

BEST PRACTICE GUIDE

Determination of Controlling Order and Reconciliation of Arrears

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Introduction

Establishment and enforcement of child support obligations was the purpose of 1975's Title IV-D of the Social Security Act. The child support enforcement program is a joint undertaking involving Federal, state and local cooperative effort. The Office of Child Support Enforcement (OCSE) within the Department of Health and Human Services' (DHHS) Administration of Children and Families (ACF) provides oversight of the program. One facet of the state and local child support enforcement programs is the collection of support when the custodian and non-custodial parents live in different states.

Mobility of custodians and non-custodial parents may create a challenge for child support enforcement programs. In the past, a new order was often entered whenever the custodian or non-custodial parent moved between states, sometimes and, even between counties. With the involvement of multiple jurisdictions, orders covering overlapping time periods were not uncommon. Arrears calculations were understandably difficult.

Over the years these challenges have been addressed by the Uniform Reciprocal Enforcement of Support Act (URESA), Revised Uniform Reciprocal Enforcement of Support Act (RURESA) and the Uniform Interstate Family Support Act (UIFSA) and by the Passage of Public Law 103-383, the Federal Full Faith and Credit for Child Support Orders Act (FFACCSOA).

FFACCSOA restricted creation of new orders and required determination of the Controlling Order. Successful determination allows accurate calculation of child support arrears as well as registration, enforcement and/or modification of the right order.

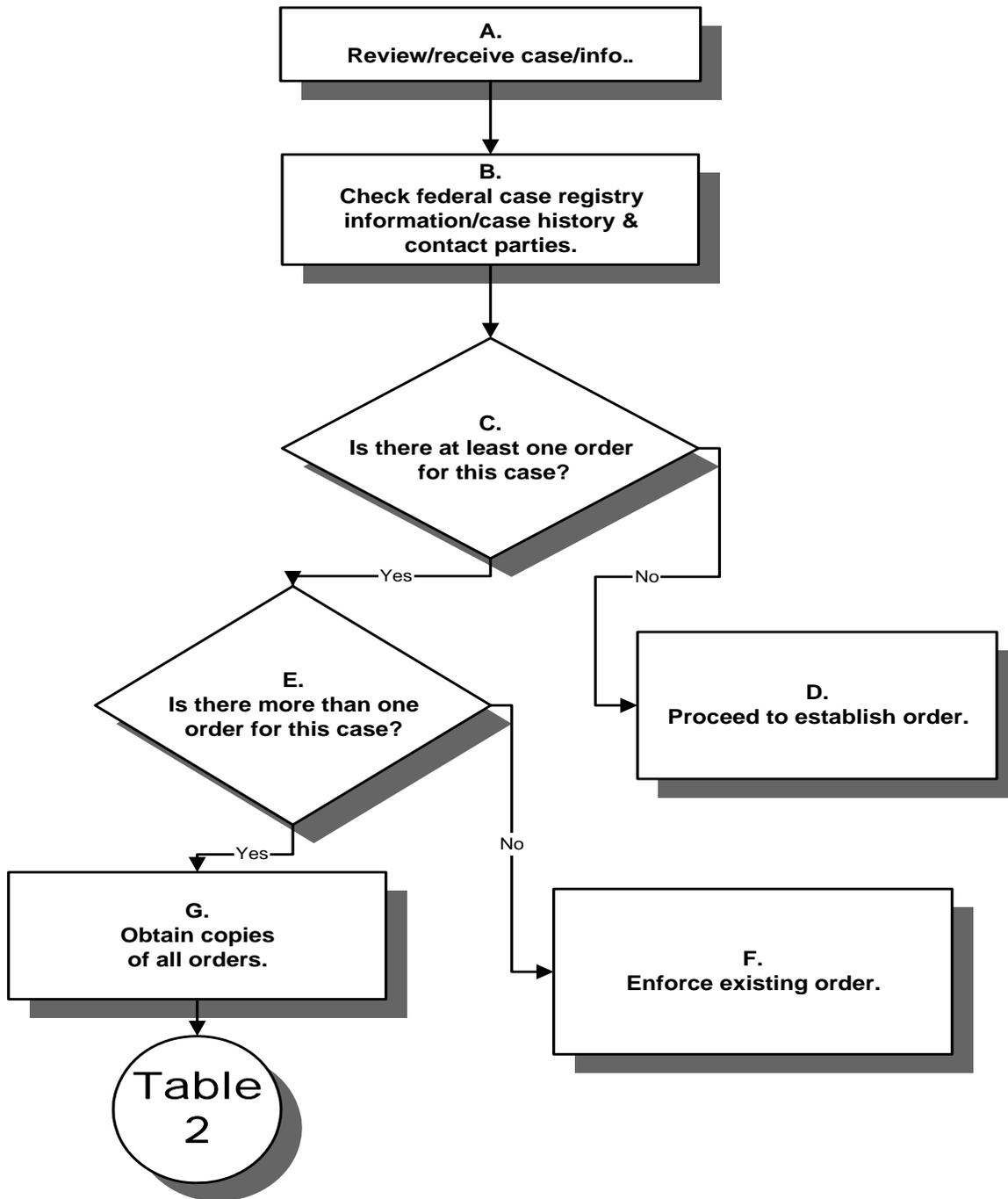
This Determination of Controlling Order (DCO) and Reconciliation of Arrears (ROA) Guide is offered as a tool for child support enforcement agencies in their effort to establish and enforce child support for the benefit of our nation's children.

This Guide is intended as a broad framework for processing determinations of controlling orders and reconciliation of arrears. It is written so that both judicial and administrative states may be able to use it. For the reason, finite details such as the name of pleadings/orders, service methods, and form numbers are not included.

**DETERMINATION
OF
CONTROLLING ORDER**

**DETERMINATION OF
CONTROLLING ORDER
(DCO), Table 1: Initial
Review of an Existing
Case, or Receiving a New
Case**

DCO: INITIAL REVIEW Flowchart 1



DETERMINATION OF CONTROLLING ORDER (DCO), TABLE 1

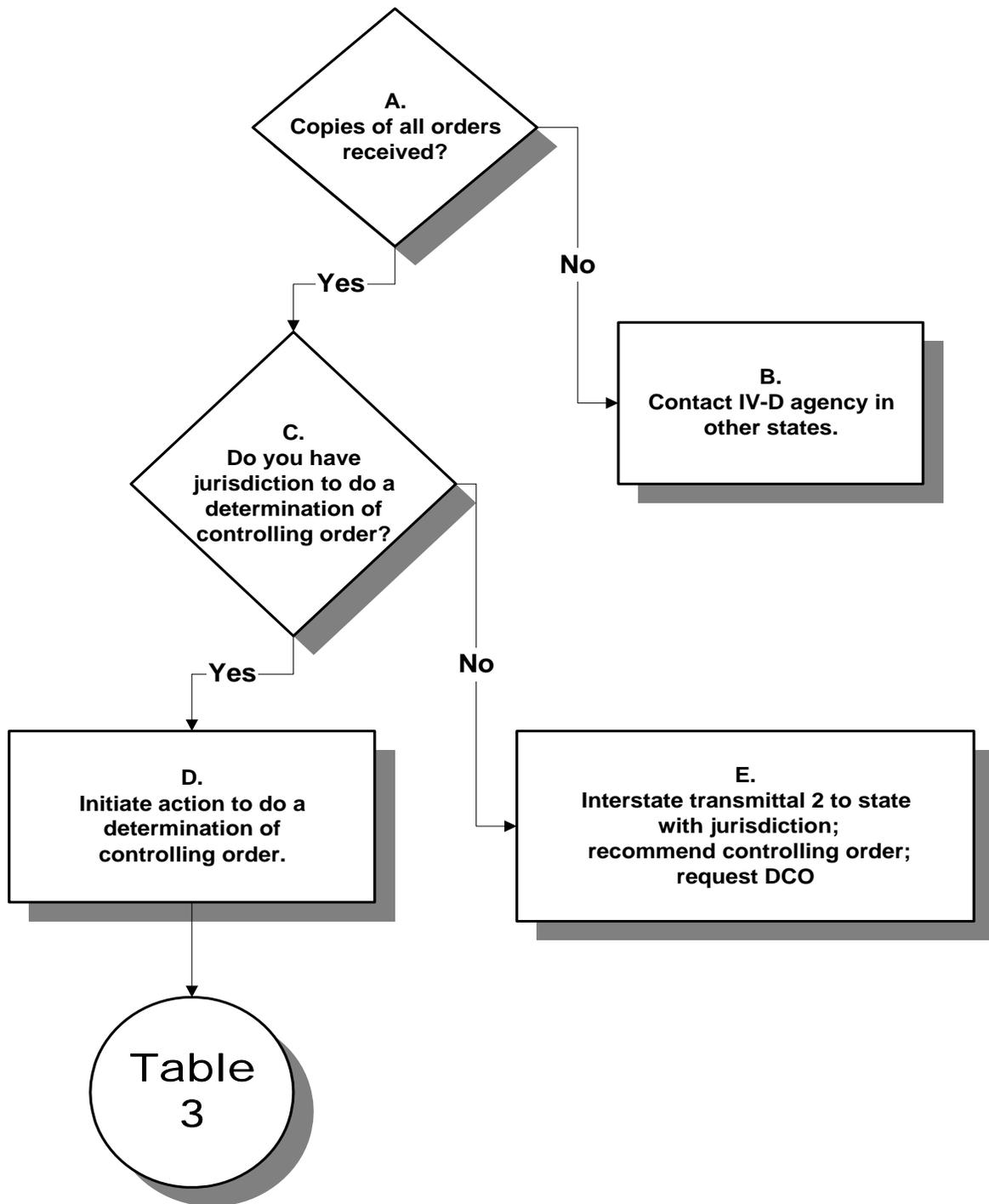
- A. Use this process any time you are reviewing an existing case, when you receive a new case or when you receive information about multiple orders on a case.
- B. Check the Federal Case Registry information to see if other states have flagged the case with notice that they have an order. You should also check your case's computer history to see if there are multiple orders in your own state. Check application or referral information to determine if there are multiple orders. Contact both the obligor and obligee to see if there is other order information.
- C. Determine whether there is an order for the same family unit.
- D. If there are no orders for the case, you must establish one.
- E. Determine whether more than one order exists for the same family unit. If it cannot be determined, enforce until notice of multiple orders is received.
- F. If there is only one order, that order should be enforced. Also If it cannot be determined that there is more than one order, enforce the known order until notice of multiple orders is received.
- G. Once you determine that there are multiple orders for the case, you must obtain copies of all orders. You can obtain copies either directly from states' court systems; use CSEnet, or make a request to the IV-D agency handling the county in which the order is entered.

DCO Table 1, FREQUENTLY ASKED QUESTIONS

- Q1. Do we have to obtain certified copies of all orders?
- A1. No. For a controlling order determination, you do not have to have certified copies of orders.
- Q2. Do you have to register all orders in order for the tribunal to consider making a DCO?
- A2. No, registration of all orders is not required.
- Q3. Must we gather all orders and can we only request orders that contain or set a determinable support obligation that is prospectively enforced?
- A3. You must gather any and all orders which order support, regardless of whether that order is being prospectively enforced.

**DETERMINATION OF
CONTROLLING ORDER
(DCO), Table 2:
Jurisdiction Review**

DCO: JURISDICTION REVIEW Flowchart 2



DCO, FLOWCHART 2

DETERMINATION OF CONTROLLING ORDER (DCO), TABLE 2

- A. If you determine that there are multiple orders for the case, you must obtain copies of all orders. You can obtain copies either directly from states' court systems; use CSEnet, or make a request to the IV-D agency where the order is entered. Check to see that you have received copies of all orders.
- B. If you have not yet received copies of all orders, contact the IV-D agency in the Order State to see if they can assist you.
- C. Once you have copies of all orders, determine whether you have jurisdiction to do a controlling order determination. To have jurisdiction, you must have either personal jurisdiction over both parties, or you must have personal jurisdiction over one party and a request or interstate referral from the other.
- D. If you have jurisdiction to do the determination of controlling order, initiate action to do so.
- E. If you do not have jurisdiction to do the determination of controlling order, send interstate transmittal #2 to the state with jurisdiction. Be sure to make a recommendation about which order you believe is the controlling order (see Table 3), and make it clear that you are requesting that they do a determination. Be sure to include copies of all orders, pay records, analysis and any documentation you used to make your recommendation.

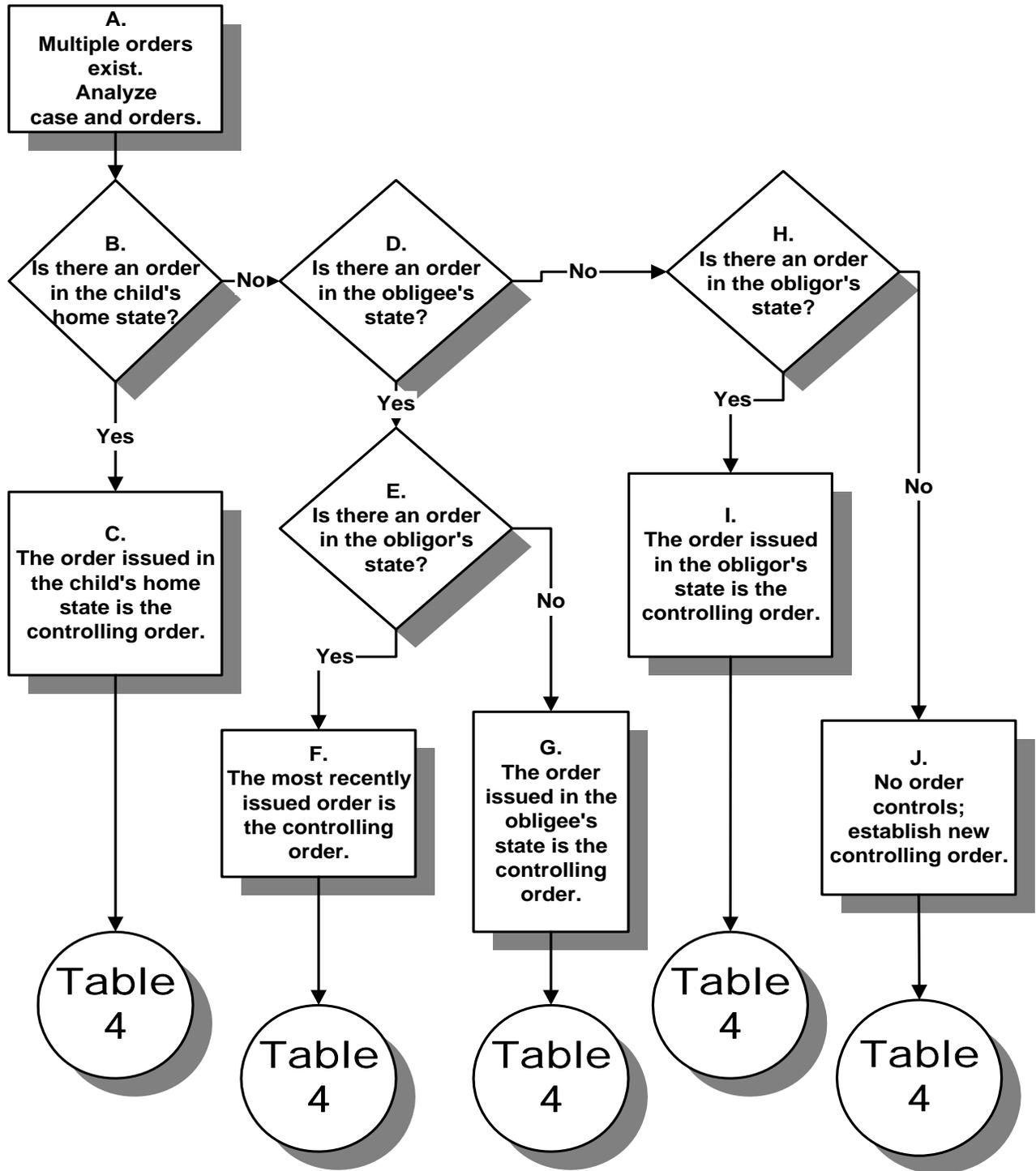
DCO Table 2, FREQUENTLY ASKED QUESTIONS

- Q1. If you are unable to obtain copies of all orders, can you proceed anyway?
- A1. Yes, if you are able to obtain reliable information about the order and its provisions, and location of the parties. “Reliable information” includes (but is not limited to) information obtained from computer records, court files and other IV-D agency records.

**DETERMINATION OF
CONTROLLING ORDER
(DCO), Table 3: Controlling
Order Analysis /
Determination**

DCO: CONTROLLING ORDER ANALYSIS / DETERMINATION

Flowchart 3



DCO, FLOWCHART 3

DETERMINATION OF CONTROLLING ORDER (DCO), TABLE 3

- A. Multiple orders exist. Review all information on the case and all of the orders.
- B. Determine whether there is an order in the child's home state. Note: "home state" means the state where the child lived for at least six months immediately preceding the time you are doing the determination or, if the child is not yet six months old, the state where the child lived from birth.
- C. If there is an order in the child's home state, that order is the controlling order.
- D. If there is no order in the child's home state, determine whether there is an order in the obligee's state, and if so, when it was entered.
- E. If there is no order in the child's home state, and there is an order in the obligee's state, determine whether there is also an order in the obligor's state, and if so, when it was entered.
- F. If there is no order in the child's home state, and there is an order in both the obligee's and obligor's states, the order that was issued most recently is the controlling order.
- G. If there is no order in the child's home state, there is an order in the obligee's state, but no order in the obligor's state, the order in the obligee's state is the controlling order.
- H. If there is no order in the child's home state, and no order in the obligee's state, determine whether there is an order in the obligor's state.
- I. If there is no order in the child's home state and no order in the obligee's state, but there is an order in the obligor's state, the order in the obligor's state is the controlling order.
- J. If there is no order in the child's home state, no order in the obligee's state and no order in the obligor's state, there is no controlling order and you must establish a new order, which will become the controlling order.

DCO Table 3, FREQUENTLY ASKED QUESTIONS

Q1. When examining all of the orders on a case, should you also look at the time frame in which the order was entered and make a determination about its validity?

A1. No. All orders should be afforded full faith and credit. There should be presumption for all orders that the tribunal had jurisdiction when entering them.

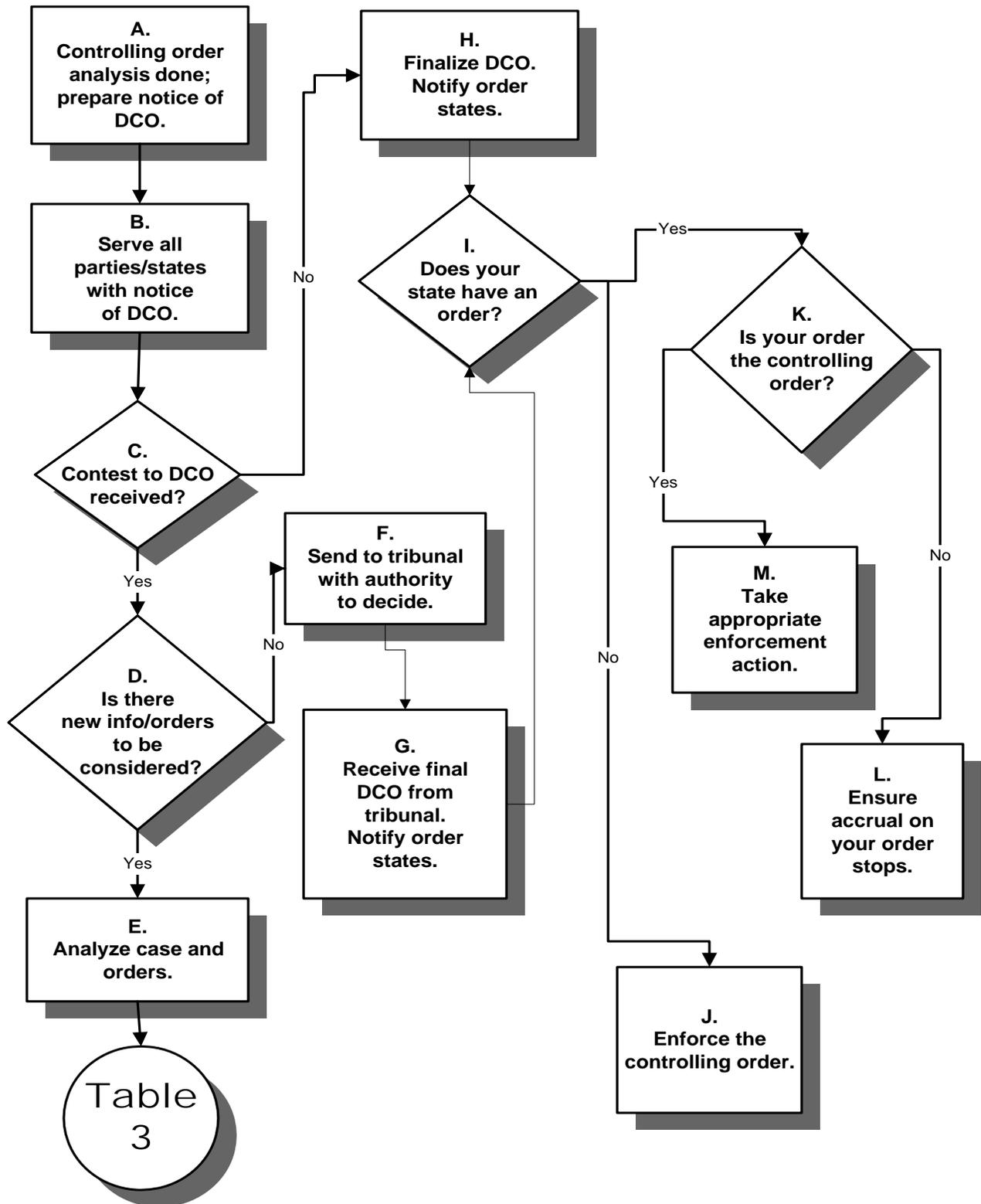
Q2. When an order from another state is registered in the home state of the child, obligee or obligor, is it considered an order issued in that state?

A2. No.

**DETERMINATION OF
CONTROLLING ORDER
(DCO), Table 4: Notice of
Determination**

DCO: NOTICE OF DETERMINATION

Flowchart 4



DCO, FLOWCHART 4

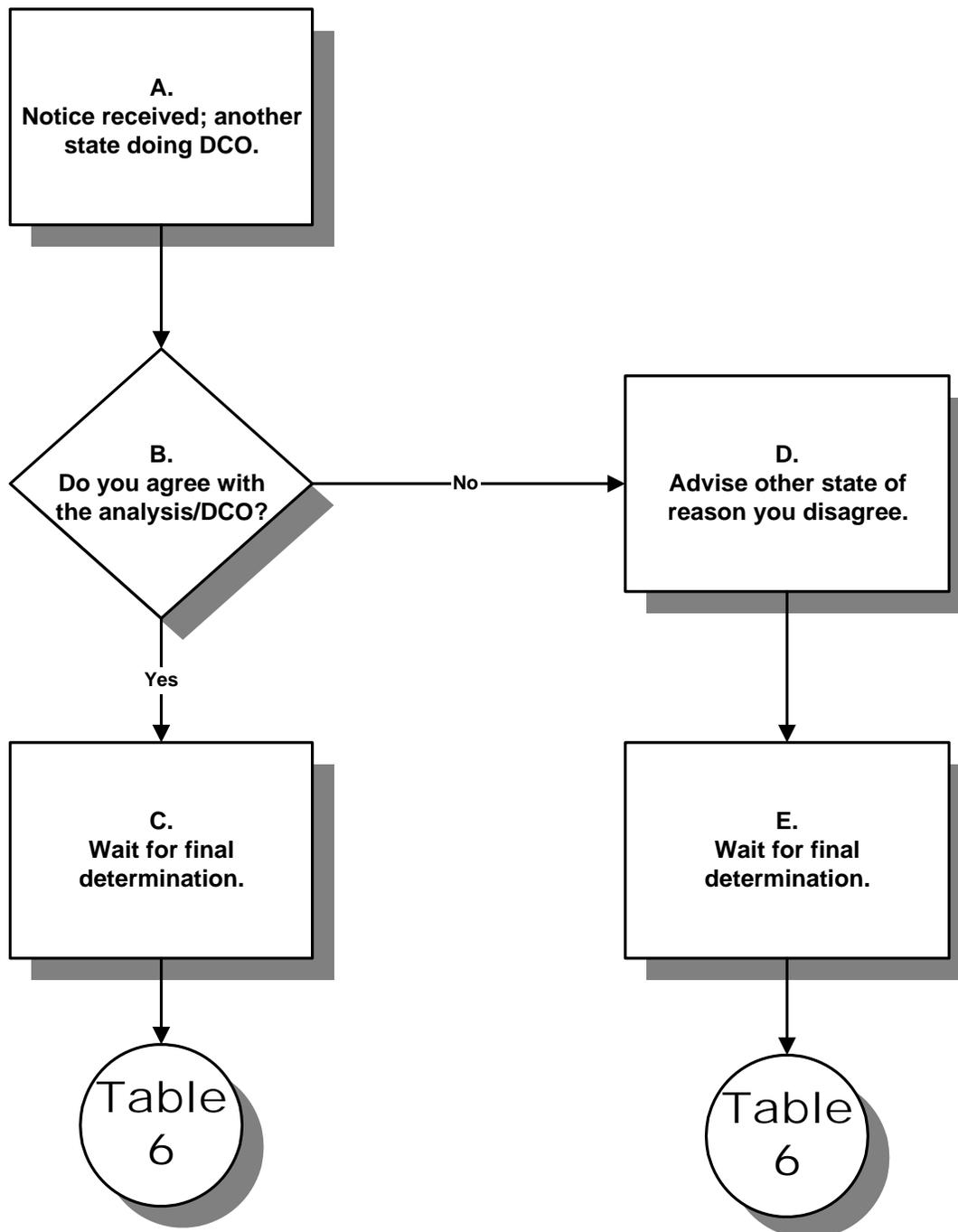
DETERMINATION OF CONTROLLING ORDER (DCO), TABLE 4

- A. Once you have identified the controlling order (or you have identified that there is no controlling order and a new one must be established), prepare a notice of your determination. The notice should include information about all of the orders which were considered, what your determination was and why, and the effect of your determination on other orders. The notice should also include any appeal or contest rights of the parties.
- B. Serve your notice of determination on all parties. Mail the notice to all states with an order (send it to the Central Registry for the state).
- C. Check to see if a contest to your determination is received.
- D. If a contest is received, check to see if the party/state objecting has new or additional information to consider, including information about other orders.
- E. If new or additional information is provided, analyze the information and orders again, and make a new determination of controlling order, if appropriate.
- F. If no new or additional information is provided, submit the objection to the tribunal in your state with the authority to decide the issue.
- G. When the tribunal with jurisdiction to decide the controlling order makes its final determination, mail a certified copy of the determination to all states with an order.
- H. If no objection or contest to the determination is received, finalize your determination. Mail a copy of your final determination to all states with an order.
- I. Check to see if your state has one of the orders.
- J. If your state does not have an order, take whatever action is appropriate to enforce the controlling order.
- K. If your state has one of the orders, determine whether it is the controlling order.
- L. If your state's order is not the controlling order, make certain that the tribunal with the non-controlling order is notified to stop accrual on the order.
- M. If your state's order is the controlling order, take whatever action is appropriate to enforce the controlling order.

**DETERMINATION OF
CONTROLLING ORDER
(DCO), Table 5: Initial
Determination from
Another State**

DCO: INITIAL DETERMINATION FROM ANOTHER STATE

Flowchart 5



DCO, FLOWCHART 5

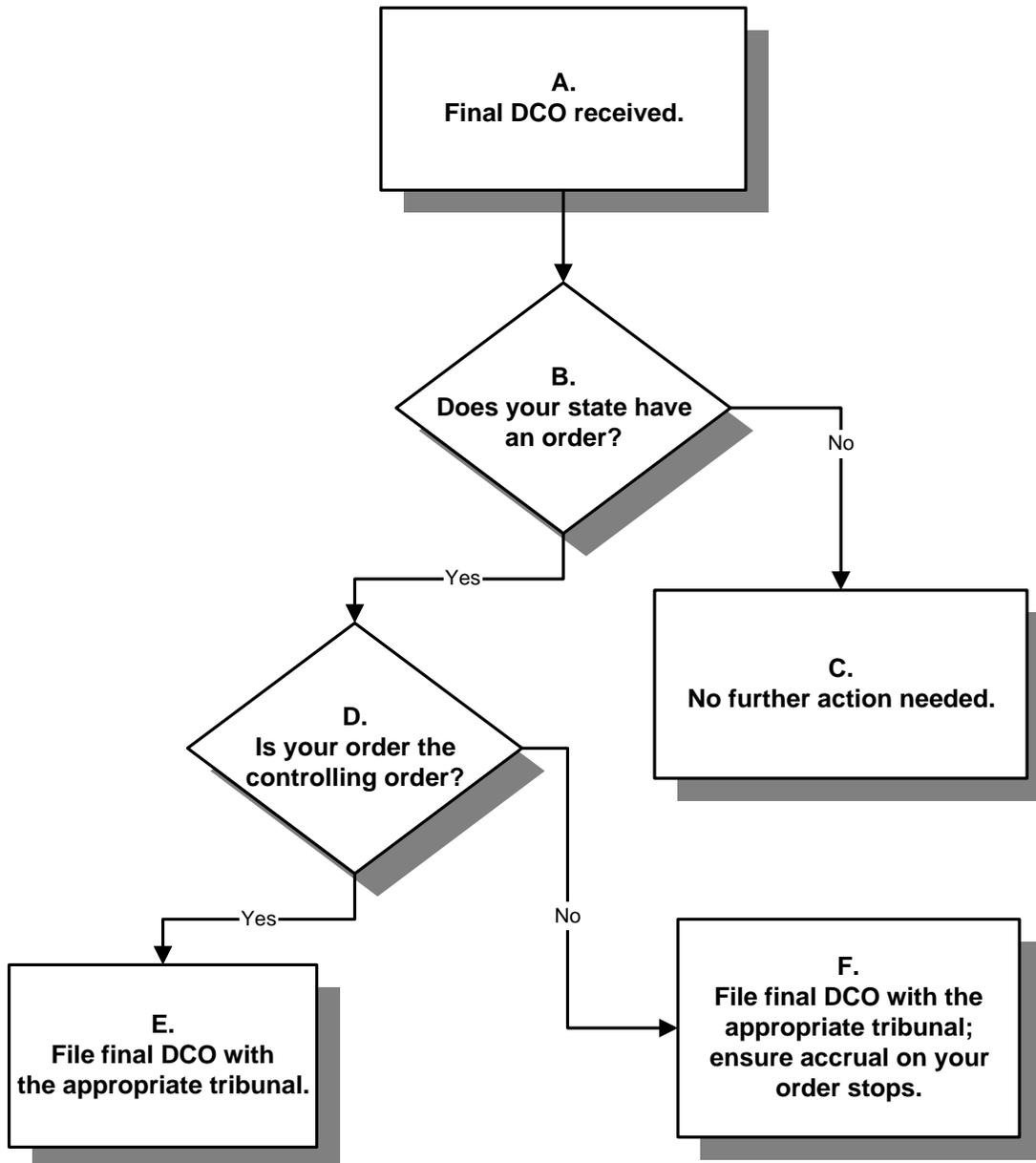
DETERMINATION OF CONTROLLING ORDER (DCO), TABLE 5

- A. You receive notice that another state is doing a determination of controlling order. Review the notice and orders.
- B. Assess whether you agree with the other state's determination.
- C. If you agree with the determination, do nothing more; wait for the final determination.
- D. If you disagree with the determination, notify the other state that you disagree and why you disagree. Be sure to include copies of any orders, analysis, declarations or other documentation you may have if they were not considered in the determination.
- E. Once you have notified the other state of your objection, wait for their final determination.

**DETERMINATION OF
CONTROLLING ORDER
(DCO), Table 6: Final
Determination from
Another State**

DCO: FINAL DETERMINATION FROM ANOTHER STATE

Flowchart 6



DCO, FLOWCHART 6

DETERMINATION OF CONTROLLING ORDER (DCO), TABLE 6

- A. You receive notice of a state's final determination of controlling order.
- B. Check to see whether your state has an order.
- C. If there is no order in your state, do nothing further.
- D. If you have an order in your state, look to see if your order was found to be the controlling order.
- E. If your order is the controlling order, file the final determination in the appropriate tribunal.
- F. If your order is not the controlling order, file the final determination with the appropriate tribunal and make sure that accrual of current support under your order is stopped.

RECONCILIATION OF ARREARS

RECONCILIATION OF ARREARS (ROA) OVERVIEW

Authority to determine the amount of arrears owed is recognized in UIFSA 1996 as a necessary part of interstate child support enforcement. The necessity of determining arrears in many interstate cases is further supported by amendments to the Uniform Act contained in UIFSA 2001. Consider the change in language in Section 305.

UIFSA '96 – *Section 305 b 4: a responding tribunal if authorized by other law may determine the amount of arrearages and specify a method of payment*

UIFSA '01 – *Section 305 b 4: if not prohibited by other law a responding tribunal may determine arrearages and specify payment*

Reconciliation of arrears also becomes a necessary part of the determination of controlling order for states that adopt UIFSA '01.

Section 207 f 3: a tribunal that determines the identity of the controlling order by order shall state: “the total amount of consolidated arrears and accrued interest if any under all of the orders after all payments made are credited as provided by section 209”.

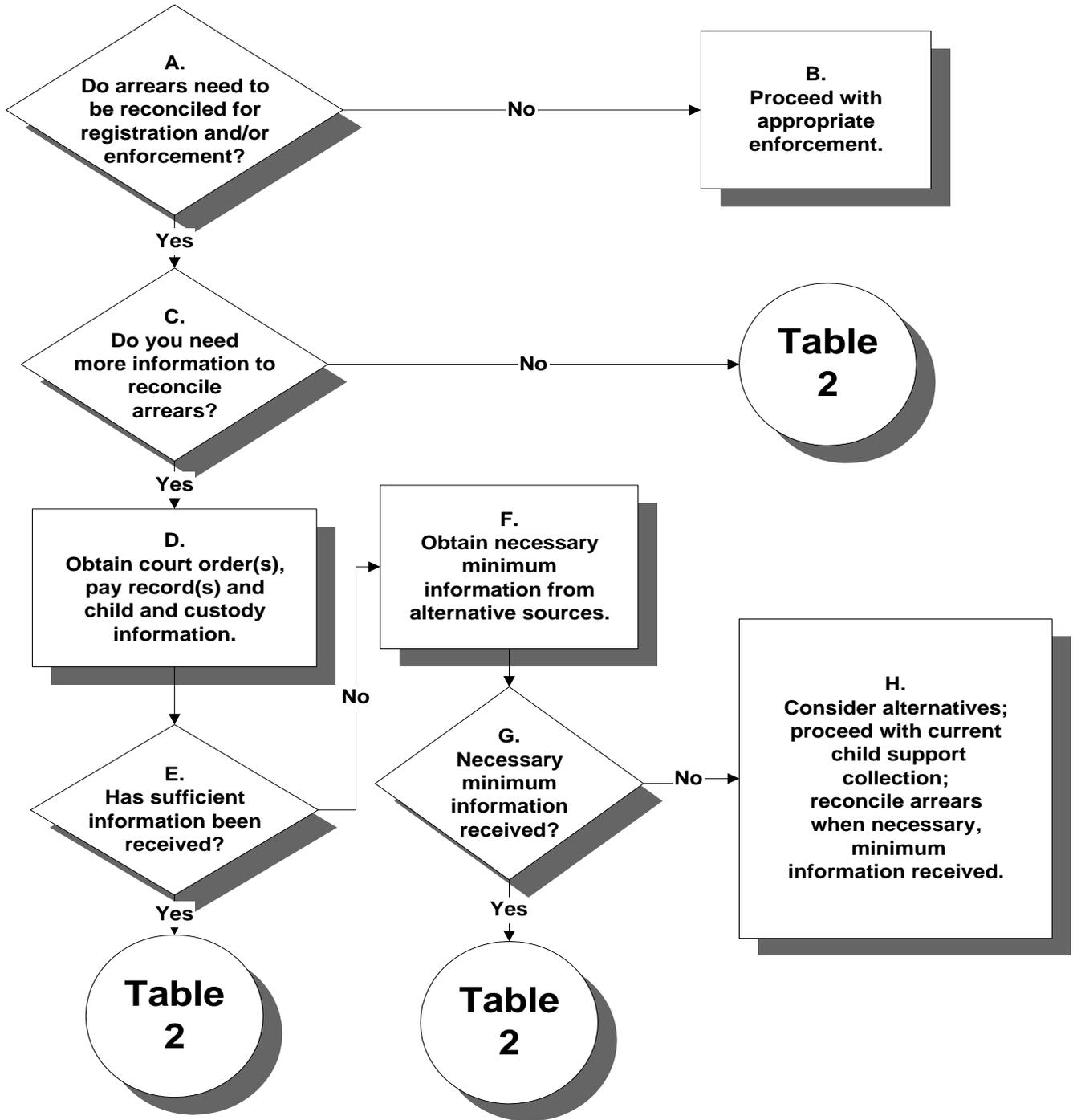
Once your state adopts UIFSA '01, any time you determine the controlling order, by order, you must consolidate the arrears, calculate the interest, and enter a judgment. Assuming that proper notice has been provided to all interested parties, a judgment for consolidated arrears must be recognized in a proceeding under UIFSA. You only need to do this once.

Section 602 has also been amended in UIFSA '01 to require that, if there are two or more orders in effect, the determination of controlling order and reconciliation of arrears will become part of the registration process.

**Recommendation / Best Practice:
ONLY RECONCILE ARREARS ONCE**

**RECONCILIATION OF
ARREARS (ROA), TABLE 1:
Obtaining Necessary
Information**

ROA: Obtaining Necessary Information Flowchart 1



ROA, FLOWCHART 1

RECONCILIATION OF ARREARS (ROA), TABLE 1

- A. Determine if arrears need to be reconciled for registration and/or enforcement.
- B. If not, proceed with the appropriate enforcement.
- C. If reconciliation is necessary, determine if you need more information. If not, proceed to Table 2.
- D. If more information is needed, obtain court orders, pay records, and child and custody information.
- E. Determine if sufficient information has been received. If so, proceed to Table 2.
- F. If more information is needed, obtain the necessary minimum information from alternative sources.
- G. Determine if sufficient information has been received. If so, proceed to Table 2.
- H. If the necessary minimum information has not been received, consider alternatives; e.g., proceed with current child support collection and reconcile arrears when the necessary minimum information is received. Also consider referring this issue through your chain of command to the state/agency with which you are working.

ROA Table 1, FREQUENTLY ASKED QUESTIONS

Q1. What is reconciliation of arrears?

A1. Reconciliation of arrears is a process by which all necessary information about the amount of support accruing and the amount of support paid and other forms of satisfaction of the obligation is gathered and a determination is made of the dollar figure that remains unpaid. Reconciliation may, but does not have to, include the determination to whom the arrears are owed (otherwise known as allocation of arrears).

Q2. When should I do a reconciliation of arrears?

A2. When:

1. **It is required** – Reconciliation of arrears may be required as a necessary part of interstate enforcement action. It is an integral part of any registration for enforcement under UIFSA. As a general rule, statutory schemes providing for enforcement of child support will provide for an advance notice to the obligor of how much debt the IV-D agency is seeking from the obligor and a method, ranging from a formal hearing to an informal review with the case officer, to prove that the amount claimed is incorrect.
2. **It is recommended** -- Even if your state has not adopted UIFSA 2001, consider the amendments as recommendations for places in the process where reconciliation of arrears may be appropriate or advisable.
 - a. *Prior to doing income withholding:* If a reconciliation of arrears hasn't been done before, you may want to do it prior to initiating direct income withholding. (see the official comment to section 506 (UIFSA 96) regarding the contest to income withholding,)
 - b. *Prior to registration:* Reconciliation of arrears is recommended prior to registration under UIFSA '96. Notice of the amount of arrears is required by Section 605 of the Uniform Act. Completion of the Registration Statement requires a dollar amount and time frame for the arrears. Two of the defenses deal with the arrears: that full or partial payment has been made and that the Statute of Limitations precludes enforcement of some or all of the arrears. A well-prepared reconciliation document may reduce the cost of addressing these defenses.

Q3. What can I do to ensure my calculations are accepted by the responding jurisdiction?

A3. Send the backup documents that you worked from when calculating the amount of arrears stated on the Registration Statement with your referral. If there is a contest, the Responding Jurisdiction will need that information to support the claim being made on your state's behalf.

- Q4. Must I do a reconciliation of arrears before referring the case to the responding jurisdiction?
- A4. Since section 607 of UIFSA requires the non-registering party to prove their defenses, full reconciliation may not be required to begin a registration action. However, agency employees generally have access to superior payment records and should consider the finality with which the consolidation of arrears under UIFSA 2001 will be treated. The best practice for the public employee in this situation is to present the most complete accounting of arrears that you can based on the records available to you.
- Q5. Can the debt be contested after registration has been confirmed?
- A5. UIFSA '96 and '01, Section 608¹ serves to limit later contests.
Warning -- Section 608 is typically thought of as a way to prevent debtors from raising the same issues or new arguments on the same issues again and again. However, this provision potentially may work to prevent an agency from re-opening the issue of arrears to add a debt period or contest any proof previously offered. Be particularly careful if your state has adopted UIFSA 2001, which specifically makes a binding determination of the arrears owed under multiple orders a part of the registration process.
- Q6. What is the best practice to avoid problems under UIFSA Section 608?
- A6. If you are doing a registration and setting arrears, do everything you have the authority to do in one proceeding and make the scope of your authority for the particular proceeding part of the record.
- Q7. When am I likely to need, or be asked to provide, more information?
- A7. Although the burden of gathering information is on the initiating jurisdiction when the reconciliation of arrears is part of a two state process, it is unusual to receive a referral that does not need additional information or clarification of the provided documents. You may be the initiating jurisdiction and need to prepare your paperwork for a two state process, the responding jurisdiction with a referral that is incomplete or unclear, or an agency getting ready to do direct enforcement or respond in a tribunal to a private filing. In all these situations, you will need the best available information.

Likely items include copies of all child support orders², and two copies of orders to be registered along with a sworn statement on arrears due³, payment records⁴, and specification of the amount of consolidated arrears⁵.

- Q8. Are other agencies required to send copies of payment records and/or certified statements of all payments received?
- A8. Both UIFSA '96 and '01 state in Section 319⁶ that the records shall be forwarded to the requesting party or tribunal of another state. UIFSA '01, Section 207d, further requires that copies accompany a request for determination of the controlling order.⁷
- Q9. What form is used to ask another state for court orders, pay records or other information?
- A9. UIFSA '96 and 01: Section 318, Assistance with Discovery, has in practice become the *transmittal number three*, the form for states requesting "HELP" from other states in the form of documents or data as well as actions.

When asking another jurisdiction for pay records or other information that you need for completion of a ROA, **use the transmittal number three as your requesting document**. Most states and their IV-D staff are already familiar with it and most states will have time frames and staff or a business function associated with addressing these requests.

- Q10. Why is it so difficult to read payment records from other jurisdictions? Can't they do it "our" way?
- A10. The laws and regulations guiding the child support enforcement programs provide that states should provide copies of the relevant pay records to other states on request. Every state's automated system has a pay record for each case and these are sent routinely to other states. Unfortunately, records designed for accounting purposes are often difficult to read, particularly ones from automated systems that assume familiarity with certain sets of code and schemes of data organization that may not be familiar to child support professionals in other states.

Sending pay records pursuant to statutory directive can create problems stemming from difficulty in reading and interpreting them. Practices to address this problem vary in cost and effectiveness, but it is strongly suggested that IV-D interstate practitioners use the tools that are presently available and use their influence within their respective organizations to advocate for additional tools that will ameliorate the present readability problem in this area.

Q11. What can we do to make sure that payment records we send to other jurisdictions are easy to understand, and encourage other states to follow suit?

A11. There are several things you can do. The following list of recommendations is meant to encourage IV-D practitioners to use any of the available tools that make it easier for other states' staff to understand the records sent to them.

- a. If you send a copy of your automated system's pay record for a case to another state, **provide a definitions list for every code that appears on the pay record.**
- b. If your agency has a software program available, **provide a debt calculation showing the accruals and payments in a plain English format without accounting and distribution codes and entries.** If your agency has not developed a "plain English" debt calculation program of its own, advocate strongly for such a program which may be available from another IV-D agency. The state of Washington has a debt calculation program, which is available and could serve as a model for other states who wish to develop their own. (Note: if you have ever tried to explain your automated system's pay record to the payor on a case you will appreciate the benefits of a "plain English" debt calculator in these situations too.)
- c. Support the development of a **national uniform "plain English" debt calculator** that will provide the data necessary for the consolidation of arrears required with every determination of controlling order under UIFSA 2001. Think of it as a stand-alone program for this purpose, *not* a new requirement for your automated system.
- d. Use a manually prepared worksheet such as the one developed for this document to demonstrate how you arrived at the arrears figure.
- e. In the event of litigation, **use your experts.** UIFSA '96 permits witnesses to testify by telephonic or other electronic means. UIFSA 2001 requires tribunals to allow it. If necessary, you can have a worker from the state that provided the pay records appear in a proceeding by telephone to explain what they mean.

Be considerate, give your "expert" as much notice and as much information about what to expect as you possibly can. The "expert" is there to help you but needs to know what is expected in order to provide you with assistance.

Q12. What other documents or information are likely to be needed prior to the calculation?

A12. Depending on the case, you may need other documents in order to do the reconciliation of arrears and be able to explain it and support your conclusions. Different states may have different names or different ways of presenting the same substantive material. Things you may need include:

- Affidavit of arrears
- Assignment of rights information
- Child information such as:
 - Date of birth
 - Emancipation in fact considerations
 - Periods of custody by the parent ordered to pay

Q13. What federal time frames should I keep in mind?

A13. Important time frames to keep in mind are found in federal regulations:

45 CFR 303.7 (b) (4) provides that an initiating state has 30 calendar days to respond to a request for additional information from a responding state...

(4) Provide the IV-D agency or central registry in the responding State with any requested additional information or notify the responding State when the information will be provided within 30 calendar days of receipt of the request for information by submitting an updated form, or a computer-generated replica in the same format and containing the same information, and any necessary additional documentation.

45 CFR 303.7 provides guidance to IV-D agencies on the provision of assistance in interstate cases. Although the rule is couched in terms of initiating and responding jurisdictions, it is still relevant to the process. An expansive reading of the terms initiating and responding, in keeping with the definitions of UIFSA 2001, means that these regulations will apply to most situations.

(7) "Initiating State" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding State under this [Act] or a law or proceeding substantially similar to this [Act]

(18) "Responding State" means a State in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating State under this [Act] or a law or procedure substantially similar to this [Act].

Q14. Thirty (30) days may have been an adequate or even speedy turn around in the days of paper documents and the U.S. Postal Service, but they seem very slow by today's standards. What is recommended to speed the process?

A14. When making a request for information, include the opportunity or availability of replying by FAX or e-mail where those technologies are adequate for your needs.

If you are responding to a request, attempt to respond within 10 working days or within the time frames required by the state's public disclosure/freedom of information act procedures, whichever is shorter.

Q15. What if I can't get the information I need from the other state?

A.15. The parties may have copies of official records that will be adequate for your needs if the official sources are unresponsive. If your written request has not produced results, try the telephone.

Q16. What if I've tried the other state, and the parties, but still don't have the minimum information I need?

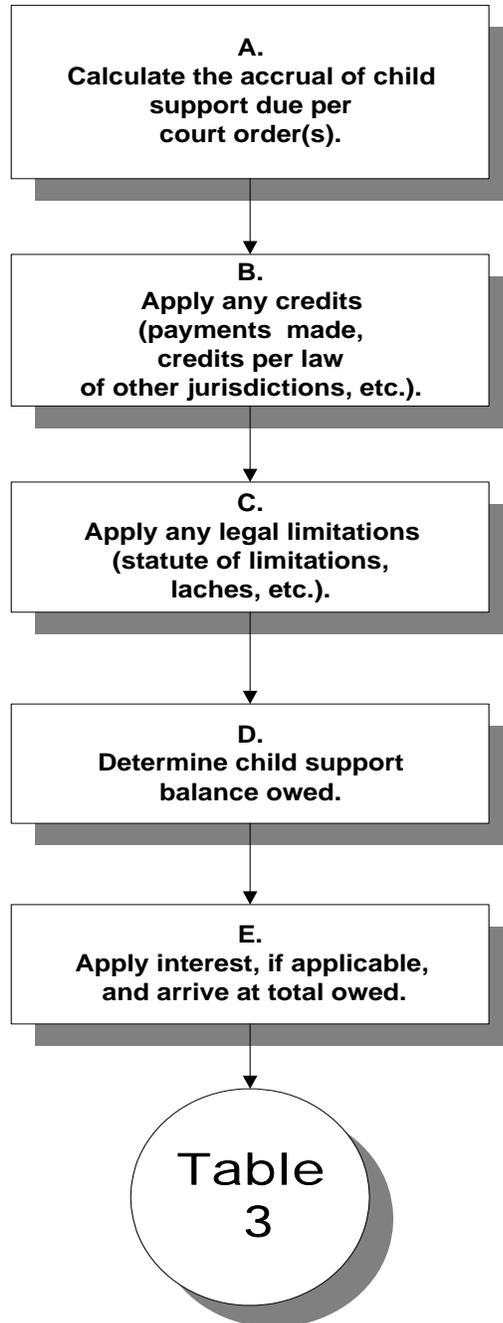
A16. You can't always get what you want, but you may have enough information to proceed. This will depend on what's missing and where you are in the enforcement process.

Consider what information you are lacking and from whom you are not getting it. You may have a number of options including:

- a. Proceeding to enforce current child support and reconciling the arrears later providing notice to the entity requesting services that you will close the case unless their cooperation (by providing the needed information) is forthcoming, 45 CFR 303.11 (b) (11) & (12).
- b. Proceeding via two-state process instead of one state and vice versa.

RECONCILIATION OF ARREARS (ROA), TABLE 2: Calculating the Total Owed

ROA: Calculating the Total Owed Flowchart 2



ROA, FLOWCHART 2

RECONCILIATION OF ARREARS (ROA), TABLE 2

- A. Calculate the accrual of child support due per the court order(s). Start by determining how much debt accrued under the orders that exist. To do this, you need all of the orders. Determine the time period applicable to each. When the orders overlap, or run simultaneously, charge debt according to the highest amount accruing.

If a tribunal has entered a lump sum judgment for a period of time, treat this as the debt calculation for that period for the order of that tribunal. Payments made after the entry of the judgment may operate to reduce the judgment amount. Payments made before the judgment was entered presumably were considered in arriving at the judgment amount. If multiple orders existed for the period of time in question, payments made to one tribunal are entitled to pro tanto credit against the order of the other tribunal and a reduction of the debt for the period of the judgment may result.

If there are multiple children and the support award is divisible to a dollars-per-month-per-child basis, identify the point at which any child issues such as emancipation or custody changes occur that may impact the obligation.

Create a debt calculation sheet in whatever format is available to you showing the gross amount accruing on a monthly basis and the gross total for the entire period in question.

Every change in the dollar amount accruing shown on the worksheet should be described, in plain English, on the worksheet at the point at which it occurs.

- B. Apply any credits (e.g., payments made and credits per law of other jurisdictions). Apply the payments using all of the information at your disposal. Payments may be demonstrated by official pay records, handwritten receipts from the parties, any documentation of credit for something other than money received, payment of the children's portion of benefits or other.
- C. Apply any legal limitations. These may include laches or state specific issues such as concealing the children. Apply the appropriate statute of limitations. The UIFSA rule (Section 604, UIFSA '96) is that you apply the statute of limitations of the issuing state or the forum state, whichever is longer. You must make this choice as to each order. You may have a situation where the forum state's statute of limitations is the longer as to each of the orders. If one issuing state's statute of limitations is longer than that of the forum state, you apply that statute of limitations to that order only.

See the references to *"The other states' law."*

- D. Determine the child support balance owed. This is the accrual of arrears less any payments and credits, less any debt that may now be unenforceable due to

operation of law.

- E. Apply interest, if applicable, and arrive at the total owed. Each state's judgments accrue interest at their own state specific rate. Some IV-D agencies enforce the accrual of interest and some do not. Some state systems will compute the accrual of interest and some will not. Amendments to Section 604 in UIFSA 2001 make clear what was implied in UIFSA 1996; the law of the issuing state governs the computation and payment of arrearages and the accrual of interest.

Check with each state that issued an order regarding their policy and practice on the accrual, computation, and enforcement of interest. Enlist the other state's help if you can, in having their automated system provide the interest calculations for their order after you have accounted for all of the payments.

Do not represent the debt of another state's order to be paid in full unless you have confirmation in writing from that state.

ROA Table 2, FREQUENTLY ASKED QUESTIONS

Q1. What law applies, when more than one state is involved?

A1. Section 604 in both UIFSA '96 and '01⁸ addresses choice of law when more than one state is involved. Different states have different laws concerning equitable credit/in-kind contributions, divisible and non-divisible awards, application of money received to interest vs. principle, credit for children's benefits from Social Security, Veterans Administration, Labor and Industries, etc. At a minimum you are going to need access to other states laws, and you may need to consult with attorneys from other states on their application.

Pro Tanto Credit

The comment to Section 209, in both the 1996⁹ and the 2001¹⁰ versions makes the same point:

The issuing tribunal is ultimately responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources. Until that scheme is fully in place, however, it will be necessary to continue to mandate pro tanto credit for actual payments made against all existing orders.

This corollary follows:

Credit for other forms of contribution must be left to the laws of the individual states issuing the orders and the fact situations presented.

Q2. How do I find out what the other states' laws are?

A2. Your agency needs Internet access to other states laws. Build a folder of "favorites" or pick a portal site or have your agency attorneys assigned to do this so that they can research these questions for non-legally trained staff as they occur. There are lots of states, and lots of small but important questions that can be answered in a timely fashion...if you are organized. *Your agency needs a plan.*

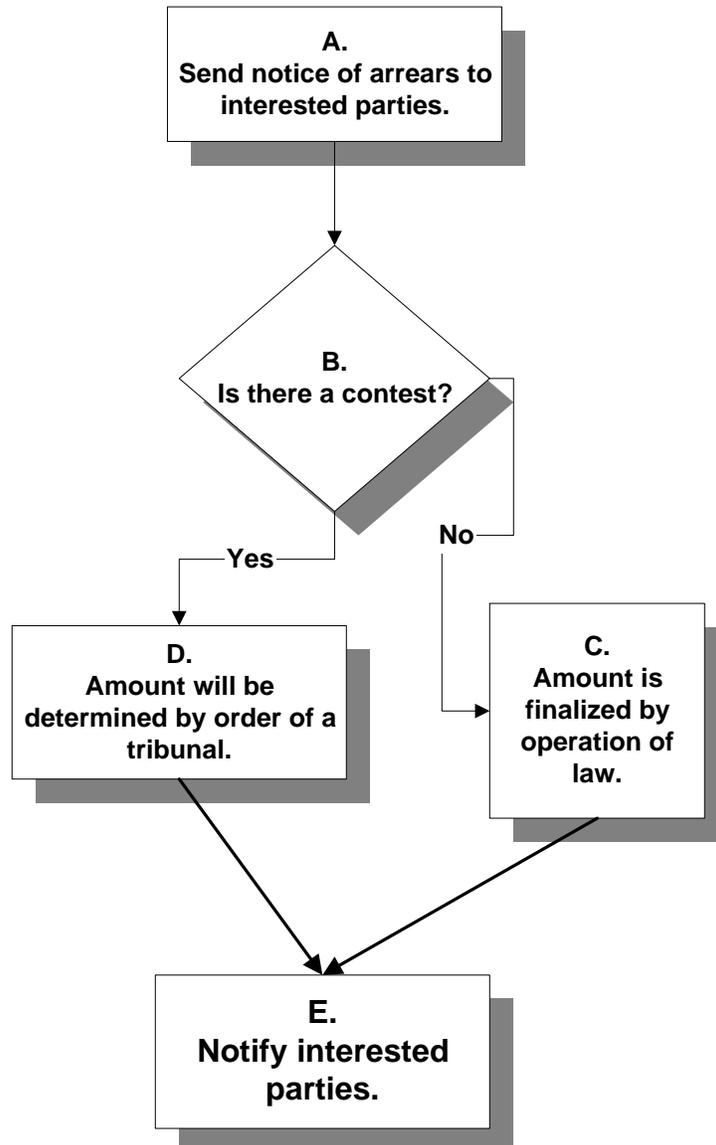
If the OCSE Interstate Referral Guide (www.acf.hhs.gov/programs/cse and then select the Interstate Referral Guide) has links to the statutes that you need, this will be a useful tool. Other useful legal portal sites that make it easier to find the legal material that you may need (state law, recent court decisions, etc.) are:

www.loc.gov/law/public/law.html is the Law Library of Congress. Select the Guide to Law Online and then go to U.S. states and territories for state specific information.

www.law.cornell.edu/states/listing is part of the Legal Information Institute and also links to state specific sites.

RECONCILIATION OF ARREARS (ROA), TABLE 3: Notifying Interested Parties

ROA: Notifying Interested Parties Flowchart 3



ROA, FLOWCHART 3

RECONCILIATION OF ARREARS (ROA), TABLE 3

- A. Send a notice of arrears to the interested parties, such as the Non-Custodial Parent and the Custodian, the other parent if not the Custodian, as well as all entities claiming an ownership in the arrears, e.g., states with assigned arrears.
- B. Determine whether or not there is a contest.
- C. If there is no contest, the amount is finalized by operation of law.
- D. If there is a contest, the amount will be determined by the order of a tribunal.
- E. Notify the interested parties that the arrears amount has been finalized. Post reconciliation of arrears notices will usually depend on the context in which the reconciliation takes place and state law and regulations. A copy of the final order or determination should be sent to all entities claiming an ownership in the arrears.

ROA Table 3, FREQUENTLY ASKED QUESTIONS

Q1. What is the time frame for sending a notice of arrears to interested parties?

A1. UIFSA model act section 303 (UIFSA '96) directs states to use the procedural law applicable to “similar proceedings” in the state when taking an action under UIFSA. States will need to look to their existing laws, court rules, and administrative rules to determine which time frames apply.

When reconciliation of arrears occurs in the context of another proceeding such as registration or determination of the controlling order, those forms and procedures will dictate the time frames and manner of giving notice of the amount of arrears in question and the procedure for contesting it.

Q2. What is the recommended method to provide notice to parties and the process for contesting that notice?

A2. Most other existing support enforcement processes already operate on some form of notice and opportunity to contest. Although the process for reconciling the arrears records of different states with different orders has become more complex, it is a process that largely fits behind any state’s existing notice and contest process. Where reconciliation of arrears may differ from existing process is in the number of parties in interest who may need to be given notice, the opportunity to provide information, and the opportunity to contest the result.

When reconciliation of arrears occurs outside the context of another proceeding, the best practice is to provide a copy of the pertinent documents to the other jurisdiction

Q3. What happens if one or more parties contest the arrears determination?

A3. Because reconciliation of arrears occurs in the context of another statutorily prescribed action, the rules and scope of any contest to arrears will depend on that context. Different states will have different processes by which a contest proceeds through their legal system.

Q4. When is the amount of arrears finalized by operation of law?

A4. If there is no contest, the amount of arrears generally becomes finalized by operation of law. Some form of default may also finalize the amount through a “no contest” order. This might happen when a hearing is automatically set, providing the party the opportunity to come forward to establish that the agency’s determination of the arrears is incorrect. If the party fails to come forward, a default, or “no contest,” order could be entered. The processes may look different depending on if the tribunal is administrative or judicial and depending on the laws and regulations of the individual state.

Q5. Is arrears reconciliation required under UIFSA?

A5. Although the statutory language does not specifically require it, reconciling arrears is a necessary part of registering a foreign order. While there is no defense to the registration of a properly entered support order, the amount of arrears is a frequently contested item. Reconciling arrears is not required by UIFSA '96 as part of the determination of controlling order under Section 207. It is required as part of that determination under UIFSA 2001. UIFSA 2001 also provides that a judgment for the consolidated arrears of support and interest **must** be recognized in proceedings under this Act. If there is a contest, the amount will be finalized through order of the tribunal. Differences between UIFSA '96 and UIFSA '01 may serve to complicate the issue of whether or not a reconciliation of arrears will or can have a binding effect on other states, or even whether they chose to participate.

Q6. Is a state that has UIFSA 1996 required to recognize a judgment for consolidated arrears and interest made under section 207 of UIFSA 2001?

A6. The Full Faith and Credit clause of the U.S. Constitution would preclude a second state from ignoring a judgment based on the fact that the second state has not enacted UIFSA 2001 and does not have the statutory authority to enter such judgments itself. Absent due process issues of lack of notice or the ability to participate as a party in the proceeding, it is recommended that states participate in a reconciliation of arrears proceeding before a tribunal held in another state and accord full faith and credit to the determination of arrears arising from that proceeding.

SAMPLE DEBT CALCULATION SHEET

IV-D Case
Number _____

NCP: _____

CST: _____

Year _____	Order Amount	Payment	Month's Debt	Interest	Balance
January Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
February Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
March Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
April Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
May Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
June Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
July Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
August Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
September Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
October Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
November Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
December Comment: _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
TOTAL	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
GRAND TOTAL	\$ _____	+	\$ _____	=	\$ _____
	Interest		Balance		Grand Total

Reconciliation of Arrears, Endnotes

¹ UIFSA '96 and '01, Section 608 – Confirmed Order: . . . confirmation of registration precludes further contest of any matter that could have been asserted at the time of registration.

² UIFSA '01, Section 207d – a request to determine the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments.

³ UIFSA '96, Section 602 – requires that the party desiring registration (for our purposes the Initiating Jurisdiction) provide two copies of all orders to be registered and a sworn statement of the amount of any arrearage.

⁴ UIFSA '96 and '01, Section 319 – Receipt and Disbursement of Payments: The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

⁵ UIFSA '01, Section 602 – as part of a registration request, if two or more orders are in effect, the party requesting registration shall provide all support orders and shall specify the amount of consolidated arrears.

⁶ UIFSA '96 and UIFSA '01, Section 319 – Receipt and Disbursement of Payments: The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of record of the amounts and dates of all payments received.

⁷ UIFSA '01, Section 207d – a request to determine the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments.

⁸ UIFSA '96, Section 604 – Choice of Law: (a) the law of the issuing state governs the nature, extent, amount, and duration of current payments and the payment of arrearages under the order.

UIFSA '01, Section 604 – Choice of Law: (a) . . . the law of the issuing state governs. 2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order.

⁹ UIFSA '96, Section 209 – Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

¹⁰ UIFSA '01, Section 209 – A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state.