

OFFICE OF CHILD SUPPORT ENFORCEMENT

An Office of the Administration for Children & Families

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Uniform Interstate Family Support Act (2008) and Hague Treaty Provisions

IM-15-01

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INFORMATION MEMORANDUM

IM-15-01

DATE: April 13, 2015

TO: State Agencies Administering Child Support Enforcement Plan under Title IV-D of the Social Security Act and Other Interested Parties

SUBJECT: Uniform Interstate Family Support Act (2008) and Hague Treaty Provisions

PURPOSE

As described in [AT-14-11](http://www.acf.hhs.gov/programs/css/resource/pl-113-183-uifsa-2008-enactment) (<http://www.acf.hhs.gov/programs/css/resource/pl-113-183-uifsa-2008-enactment>), P.L. 113-183, the *Preventing Sex Trafficking and Strengthening Families Act* (<http://www.gpo.gov/fdsys/pkg/PLAW-113publ183/pdf/PLAW-113publ183.pdf>), requires all states to enact any amendments to the Uniform Interstate Family Support Act "officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws" (referred to as *UIFSA 2008* ([\). The UIFSA 2008 amendments integrate the appropriate provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, referred to as the treaty.](http://www.uniformlawcommission.com/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008))

P.L. 113-183 requires that UIFSA 2008 must be in effect in every state "no later than the effective date of laws enacted by the legislature of the State implementing such paragraph, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act." If a state has a 2-year legislative session, "each year of the session shall be deemed to be a separate regular session of the State legislature."

Recent legislative discussions and questions about the treaty have raised several questions we would like to clarify in this document. This document is divided into three sections:

- Section I Treaty Provisions and Requirements
- Section II United States Involvement in the Development of the Treaty
- Section III Treaty Countries and the Process for Ratification

SECTION I: TREATY PROVISIONS AND REQUIREMENTS

How will the treaty help U.S. children?

- The treaty will greatly expand the number of countries that will recognize and enforce U.S. child support orders. Therefore, more U.S. children will be able to obtain financial support, regardless of where their parents live.
- The treaty requires a country to provide cost-free services to applicants from treaty countries. The U.S. already provides such services to parents in other countries. Once the U.S. becomes a party to the treaty, other treaty countries will have to provide cost-free services to our residents.
- The treaty establishes standard procedures for processing international cases, which will vastly improve efficiency and timeliness, and reduce the costs of establishing and enforcing orders.

Why did Congress support this treaty?

- The treaty emphasizes parental responsibility for the financial support of children.

- It only requires the U.S. to recognize and enforce child support orders that are based on U.S. due process requirements regarding personal jurisdiction, notice, and an opportunity for a hearing.
- Before a country can ratify the treaty, the country must provide evidence that its laws and procedures meet the treaty requirements, including parentage establishment, recognition and enforcement of support orders for children up to the age of 21, cost-free services, notice and an opportunity for a hearing or review, and protection of identifying information where there is a risk of harm to the parent or child.
- The treaty contains strong administrative cooperation requirements and timeframes.
- The treaty will result in child support services that are consistent, affordable, and timely.
- There will be post-treaty review and monitoring of countries' performance under the treaty.

Under the treaty, must a state enforce any support order that is transmitted from another treaty country?

- No. Under UIFSA 2008 a state tribunal may refuse to recognize and enforce a foreign support order on its own motion or, if challenged by a party, if the order is "manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard."
- In addition, a tribunal may refuse recognition and enforcement of the order for any of the grounds set forth under UIFSA 2008 (§708(b)).
- When a custodial parent in a treaty country asks a U.S. tribunal to recognize and enforce a support order issued by a treaty country, the noncustodial parent in the U.S. will receive notice of the request. The noncustodial parent has an opportunity to contest the recognition and enforcement of the order.
- If a U.S. tribunal cannot recognize a foreign support order, an effort will be made to establish an order in this country.
- The goal is to ensure that, where there is a support obligation, the child(ren) of treaty countries receive support through a uniform, simple, efficient, accessible, fair, and cost-free process.

Why is the treaty being implemented by state law?

- The Hague Maintenance Convention, like many treaties, is not "self-executing"; legislation is required to implement its provisions.
- Child support enforcement in the United States has traditionally been the province of state and local jurisdictional authorities. There are many commonalities between the states in how such obligations are established and enforced, but there is no uniform body of federal child support law.
- Beginning in 1984, however, Congress determined that because of the tendency of parents to travel from state to state, and the fact that parents of a child often live in different states, it would be highly desirable to have a relatively few "mandatory state laws" that all states must enact. These laws and procedures apply to such basic principles as establishment of paternity to age 18, recognition of income withholding orders issued by sister states, and requirements that all states have certain common enforcement remedies.
- To assure enactment of these state laws, Congress tied funding for states' child support and welfare programs to the enactment of such legislation. The first mandatory state law requirements were established in 1984 in legislation that was passed unanimously by both the Senate and the House of Representatives and signed by President Reagan.
- Since 1992, states have used UIFSA to process interstate and international child support cases. In 1996, as a part of the Welfare Reform legislation passed by Congress, it was mandated that all states enact UIFSA to improve inter-jurisdictional case processing.
- Out of deference to the role of states as the locus of jurisdiction for child support and previous success using UIFSA to implement the interstate child support provisions of welfare reform, there was consensus among the Uniform Law Commission (ULC), the U.S. Department of State, the Federal Office of Child Support Enforcement (OCSE), and state and local child support practitioners that UIFSA would be the appropriate vehicle to integrate the treaty into U.S. law. Implementation of the treaty through state law is more consistent with existing family law, as well as more efficient and effective, rather than through a federal law that would govern a segregated portion of international child support cases.
- Because of that early decision, the U.S. delegation was able to ensure that the treaty included UIFSA's process for recognition and enforcement of orders, recognized UIFSA's rules on personal jurisdiction, and incorporated many of UIFSA's procedures.

Does implementation of the treaty open federal databases to foreign countries?

- No. Nothing in the treaty or UIFSA 2008 amends the privacy and security requirements that apply to federal and state child support programs or expands access to databases beyond what already exists.
- Federal law and regulation contain tight restrictions on access to the Federal Parent Locator Service (FPLS) information, which includes the National Directory of New Hires, and other federal databases. Federal law imposes substantial criminal and civil penalties for unauthorized use or disclosure of information.
- If requested by a foreign treaty country unsure of where to refer an order for enforcement in the U.S., OCSE will search the FPLS and is authorized to provide only the state of residence of an individual sought for child support purposes. The foreign treaty country would then send a request for services directly to that specific state.

How do UIFSA 2008 and the treaty differ from current law?

While much of the treaty is based on the prior versions of UIFSA, the treaty differs from current state law in the following ways:

- Under UIFSA 2008, state child support agencies will no longer be obliged to provide child support services to absolutely anyone who applies from any other country, as is required under current law. The treaty permits states to reject applications for services from non-treaty countries if they choose to do so. (It will be states' option if they decide to continue to provide universal child support enforcement services to everyone.)

- The treaty provides a longer time period for a parent to challenge the recognition and enforcement of a support order. The period is extended in recognition of the international residence of parties.
- The treaty provides that if a tribunal does not recognize a treaty support order because there was a lack of personal jurisdiction, and the debtor is a resident of the state, it will take all appropriate measures to establish an enforceable support order.
- UIFSA 2008 includes new provisions that incorporate these treaty requirements into UIFSA. All of these requirements were supported by the U.S. delegation during the negotiation of the treaty.
- It is also important to highlight what the treaty does not do. The treaty does not change existing UIFSA provisions and U.S. law regarding personal jurisdiction, due process protections of notice and an opportunity for a hearing, and application of U.S. law concerning enforcement of the order.

SECTION II: UNITED STATES INVOLVEMENT IN THE DEVELOPMENT OF THE TREATY

Who served on the United States delegation for the treaty negotiations?

- The United States participated in negotiations for the treaty from 2003 to 2007.
- In addition to official members of the U.S. delegation from the U.S. Department of State and OCSE, state and local child support experts participated in treaty negotiations as representatives of the National Child Support Enforcement Association, International Association of Women Judges, International Bar Association, International Academy of Matrimonial Lawyers, and the Uniform Law Commissioners.
- Members of the U.S. delegation served as members of the Convention drafting committee, and co-chairs of the Forms Working Group and Administrative Cooperation Working Group. The co-chair of the Country Profile Committee was a member of the National Child Support Enforcement Association delegation.

Why has the U.S. previously been unable to join a multilateral child support treaty?

- The U.S. is not a party to any existing international child support treaty because prior treaties had a very limited scope and did not comply with U.S. due process requirements concerning personal jurisdiction.
- In the U.S., a court or administrative authority cannot establish an order to pay child support unless there is personal jurisdiction over the noncustodial parent. In most of the rest of the world the concept of "child-based" jurisdiction governs. If the custodial parent and child live in the country, that country's courts have authority to enter a support order, notwithstanding the possibility that the noncustodial parent has never been in the country, has never sent support for the child there, or has never had any other significant contacts with the country.
- This long-standing fundamental problem of basic differences in the way our judicial systems operate was resolved, finally, with a simple solution that became Article 20, paragraph 4 of the treaty. The United States will take a reservation stating that it will not be bound to recognize and enforce a foreign support order, unless it determines that the other country had the necessary "minimum contacts" with the noncustodial parent that would satisfy requirements in this country for obtaining personal jurisdiction. However, the U.S. agreed that, if it could not recognize such a foreign order, and it has personal jurisdiction over the other parent in this country, then it would initiate proceedings, in accordance with the Constitution of the United States to establish a support order in this country that it could enforce.

Why did the United States participate in treaty negotiations?

- Under current law, the U.S. has entered into bilateral arrangements with 14 countries and 12 Canadian provinces. Those countries are: Australia, the Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, the Slovak Republic, Switzerland and the United Kingdom.
- However, country-by-country negotiations are difficult and time-consuming, but many foreign countries will not enforce U.S. support orders in the absence of a treaty obligation or bilateral arrangement.
- The U.S. participated in negotiation of the new Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance for three main reasons:
 - More U.S. families will receive child support, with no legal fees, when there is a treaty obligation.
 - By playing a lead role in negotiating and drafting, the U.S. could ensure that the treaty would meet U.S. due process requirements.
 - By playing a lead role in negotiating and drafting, the U.S. could ensure that the treaty would be practical, effective, and based on practices we have found successful in the United States.

SECTION III: TREATY COUNTRIES AND THE PROCESS FOR RATIFICATION

What countries have ratified the treaty?

- The European Union (27 countries) ratified the treaty in 2014. In addition, Norway, Albania, Ukraine, and Bosnia and Herzegovina have ratified the treaty. See http://www.hcch.net/index_en.php?act=conventions.text&cid=131 (http://www.hcch.net/index_en.php?act=conventions.text&cid=131) for the text of the treaty and for additional information.

Can any country join the treaty?

- No. A country can only join the treaty after providing evidence that it has laws and procedures complying with treaty requirements.

What steps occurred after the conclusion of treaty negotiations?

- The treaty was finalized in 2007.
- In 2009 the U.S. Senate Foreign Relations Committee conducted hearings and in 2010 the full Senate gave its Advice and Consent to the ratification of the treaty. The House of Representatives passed implementing federal legislation in 2013. In 2014 both the House of Representatives and the Senate passed implementing federal legislation. The bi-partisan bill is titled *Preventing Sex Trafficking and Strengthening Families Act*, Pub. L. 113-183.

How will the treaty be implemented within the United States?

- In 2010 the Senate gave its Advice and Consent for the President to proceed towards ratification of the treaty on the International Recovery of Child Support.
- Congress passed federal legislation in 2014 to improve the international recovery of child support. That legislation authorizes the Secretary of HHS to ensure compliance of the U.S. with the multilateral child support treaty when it is ratified and requires that all states enact UIFSA 2008 as a condition of continuing receipt of federal funds.
- Because child support in the U.S. is handled at the state level (not federal), the treaty must be implemented by state law.
- All states already use UIFSA to process interstate and international cases. The 2008 amendments to UIFSA add provisions that meet treaty requirements concerning the recognition and enforcement of treaty orders.
- Once all states have enacted UIFSA 2008, the President will sign the instrument of ratification, and deposit that instrument as required for the U.S. to become a party to the treaty.

INQUIRIES: Please contact your OCSE Regional Program Manager.

Sincerely,

Vicki Turetsky
Commissioner
Office of Child Support Enforcement

cc: Tribal IV-D Directors
ACF/OCSE Regional Program Managers