Module 7

Modification of a Support Order under the Convention – Outgoing Application
TRAINING NOTES

What you need to say/do
1. Display PowerPoint Slide 7-1: International Case Processing under UIFSA 2008: Module 7 (title slide). After introducing the webinar course, display PowerPoint Slide 7-2: Webinar Series. Explain the targeted audience, the content of the webinar modules, and the webinar resources.
2. Display PowerPoint Slide 7-3: Webinar Modules as you explain the focus of each module.
4. Beginning with PowerPoint Slide 7-5: Terms within Hague Child Support Convention, 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.

What you need to know
1. It takes approximately 1.5 hours to complete this module.

PowerPoint Slides:
- 7-1 through 7-67

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 the discussion turns toward processing international support cases from countries with bilateral reciprocity arrangements that are not Convention countries.
MODULE 7: MODIFICATION OF A SUPPORT ORDER UNDER THE CONVENTION – OUTGOING APPLICATION

Time: 1.5 hours

7.1 MODIFICATION OF A SUPPORT ORDER UNDER THE CONVENTION – OUTGOING APPLICATION

Today we are presenting Module 7, which focuses on an outgoing Convention application to modify a support order. We will discuss your role as the requesting Central Authority when preparing and transmitting an application to a Convention country. We will also discuss the steps a Convention country will take to process that application.

7.2 TERMS WITHIN HAGUE CHILD SUPPORT CONVENTION

Because the Convention applies to countries with various legal systems, it includes terminology that differs from the terms we use in the United States. This slide “converts” Convention terms to their equivalent U.S. terms. Modules 1 and 2 explained the terms, and we will not review them again. However, if there are new participants to today’s
webinar, please check the Trainer Notes for Module 1 or 2 for an explanation of each term on the slide.

**Note to Trainer** – The following information is provided in the Trainer Notes for Modules 1 and 2: When the Convention refers to a creditor, it is referring to the individual entitled to receive support – the person in the U.S. that most states would refer to as the obligee or custodial parent. In some cases, the creditor may be a public body. When the Convention refers to a debtor, it is referring to the individual responsible for payment of support. In the United States, most states use the term obligor or noncustodial parent.

Probably the most confusing term to us in the United States is the Convention’s use of the word “State." This is State with a capital “S" and means a country. A Contracting State is a country that has ratified or approved the Convention. In the United States we often refer to that country as a Convention country.

The Convention uses the term “maintenance” whereas in the United States we use the term “support.”

When the Convention refers to a “requesting State,” it is referring to the Contracting State (i.e., country) that is requesting services from another Contracting State. The Convention country receiving and responding to the request is called the “requested State.” As you can tell, the equivalent terminology in UIFSA is an initiating state and a responding state.

For the most part, in implementing the Hague Child Support Convention, UIFSA (2008) uses words that are familiar to child support agencies. For example, the process that the Convention outlines for recognition and enforcement of a support decision is equivalent to the process in Article 7 for recognition and enforcement of a registered support order. However, there are a few additional definitions in Article 7 based on the Convention. Earlier, we discussed the definitions of Central Authority and direct request to a tribunal. Another new definition is the term “foreign support agreement.” The drafters of UIFSA were
trying to rephrase the definition in the Convention for “maintenance arrangement,” using words more familiar to the United States. A “foreign support agreement” is an agreement for support in a record that is enforceable as a support order in the country of origin and has been authenticated by, registered, or filed with a foreign tribunal, and may be reviewed and modified by a foreign tribunal. It is not the same thing as a U.S. separation agreement, which is enforceable as a contract. Section 710 of UIFSA discusses the process for recognition and enforcement of a registered foreign support agreement.]

7.3 ADDITIONAL TERMS WITHIN CONVENTION

There are two additional terms we will use during this presentation.

The Convention often refers to the “competent authority.” There is no definition within the Convention because the identity of the competent authority will vary among Convention countries. The competent authority for modifying a support order may or may not be the same authority as the one that declares whether a decision registered for recognition and enforcement is in fact enforceable. Depending on the country, the competent authority might be the court, an administrative agency, or both. The identification of competent authority may also depend on the context. For example, if there is a challenge to the integrity of a document, it will be up to the State of origin to determine the competent authority for certifying the requested document.

When we refer to a “Contracting State,” we are talking about a country in which the Hague Child Support Convention is in effect. That is the term used by the Convention. In the United States, we often refer to a Contracting State as a Convention country.
7.4 DEFINITION OF CENTRAL AUTHORITY

Each Administrative Cooperation Convention negotiated by the Hague Conference on Private International Law requires a Contracting State to designate a Central Authority. The Central Authority is an agency or organization that is designated to play a key role in the implementation and operation of the international treaty.

Article 5 of the Hague Child Support Convention lays out general functions of Central Authorities: they must cooperate with each other to achieve the Convention’s purposes and they must try to resolve as much as possible any difficulties that arise in the implementation of the Convention. Article 6 of the Convention lists specific functions of a Central Authority. For example, the Central Authority must both transmit and receive applications. Other Convention provisions place additional mandatory obligations on the Central Authority. These obligations emphasize the need for international cooperation among Contracting States (countries that are parties to the Convention).

The functions of the Central Authority may be performed by public bodies, or other bodies subject to the supervision of the competent authorities of the Contracting State. That means that countries will vary regarding what entity serves as the Central Authority. However, each Convention country is required to keep the Permanent Bureau informed of the identity of its Central Authority. That information is accessible from the Child Support Section of the Hague website; in the right hand column, click on the word “Authorities.” A Contracting State also identifies its Central Authority in the Country Profile that we discussed in Module 1. The Country Profile is maintained on the Child Support section of the Hague Conference website. It is the resource that most
Contracting States use to inform the Permanent Bureau and other Convention countries of their child support laws and procedures.

### 7.5 U.S. CENTRAL AUTHORITY

In the United States, the Central Authority is the Department of Health and Human Services, with authority in the Secretary to perform the lawful acts necessary to execute the functions of the Central Authority. See Section 459A of the Social Security Act (42 U.S.C. § 659a) and [Executive Order 13752](https://www.gpo.gov/fdsys/pkg/FR-2016-12-13/pdf/2016-30137.pdf) of December 8, 2016, published in 81 Fed. Reg. 90,181 (Dec. 13, 2016). The Secretary has delegated the responsibilities of the Central Authority to OCSE.

Article 6 of the Hague Convention lists two specific functions of Central Authorities:

1. They must transmit and receive applications under Chapter III. We will discuss those applications in a bit.

2. They must initiate or facilitate the institution of proceedings in respect of such applications.

Article 6 also requires the Central Authority to take all appropriate measures with regard to those applications. The U.S. delegation played a major role in ensuring that the list of measures is comprehensive. One of the specific measures is helping to locate the debtor or creditor. As it does now, OCSE will use the FPLS to assist Convention countries when they do not know the U.S. state in which the creditor or debtor resides. However, the information OCSE returns to the Convention country is the state of residence. It will not provide residential or employment address information.
The Executive Order specifically authorizes the designation of IV-D agencies as public bodies authorized to perform specific functions in relation to applications under the Convention. Consistent with that authorization, on December 29, 2016, HHS formally designated state IV-D agencies as public bodies to perform functions related to applications under the Convention in accordance with UIFSA 2008, Title IV-D of the Social Security Act and implementing federal regulations, and OCSE guidance and instructions. See 82 Fed. Reg. 850 (Jan. 4, 2017). That means that applications for Convention cases will continue to be received and transmitted at the state level. And state child support agencies will be responsible for initiating the appropriate proceedings in relation to those applications. State child support agencies perform these specific Convention functions subject to the supervision of OCSE.

### 7.6 OVERVIEW OF APPLICATION FOR MODIFICATION

An application for modification of a child support order is appropriate when there is an existing support order. According to the Convention Explanatory Report, the order may have been issued by the requested State, by a Contracting State other than the requested State, or even by a non-Contracting State.\(^1\) In that regard it differs from an application for recognition and enforcement, which is limited to orders by a Contracting State. Although there is no requirement in the Convention that the decision being

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modified be issued by a Contracting State, the decision must be one that falls within the scope of the Convention, in other words, child support up to age 21.²

Under the Convention, an application to modify a child support order is available to both creditors and debtors. The distinction is that as long as the creditor is residing in the issuing State, the debtor cannot seek modification in a different State unless one of three exceptions applies. That is a rule familiar to us because it is similar to the UIFSA concept of continuing, exclusive jurisdiction (CEJ). Under the Convention, however, there is no limitation regarding where a creditor may seek modification.

The requested State will use its domestic law, including its jurisdiction requirements,³ when responding to a Convention application for modification. We will focus on UIFSA’s jurisdiction requirements during this module. If your state is the appropriate forum for modifying an order under UIFSA, it will be your state’s domestic law that applies regarding the availability of, and defenses to, modification, as well as the applicable support guidelines. If you send an application to modify to a Convention country, it will be that country’s law that applies regarding the availability of, and defenses to, modification, as well as determination of the support amount.

7.7 OUTGOING APPLICATION FROM THE UNITED STATES

Let’s review the steps involved in preparing and transmitting an outgoing Convention application for modification.

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² See Para. 263 of the Explanatory Report.
³ See Article 10(3) of the Hague Child Support Convention. See also Para.275 of the Explanatory Report.
7.8 ROLE OF REQUESTING CENTRAL AUTHORITY

This slide summarizes the responsibilities of a requesting Central Authority under the Convention.

In its role in the U.S. as a requesting Central Authority, a IV-D agency must help the petitioner complete the application and ensure that the Convention application includes all the necessary information and documents. The Country Profile is an excellent resource for identifying forms and information needed by the requested State. The IV-D agency must also review the application to ensure it complies with the Convention. State child support agencies need to decide who will be conducting that review. Will it be at the local level or centralized with a unit that focuses on Convention cases? Note that this review is limited to compliance with the Convention; it is not a determination about the merits of the application.

Once it is satisfied that the application complies with the Convention, the requesting Central Authority (the IV-D agency in the U.S.) must transmit the application on behalf of the applicant to the requested Central Authority. The application must include a transmittal form. There is no need to include certified documents unless the requested Contracting State asks for them.4

If the order to be modified is in English, and is being sent to a country requiring documents in a different language, the order must be translated. Article 45 of the Convention, which addresses translation, authorizes the requesting Central Authority to charge an applicant translation costs unless those costs are covered by the country’s

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4 See Para. 856 of the Practical Handbook.
system of legal assistance. We will briefly discuss translation requirements again later in this presentation but will wait until Module 8 of the webinar for a more in-depth examination of translation issues.

7.9 FLOW CHART IN U.S. FOR OUTGOING APPLICATION – STEP ONE

In the United States, Convention cases will continue to be processed at the local level. OCSE will not be involved in the transmission of applications.

Let’s talk about the first step of that process. There are a number of critical considerations for the caseworker. The main questions are:

- Where was the decision made?
- Where does the creditor now reside?
- Where does the debtor reside?
- Where will the modified decision need to be recognized and enforced?
7.10 CREDITOR APPLICANT – U.S. ORDER

Let’s assume there is a U.S. support order, the creditor in your state is the applicant, and the debtor resides in a Convention country.

If the order was issued by a U.S. tribunal, you do not need to send a Convention application for modification. You should generally seek modification in the United States. We discussed this at length during Module 6.

If the creditor resides in your state and your state issued the order, the tribunal in your state has continuing, exclusive jurisdiction to modify its order. Of course, you must provide notice to the debtor according to your state’s law, or request that the debtor submit to jurisdiction. If you need assistance from another country, you may be able to make a request under Article 7 of the Convention for another Central Authority to help locate or contact the debtor or facilitate the service of documents.

If a different U.S. state issued the order and the creditor resides in your state, Section 611(f) of UIFSA applies. Under that section, if one party lives outside the U.S. but one party still lives in a U.S. state, the tribunal that issued the order retains jurisdiction to modify its order.

If a U.S. tribunal modifies the U.S. order and the creditor wants to enforce the modified order in the country where the debtor is now living, you will need to send a Convention application for recognition and enforcement of the modified order to the requested Central Authority of the country where the debtor resides. We discussed outgoing applications for recognition and enforcement during Module 4.
Keep in mind that modification jurisdiction under Section 611(f) of UIFSA is not exclusive. So, for various reasons, you may decide to file a Convention application for modification of the U.S. order in the debtor’s country rather than in the United States.

### 7.11 CREDITOR APPLICANT – CONVENTION ORDER

Although UIFSA has rules regarding modification of a U.S. order, there are no restrictions in the Convention on where a creditor may seek modification of a Convention order. Usually you will send a Convention application for modification to the country in which the debtor resides.

Should the debtor later move to a different Convention country, it may be necessary to use the Convention's procedures for recognition and enforcement to enforce the modified order in the debtor’s new country of residence.

### 7.12 DEBTOR APPLICANT – U.S. ORDER

Let’s assume there is a U.S. support order, the debtor in your state is the applicant, and the creditor resides in a Convention country. Decisions of where to send the application are the same as those for when the applicant was the creditor.
That means if the order was issued by a U.S. tribunal, you do not need to send a Convention application for modification. You can seek modification in the United States. We discussed this at length during Module 6.

If the debtor resides in your state and your state issued the order, the tribunal in your state has continuing, exclusive jurisdiction to modify its order. As noted earlier, you must provide notice to the creditor according to your state’s law, or request that the creditor submit to jurisdiction. If you need assistance from another country, you may be able to make a request under Article 7 of the Convention for another Central Authority to help locate or contact the creditor or facilitate the service of documents.

If a different U.S. state issued the order and the debtor resides in your state, Section 611(f) of UIFSA applies. Under that section, if one party lives outside the U.S. but one party still lives in a U.S. state, the tribunal that issued the order retains jurisdiction to modify its order.

Keep in mind that modification jurisdiction under Section 611(f) of UIFSA is not exclusive. So UIFSA would permit modification of the U.S. order in the creditor’s country rather than in the United States. However, it would be rare that a debtor would seek modification in the creditor’s country rather than in the United States. One barrier is that the requested country is not required by the Convention to provide a debtor with free legal assistance so the proceeding could be costly. The second barrier is that the debtor would then have to request the U.S. tribunal to recognize the modification of its order; such recognition would not be automatic.
If the applicant is the debtor and the local office determines a Convention application for modification is appropriate, the caseworker must identify where the application can be sent. Although there are no restrictions in the Convention on where a creditor may seek modification, there are restrictions on where a debtor may seek modification if the order was issued by a Contracting State.

Based on Article 18 of the Convention, if the creditor habitually resides in the Contracting State that issued the order, the obligor must send a Convention application for modification to that country. There are limited exceptions, which we will discuss on the next slide.

The Convention does not define “habitual residence.” According to the Explanatory Report, it is a case-by-case determination, looking at the connection between the individual and the State of origin.

If the creditor does not habitually reside in the Contracting State that issued the order, the debtor may transmit an application for modification to any Contracting State with jurisdiction over the creditor.

If the application is sent to a Contracting State that did not issue the order and the order is modified, it may be necessary to use the Convention’s procedures for recognition and enforcement to have the modified order recognized in another Contracting State.

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6 See Para. 444 of the Explanatory Report.
7.13.1 Exceptions to Modification Limitation on Debtor

As noted on the prior slide, if the creditor habitually resides in the Contracting State that issued the order, the debtor should usually seek modification in that Contracting State. The Convention permits a debtor to bring a proceeding to modify a decision or make a new decision in a different Contracting State only in three situations:

- Where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;

- Where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or

- Where the decision made in the State of origin cannot be recognized or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

We talked about each of these exceptions during Module 6.
In Module 1 we explained how to reach Convention resources published by the Hague Conference on Private International Law. First, go to its website at www.hcch.net. There are two official languages used by the Hague Conference: English and French. For resources in English, click on the word “English.” That takes you to a page containing a list of topics for which the Hague Conference has developed Conventions. Click on “Child Support” in order to reach all the resources related to the Hague Child Support Convention.

Included on that Child Support page is a wonderful resource for child support caseworkers and lawyers. In fact, its title is the Practical Handbook for Caseworkers! It was written by Hannah Roots, a child support attorney in British Columbia who often speaks at U.S. child support conferences. The handbook contains detailed information about processing each application under the Hague Child Support Convention. Chapters discuss incoming and outgoing applications, and include flow charts, instructions on how to complete Convention forms, and responses to frequently asked questions.
### 7.15 REQUIRED DOCUMENTS NEEDED FOR MODIFICATION OF SUPPORT ORDER UNDER THE CONVENTION

Whether the applicant is the creditor or the debtor, the next step is to make sure the agency has all the documents that need to be transmitted to the requested State.

Every Convention application must include a Transmittal. This is a mandatory Convention form. However, there is no mandatory form for the application. Nor does the Convention require specific documents to accompany an Application to Modify a Decision.

Each country may specify by declaration any documents that must accompany an incoming application to modify a maintenance decision. That information would be on the Status Table on the Child Support page of the Hague website. In the Country Profile, a country may also identify any form, information, and supporting documents it needs in order to process an application for modification. In reviewing the Country Profiles listed on the Hague Conference website, it appears that almost all of the countries want applicants to use the recommended Convention Application for Modification. Countries also require financial information about the parties. Other documents vary, depending on a country’s laws, support guidelines, and procedures.
This slide and the next two identify the documents and information required by the Convention.

The first column lists the document or information. The second column explains when the document or information is needed. And the third column identifies the applicable Convention form unless the country has identified an alternative preferred form in its Country Profile.

Information about the creditor, especially financial information, is needed for determination of any new or modified support obligation.

Information about the debtor, to the extent known, is also important – especially financial information. The information is critical in determining a modified support amount. The information may also be needed for determining eligibility for legal assistance when the debtor is the applicant. With limited exception, a requested State must provide free legal assistance, if needed, with respect to all applications by a creditor in respect of a child below the age of 21. However, there is no automatic right to
cost-free legal assistance to a debtor.\(^7\) Under Article 17 of the Convention, for applications other than child support applications by a creditor, a Contracting State may make the provision of free legal assistance subject to a means or a merit test. The information contained in the Financial Circumstances Form will assist the requested State in making any determination concerning the entitlement of the debtor to assistance if it uses a means test.

We will discuss the applicable Convention forms in a minute.

<table>
<thead>
<tr>
<th>Required by Convention</th>
<th>When Used</th>
<th>Form/Document Used Unless Requested State Requests Different Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete text of order</td>
<td>Always, unless requested State allows an abstract of order</td>
<td>Order itself or Abstract/Extract, if acceptable. If requested State can require certified order</td>
</tr>
</tbody>
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The requested State will need the complete text of the order, unless it has indicated in its Country Profile that an abstract of the order is acceptable. If an abstract is acceptable, that will help reduce translation costs. Consult the Country Profile to also determine whether the requested State requires a certified copy of the order. If a certified copy is not routinely required, a simple copy is fine.

In addition to Convention required documents, a country may require specific forms, documents, or information under domestic law that governs modification. As already noted, the best resource is the Country Profile. However, not every country has completed a Country Profile. Another resource is the Status Table on the Child Support page of the Hague Conference website. The Status Table lists all the countries that have ratified or acceded to the Convention, as well as the country’s reservations, declarations, and notifications. Often the notifications include special document requirements.

\(^7\) The debtor applicant is entitled, however, to Central Authority assistance under Article 6 and to effective access to procedures in accordance with Article 14. See Para. 266 of the Explanatory Report.
7.15.1 Transmittal – Required Form

Every Application for Modification must be accompanied by the Convention Transmittal form. The form identifies the parties and the type of application. It also indicates the documents that accompany the application. It is very similar to the Child Support Enforcement Transmittal #1 that we use in the United States in intergovernmental cases.

The preamble to the Transmittal recognizes that there are situations where the release of any personal information could jeopardize the health, safety, or liberty of a person. If your agency, as the requesting Central Authority, has determined that this case presents such a risk, you should check the tick box indicating a determination of non-disclosure has been made.

Sections 1 and 2 provide information about the requesting Central Authority and the person who should be contacted if the requested State has any follow-up questions. For the address of the requesting Central Authority, use the address of the local agency working the case. Presumably that will also be the address of the contact person so there would be no need to add an address in Section 2.
Section 3 is self-explanatory. You can find the address of the requested Central Authority in the country’s Country Profile. Because not all countries have completed a Country Profile, you can also find the Central Authority’s address by clicking on the word “Authorities” on the right-hand column of the Child Support page of the Hague Conference website.

Section 4 requests the name and date of birth of the applicant. In an application for modification of a child support order, the individual applicant may be the person for whom support is sought or payable, such as a parent of a child, or the child. In the United States, we usually refer to that person as the obligee. The applicant may be the legal representative of the person for whom support is sought or payable. The applicant may also be the debtor or the debtor’s representative.

Note that under the Convention a public body cannot be an applicant for purposes of an Application for Modification. As outlined in Article 36 of the Convention, a public body may be regarded as a creditor only in an application for recognition and enforcement under Article 10(1) a) or an application for enforcement under Article 10(1) b). It may also be a creditor for the purpose of an application for establishment, but only in the situation where Article 20(4) arises. Pursuant to Article 20(4), if the application of a public body for recognition and enforcement of a decision is not possible as a result of a reservation made under Article 20(2), and if the debtor is habitually resident in the State

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8 See Para. 67 of the Explanatory Report.
addressed, that State must take all appropriate measures to establish a decision for the benefit of the creditor, even though the application has been brought by a public body.⁹

Section 5 requests information about the person for whom support is sought or payable. This person may be the same individual as the applicant. However, if you list the custodial party’s name as the applicant and you want modification of a child support order, in Section 5 you would provide the names and dates of birth of the children who benefit from the support order. The Transmittal provides space for the names of three children.

In Section 6, you should provide details about the debtor. As you can tell, this is basic information. More information about the debtor will be included in the application form and in the Financial Circumstances Form.

Section 7 contains tick boxes for you to indicate which application the transmittal is accompanying. The Article references are to the Hague Child Support Convention, not

⁹ See Para. 590 of the Explanatory Report. See also Para. 591 of the Explanatory Report: “After some discussion, it was evident that public bodies would rarely, if ever, need to establish or modify a decision in a requested State. Rather, it would always be preferable if the public body obtained such decisions in its own country, to be followed by recognition and enforcement in the requested State. Therefore, the Diplomatic Session saw no need to extend to public bodies the full range of applications.”
UIFSA. Use the Practical Handbook as a quick reference to the correct Article. You may also view the text of the Convention itself. Both are available on the Child Support page of the Hague Conference website.

If the creditor is the applicant, check the tick box for Article 10(1) e) if the debtor resides in the Contracting State that issued the order. That means you are sending an Application for Modification of a Decision Made in the Requested State. Check the tick box for Article 10(1) f) if the debtor does not reside in the issuing State. That means you are sending an Application for Modification of a Decision Made in a State Other Than the Requested State.

If the debtor is the applicant, check the tick box for Article 10(2) b) if the creditor resides in the Contracting State that issued the order. That means you are sending an Application for Modification of a Decision Made in the Requested State. Check the tick box for Article 10(2) c) if the debtor does not reside in the issuing State. That means you are sending an Application for Modification of a Decision Made in a State Other Than the Requested State.

Section 8 of the Transmittal lists the documents that must be included with the application. Subsection a) only applies to an application for recognition and enforcement.

Article 30 of the Convention addresses recognition and enforcement of a maintenance arrangement so none of the tick boxes at the bottom of the third page of the transmittal are applicable to an application to modify a child support order.
Section 8(b) does apply to a modification application. Check the box related to Article 10(1) e or f, if the applicant is the creditor. Note the number of supporting documents, excluding the transmittal form and the application itself. Check the box related to Article 10(2) b or c) if the applicant is the debtor and you are sending supporting documents. Again, note the number of supporting documents. The Country Profile is your best resource for determining what supporting documents the requested State needs or requires.

Finally, note the Transmittal does not require a signature. Rather there is a block for the name of the authorized representative of the requesting Central Authority who is completing the form. In most states, that will be the caseworker handling the case.

### 7.15.2 Application for Modification

Most Convention countries have indicated in their Country Profiles that they want Contracting States to use the recommended Application form published by the Hague Conference. As is true for all applications, the first section of the Application for Modification provides a confidentiality and personal data protection notice. If there is concern that disclosure of identifying information would jeopardize the applicant’s
health, safety, or liberty, place a check mark in the appropriate box on the Application form and do not provide the personal information requested in Section 2. Instead, include the applicant’s personal information on the separate Restricted Information form, which is found at the end of the application form.

Section 1 asks for your file reference number; in the U.S., that will be your IV-D case number.

In Section 2, you provide information about the individual applicant. The applicant can be the person for whom support is sought or payable, such as a parent of a child or the child. In the United States, we usually refer to that person as the obligee. The applicant can be the representative of the person for whom support is sought or payable. The applicant can also be the debtor or the debtor’s representative. In the United States, we usually refer to the debtor as the obligor.

The family name is the applicant’s last name. The given name is the applicant’s first name.

This slide shows the bottom half of page 1 of the Application.

Section 3 provides information about the individual for whom support is sought or payable. If you listed the parent as the applicant in Section 2, do not complete subsection 3.1. Instead, complete subsection 3.2.
Subsection 3.2 is where you provide information regarding the children for whom support is sought or payable. As you can see, there is space for information about three children. If the order you want modified is for more than three children, the application has space later on the form where you can list them.

Section 4.1 of the form (not shown) asks for particulars about the debtor (obligor). This slide shows subsections 4.2 and 4.3. Complete subsection 4.2 if the debtor is the applicant. Items (a) – (f) are seeking information about the representative of the person(s) for whom support is sought or payable; in most cases, that will be the obligee parent.

In subsection 4.3, you should provide information that may assist locate efforts about the respondent. Complete this section regardless of whether the creditor or the debtor is the applicant. The personal identification number is a government issued number that may help the Central Authority verify the respondent’s identity in government or other databanks. For example, it may be the Social Security number (if the respondent is from the U.S.), National Insurance Number (if the person is from the U.K.), Social Insurance Number (if the person is from Canada), or Tax File Number (if the person is from Australia).
Section 5 of the application details payment information. Subsection (a) relates to electronic transfer of payments. If a state prefers child support payments by check, provide details for the check and the state disbursement unit (SDU) in subsection (b). In both subsections, make sure you provide the correct file or account reference number so that payments can be properly identified.

Regarding types of payments, some countries are having major difficulty accepting and issuing paper checks and are moving toward only processing electronic payments. OCSE and several states are currently looking at international electronic payment processing solutions. We will discuss international payments more in Module 8.

Do not complete Section 5 if there is concern that identification of the bank or SDU location would create a risk to the applicant. In that case you would use the Restricted Information Form, which includes an entire section on financial circumstances.

Section 6 of the application provides details about the order you want modified. The items are self-explanatory. Subsection 6.5 asks for the effective date of the order. Usually that will be the date current support payments become effective.
Section 7 is important because it relates to changes that support the request for modification. Such changes include a change in income or financial situation and a change in child care arrangements. Please check any box that is applicable. Some of the listed changes may or may not be grounds for modification in the requested State. Keep in mind, it is the requested State’s law that applies with regard to the grounds for, and defenses to, modification.

Section 8 contains tick boxes for noting what modifications are sought by the applicant. Again, check any that apply. You will note that one of the tick boxes is reducing or cancelling arrears. Other countries’ laws may allow for the cancellation of arrears. However, a IV-D agency should never check the box asking for reduction or cancellation of arrears because U.S. law does not allow retroactive modification of support arrears. Another tick box relates to termination of the support obligation. If the child support agency is helping a debtor applicant, this tick box may be particularly relevant.

In Section 9, check the appropriate boxes to indicate the documents included with the application. You should always include the decision itself and the Financial
Circumstances Form. You should also include evidence that supports the change in circumstances. Such evidence may include copies of pay stubs or income tax returns showing a change in income, medical bills to demonstrate increased health expenses, and bills related to changes in child care or school expenses.

If the creditor is the applicant, presumably you will always check the tick box in Section 10, requesting enforcement of the modified order.

Section 11 allows you to provide additional information to the requested Central Authority. You may also want to use this space to make any requests not otherwise noted on the application. For example, if the modified decision made in the requested State will have to be recognized in another State after it is made, and a certified copy of the decision will be required for that step, it is a good practice to ask the requested Central Authority to provide a certified copy of the decision along with the Status Report, when the modification application is concluded. In such a case, you should also request a Statement of Enforceability and Statement of Proper Notice, if applicable, which are required documents for recognition and enforcement of a Convention order.

If you are helping a debtor and sending an Application for Modification of a Decision Made by a State Other Than the Requested State, you need to complete Section 12. Check the first tick box if the creditor does not habitually reside in the issuing country. If you are unable to check that box because the creditor does reside in the issuing country, then you must check the second tick box and indicate in the lower tick boxes which exception applies. As we’ve discussed earlier, in a child support case, if the creditor habitually resides in the Contracting State that issued the order, a debtor is not
allowed to seek a modification of that order in a State other than that Contracting State unless one of the exceptions applies. Those are the 4 exceptions listed on the form.

Finally, the application ends with the attestation that is on every application. There is a tick box to indicate whether the applicant completed the application. You should always check the final tick box. It indicates that the named authorized representative of the Central Authority – which, in the U.S., would be a representative of the IV-D agency – attests that the application complies with Convention requirements, the information contained in the application and supporting documents correspond to the information and documents provided by the applicant, and the application is forwarded by the Central Authority on behalf of and with the consent of the applicant.

7.15.3 Restricted Information if Applicable

If you have determined that certain identifying information should not be disclosed or confirmed for the protection of the health, safety, or liberty of a person, you will include the Restricted Information form with the Application for Modification of a Decision. Under the Convention, the determination by the requesting Central Authority has the same purpose as the allegation by a party under Section 312 of UIFSA (2008). The Restricted Information on the Applicant form segregates personal and financial information about the applicant.

Note that the numbering is not sequential; it conforms with the section numbers on the Application for Modification where identifying information is provided. Because bank account information may help identify the location of a person, Section 5 segregates that information.
There is a separate Restricted Information form for the Financial Circumstances Form.

The remaining tick boxes are the attestation ones that are at the bottom of all Convention applications. The name of an authorized representative of the child support agency should appear at the bottom of the page.

7.15.4 Financial Circumstances Form

The Financial Circumstances Form is another recommended form published by the Hague Conference. It should be included with every Application for Modification unless the requested State has identified a different form in its Country Profile.

Like the application, there is a place on the form to indicate whether there is a concern that the disclosure or confirmation of the information would jeopardize the health, safety, or liberty of a person. In such a case, the personal information will then only appear in the Restricted Information form.

Because the Financial Circumstances Form has been designed for use with all applications, Section 3 has tick boxes to indicate whether the applicant is the creditor, a representative of the person for whom maintenance is sought or payable, or the debtor.
Section 4 identifies the application that is being made. You should check the box “Modification of a decision” regardless of whether the applicant is the creditor or the debtor. You do not need to check the box about applying for legal assistance when a creditor is seeking modification of a support order for a child up to age 21. Legal assistance is mandatory, if necessary in the requested State. However, if the applicant is the debtor, you will need to check the box “Applying for legal assistance” and follow the instructions about other sections to complete. As previously discussed, there is no Convention requirement to provide free legal assistance to a debtor.

In Section 5 indicate the currency that is used throughout the Financial Circumstances Form. Currency conversion is not required. However, if you have converted all amounts to the currency of the requested State, indicate the exchange rate used and the date of the conversion.

In conjunction with the Application for Modification, you should complete the creditor portion of the form. It provides general financial information about the creditor as well as information about the creditor’s dependents.

Section C provides income information about the creditor’s current spouse, partner, or other household member who is contributing to the creditor’s household expenses.
Depending upon the laws of the requested State, the availability of such income may impact establishment of the support amount.

Part III of the form provides information about the debtor. It should also be completed to the extent information is known. Section A identifies the debtor’s employment, earnings, and present marital status.

Section B identifies all of the debtor’s dependents, including dependents in the debtor’s current household.

Section C provides income information about the debtor’s current spouse, partner, or other household member who is contributing to the debtor’s household expenses. Depending upon the laws of the requested State, the availability of such income may impact establishment of the support amount.

Part IV should also be completed for all applications. Section A lists the debtor’s assets. Complete it to the extent information is known.
Section B of Part IV lists any known debts of the debtor.

Section V provides more detailed information about the financial circumstances of the applicant. Regardless of whether the applicant is the creditor or the debtor, you need to complete this section for the Application for Modification of a Decision.

Part VI of the Financial Circumstances Form addresses medical insurance.

Finally, the form concludes with the attestation language that is common to all Convention forms.
7.16 OCSE RESOURCES ON THE CONVENTION FORMS

OCSE issued AT-17-06 and DCL-16-21, which provide guidance and information about the mandatory and recommended Convention forms. OCSE has also formatted the forms into a fillable PDF format, which you can access from the OCSE website. The Hague forms were recently re-approved by the Office of Management and Budget for a three year period. The forms on the OCSE website now have an expiration date of April 30, 2020.

OCSE is working with the Permanent Bureau to identify translated Convention forms for the other Hague countries. Right now, the forms are also available in French and bilingual German/English.

Keep in mind the Hague Convention forms were developed with lots of tick boxes so that the content itself needs minimal to no translation. When preparing Hague forms in another language, OCSE suggests laying the English version and the foreign language version side by side so you can easily transfer the information to the foreign language form. It is OCSE’s understanding that there is a plan for each country to provide an “approved” version of the translated forms in its own language to the Hague Permanent Bureau. As soon as these translated forms are available, OCSE will make them available to states.
Module 7: Modification of a Support Order under the Convention – Outgoing Application

This slide shows OCSE’s International page and indicates where to access the Hague Convention forms.

7.17 TRANSLATION OF OUTGOING DOCUMENTS FROM UNITED STATES


Any application and related documents, such as the child support order, must be in the original language. It must be accompanied by a translation into an official language of the requested State or another language which the requested State has declared it will accept, unless the competent authority of that State dispenses with translation.

Unless otherwise agreed by the Central Authorities, any other communications between such Authorities must be in an official language of the requested State or in either English or French. However, a Contracting State may make a reservation objecting to the use of either English or French. For example, the U.S. has objected to the use of French when a Central Authority communicates with us. Such a reservation will be noted in the Status Table on the Child Support page of the Hague Conference website.
You can also learn about a country’s language requirements by checking its Country Profile.

<table>
<thead>
<tr>
<th>Hague Country</th>
<th>Communication</th>
<th>Document Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>English</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>English</td>
<td>German</td>
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<tr>
<td>Belgium</td>
<td>English</td>
<td>French, Dutch, or German (check with OCSE)</td>
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<tr>
<td>Bosnia and Herzegovina</td>
<td>English</td>
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<tr>
<td>Bulgaria</td>
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<tr>
<td>Switzerland</td>
<td>English</td>
<td>German</td>
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</tbody>
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If there is no information listed under the column labeled Document Translation, it is because the country has not provided such information.
7.18 FLOW CHART IN U.S. FOR OUTGOING APPLICATION – STEP TWO

Before transmitting the application, Article 12 of the Convention requires the requesting Central Authority to review the application to ensure that it complies with the Convention.

One implementation question a state IV-D agency needs to answer is whether applications will go directly from the local IV-D office to the requested Central Authority – as currently done in most states in international cases – or whether the agency wants to centralize a final review of all outgoing Convention applications. Currently there is no federal requirement to centralize the review or transmission of an application. However, some states are considering centralization in order to establish expertise in Convention provisions. OCSE encourages specialization in international case processing and will work with states to share best practices.

7.19 FLOW CHART IN U.S. FOR OUTGOING APPLICATION – STEP THREE

The next slides focus on what happens once a IV-D agency has transmitted an Application for Modification to the requested Central Authority in the Convention country.
How will you know the address of the country’s Central Authority? You should check the country’s Country Profile. As noted earlier, you can also find information about the Central Authority by clicking on the word “Authorities” on the right-hand column of the Child Support page of the Hague Conference website.

**7.20 REVIEW OF INCOMING CONVENTION APPLICATION BY REQUESTED CENTRAL AUTHORITY**

In its review of an application, there are two important provisions that govern the requested Central Authority.

First, it may refuse to process an application only if it is manifest that Convention requirements are not met. According to the Convention’s Explanatory Report, “manifest” means it must be clear on the face of the documents that the requirements are not fulfilled. The Explanatory Report further states that if it’s unclear whether the application satisfies Convention requirements, it is preferable for the requested Central Authority to go ahead and process it and not make any decision that is more properly left to the competent authority acting on the application.

The Explanatory Report gives the following example of when it might be manifest that Convention requirements are not met: the party previously submitted an application concerning the same debtor that had failed on a specific ground and now the applicant is submitting the same application with no change of circumstances.

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12 See Para. 346 of the Explanatory Report.
13 Para. 345 of the Explanatory Report.
Second, the Central Authority may not reject an application solely because additional documents or information are needed. If additional information is needed, the Central Authority should ask the requesting Central Authority for the information. If the information or documents are not provided within 3 months – or whatever longer time period is specified – the Convention allows a country to decide not to process the application. In the rare case where the requested Central Authority decides to refuse to process the application, there must be prompt notice to the requesting State. Hopefully, with the Convention’s emphasis on administrative cooperation, that outcome will be very rare.

In Module 6 we talked about each of these provisions in the context of an incoming application to the U.S. and the role of the state Central Registry.

7.21 ROLE OF REQUESTED CENTRAL AUTHORITY

With this slide we focus on the role of the requested Central Authority. What happens after it receives and reviews an application from a U.S. child support agency? Article 12 sets out several requirements, including timeframes for taking action. This is unusual for a Hague Convention and an example of how important it was to the U.S. that the treaty address the practical issue of delays in case processing.

The Convention requires the requested Central Authority to acknowledge receipt of the application within six weeks. There is a mandatory Acknowledgment form that must be used. The acknowledgment will also inform you about what initial steps have been taken, identify any needed additional documents, and provide contact information.
Within three months of the Acknowledgment, the Central Authority in the requested State is also required by the Convention to provide a status update. You don’t have to request that initial status update.

The Convention outlines general case processing responsibilities that the Central Authority has when receiving applications from a Convention country. This slide summarizes measures that Article 6 requires, if appropriate. We discussed these measures during the Module 2 webinar. If you recall, the required role of the requested Central Authority is usually to facilitate or help with these measures. Although many of the measures seem more related to helping a creditor applicant, assistance in locating a creditor may be needed when the creditor is the respondent to an application by the debtor for modification of a decision.14

[Note to Trainer: The following information is provided in the Trainer Notes for Module 2.

A requested Central Authority must:

• Provide or facilitate the provision of legal assistance, where circumstances require;

• Help locate the debtor or the creditor;

• Help obtain relevant financial information about the debtor or creditor, including income and the location of assets;

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• Encourage amicable solutions with a view to obtaining voluntary payment of support. Examples are the use of mediation, conciliation, or similar processes;

• Facilitate the ongoing enforcement of support orders, including any arrears;

• Facilitate the collection and expeditious transfer of support payments;

• Facilitate the obtaining of documentary or other evidence;

• Provide assistance in establishing parentage where necessary to recover support;

• Initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application.

What does this mean? The Central Authority may need to begin proceedings to freeze the debtor’s assets pending the outcome of any legal proceeding. The measure must be “provisional,” meaning temporary, and “territorial” in nature, meaning the effect must be confined to the territory of the requested State. The purpose of freezing assets is to secure the outcome of the child support proceeding, in other words, to ensure that there is income or assets against which the child support can be enforced.

• Facilitate service of documents.

You will notice a lot of verbs like “help,” “encourage,” and “facilitate” in that list. The United States would have preferred stronger language but that was one of the compromises we made in order to ensure the Convention included a detailed list of responsibilities.]
7.22 REQUESTED CENTRAL AUTHORITY AND POWER OF ATTORNEY

Ordinarily, a requested Central Authority will process applications quickly without the need for any additional formal documents requesting assistance. However, under certain countries’ domestic law, such as Sweden, there must be a power of attorney in order for the Central Authority to act on behalf of the applicant. In that limited circumstance, Article 42 permits a Central Authority of the requested State to require a power of attorney from the applicant in order to represent the applicant before authorities. The Country Profile will let you know whether a power of attorney form is required.

7.23 LAW OF FORUM

Regardless of what country issued the support order, the competent authority in the requested State will apply its country’s laws and defenses regarding the availability of modification. If the competent authority modifies the order, it will determine the support amount based on the laws in its country. Check the Country Profile to learn more about a country’s modification laws, including whether it uses support guidelines.
7.24 OTHER RELEVANT CONVENTION PROVISIONS

- Physical presence of child or applicant not required (Art. 29)

Article 6 requires the requested Central Authority to initiate or help initiate any necessary proceedings in the requested State related to the Application for Modification. If there is a proceeding, Article 29 prohibits any requirement that the child or applicant be physically present in the proceeding.

7.25 MODIFICATION OF ARREARS

- Some Convention countries consider cancellation of support arrears as an appropriate request in a modification application
- Modification of arrears is not permitted under U.S. law

Some Convention countries allow cancellation of support arrears through a modification action. However, that is not permitted in the United States. Under federal law, support arrears are vested judgments in favor of the obligee and retroactive modification, prior to the date of the filing of the petition, is prohibited.\(^\text{15}\) Therefore, if a requested State modifies arrears under a U.S. order that has been transmitted to the country for modification, it is unlikely a U.S. tribunal will later recognize that arrears modification.

\(^\text{15}\) See 42 U.S.C. § 666(a)(9).
7.26 ESTABLISHMENT VERSUS MODIFICATION

In some countries, the domestic law only allows the competent authority to make a new decision, and not a modification decision. As the result would be the same regardless of the terms used, a Contracting State would be in compliance with its obligation to provide for modification decisions under the Convention if it made a new decision upon a request for a modification decision. The Diplomatic Session agreed that the word “modification” should include the concept of “making a new decision” if the domestic law of a Contracting State permits only this concept instead of “modification.”16

7.27 MODIFIED OR NEW ORDER

If the competent authority in the requested State modifies the order, this modified order constitutes a Convention order. Should the creditor need to enforce this order in a different Convention country, the creditor may transmit the order along with a Convention Article 10 application for recognition and enforcement to the Convention country. Similarly, if the modification reduces or suspends the debtor’s support

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16 See Para. 264 of the Explanatory Report.
obligation, the debtor may send an application for recognition and enforcement of the modified order to the Convention country that originally issued the order.17

7.28 CASE SCENARIOS – OUTGOING APPLICATION

The next slides present two case scenarios.

In the first scenario, the obligee resides in Virginia. She has a support order that was issued in South Carolina. The obligor lives in England. The obligee wants an increase in support. Assuming she receives IV-D services, what steps should the child support agency take to help her seek a modification?

**Note to Trainer** – After allowing time for the participants to think about the appropriate answer, you should identify the steps the child support agency needs to take.

The first step is to review the application, asking the following questions:

- Where was the decision made? The decision was made in South Carolina.

- Where does the obligee now reside? The obligee resides in Virginia.

- Where does the obligor reside? The obligor resides in England, which is a Convention country.

- What is the appropriate forum for modification?

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17 See Para. 268 of the Explanatory Report.
Since the order is a U.S. order, does the issuing state of South Carolina have continuing, exclusive jurisdiction (CEJ) to modify the order? No, South Carolina lacks CEJ because no party or child resides in South Carolina.

Does UIFSA Section 611(f) apply? Yes, because the obligee continues to reside in the United States and the obligor resides outside the country.

Is there a U.S. forum for modification? Yes, based on Section 611(f) of UIFSA, the child support agency can send a UIFSA request to South Carolina asking it to modify its own order.

Assume South Carolina acts on the request by New York to modify the South Carolina order.

- How will South Carolina provide notice to the obligor?

  Notice must be provided based on South Carolina law. If needed, under Article 7 of the Convention, South Carolina can ask the Central Authority for England to help locate or contact the obligor or facilitate the service of documents.

- If the obligee wants to enforce the modified order in England, where the obligor has income and assets, what steps should the Virginia child support agency take?

  Because the modified order is a Convention order, the child support agency can transmit an application for recognition and enforcement of the modified order to England.]
In this scenario, the obligee resides in New York. She has a support order that was issued in Italy. The obligor lives in France. The obligee wants an increase in support. Assuming she receives IV-D services, what steps should the child support agency take to help her seek a modification?

[Note to Trainer] – After allowing time for the participants to think about the appropriate answer, you should identify the steps the child support agency should take.

- The first step is to review the facts of the case. The main questions to ask are:
  - Where was the decision made? The decision was issued in Italy.
  - Where does the obligee now reside? The obligee resides in New York.
  - Where does the obligor reside? The obligor resides in France, which is a Convention country.
  - Based on those facts, what is the appropriate forum for modification?

The obligee can seek modification in a country with jurisdiction over the obligor. Because she will ultimately need to enforce the order in the country where the obligor has income and assets, the agency may determine that the most appropriate forum for modification is France, where the obligor now resides.
The next step is to prepare the application.

- Check the Country Profile for France to determine the documents it requires. For example, does it require a certified copy of the support order?
- Obtain any needed translations.

The third step is to review the application to ensure it complies with Convention requirements.

The fourth step is to transmit the application to the Central Authority in France.

What steps should the Central Authority in France take?

- Review application
- Send acknowledgment
- Initiate or facilitate initiation of proceedings
- Send status of application

What steps should the competent authority take?

[Note to Trainer – After allowing time for the participants to think about the appropriate answer, you should identify the steps the requested Central Authority in France should take.

It should timely acknowledge the application and promptly forward the application and documents to the competent authority in France with authority to modify the support order. Within three months of the acknowledgment, it should send New York a status update.]
What steps should the competent authority in France take?

[Note to Trainer – After allowing time for the participants to think about the appropriate answer, you should identify the steps the competent authority in France should take.

It will follow French law regarding modification, including its jurisdictional rules. French law will govern whether the Italian order must first be recognized before it can be modified. Under many countries’ laws, that step is not needed. French law will also govern the availability of modification and the determination of any modified amount.]

If the obligee wants Italy to recognize the modification of its order, what steps should the New York child support agency take?

[Note to Trainer – After allowing time for the participants to think about the appropriate answer, you should identify the steps the New York child support agency should take.

Because the modified order is a Convention order, the child support agency can transmit an application for recognition and enforcement of the modified order to Italy. In that case, it will need the competent authority in France to also complete a Statement of Enforceability and, depending on the circumstances, a Statement of Proper Notice.]
7.29 NEXT TRAINING DATES AND MODULES

You probably have lots of questions about implementing the Convention in the United States. OCSE’s Division of Policy and Training will continue to issue guidance on these implementation issues.

To address immediate needs, the Division is hosting this webinar training series. This module discussed an outgoing Application to Modify a Support Decision. The next module will discuss issues related to implementation of the Hague Convention in the United States.

Please note the dates and time for the next trainings on your calendar.

At any point, please do not hesitate to contact OCSE at the address on the slide with questions you may have or feedback on the webinar content.

Thank you for attending this webinar.