansas, and Illinois. Nebraska is highlighted in a darker shade of gray and contains a blue icon of a single person. Kansas is highlighted in a lighter shade of gray and contains a blue icon of a family (two adults and a child). Illinois is highlighted in a medium shade of gray and contains a blue icon of a document with lines of text.


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Notes:

A tribunal in Nebraska will have the authority to modify the amount of current support. Further, once the court in Nebraska modifies the order and assumes continuing, exclusive jurisdiction, the law in Nebraska will determine the interest that accrues going forward on any arrearages under the modified order.

**Practice Using Modification Principles:
Non-Modifiable Terms of Order**

- What is Nebraska **prohibited** from modifying?




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Notes:

Using the same scenario, what are some of the terms of the Illinois order that the court in Nebraska cannot modify?

**Practice Using Modification Principles:
Non-Modifiable Terms of Order – Answer**

- Nebraska **prohibited** from modifying duration
- Nebraska can't modify arrearages accrued under Illinois order



The map shows Nebraska, Kansas, and Illinois. Nebraska is highlighted in light blue and contains a single person icon. Kansas is highlighted in light blue and contains a family icon (two adults and a child). Illinois is highlighted in light blue and contains a document icon. The surrounding states are shown in light gray.

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Notes:

Under UIFSA, the court cannot modify the duration of the child support established by Illinois law unless expressly permitted by Illinois law. Therefore, the noncustodial parent must pay support until the child is 19 years old pursuant to Illinois law, regardless of the law in Nebraska.

Also, any arrearage that accrued under the Illinois order will not be modifiable in Nebraska, but any past-due support that accrues after modification will be governed by Nebraska law including interest on the arrears.



Notes:

We have a few minutes for some questions on interstate modification or any topic covered today, but I first want to point out that after the webinar all registrants will receive a training evaluation. We hope you will complete it and you are welcome to include any additional questions in the evaluation response. You also can send your questions to OCSE at the email address listed on this slide.

References with Hyperlinks

UIFSA 2008

- http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA_2008_Final_Amended%202015_Revised%20Prefatory%20Note%20and%20Comments.pdf

OCSE Intergovernmental Forms Matrix

- https://www.acf.hhs.gov/sites/default/files/programs/css/intergovernmental_forms_matrix.pdf

OCSE Intergovernmental Forms Training

- <https://www.acf.hhs.gov/css/resource/intergovernmental-forms-training>

Notes:

On the next two slides, OCSE has listed the important reference materials discussed during this training and provided hyperlinks to these materials.

References with Hyperlinks

PIQ-18-01 Electronic Documents and Tribunals under UIFSA 316

<https://www.acf.hhs.gov/css/resource/electronic-documents-and-tribunals-under-uifsa-316>

Income Withholding Answers to Employers

<https://www.acf.hhs.gov/css/resource/income-withholding-answers-to-employers-questions#iwo-1>

OCSE Interstate Case Processing Training Series

- Interstate 101
- Interstate 201
- Interstate Case Scenarios
- Interstate Payment Processing
- Interstate Case Closure
- OCSE's Interstate Tools and Resources

Notes:

This concludes our Interstate 201 training. We have 4 more interstate training sessions for you.

Finally, OCSE will post the recordings and PowerPoints—including trainer notes—from all these sessions on the OCSE website for your future use and to share with colleagues.