

# **Module 9**

## **Processing of a Non-Convention Case**

## TRAINING NOTES

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### ***What you need to say/do***

1. Display **PowerPoint Slide 9-1: International Case Processing under UIFSA (2008)** (title slide). After introducing the webinar course, display **PowerPoint Slide 9-2: Webinar Series**. Explain the targeted audience, the content of the webinar modules, and the webinar resources.
2. Display **PowerPoint Slide 9-3: Webinar Modules** as you explain the focus of each module.
3. Display **PowerPoint Slide 9-4: Module 9: Processing of a Non-Convention Case** (title slide).
4. Beginning with **PowerPoint Slide 9-5: Overview of Module**, follow the content of these Trainer Notes, displaying the appropriate PowerPoint slide.
5. In addition to trainer notes at the bottom of each PowerPoint slide, there is more background information in these Trainer Notes. You may use this information to supplement the slide content, based on the amount of training time you have.

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### ***What you need to know***

1. It takes approximately 1 hour, 15 minutes to complete this module.

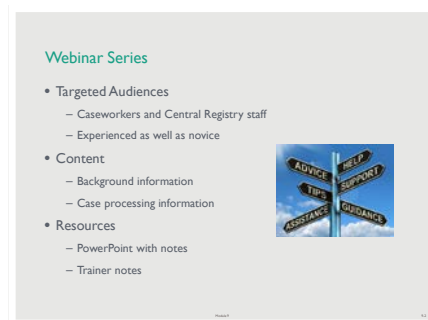
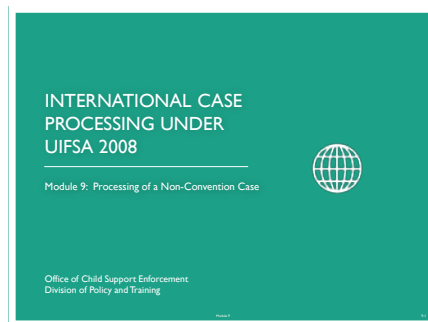
### **PowerPoint Slides:**

- 9-1 through 9-58

### **Handouts:**

- None

## WEBINAR INTRODUCTION: INTERNATIONAL CASE PROCESSING UNDER UIFSA 2008



### INTRODUCTION: TARGETED AUDIENCE

Welcome to the Webinar Series on International Case Processing under UIFSA 2008. Some people in the audience may have attended multiple conference workshops where speakers discussed the background of the Convention or presented an overview of UIFSA (2008). For others, this information will be brand new.

This webinar content is designed to cover both audiences.

The webinar resources for each module include the PowerPoint slides and notes, and an expanded set of trainer notes. These resources will be available on OCSE's website.

### INTRODUCTION: OVERVIEW OF WEBINAR SERIES



The first two modules of the webinar series are overview modules. They provide background information about the Hague Child Support Convention so you will better understand the U.S. goals during treaty negotiations, the process used for negotiating an international treaty, and terminology in the Convention. They also discuss the scope of the Convention and services that a Central Authority must provide so that you will have a better idea of what to expect on **outgoing** cases to a Convention country.

Beginning with Module 3, the focus shifts to case processing. The most likely application under the Convention is an application to recognize and enforce a support order issued by a Convention country. For that reason, there is one module explaining the process and forms for incoming applications and a separate module, Module 4, explaining the process and forms for outgoing applications.

Module 5 examines incoming and outgoing applications for establishment of a support order, including establishment of parentage when necessary to obtain support.

Modules 6 and 7 examine incoming and outgoing applications for modification under the Convention.

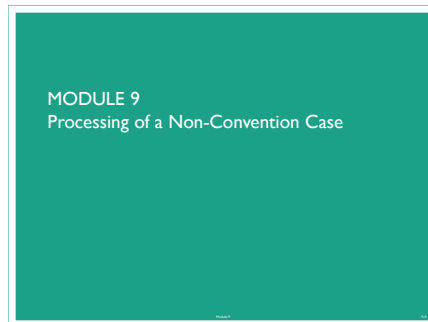
Module 8 addresses implementation issues and questions that have arisen.

Finally, in Module 9 we discuss processing international support cases from foreign reciprocating countries that are not Convention countries, as well as cases from other foreign nations.

## MODULE 9: PROCESSING OF A NON-CONVENTION CASE

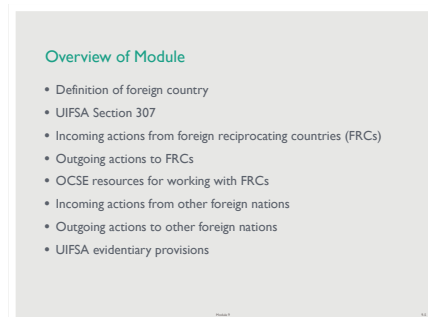
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### 9.1 PROCESSING OF A NON-CONVENTION CASE



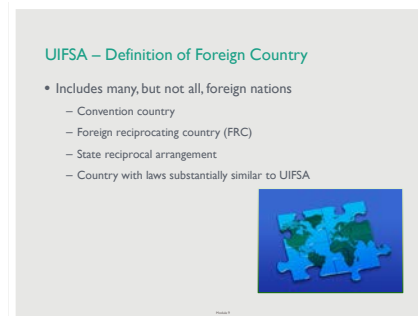
Today we are presenting Module 9, which discusses processing international cases that are not Convention cases.

### 9.2 OVERVIEW OF MODULE



In the first half of the module, we will focus on incoming and outgoing cases with foreign reciprocating countries. We will also identify resources that the federal Office of Child Support Enforcement (OCSE) offers for working these cases. In the second half we will discuss incoming and outgoing cases with other foreign nations. We will conclude with a discussion of the UIFSA evidentiary provisions that help ensure parties can fully participate in proceedings and tribunals have the information they need.

### 9.3 UIFSA – DEFINITION OF FOREIGN COUNTRY



Article 2 of the Hague Child Support Convention identifies the Convention’s scope.

UIFSA 2008 contains a definition for “state” and a separate definition for “foreign country.” The definition of “foreign country” includes many, but not all, foreign nations.

- It includes countries in which the Hague Child Support Convention is in force. We call these Convention or Treaty countries.
- It includes countries that the United States has a federal bilateral arrangement with according to section 459A of the Social Security Act; these are called foreign reciprocating countries or FRCs.
- It includes countries with which your state has a state level reciprocal arrangement.
- And it includes countries with laws substantially similar to UIFSA.

As noted in UIFSA’s Comment, this last category can’t be as easily determined as the first three. Theoretically, a tribunal could determine a country has substantially similar laws in a particular case. The Comment also mentions the possibility of a state creating an efficient method for identifying foreign countries whose laws are “substantially similar” to UIFSA.

Note that in defining a foreign country, the word “country” includes a political subdivision of that country. For example, some states have state reciprocal arrangements with the Canadian province of Quebec or with specific states in Mexico.

### 9.4 HAGUE CHILD SUPPORT CONVENTION COUNTRIES

**Hague Child Support Convention Countries**

• As of March 31, 2019, Convention in force in 37 countries

Albania	France	Norway
Austria	Germany	Poland
Belarus	Greece	Portugal
Belgium	Honduras	Romania
Brazil	Hungary	Slovakia
Bosnia and Herzegovina	Ireland	Slovenia
Bulgaria	Italy	Spain
Croatia	Latvia	Sweden
Cyprus	Lithuania	Turkey
Czech Republic	Luxembourg	Ukraine
Estonia	Malta	United Kingdom
Finland	Montenegro	United States
	Netherlands	

As of March 31, 2019, the Convention is in force in 37 countries. This includes all European Union countries with the exception of Denmark. Brazil was the first South American country to join the Convention.

### 9.5 FEDERAL BILATERAL AGREEMENTS

#### 9.5.1 Overview

**Federal Bilateral Arrangements**

• Statutory authority 42 U.S.C. § 659A

• Declared by Secretary of State, with concurrence of Secretary of HHS

• FRC must meet mandatory requirements:

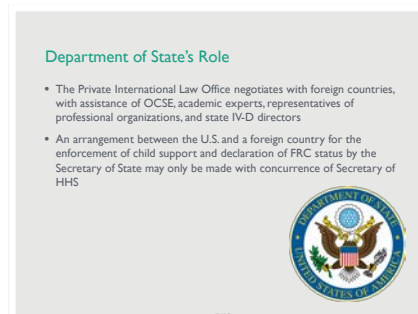
- Procedures for establishment of paternity and support for children and custodial parent
- Procedures for enforcement of support order, collection and distribution
- Cost-free services
- Central Authority

In 1996 Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This federal legislation contained major reforms to child support. One of its provisions authorized the State Department, with the concurrence of HHS, to declare a country as a foreign reciprocating country if it met certain requirements. This was the first time there was legislation authorizing federal bilateral agreements. The statute allows a declaration to be made in the form of an international agreement, in connection with an international agreement or a corresponding foreign declaration, or on a unilateral basis. Most of the current FRC arrangements were made in the form of simple declarations.

In order for the United States to establish a country as a foreign reciprocating country under section 459A of the Social Security Act,<sup>1</sup> that country must have in effect procedures available to U.S. residents for the establishment of paternity, the establishment of support orders for children and custodial parents, and the enforcement of support orders for children and custodial parents, including procedures for collection and distribution. These procedures must be available to U.S. residents at no cost.

### 9.5.2 Key Agencies

The key players in negotiating a bilateral arrangement are the State Department and the Department of Health and Human Services (HHS). The Secretary of HHS, in turn, has designated OCSE to help negotiate bilateral arrangements.



Within the State Department, it is the Private International Law Office that negotiates bilateral arrangements. That Office is assisted not only by OCSE, but also by a number of subject matter experts.

In order for there to be a declaration of reciprocity, the Secretary of HHS must concur with the declaration.



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<sup>1</sup> Codified at 42 U.S.C. § 659a.



In the United States, the Central Authority for international child support treaties and bilateral arrangements is the Secretary of HHS. The Secretary has in turn designated OCSE as the entity to serve as Central Authority.

For FRCs, one of the services OCSE provides as Central Authority is locate assistance. OCSE will use the Federal Parent Locator Service to assist FRCs when they do not know the U.S. state in which the creditor or debtor resides. However, the information OCSE returns to the FRC is the state of residence. It will not provide residential or employment address information.

OCSE provides policy guidance, tools such as Caseworker's Guides, and training to both state child support workers and FRCs.

In addition, OCSE responds to numerous inquiries from parents, state child support agencies, and foreign governments, and works closely with federal and state staff on specific case concerns.

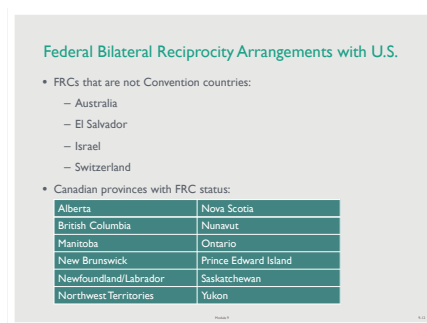
State child support agencies perform the day-to-day processing of FRC support cases. OCSE is available to provide assistance and coordination in working international child support cases.



Because state child support agencies provide the case processing functions in FRC cases, requests for child support services in FRC cases are received and transmitted at the state level. State child support agencies are responsible for initiating the appropriate proceedings related to those requests and providing IV-D services.

The state plan requirements in federal law require states to treat a request for services from an FRC as if the request is from another U.S. state.<sup>2</sup>

### 9.5.3 Federal Bilateral Reciprocity Arrangements with United States



**Federal Bilateral Reciprocity Arrangements with U.S.**

- FRCs that are not Convention countries:
  - Australia
  - El Salvador
  - Israel
  - Switzerland
- Canadian provinces with FRC status:

Alberta	Nova Scotia
British Columbia	Nunavut
Manitoba	Ontario
New Brunswick	Prince Edward Island
Newfoundland/Labrador	Saskatchewan
Northwest Territories	Yukon

This slide lists countries that are parties to a U.S. bilateral arrangement and have not yet joined the Convention. These jurisdictions include four countries – Australia, El Salvador, Israel, and Switzerland – and 12 of the 13 Canadian provinces and territories – all but Quebec.

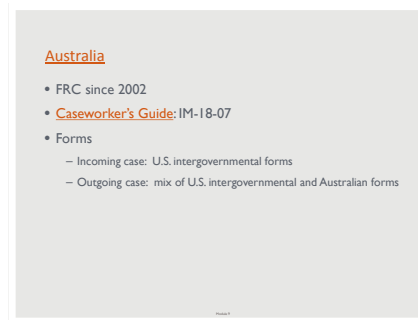
States will work cases with these countries according to the terms of the arrangement, and the country-specific Caseworker’s Guides that OCSE has published. Please note that OCSE recently revised the guide for Australia and is working on revisions to the guide for Switzerland. Also, if you have a case with El Salvador, OCSE encourages you to contact the international team within OCSE for guidance.

The next five slides provide a bit more detail about each FRC. If you view these slides online, please note that the name of the country is a hyperlink to that country’s page on the OCSE website.

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<sup>2</sup> Section 454(32)(A) of the Social Security Act, codified at 42 U.S.C. § 654(32)(A).

### 9.5.3.1 *Australia*



Australia has been an FRC since 2002. In fact, Australia was part of OCSE's very first Caseworker's Guide. The Australia Guide was updated in March 2018.

The Australian Central Authority will send cases to the U.S. using our intergovernmental forms. For outgoing cases, you should use a combination of U.S. intergovernmental forms and Australian forms. Check the Caseworker's Guide for more information.

### 9.5.3.2 *Canada*



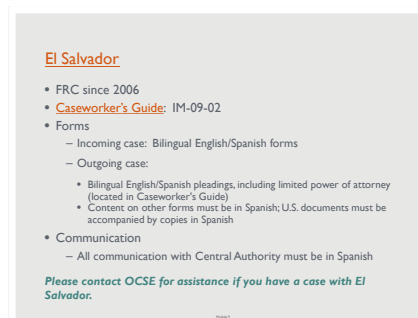
For most U.S. states, Canada is one of their largest child support partners. And from the perspective of every Canadian province and territory, the United States is their largest international partner. As noted by the dates for the various bilateral arrangements, the United States and Canada have a long history of working collaboratively. In fact, the Canadian Interjurisdictional Support Orders Act (ISO) was informed by the U.S. experience with UIFSA and allowed Canada to move away from its prior practice of provisional and confirming orders.

The Canadian support offices will send cases to the U.S. using our intergovernmental forms. For outgoing cases, you can send either the U.S. intergovernmental forms or the applicable Canadian forms. They will accept either.

Note that in enforcement and modification cases, Canada needs three certified copies of the existing U.S. order.

Check the Caseworker's Guide for more information.

### 9.5.3.3 *El Salvador*

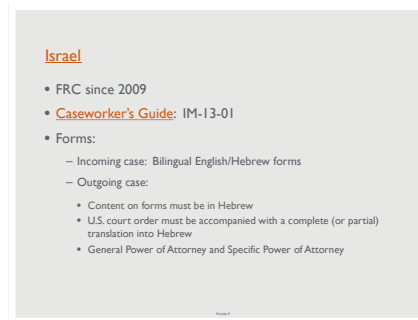


El Salvador has been an FRC since 2006. The Central Authority is very strict about communication in Spanish.

El Salvador's Central Authority will send cases to the U.S. using specific bilingual English/Spanish forms found in the Caseworker's Guide. For outgoing cases, you must use the same bilingual English/Spanish pleadings, including a limited power of attorney form. Note that the content on all other forms must be in Spanish; U.S. documents in English must therefore be accompanied by copies in Spanish. All communication with the Central Authority must also be in Spanish.

Before incurring the expense of translations, OCSE asks that you contact the international team for assistance if you have a case with El Salvador.

### 9.5.3.4 *Israel*



Israel has been an FRC since 2009.

The Israeli Central Authority will send cases to the U.S. using bilingual English/Hebrew forms that are in the Caseworker's Guide. For outgoing cases, the content in the pleadings and other forms must be in Hebrew. The U.S. court order must be accompanied with a complete (or partial, in some cases) translation into Hebrew.

Sending a case to Israel is a two-step process for the U.S. petitioner. The first step is completing and transmitting the application package to Israel, which will include completing a general power of attorney, authorizing Israel's Central Authority to open a case and act on the applicant's behalf. The attorney appointed to the case in Israel will use this information to prepare a detailed "free form" petition setting out the legal and factual assertions to support the application. As a second step, the U.S. petitioner is required to review and attest to the petition's accuracy via an affidavit of details before the petition may be filed in an Israeli family court. The petitioner must also execute a Specific Power of Attorney, allowing the appointed lawyer to act on his or her behalf, and a Unified Family Court Form. These documents will be sent directly to the U.S. petitioner by the appointed attorney, unless the IV-D agency specifically states that this procedure is not acceptable.

### 9.5.3.5 Switzerland

#### Switzerland

- FRC since 2004
- [Caseworker's Guide](#): IM-09-01 (Soon to be revised.)
- Forms: Switzerland has not agreed to use U.S. intergovernmental forms
  - Incoming case: Switzerland may use multilingual Swiss forms
  - Outgoing case:
    - Use multilingual Swiss forms (application and power of attorney)
    - Content on forms must be in official language of the Swiss Canton - French, German, or Italian
    - U.S. documents must be accompanied by a translation into the official language of the Swiss Canton

Switzerland has been an FRC since 2004. Keep in mind that Switzerland is not part of the European Union and has not ratified the Hague Child Support Convention. Also be aware that Switzerland's language requirements are not uniform; Switzerland is divided into cantons, which may have German, French, or Italian as their official language.


The Swiss Central Authority may send cases to the U.S. using multilingual forms found in the Caseworker's Guide. For outgoing cases, child support agencies must use these multilingual Swiss forms, which include an application and power of attorney. The content on the forms must be in the official language of the particular Swiss Canton. Depending on the Canton, it could be French, German, or Italian. U.S. documents must also be accompanied by a translation into the official language of the Swiss Canton.

OCSE is developing an updated Caseworker's Guide for Switzerland.

## 9.6 STATE RECIPROCAL ARRANGEMENTS

#### State Reciprocal Arrangements

- Federal statutory authority
  - 42 U.S.C. § 659A(d)
  - "State may enter into reciprocal arrangements for the establishment and enforcement of support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a), to the extent consistent with Federal law."
- State statutory authority
  - UIFSA, Section 308(b)
  - "The [appropriate state official or agency] may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination."



Federal bilateral arrangements take precedence over any state reciprocal arrangement. However, section 459A of the Social Security Act<sup>3</sup> permits states to enter into reciprocal arrangements with countries that are **not** the subject of a federal declaration. At the state level, this is implemented through Section 308(b) of UIFSA. A similar provision was in the Revised Uniform Reciprocal Enforcement of Support Act, the 1968 precursor to UIFSA.



UIFSA's definition of "foreign country" includes a country with which your state has a state reciprocal arrangement. States vary regarding the existence of such arrangements. This slide notes countries, which are not Convention countries or FRCs, that have state reciprocal arrangements with one or more U.S. state, the District of Columbia, Puerto Rico, the Virgin Islands, or Guam.

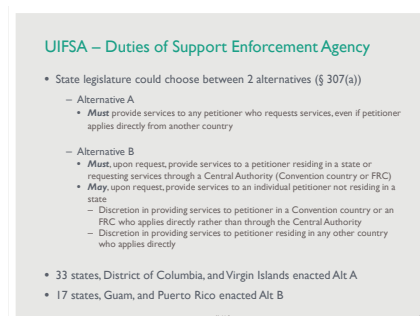
Since these are not federal-level arrangements, OCSE does not maintain information about them on its website. However, states report state reciprocal arrangements in response to a question on the Intergovernmental Reference Guide (IRG), which is available on OCSE's website.

At the state level, the state child support office or Secretary of State usually maintains such information.

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<sup>3</sup> Codified at 42 U.S.C. § 659a(d).

### 9.7 DUTIES OF SUPPORT ENFORCEMENT AGENCY



Whether a petitioner applies through a Central Authority is important under UIFSA.

When a state legislature enacted UIFSA (2008), it could choose between Alternative A and Alternative B of the Model Act. Both alternatives are based on language in the federal Preventing Sex Trafficking and Strengthening Families Act<sup>4</sup> that Congress passed in 2014.

If your state enacted Alternative A, you as the support enforcement agency must provide services in a proceeding under UIFSA to all petitioners regardless of where they reside. That includes all direct applications for services in a UIFSA proceeding received from petitioners living in other countries – regardless of whether the country meets UIFSA's definition of “foreign country.”

If your state enacted Alternative B, you as the support enforcement agency must provide services in a UIFSA proceeding to a petitioner who resides in a “state,” as defined by UIFSA. You must also provide services in a UIFSA proceeding to a petitioner who requests services through a Central Authority. That Central Authority may be in a Hague Convention country or a foreign reciprocating country (FRC).

However, under Alternative B, if you receive a direct application for services in a UIFSA proceeding from a petitioner who lives in a foreign nation that is not a Hague Convention country or an FRC, your state has discretion about providing such services. Similarly, your state may – but is not required to – provide services in a UIFSA

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<sup>4</sup> Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, 128 Stat. 1919.



proceeding to a petitioner who lives in a Hague Convention country or an FRC and applies directly for services in a UIFSA proceeding rather than going through his or her Central Authority.

Keep in mind that UIFSA covers all interjurisdictional child support cases, IV-D and non-IV-D. Applications for IV-D services are made pursuant to title IV-D of the Social Security Act and federal regulations, not UIFSA.

### 9.8 UIFSA ROAD MAP – SECTION 105



One of the unique provisions of UIFSA (2008) is Section 105, which provides a clear road map to tribunals that are handling an international case.

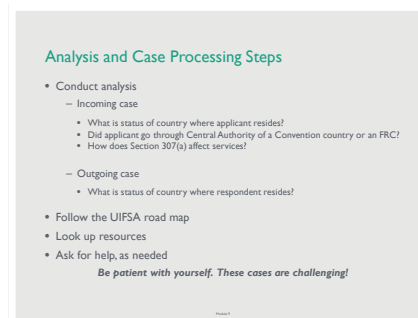
The tribunal **must** apply UIFSA Articles 1 through 6 to a support proceeding involving an order issued by a foreign country, a tribunal of a foreign country, or a party or child residing in a foreign country. Keep in mind, the provision is referring to a country that meets UIFSA's definition of a "foreign country." That definition includes an FRC.

If it is a Convention proceeding, the tribunal **must** apply the new Article 7 of UIFSA. So long as there is no conflict with Article 7, the tribunal will also apply Articles 1 through 6. Keep in mind that Article 7 applies **only** to applications under the Hague Child Support Convention.

If a tribunal is recognizing an order on the basis of comity – which is a case by case decision – the tribunal **may** apply UIFSA Articles 1 through 6. It is not mandatory to use UIFSA in such cases. Comity is a legal term. It is a willingness by the U.S. tribunal to recognize an order based on respect for the foreign tribunal because it complied with

our concept of due process. The recognition is not as a matter of legal requirement. Because comity is extended to an order, not a country, the next time a different order from that country comes before the tribunal in a different case, the court must decide anew whether to recognize this second order on the basis of comity.

### 9.9 ANALYSIS AND CASE PROCESSING STEPS



Now that we've discussed the types of international cases, how do we approach case processing? This slide offers some broad steps for approaching international case processing.

When analyzing an incoming case, you need first to determine whether the country sending the case meets UIFSA's definition of "foreign country." Is it coming from a Convention country? If not, is it coming from an FRC or a country with state-level reciprocity?

You also need to determine whether the applicant applied through the Central Authority of a Convention country or an FRC where he or she lives, or whether the applicant filed directly with the agency. The applicant may have also filed through the designated authority of a country that is not a Convention country or an FRC. How the applicant requested services will determine what services the support enforcement agency provides under Section 307(a).

In addition, you will follow the UIFSA road map, regarding which provisions of UIFSA apply.

For outgoing cases, you need to determine whether you are sending the case to a Convention or foreign reciprocating country. The answer will affect the forms you use.

Don't forget to check available resources, such as the Caseworker's Guides on OCSE's website.

These can be hard and complex cases for families and for caseworkers. So don't get discouraged. Ask for help, if needed. The OCSE Division of Policy and Training and members of the NCSEA International Committee are among those who are happy to share information.

### 9.10 CASE SCENARIOS

#### 9.10.1 Case Scenario One

**Case Scenario #1 – Residence of Applicant**

Assume the custodial parent lives in Ontario, Canada. The noncustodial parent lives and works in Michigan. She wants Michigan to recognize and enforce her Canadian order.

How should she proceed? What provisions of UIFSA will apply?

Custodial parent does not reside in a Convention country so UIFSA Article 7 does not apply. Ontario, Canada is an FRC. Articles 1 - 6 of UIFSA apply.

Does it matter where the applicant resides? Yes, it does. Let's look at two scenarios that illustrate the importance of residence.

In the first scenario, the custodial parent lives in Ontario, Canada. The noncustodial parent lives and works in Michigan. The custodial parent wants Michigan to recognize and enforce her Canadian order.

[The trainer should discuss the following questions and responses to the scenario, allowing time for the participants to think about the appropriate answer:

- How should she proceed?

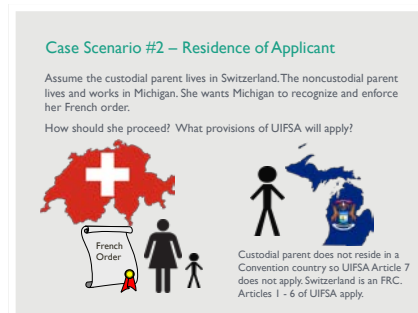
Because Ontario is not a Convention country, she cannot file an application under the Convention. But she has another recourse. According to the

international page of OCSE's website, Ontario, Canada is a foreign reciprocating country with the United States. It therefore meets the UIFSA definition of "foreign country." As long as she applies through the Ontario agency, the Michigan support enforcement agency must provide services in the UIFSA proceeding – regardless of whether the state has enacted Alternative A or B of Section 307.

- What provisions of UIFSA will apply?

According to the road map in Section 105 of UIFSA, the tribunal should apply Articles 1 through 6 of UIFSA.]

### 9.10.2 Case Scenario Two



In the second scenario, the custodial parent lives in Switzerland. The noncustodial parent lives and works in Michigan. The custodial parent wants Michigan to recognize and enforce a support order issued by France.

[The trainer should discuss the following questions and responses to the scenario, allowing time for the participants to think about the appropriate answer:

- How should she proceed?

Under Article 10 of the Hague Child Support Convention, one of the threshold criteria for an applicant to seek the assistance of a Central Authority under the Convention is that the applicant must reside in the requesting Contracting State.

In the example depicted on the slide, the custodial parent has an order issued by France, which is a Convention country. However, because she resides in

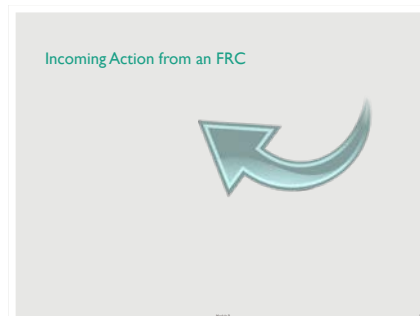
Switzerland, which is not a Convention country, she cannot file an application under the Convention.

She does have another recourse. According to the international page of OCSE's website, Switzerland is a foreign reciprocating country with the United States. It therefore meets the UIFSA definition of "foreign country." As long as she applies through the Swiss Central Authority, the Michigan support enforcement agency must provide services in the UIFSA proceeding – regardless of whether the state has enacted Alternative A or B of Section 307.

- What provisions of UIFSA will apply?

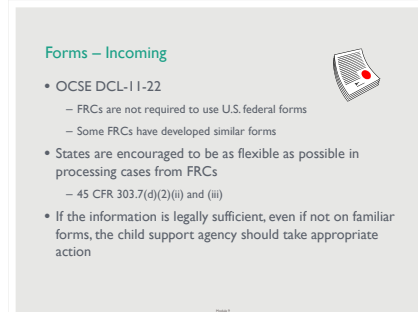
According to the road map in Section 105 of UIFSA, the tribunal should apply Articles 1 through 6 of UIFSA.]

### 9.11 INCOMING ACTION FROM A FOREIGN RECIPROCATING COUNTRY



Now that we've provided an overview of processing cases from an FRC, let's look more closely at specific requests in an incoming case.

### 9.11.1 Forms



OCSE issued a Dear Colleague Letter in 2011 regarding forms in international cases. It pointed out there is no federal requirement that foreign reciprocating countries use the federal forms mandated for IV-D cases, nor is there a state requirement within UIFSA. Rather, UIFSA requires that the petitioner submit a petition and accompanying documents that “conform substantially” with the requirements imposed by federal intergovernmental support forms.

OCSE encourages states to be as flexible as possible in processing cases from FRCs and to interpret UIFSA’s substantial conformance provision broadly. Given the importance of uniform forms for efficient case processing, OCSE has worked with FRCs to reach consensus on forms to be used under the respective reciprocity agreement or declaration. If available, these alternative forms are included in a country’s chapter in “A Caseworker’s Guide to Processing Cases with Foreign Reciprocating Countries.”

One very important principle in case processing is to continue to process an international application – whether it is from an FRC or a Convention country – as much as possible, even if it is not on the applicable intergovernmental or Hague Convention form or as complete as you would expect. Keep in mind that federal regulations direct states to process cases to the extent possible pending receipt of any missing documentation.<sup>5</sup>

These cases are different from interstate cases, and require extra effort and understanding.

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<sup>5</sup> See 45 C.F.R. § 303.7(d)(2)(ii) and (iii).

### 9.11.2 Establishment

#### Establishment

- FRC may use federal intergovernmental forms or other agreed upon forms
- Processed similar to an interstate support case under UIFSA
  - Establishment of support duty
  - Child support guidelines
  - Duration of support

On an incoming establishment case, the FRC may send a petition and testimony using the federal intergovernmental forms or other agreed upon forms. If the Caseworker's Guide for a particular FRC indicates agreement on certain forms, and those forms have not been used, please remind the requesting Central Authority of the agreement. If there are no agreed upon forms, please be flexible in working the case. Inform the requesting Central Authority what forms or documents are needed. In the meantime, process the case to the extent possible pending receipt of the missing documentation.

According to the UIFSA road map, you will process an incoming establishment case from an FRC similarly to how you process an incoming interstate case. In an establishment case, it will be your state's law – as the forum state – that will apply both in determining the support duty and in establishing the support amount. Once a support order is issued, it is your state's law that governs duration of support.

### 9.11.3 Modification

#### Modification

- FRC may use federal intergovernmental forms or other agreed upon forms
- Processed similar to interstate support case under UIFSA
  - Exception: Section 615
    - Even if issuing country has CEJ, if the foreign country lacks or refuses to exercise jurisdiction to modify under its laws, a U.S. tribunal may assume jurisdiction to modify
      - Consent to modify not required
      - Petitioner may reside in either responding state or foreign country
- Registration for modification under Article 6 of UIFSA

On an incoming modification case, the FRC may send a petition and testimony, as well as the Letter of Transmittal Requesting Registration, using the federal

intergovernmental forms or other agreed upon forms. As previously noted, if the Caseworker's Guide for a particular FRC indicates agreement on certain forms, and those forms have not been used, please remind the requesting Central Authority of the agreement. If there are no agreed upon forms, please be flexible in working the case. Inform the requesting Central Authority what forms or documents are needed. In the meantime, process the case to the extent possible pending receipt of the missing documentation.

According to the UIFSA road map, you will process an incoming modification case from an FRC similarly to how you process an incoming interstate case. There is one exception.

Ordinarily, UIFSA provides that if a tribunal has continuing, exclusive jurisdiction (CEJ), no other state may modify the order. However, under Section 615 of UIFSA, even if the issuing country has CEJ, if the foreign country lacks or refuses to exercise jurisdiction to modify under its laws, a U.S. tribunal may assume jurisdiction to modify. Consent by both parties to modify the order in the U.S. state is not required. And the petitioner may reside in either the responding state or the foreign country.

How does one know if the foreign country lacks or refuses to exercise jurisdiction to modify? Such a determination will be case specific. The example provided by the Official Comment is when an obligor has moved to the responding U.S. state and the law of the issuing country requires the physical presence of both parties at a hearing in order to modify its order. The Comment further notes that there may be a reason for the foreign tribunal to refuse to modify its order, so that a state tribunal should be cautious when modifying another country's order under this provision. It encourages tribunals to communicate with each other under Section 317 rather than relying on representations of one or more of the parties.



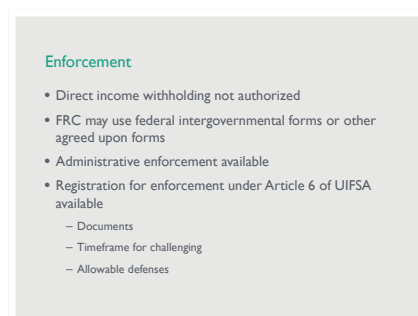


In a modification case, it will be your state's law – as the forum state – that will apply both in determining the availability of modification and in establishing the support amount.

Can a tribunal modify the duration of support? If the order was issued by another U.S. state, Section 611 of UIFSA prohibits a tribunal from modifying any aspect of the child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. Although Section 611 is specific to state support orders, Section 604 Choice of Law applies to both state and foreign support orders. It provides that the law of the issuing foreign country governs the duration of current payments under a registered order.

Keep in mind that any foreign order a U.S. tribunal modifies may, in some instances, have to be subsequently recognized in the original issuing country. For that reason, a tribunal may decide it will only modify terms that a tribunal in the issuing country would modify.

### 9.11.4 Enforcement

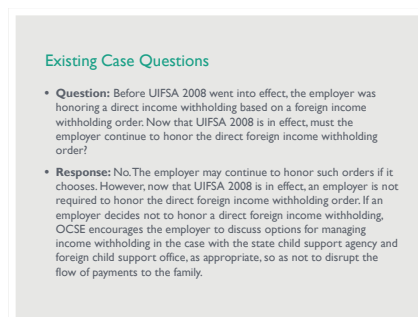


With regard to enforcement, UIFSA (2008) has an important change. Section 501, which authorizes direct income withholding, is limited to income withholding orders issued in another state. Because of the new definition of “state,” it no longer applies to foreign support orders.

On the other hand, Section 507 authorizes administrative enforcement of a foreign support order. Keep in mind, however, that administrative enforcement without registration is only available for non-Convention foreign support orders.<sup>6</sup>

Also, an FRC may seek to register a foreign support order for enforcement under Article 6 of UIFSA. The documents, timeframes, and available defenses are the same as those applicable to registration for enforcement of a state order.

### 9.11.5 Existing Cases



**Existing Case Questions**

- **Question:** Before UIFSA 2008 went into effect, the employer was honoring a direct income withholding based on a foreign income withholding order. Now that UIFSA 2008 is in effect, must the employer continue to honor the direct foreign income withholding order?
- **Response:** No. The employer may continue to honor such orders if it chooses. However, now that UIFSA 2008 is in effect, an employer is not required to honor the direct foreign income withholding order. If an employer decides not to honor a direct foreign income withholding, OCSA encourages the employer to discuss options for managing income withholding in the case with the state child support agency and foreign child support office, as appropriate, so as not to disrupt the flow of payments to the family.

Child support caseworkers have raised questions about cases already being handled at the time UIFSA 2008 went into effect in their state or the Hague Child Support Convention became effective in the United States. Let's review some of those questions.

**Question:** Before UIFSA 2008 went into effect, the employer was honoring a direct income withholding based on a foreign income withholding order. Now that UIFSA 2008 is in effect, must the employer continue to honor the direct foreign income withholding order?

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<sup>6</sup> An application for recognition and enforcement of an order issued by a Convention country is governed by Article 7 of UIFSA. Section 706 requires registration of the Convention order as provided in Article 6.

**Response:** No. The employer may continue to honor such orders if it chooses. However, now that UIFSA 2008 is in effect, an employer is not required to honor the direct foreign income withholding order. If an employer decides not to honor a direct income withholding order issued by a foreign country, UIFSA provides procedures for the FRC or Convention country to register the foreign support order in a state for the purpose of enforcement. OCSE encourages the employer to discuss options for managing income withholding in the case with the state child support agency and foreign child support office, as appropriate, so as not to disrupt the flow of payments to the family.

### Existing Case Questions (cont'd)

- **Question:** Now that the Hague Child Support Convention has entered into force in the United States, how should states handle cases that are currently being worked under a federal bilateral agreement?
- **Response:** States should continue to work cases that were initiated under a bilateral agreement so as not to disrupt payments to families. However, if a major action requiring a new application is necessary, such as a modification, and the other country is also a Convention country, states should use Convention forms and follow Convention requirements as provided in Article 7 of UIFSA and the Convention.

**Question:** Now that the Hague Child Support Convention has entered into force in the United States, how should states handle cases that are currently being worked under a federal bilateral agreement?

**Response:** States should continue to work cases that were initiated under a bilateral agreement so as not to disrupt payments to families. However, if a major action requiring a new application is necessary, such as a modification, and the other country is also a Convention country, states should use Convention forms and follow Convention requirements as provided in Article 7 of UIFSA and the Convention. The following FRCs are now Convention countries: Czech Republic, Finland, Hungary, Ireland, Netherlands, Norway, Poland, Portugal, Slovakia, and the United Kingdom.

### 9.11.6 Case Scenarios

#### 9.11.6.1 Case Scenario Three

**Case Scenario #3**

The designated authority in Quebec sends the Florida central registry a request to register and enforce a support order issued in Quebec, determining paternity and establishing a support amount.

- Florida has a state-level reciprocity arrangement with Quebec, which is the province where the custodial parent and child reside
- Assume the order requires support to age 21 if the child is attending university and dependent on the custodial parent




Figure 1

Let's assume the designated authority in Quebec has sent the Florida central registry a request to register and enforce a support order issued in Quebec. In the order the court determines paternity and sets a support amount. The order also requires support to age 21 if the child is attending university and dependent on the custodial parent. Assume also there was proper notice and an opportunity for the obligor to appear.

The other relevant facts are that:

- Florida has a state-level reciprocity arrangement with Quebec, where the custodial parent resides.
- Jurisdiction to issue the order was based on the fact that creditor and child were living in Quebec.

**Case Scenario #3 (cont'd)**

The Florida central registry and local child support office need to answer the following questions.

- Does Quebec meet the UIFSA definition of "foreign country"?  
Yes
- Did the custodial parent request services through a Central Authority in a Convention country or an FRC?  
No
- How does Florida's enactment of UIFSA Section 307(a) affect the availability of services by the agency under UIFSA?  
Florida enacted Alt.A, which requires services to all petitioners, regardless of residence.
- Which Article of UIFSA should Florida use to register the order for enforcement?  
Article 6

Figure 1

Using the case analysis steps we discussed earlier, the Florida central registry and local child support office need to answer the following questions.

First, does Quebec meet the definition of “foreign country” under UIFSA?

[After allowing time for the participants to think about the appropriate answer, the trainer or moderator should provide the following response:

Canada has not ratified the Hague Child Support Convention, so Quebec is not a Convention jurisdiction. Nor is it a foreign reciprocating country under a federal bilateral arrangement. However, it *is* party to a state reciprocal arrangement with Florida. Therefore, the answer is “yes,” Quebec is a “foreign country” under UIFSA.]

The next case processing question is whether the petitioner sought services through the Central Authority of a Convention country or an FRC. Under the facts of this scenario, the petitioner applied through the designated authority in Quebec. However, that authority is not the Central Authority of a Convention country or an FRC.

How does that answer impact the next question: Must the Florida support enforcement agency provide services under UIFSA to the petitioner?

[After allowing time for the participants to think about the appropriate answer, the trainer or moderator should provide the following response:

If Florida enacted Alternative A of Section 307(a), it must provide services to all petitioners, regardless of where they reside. If Florida enacted Alternative B, it must provide services to petitioners who reside in Convention countries and FRCs and apply through those countries’ Central Authorities. However, for other countries such as a country with a state reciprocal arrangement, services are discretionary. Florida enacted Alternative A. Therefore, the support enforcement agency must provide appropriate services to the petitioner.]

Which Article of UIFSA should Florida use to register the order for enforcement?

[After allowing time for the participants to think about the appropriate answer, the trainer or moderator should provide the following response:

Because Canada is not a Convention jurisdiction, the Florida agency will use Article 6 of UIFSA to register the Quebec order in Florida for enforcement.]

Case Scenario #3 (cont'd)

Assume the order is registered for enforcement, and notice is given to the obligor. The obligor contests the registration on the basis that Quebec did not have jurisdiction over him when the order was entered. He also objects to paying support beyond the duration set by Florida law.

- Are those valid defenses under UIFSA?

Lack of personal jurisdiction *is* a valid defense to recognition and enforcement of a foreign order.

Payment of support beyond the age of duration in the responding state is *not* a valid defense to registration under Section 607. Section 604 provides that the law of the issuing state or foreign country governs the duration of current payments under a registered support order.

Let's assume the order has been registered for enforcement and notice has been sent to the obligor. Within the 20-day period for challenge, the obligor has contested the registration on the basis that Quebec did not have jurisdiction over him when the order was entered. He also objects to paying support beyond the duration set by Florida law. Are those valid defenses under UIFSA?

[After allowing time for the participants to think about the appropriate answer, the trainer or moderator should provide the following response:

Lack of personal jurisdiction *is* a valid defense to recognition and enforcement of a foreign order. Creditor-based jurisdiction does not comply with U.S. due process requirements. Therefore, the obligor may have a valid defense to recognition of the order if that was the basis of the court's jurisdiction.

Payment of support beyond the age of duration in the responding state is *not* a valid defense to registration under Section 607. In fact, Section 604 provides that the law of the issuing state or *foreign country* governs the duration of current payments under a registered support order. Therefore, it will be Quebec's law – not Florida's – that governs the duration of the obligor's support obligation.]

### 9.11.6.2 Case Scenario Four

**Case Scenario #4**

A petitioner in Kenya sends the Ohio child support agency a request to register and enforce a support order for her 5-year-old child.

- The child was conceived and born in Kenya
- The obligor, who now lives in Ohio, received notice of the proceeding in Kenya and had an opportunity to participate
- Ohio does not have a state reciprocity arrangement with Kenya



Figure 1

In this scenario, a petitioner has applied directly to the Ohio IV-D agency, seeking enforcement of an order issued by a court in Kenya. The respondent, who now lives in Ohio, received notice of the proceeding in Kenya and had an opportunity to participate.

The other relevant facts are that:

- The child was conceived and born in Kenya.
- Ohio does not have a state-level reciprocity arrangement with Kenya.

**Case Scenario #4 (cont'd)**

What case processing questions do the Ohio central registry and local office need to answer?

- Does Kenya meet the UIFSA definition of “foreign country”?  
No
- Did the custodial parent request services through the Central Authority of a Convention country or an FRC?  
No
- How does Ohio’s enactment of UIFSA Section 307(a) affect the availability of services under UIFSA?  
Ohio enacted Alt.A, which requires services to all petitioners, regardless of residence.
- Which Article of UIFSA should the agency use to seek enforcement of the order?  
Under Section 105, IV-D agency may request the tribunal to recognize and enforce the Kenyan order on the basis of comity. In such a case, the tribunal may apply the procedural and substantive provisions of Articles 1 through 6 of UIFSA.

Figure 1

Using the case analysis steps we discussed earlier, what questions do the Ohio central registry and local office need to answer?

[After allowing time for the participants to think about the appropriate answer, the trainer or moderator should provide the following response:

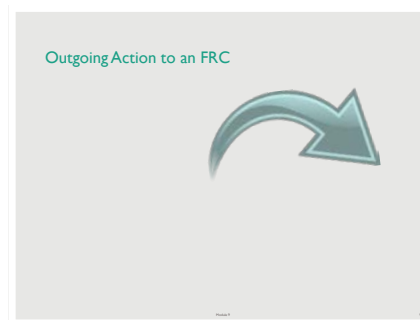
First, does Kenya meet the definition of “foreign country” under UIFSA? It is not a Convention country. It is not a foreign reciprocating country under a federal bilateral arrangement. It is not a party to a state reciprocal arrangement with Ohio. Therefore, the answer is “no,” Kenya is not a “foreign country” under UIFSA unless a tribunal or

other appropriate official in Ohio has determined Kenya has laws and procedures for the enforcement of a support order that are substantially similar to UIFSA.

The next question is whether the petitioner applied directly to the Ohio child support agency or whether the petitioner sought services through a Central Authority of a Convention country or an FRC. Depending on whether Ohio enacted Alternative A or B of Section 307(a) of UIFSA, the answer to that question has consequences. Ohio enacted Alternative A, so the agency must provide services to all UIFSA petitioners, regardless of their residence or whether they apply through a Central Authority.

Finally, the agency needs to decide how to proceed with enforcement. Because Kenya is neither a Convention country nor a “foreign country” under UIFSA, the IV-D agency may request the tribunal to recognize and enforce the Kenyan order on the basis of comity. The road map in Section 105 of UIFSA provides that, in such a case, the tribunal **may** apply the procedural and substantive provisions of Articles 1 through 6 of UIFSA; it is not required to do so.]

### 9.12 OUTGOING ACTION TO A FOREIGN RECIPROCATING COUNTRY



Let's shift now to outgoing cases to a foreign reciprocating country.



### 9.12.1 Services to Expect



As noted at the beginning, one of the requirements for a bilateral arrangement is that the country must have in effect procedures available to U.S. residents for the establishment of paternity, the establishment of support orders for children and custodial parents, and the enforcement of support orders for children and custodial parents, including procedures for collection and distribution. These procedures must be available to U.S. residents at no cost.

In addition, the country must designate a Central Authority responsible for:

- Facilitating support enforcement in cases involving residents of the foreign country and residents of the U.S. and
- Ensuring compliance with the standards established under the bilateral arrangement.

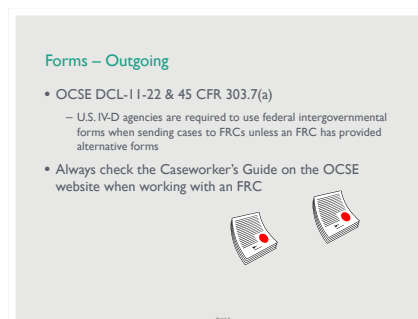
### 9.12.2 Applicable Law



When a child support agency sends a case to an FRC, it will be that country's laws and procedures that govern:

- Jurisdiction to establish and modify an order;
- The basis for a support obligation;
- Determination of the support amount, such as the application of any support guidelines;
- The availability of modification; and
- Enforcement of the order.

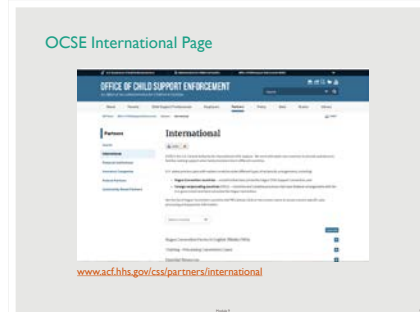
### 9.12.3 Forms



As noted earlier, OCSE issued a Dear Colleague Letter in 2011 regarding forms in international cases. [DCL-11-22](#) addressed not only incoming cases to the U.S. but also outgoing cases from the U.S. to an FRC. The DCL stated that U.S. child support agencies are required to use federal intergovernmental forms for an outgoing case to an FRC – the same as those used in interstate cases – unless specific forms have been provided for that country. So, check the OCSE website for the applicable Caseworker's Guide before sending a case to an FRC. Do not automatically send the federal intergovernmental forms. El Salvador, for example, will only accept the bilingual forms that are included in the Caseworker's Guide, and will send the case back if you send any other forms.

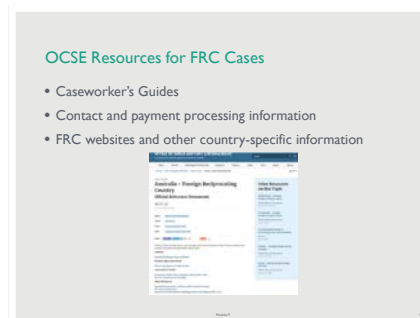
Besides having bilingual forms acceptable to the FRC, additional forms might be required, such as a power of attorney.

### 9.12.4 OCSE Resources

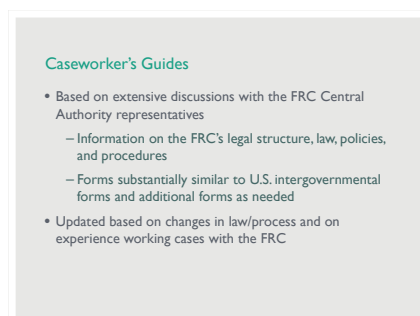


OCSE's international page has a number of resources for working with foreign reciprocating countries.

The link on the slide is to the landing page for OCSE international information. Use the drop down menu to select the foreign reciprocating country you want. Keep in mind that the drop down menu includes the Hague Convention countries as well.



Using Australia as an example, this slide shows you the type of information available for an FRC. It includes the website for the country's child support agency or Central Authority, the reciprocating agreement, the Caseworker's Guide, and other resources.



As noted earlier, OCSE has developed Caseworker's Guides for the five foreign reciprocating countries that are not Convention countries: Australia, Canada, El Salvador, Israel, and Switzerland. OCSE recently updated the guide for Australia and is in the process of updating the guide for Switzerland.

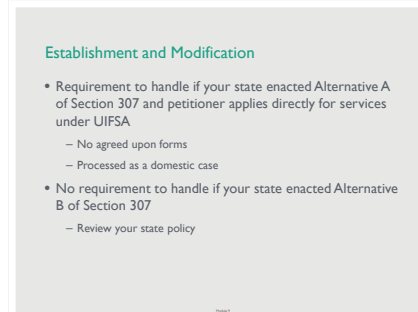
The Caseworker's Guides are based on extensive discussions with representatives of the FRC Central Authority, to ensure the information is both accurate and practical. There is information on the FRC in general, its child support program, and the Central Authority there. There may be specific forms, some bilingual, to use for a case to this country. Sometimes the Caseworker's Guide will also describe what information the U.S. child support agency can expect to receive from the FRC.

### 9.13 INCOMING ACTIONS FROM A FOREIGN NATION THAT IS NOT A FOREIGN COUNTRY



We've discussed incoming and outgoing cases with a foreign reciprocating country. What about an incoming action from a foreign nation that does not meet UIFSA's definition for "foreign country"? In other words, an incoming action from a country that is not a Convention country, not an FRC, not a country that is a party to a reciprocal arrangement with your state, and not a country with laws substantially similar to UIFSA. What forms and procedures apply to those cases?

### 9.13.1 Establishment and Modification

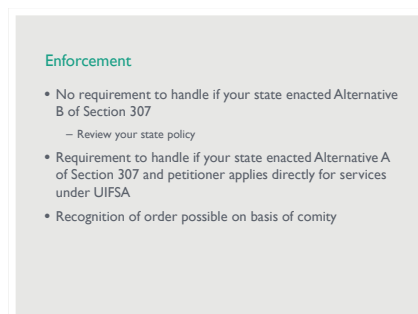


Let's first discuss establishment and modification cases. If your state enacted Alternative A, you as the support enforcement agency **must** provide appropriate services in a UIFSA proceeding to **all** petitioners regardless of where they reside. That includes all direct applications for services in a UIFSA proceeding received from petitioners living in foreign nations that do not meet UIFSA's definition of "foreign country." For such cases, there are no agreed upon forms.

Process the request as you would process a similar request in a domestic case. That means your state's law will govern with regard to establishment of a support duty, determination of the support amount, and the availability of modification.

On the other hand, if your state enacted Alternative B, and you as the support enforcement agency receive a direct application for services under UIFSA from a petitioner who lives in a foreign nation that is **not** a Hague Convention country or an FRC, your state has discretion about providing such services.

### 9.13.2 Enforcement



What about a request for enforcement? As just noted, you have discretion about providing services if your state enacted Alternative B and you as the support enforcement agency receive a direct request for enforcement under UIFSA from a petitioner who lives in a foreign nation that is not a Hague Convention country or an FRC.


On the other hand, if your state enacted Alternative A, you as the support enforcement agency must provide services under UIFSA to all petitioners regardless of where they reside. That includes all direct requests for enforcement under UIFSA received from petitioners living in foreign nations that do not meet UIFSA's definition of "foreign country." Your state law would determine the forms used.

What procedure would be used to recognize the order issued by the foreign nation? Article 6 of UIFSA applies to registration and enforcement of a support order issued by a foreign country, as defined by UIFSA. There is no requirement to apply it to orders issued by other foreign nations. Rather Section 105(b) provides that a tribunal may apply principles of comity, if appropriate, to recognize a support order issued by a foreign nation that does not meet the definition of "foreign country." As noted earlier, comity is a legal term. It is a willingness by the U.S. tribunal to recognize an order based on respect for the foreign tribunal because it complied with our concept of due process. The recognition is not as a matter of legal requirement. Because comity is extended to an order, not a country, the next time a different order from that country comes before the tribunal in a different case, the court must decide anew whether to recognize this second order on the basis of comity.

Section 105(b) further provides that if the tribunal recognizes an order on the basis of comity, the tribunal **may** apply the procedural and substantive provisions of UIFSA Articles 1 through 6. However, it is not required to do so.

### 9.14 OUTGOING ACTIONS TO A FOREIGN NATION THAT IS NOT A FOREIGN COUNTRY

Outgoing Action to a Foreign Nation that is Not a Foreign Country



- **Question:** How can a child support agency establish a support order if the noncustodial parent lives in a foreign nation with which the United States has no treaty or bilateral arrangement, and the country is not a party to a state reciprocal arrangement?
- **Response:** The most effective recourse is to determine a point of contact in the foreign nation and begin a discussion about available services. Unfortunately, in most cases when there is no reciprocity, state child support agencies are unsuccessful in obtaining a support order because the nation will not provide the custodial parent such services on a cost free basis.

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This and the next slide review some questions related to cases with foreign nations that are not Convention countries or foreign reciprocating countries.

**Question:** How can a child support agency establish a support order if the noncustodial parent lives in a foreign nation with which the United States has no treaty or bilateral arrangement, and the country is not a party to a state reciprocal arrangement?

**Response:** The most effective recourse is to determine a point of contact in the foreign nation and begin a discussion about available services. Unfortunately, in most cases when there is no reciprocity, state child support agencies are unsuccessful in obtaining a support order because the nation will not provide the custodial parent such services on a cost free basis. The child support agency may need to suggest the custodial parent seek private legal counsel to pursue child support. The Department of State's website provides information for citizens needing legal counsel in other countries.

Outgoing Action to a Foreign Nation that is Not a Foreign Country (cont'd)

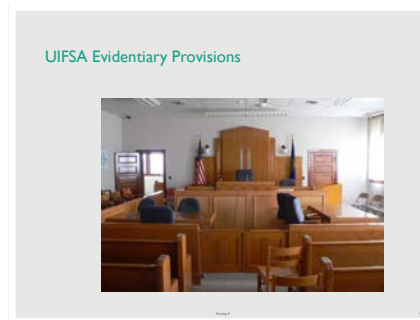
- **Question:** If the noncustodial parent lives in a foreign nation that is not a Convention country or an FRC, but works for a U.S. company, how can we best enforce our state support order?
- **Response:** If a child support order has already been legally established, and the noncustodial parent works for a U.S. employer that has offices in the U.S., it may be possible to use income withholding or other legal remedies by serving the domestic agent of the U.S. employer. You also may be able to enforce the order domestically if the noncustodial parent owns assets in the U.S. If the parent is a U.S. citizen, you may be able to submit the case to the passport denial program.

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**Question:** If the noncustodial parent lives in a foreign nation that is not a Convention country or an FRC, but works for a U.S. company, how can we best enforce our state support order?

**Response:** If a child support order has already been legally established, and the noncustodial parent works for a U.S. employer that has offices in the U.S., it may be possible to use income withholding or other legal remedies by serving the domestic agent of the U.S. employer. You also may be able to enforce the order domestically if the noncustodial parent owns assets in the United States. If the parent is a U.S. citizen, you may be able to submit the case to the passport denial program.

### 9.15 UIFSA EVIDENTIARY PROVISIONS



Let's move to a discussion of evidentiary provisions within UIFSA (2008).

#### 9.15.1 Outside This State

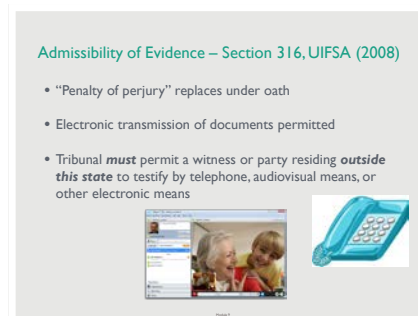


UIFSA (2008) includes a definition for the new term "outside this state." It means a location in another state or a country other than the United States, whether or not the country is a foreign country. According to the Official Comment to the section, the



phrase is used in UIFSA when the application of the provision is to be as broad as possible. “Outside this state” means a different U.S. state, a tribe, a foreign country, or a foreign nation that does not meet the definition of “foreign country.” In other words, anywhere other than the forum state!

### 9.15.2 Admissibility of Evidence – Section 316, UIFSA (2008)



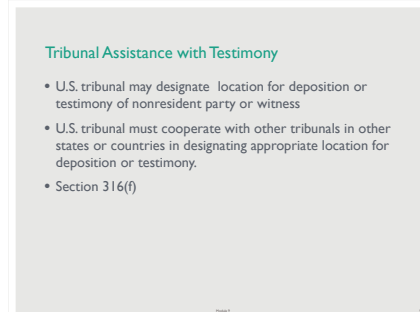
Another UIFSA provision that is important in international cases is Section 316.

It replaces the requirement that a person swear under oath before a notary in order for information in a document to be admissible into evidence. Section 316 provides that an affidavit or a document, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing “outside this state.”

Section 316 encourages tribunals and parties to take advantage of modern methods of communication. It authorizes the transmission of documents from outside the state by telephone, telecopier, or other electronic means.

Finally, a big change from UIFSA 1996 is the requirement that tribunals **must** allow a witness or party residing outside the state to testify by telephone, audiovisual means, or other electronic means. It is not discretionary. We will talk about this requirement in more detail in a minute.

### 9.15.3 Tribunal Assistance with Testimony



If a nonresident party or witness is testifying by telephone or other electronic means, the tribunal may designate the location from which it wants the person to testify. Section 316(f) of UIFSA mentions testimony from a tribunal outside the state but recognizes the forum tribunal may designate a different location. UIFSA also requires tribunals to cooperate with each other in designating an appropriate location for the deposition or testimony.

### 9.15.4 Coordination of International Hearings



Let's assume there is an incoming action from an FRC to the U.S. and one of the parties wants a telephonic or electronic hearing. This slide and the next list issues that the child support agency needs to address. If you recall, we discussed these issues in Module 8 in the context of a Convention proceeding.

First, how must the request be made? Some states have court rules requiring the party to make a formal request, using a standardized form. For example, New York State has a unified court system. On its website is a form titled Electronic Testimony Application

and Waiver of Personal Appearance that the New York Family Court uses for hearings in child support cases.

Second, what type of assistance can the IV-D agency expect from the requesting Central Authority in the FRC? That will depend on the country. Some countries may inform the applicant about the telephonic hearing but it will be up to the applicant to arrange for his or her participation. The Central Authority in some countries may facilitate the testimony, including arranging for a location for the testimony. Other countries may be less receptive, citing concerns over various coordination issues. The two coordination issues raised the most by countries are time zones and location. Tribunals and parties need to be flexible in accommodating different time zones.

Tribunals also differ regarding the designated location for testimony by the nonresident party. Some tribunals require a formal setting such as a child support agency office, a court room, or a notary's office. Other tribunals are comfortable designating a person's home, especially if the time differential is large.

Finally some countries may require the child support agency to comply with the Hague Evidence Convention in order to receive testimony in a proceeding from an applicant in their country.



Technology is much more accessible these days. Most U.S. courtrooms have speaker telephones or computers. Depending on the service provider, some courts may be limited to incoming international telephone calls and unable to place outgoing calls. That may result in a great expense to the nonresident party if the court is not able to calendar the case for a particular time. If FaceTime or Skype is used, there is no cost to the

party. Obviously, the nonresident party needs access to the technology used by the tribunal. If the person plans to call from a cellphone, rather than a land line, it may be advisable to check the quality of the phone connection in advance.

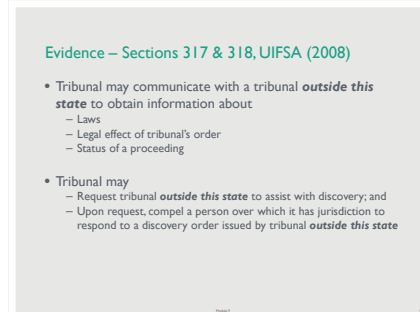
Another issue raised by telephonic and electronic hearings is verification of the testifying party. If testimony is provided by telephone, a party or witness before the tribunal can identify the voice of the nonresident person. Alternatively an official outside the state – such as a notary or an agency representative – can view a photographic identification and verify the identity of the person. Verification of the person is less problematic if the person is testifying by Skype or the iPhone FaceTime tool, which provide a visual image.

In some international cases, the tribunal will need to provide interpretation for the person testifying. Most U.S. courts have contracts with private companies or local universities or colleges for interpretation services. If you need such services, make sure you provide advance notice to the court. Try to also learn in advance if there will be dialect issues.

The tribunal will also need to address how documents will be admitted during the telephonic or electronic hearing.

Finally, in the United States any attorney outside the forum who makes an appearance and participates in the hearing must either be licensed to practice in that forum or admitted through a *pro hac vice* process. This includes attorneys located in foreign countries. “*Pro hac vice*” is a Latin phrase, meaning “for this turn” or “for this occasion.” It is a special kind of admission by which a lawyer, who has not been admitted to practice in a particular jurisdiction, is nevertheless allowed to participate in a particular case being heard in that jurisdiction. States have different requirements regarding the *pro hac vice* admission process.

### 9.15.5 Evidence – Sections 317 and 318, UIFSA (2008)



Section 317 authorizes a state tribunal to communicate with a tribunal “outside this state.” As previously noted, “outside this state” means a tribunal of another state (as defined by UIFSA), a foreign country, or a foreign nation that is not defined as a foreign country under UIFSA. The communication can be about the laws, legal effect of an order, or status of a proceeding.

Section 318 authorizes a tribunal to help a tribunal “outside the state” with the discovery process.

### 9.16 CONCLUSION

This concludes the webinar series on processing international cases.



As you process international support cases, please do not hesitate to contact OCSE at the addresses on the slide with questions you may have or feedback on the webinar content.