

NAME OF STATE OR ORGANISATION: The United States of America

EXPLANATIONS AND QUESTIONS

If a question does not apply to your State, please answer "Not applicable" or "N/A".

Some questions can be answered by marking a box.

Where your answer refers to specific provisions of your law / laws, please cite the law and provision number as it may be a helpful reference in the Guide to Good Practice.

Where your answers can be enhanced by providing a link to an electronic version of a document (*e.g.*, guidelines, criteria), please give that link.

USE OF TERMINOLOGY

There are three situations in which accreditation and authorization (as used in the Convention) may occur. A distinction is to be made between "accreditation" and "authorisation":

- (1) adoption bodies are accredited in the receiving State to work in States of origin (Arts 10, 11) (1993 Hague Convention terminology: **accreditation**);
- (2) those adoption accredited bodies of receiving States are granted authorisation in the State of origin with a view to arranging the adoption (Art. 12) (1993 Hague Convention terminology: **authorisation**);
- (3) bodies in the State of origin are accredited by it to work with foreign bodies of the receiving State with a view to adoption (Arts 10, 11) (1993 Hague Convention terminology: **accreditation**).

NB: FOR STATES OF ORIGIN, PLEASE MAKE IT CLEAR IN YOUR ANSWERS IF YOU ARE REFERRING TO YOUR OWN ACCREDITED BODIES OR TO FOREIGN ACCREDITED BODIES WORKING IN YOUR STATE.

A. General policy issues concerning accreditation

INTRODUCTION

The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Hague Convention) entered into force for the United States on April 1, 2008. As part of its ratification of the 1993 Hague Convention, the United States declared, pursuant to Article 22(2), that in the United States the Central Authority functions under Articles 15-21 may also be performed by bodies or persons meeting the requirements of Articles 22(2)(a) and (b). (Although the United States refers to these persons as "approved persons" in its regulations, the United States will, to the extent possible, use the terminology of the Permanent Bureau and refer to them as "approved (non-accredited) persons" in its responses to this questionnaire.)

In accordance with the U.S. domestic legislation implementing the 1993 Hague Convention, the Intercountry Adoption Act of 2000, P.L. 106-279¹, the United States established a system for the accreditation of bodies and approval of persons to provide certain defined adoption services in connection with adoption cases covered by the 1993 Hague Convention. This system is memorialized in U.S. federal accreditation and approval regulations at Part 96 of Title 22 of the Code of Federal Regulations (CFR). Under this system, the U.S. Department of State designates "accrediting

entities” to accredit bodies and approve persons – in accordance with the accreditation and approval regulations – to provide the defined adoption services in adoption cases both when the United States is a receiving State and when the United States is a State of origin.

More importantly, under U.S. law and regulation, with certain minor exceptions, the accrediting entities must apply the same standards to both accredit bodies and approve persons, namely the standards set forth in 22 CFR Part 96, Subpart F, Standards for [1993 Hague] Convention Accreditation and Approval. For this reason, U.S. responses to the questions in sections A-H below cover both accredited bodies and approved (non-accredited) persons.

In addition, the Intercountry Adoption Act provided for the temporary accreditation of certain bodies for a one or two year period after the entry into force for the United States of the 1993 Hague Convention. Because, in accordance with U.S. law and regulation, the accrediting entities applied different standards to temporarily accredit bodies and because these temporary accreditations will expire in the next nine months, U.S. responses to the questions in sections A-H below do not cover temporarily accredited bodies, unless otherwise indicated.

1. **In your State what terminology do you use for the situations described in (1), (2) and (3) above? Is it the same or different? If different, please specify, define and indicate if you intend to use your own terminology to answer the following questions.**

With respect to the situation described in (1) (“adoption bodies are accredited in the receiving State to work in States of origin (Arts 10, 11)”), the United States uses the term “accreditation”. As noted in the U.S. “Introduction” above, the United States uses the term “approval” to refer to approved (non-accredited) persons.

The situation described in (2) (“those adoption accredited bodies of receiving States are granted authorization in the State of origin with a view to arranging the adoption (Art. 12)”) is a question of the law of the relevant U.S. state. To the best of the U.S. federal government’s knowledge, this situation does not occur, *i.e.*, no U.S. state grants “authorization” to the “adoption accredited bodies” of receiving States.

With respect to the situation described in (3) (“bodies in the State of origin are accredited by it to work with foreign bodies of the receiving State with a view to adoption (Arts 10, 11)”), the United States uses the term “accreditation” and “approval” as noted above.

2. **Is your State a receiving State or a State of origin or both?**

The United States is both a receiving State and a State of origin.

3. **Have you informed the Permanent Bureau all of the details of bodies accredited by your State, as required by Article 13? Is the information which is currently on the Hague Conference website up to date?**

Yes. The United States has informed the Permanent Bureau of all of the details of all accredited bodies and approved (non-accredited) persons.

If your State has decided not to use accredited bodies, please explain the reasons and indicate what has influenced the decision. Please answer any

questions that are relevant to your State's situation.

Not applicable. The United States has decided to use both accredited bodies and approved (non-accredited) persons.

4. How do you define "accreditation" and "accredited body" in your State?

U.S. accreditation and approval regulations define "accredited agency" and "approved person" as follows:

"Accredited agency" means an agency that has been accredited by an accrediting entity, in accordance with the standards in subpart F of this part, to provide adoption services in the United States in cases subject to the [1993 Hague] Convention. It does not include a temporarily accredited agency.

"Accrediting entity" means an entity that has been designated by the Secretary to accredit agencies (including temporarily accredit) and /or to approve persons for purposes of providing adoption services in the United States in cases subject to the Convention.

"Adoption Service" in [1993 Hague] Convention cases means: any one of the following six services:

- (1) Identifying a child for adoption and arranging an adoption;
- (2) Securing the necessary consent to termination of parental rights and to adoption;
- (3) Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;
- (4) Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;
- (5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or
- (6) When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

"Approved person" means: a person that has been approved, in accordance with the standards in subpart F of this part, by an accrediting entity to provide adoption services in the United States in cases subject to the [1993 Hague] Convention.

See 22 CFR 96.2.

The United States uses the term "accreditation" to refer to both the process of accreditation and the successful completion of the process of accreditation; the United States uses the term "approval" to refer to both the process of approval and the successful completion of the process of approval.

5. Do the following categories of actors come within the definition of accredited body (are they included as accredited body staff, employees or personnel)?

- facilitators (if they exist in your State, please specify their role)**

- national representatives of foreign accredited body
- translators
- lawyers (e.g., with a power of attorney from prospective adopters)
- guide, drivers, etc.

If these actors are not employees of the accredited body, what is their legal relationship, if any, to the accredited body?

See U.S. response to question 4 above. To the extent that any of the above actors provide adoption services, U.S. law requires them to be part of an accredited body or approved (non-accredited) person, accredited or approved individually, or supervised by an accredited body or approved (non-accredited) person². See U.S. response to question 34.

6. **As at 30 September 2009, what is the current number of accredited bodies in your State, state or province? If possible, please indicate how many bodies have been refused accreditation, have lost their accreditation or discontinued their activities since 1 January 2006, and for what reason.**

The following chart summarizes the number of accredited and temporarily accredited bodies, and approved (non-accredited) persons as of 30 September 2009:

Accredited bodies	170
Bodies temporarily accredited	54
Approved (non-accredited) persons	8
Bodies refused accreditation	11
Bodies refused temporary accreditation	3
Persons refused approval	0
Accredited bodies & approved (non-accredited) persons who lost their accreditation or approval	0
Accredited bodies & approved (non-accredited) persons who discontinued their activities	7

Updated information is available to the public on the U.S. Department of State's Intercountry Adoption website, [Adoption.State.gov](http://adoption.state.gov) at the following location: <http://adoption.state.gov/hague/accreditation/agencies.html>.

7. **Do you think the number of accredited bodies accredited by, or operating in your State is proportional to the number of intercountry adoptions taking place? If not, do you intend to take any appropriate measures?**

The United States disagrees with the idea that any alleged disproportionateness (*i.e.*, instances where the number of accredited bodies and approved (non-accredited) persons is not "proportional" to the number of intercountry adoptions taking place) creates any problems.

8. **Do you impose any limits on the number of accredited bodies which are granted accreditation in your State? If yes, on what grounds are limits imposed?**

No. The United States does not impose any limits on the number of bodies or persons that are granted accreditation or approval.

9. **Does the Central Authority or the accredited body make the choice of the foreign States with which the accredited body could work (if authorisation were to be given)?**

Accredited bodies and approved (non-accredited) persons decide the foreign States with which they want to work. Accredited bodies and approved (non-accredited) persons provide information about the States with which they work to the relevant accrediting entity over the course of their accreditation or approval period.

Receiving State questions

10. (i) **Receiving States: does the grant of accreditation automatically include an authorisation to act in:**
- a) **any State of origin;**
 - b) **a specified State / States of origin?**

A grant of accreditation or approval authorises the body or person to act in any State of origin. During the accreditation and approval process, the relevant accrediting entity scrutinizes the program for each State of origin in which the accredited body or approved (non-accredited) person plans to provide adoption services.

In addition, an adoption service provider may seek, and an accrediting entity may grant, an accreditation or approval that is limited to cases in which the United States is the receiving State or to cases in which the United States is the State of origin.

- (ii) **Do you limit the number of accredited bodies for every State of origin?**

No. The United States does not limit the number of accredited bodies or approved (non-accredited) persons for any State of origin.

B. Organisation and structures

11. **On which subjects does the accredited body have to provide evidence to, or inform, the Central Authority or other competent authority to obtain or maintain accreditation? Please tick relevant box:**

- Composition of the accredited body's personnel and any changes**

See 22 CFR 96.31, Licensing and Corporate Governance: Corporate Structure³.

- Qualifications and experience of personnel**

See 22 CFR 96.37, Professional Qualifications and Training for Employees: Education and experience requirements for social service personnel⁴; and 22 CFR 96.38, Professional Qualifications and Training for Employees: Training requirements for social service personnel⁵.

- Resolution of the board of governors attesting that the body is bound by ethical principles and rules of professional conduct**

See 22 CFR 96.32, Licensing and Corporate Governance: Internal Structure and Oversight⁶; and 22 CFR 96.35, Ethical Practices and Responsibilities, Suitability of agencies and persons to provide adoption services consistent with the [1993 Hague] Convention⁷.

- Internal statute, regulations and guidelines of accredited body, including documents which demonstrate the legal constitution of the accredited body**

See 22 CFR 96.31, Licensing and Corporate Governance: Corporate Structure⁸; and 22 CFR 96.32, Licensing and Corporate Governance: Internal Structure and Oversight⁹.

- Financial management and accounting practices**

See 22 CFR 96.33, Financial and Risk Management: Budget, audit, insurance and risk assessment requirements¹⁰; and 22 CFR 96.34, Financial and Risk Management: Compensation¹¹.

- Costs and expenses charged by accredited body**

See 22 CRR 96.40, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Fee policies and procedures¹².

- Copy of the terms of collaboration between the accredited body and the body or person to whom the body entrusts responsibilities in performance of the adoption procedure**

Collaboration between accredited bodies or approved (non-accredited) persons and other service providers -- in the United States and in foreign States -- who provide one or more of the defined adoption services (see U.S. response to question 4 above) takes place under the terms of a supervisory agreement. The terms of such an agreement are outlined for collaboration with providers in the United States in 22 CFR 96.45 (Service Planning and Delivery, Using supervised providers in the United States)¹³, and for collaboration with providers in a foreign receiving State or State of origin in 22 CFR 96.46 (Service Planning and Delivery, Using providers in [1993 Hague] Convention countries)¹⁴. While accredited bodies and approved (non-accredited) persons are not required to submit copies of all such agreements, accrediting entities may ask to review them.

- Budget forecasts for 12-24-36 months**

See 22 CFR 96.33, Financial and Risk Management: Budget, audit, insurance and risk assessment requirements¹⁵. Additionally, accredited bodies and approved (non-accredited) persons must comply with both federal and U.S. state financial and other requirements.

- Copy of the standard-form contract between the body and adoptive candidate**

See 22 CFR 96.39, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Information disclosure and quality control practices¹⁶.

Insurance for legal liability.

See 22 CFR 96.33, Financial and Risk Management: Budget, audit, insurance and risk assessment requirements¹⁷.

Other – please provide details

Accredited bodies and approved (non-accredited) persons also provide evidence to the accrediting entities on the following subjects in order to obtain or maintain accreditation or approval:

U.S. state licensing requirements. *See* 22 CFR 96.30, Licensing and Corporate Governance: State Licensing¹⁸.

Child buying. *See* 22 CFR 96.36, Ethical Practices and Responsibilities: Prohibition on child buying¹⁹.

Complaints. *See* 22 CFR 96.41, Responding to Complaints and Records and Reports Management, Procedures for responding to complaints and improving service delivery²⁰.

Records. *See* 22 CFR 96.42, Responding to Complaints and Records and Reports Management, Retention, preservation, and disclosure of adoption records²¹.

Reports management. *See* 22 CFR 96.43, Responding to Complaints and Records and Reports Management, Case tracking, data management, and reporting²².

Receiving State questions

Certified true copy of an official version of the legislation of the State of origin with which the accredited body will co-operate.

Accredited bodies and approved (non-accredited) persons provide their social service personnel with training on the adoption laws of any State where the body provides adoption services. *See* 22 CFR 96.38(a)(3)²³. Accredited bodies and approved (non-accredited) persons also ensure that foreign providers act in compliance with the laws of the State of origin. *See* 22 CFR 96.46(a)(1)²⁴. During the site visit by the relevant accrediting entity, applicants for accreditation and approval demonstrate their compliance with State of origin legal requirements to provide adoption services.

Contracts with foreign collaborators or intermediaries, their qualifications and mode of payment (monthly salary / flat rate for every adoption)

See U.S. response to question above re “collaborators”; and 22 CFR 96.46, Service Planning and Delivery: Using providers in [1993 Hague] Convention countries²⁵.

Agreements with orphanages in the countries of origin or internal regulations relating to the handling of cases, and confidentiality rules

Copy of the statement of authorisation or approval to work in the State of origin if applicable

*See 22 CFR 96.27(g)*²⁶.

Evidence of knowledge of the situation (cultural, social and legal) in the State of origin

During the accreditation and approval process, the relevant accrediting entity reviews the body's or person's policies and procedures for each State of origin in which the body or person has an adoption program, including knowledge of the cultural, social and legal situation there.

Furthermore, accredited bodies and approved (non-accredited) persons provide their social service personnel with training on the cultural diversity of the population served by the body (see 22 CFR 96.38(a)(7)²⁷) as well as the adoption law of the State of origin (see 22 CFR 96.38(a)(3)²⁸).

Evidence of knowledge of the adoption law and practice in the State of origin, and understanding of the role of counterparts in the State of origin

See above.

12. **Is it compulsory for staff of an accredited body to be professionally qualified? If yes, which professions? (e.g., lawyers, psychologists, psychiatrists, social workers, etc).**

U.S. accreditation and approval standards regarding the professional qualifications for employees apply to the accredited bodies' or approved (non-accredited) persons' employees, executive directors, social work supervisors, non-supervisory employees, employees who conduct home studies, and employees who conduct child background studies. *See* U.S. response to question 11 above "Qualifications and experience of personnel"; 22 CFR 96.37, Professional Qualifications and Training for Employees: Education and experience requirements for social service personnel²⁹; and 22 CFR 96.38, Professional Qualifications and Training for Employees: Training requirements for social service personnel³⁰.

See also 22 CFR 96.32, Licensing and Corporate Governance: State Licensing³¹; and 22 CFR 96.35, Ethical Practices and Responsibilities, Suitability of agencies and persons to provide adoption services consistent with the [1993 Hague] Convention³², specifically 96.35(d)(3) and (4) regarding the submission of certificates of good standing for lawyers and social workers.

13. **If volunteers are used, what is the ratio of volunteers to professional staff?**

U.S. accreditation and approval regulations do not address specifically the use of volunteers, but do provide for supervision of all adoption related social services that require the application of clinical skills and judgment, by professional staff with appropriate qualifications. *See* 22 CFR 96.37(e)(3)³³.

14. **Are your accredited bodies required to sign a contract or agreement with the prospective adoptive parents? In general, what are the obligations of accredited bodies to adoptive candidates?**

No. Accredited bodies and approved (non-accredited) persons are not required to sign a contract or agreement with the prospective adoptive parents, although most do.

With respect to the obligations of accredited bodies and approved (non-accredited) persons to prospective adoptive parents, U.S. accreditation and approval standards provide, among other things, that accredited bodies and approved (non-accredited) persons disclose information (see 22 CFR 96.39, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Information disclosure and quality control practices³⁴); disclose fee practices (see 22 CFR 96.40, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Fee policies and procedures³⁵); respond to complaints (see 22 CFR 96.41, Responding to Complaints and Records and Reports Management: Procedures for responding to complaints and improving service delivery³⁶); prepare and train prospective adoptive parents (see 22 CFR 96.48, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Preparation and training of prospective adoptive parent(s) in incoming cases³⁷); conduct placement and post placement monitoring (see 22 CFR 96.50, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Placement and post-placement monitoring until final adoption in incoming cases³⁸); provide post adoption services (see 22 CFR 96.51, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Post adoption services in incoming cases³⁹); and perform communication and coordination functions (see 22 CFR 96.52, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Performance of [1993 Hague] Convention communication and coordination functions in incoming cases⁴⁰).

15. **What are the role and responsibility of the Central Authority or competent authorities with respect to the training of accredited bodies?**

The accrediting entities provide initial training to applicants for accreditation and approval about the 1993 Hague Convention and the U.S. accreditation and approval process. Once a body or person is accredited or approved, the relevant accrediting entity provides follow up, and refresher and individualized training, if the accrediting entity decides, in the course of monitoring and overseeing the performance of the body or person, that such training is needed.

16. **Are your accredited bodies required to have internal guidelines for carrying out tasks related to adoptions including guidelines on confidentiality of information?**

U.S. accreditation and approval standards provide that accredited bodies and approved (non-accredited) persons safeguard sensitive individual information. *See* 22 CFR 96.42, Responding to Complaints and Records and Reports Management: Retention, preservation and disclosure of adoption records, and specifically 96.42(c)⁴¹. The relevant accrediting entity reviews a body's written policies and procedures

implementing the standards, among other things, to evaluate the body's or person's compliance.

17. Are your accredited bodies required to keep the adoption records for a certain number of years? How many years?

U.S. accreditation and approval standards provide that accredited bodies and approved non-accredited persons retain or archive adoption records for the period of time required by the relevant U.S. state law. *See* 96.42(a)⁴². (The regulations define "adoption record" as a record received or maintained by an accredited body or approved (non-accredited) person or a public domestic authority.)

(On the other hand, 22 CFR Part 98 requires the preservation for 75 years of "Convention records", *i.e.*, records generated or received by the U.S. Department of State and/or the U.S. Department of Homeland Security in connection with an adoption case covered by the 1993 Hague Convention.)

C. Accreditation procedure

18. Please provide details (including powers and resources) of the authority or authorities which grant accreditation. Briefly describe the procedure to obtain accreditation.

As noted in the U.S. "Introduction" in Section A above, U.S. domestic legislation implementing the 1993 Hague Convention, the Intercountry Adoption Act, and U.S. accreditation and approval regulations provide for the designation by the U.S. Department of State of accrediting entities, *i.e.*, entities that grant accreditation or approval. The regulations provide, among other things, for the following in 22 CFR Part 96, Subpart B, Selection Designation, and Duties of the Accrediting Entities:

- Requirement that accrediting entity be a non-profit or public entity (22 CFR 96.5⁴³);
- Performance criteria for designation as an accrediting entity (22 CFR 96.6⁴⁴);
- Authorities and responsibilities of an accrediting entity (22 CFR 96.7⁴⁵);
- Fees charged by accrediting entities (22 CFR 96.8⁴⁶);
- Agreement between the Secretary of State and the accrediting entity (22 CFR 96.9⁴⁷); and
- Suspension or cancellation of the designation of an accrediting entity by the Secretary [of State] (22 CFR 96.10⁴⁸).

The U.S. Department of State has entered into a Memorandum of Agreement with each accrediting entity that is currently designated (the Council on Accreditation and the Colorado Department of Human Services) regarding performance of its duties as an accrediting entity.

Pursuant to these Memoranda of Agreement, accrediting entities develop application procedures designed to assess whether an applicant is in substantial compliance with U.S. accreditation and approval standards found in 22 CFR Part 96, Subpart F, in accordance with a substantial compliance system approved by the Department, that identifies certain standards as mandatory, critical or foundational.

Generally speaking, the process runs as follows:

- An applicant for accreditation or approval submits an application form and fee to an accrediting entity.
- The applicant prepares a self-assessment of its compliance with applicable U.S. accreditation and approval standards and provides the assessment along with supporting documentation to the accrediting entity for review.
- The applicant receives comments and recommendations on how to revise its practices, if needed, based on the accrediting entity's review of the self-assessment.
- The accrediting entity performs a site visit⁴⁹ to follow up on the self-assessment as well as on information obtained from the public about the applicant.
- The applicant is given an opportunity to cure any deficiencies in its compliance with the applicable standards, if necessary and possible.
- A final decision is reached on accreditation or approval, and the applicant and public are informed.

19. **Please give a brief outline of your accreditation criteria, guidelines or legislation. If possible, please provide an electronic copy of your accreditation criteria, guidelines or legislation, and any translations into English, French or Spanish.**

U.S. accreditation and approval regulations are at 22 CFR Part 96. They are consistent with the standards set forth in the Intercountry Adoption Act⁵⁰. Under these regulations, accrediting entities must determine that bodies seeking accreditation or approval are in substantial compliance with applicable U.S. accreditation and approval standards. (The standards are a subset of the regulations.)

20. **Is there a central registry of all accredited bodies?**

Yes. The U.S. Department of State, the designated Central Authority for the 1993 Hague Convention in the United States, maintains lists of accredited and temporarily accredited bodies, and approved (non-accredited) persons as well as bodies and persons that were denied accreditation or approval. The lists are available on the U.S. Department of State's Intercountry Adoption website, [Adoption.State.gov](http://adoption.state.gov) at the following location: <http://adoption.state.gov/hague/accreditation/agencies.html>.

21. **For how long is the accreditation granted?**

Accrediting entities are generally authorized to accredit a body or approve a person for a period of four years. However, in order that the renewal requests from bodies and persons that were accredited or approved at the time the 1993 Hague Convention entered into force for the United States did not occur at the same time, accrediting entities were permitted to accredit or approve certain bodies or persons for periods between three and five years for their first accreditation or approval cycle.

22. **What are the conditions for renewal of accreditation?**

The standards for renewal of accreditation and approval are the same as those for initial accreditation and approval.

- D. Authorisation of foreign accredited bodies**

23. **In your State how do you define “authorisation” in the context of Article 12? Do you have criteria for authorisation?**

See U.S. response concerning “authorization” in question 1 above. Authorization in the context of Article 12 is a question of the law of the relevant U.S. state.

24. **Who makes the decision to authorise accredited bodies in accordance with Article 12? Is your process of authorisation formal or informal? Please describe the process.**

See U.S. response concerning “authorization” in question 1 above. Authorization in the context of Article 12 is a question of the law of the relevant U.S. state.

25. **Is the Permanent Bureau informed of the authorisations?¹**

See U.S. response concerning “authorization” in question 1 above. Since any authorization would not be made by the U.S. Central Authority, the U.S. Central Authority informs the Permanent Bureau of any authorization if it becomes aware of one.

Receiving State questions

26. **As a receiving State, can you provide the current numbers of accredited bodies authorised for individual countries of origin?**

Not applicable. As noted above, accrediting entities do not grant accreditation and approval for individual States of origin. *See* U.S. response to question 10(i) above.

27. **On what basis does the accredited body seek authorisation to work in a State of origin?**

Not applicable. As noted above, accrediting entities do not grant accreditation and approval for individual States of origin. *See* U.S. response to question 10(i) above.

28. **What factors or criteria are relevant for the Central Authority (or competent authority) to consider when giving or denying authorisation to work in a State of origin?**

Not applicable. As noted above, accrediting entities do not grant accreditation and approval for individual States of origin. *See* U.S. response to question 10(i) above.

State of origin questions

29. **As a State of origin, have you authorised foreign accredited bodies to undertake intercountry adoptions in your State (see Art. 12)? How many accredited bodies are currently authorised and from which receiving countries? How many were authorised as at 31 December 2005?**

Not applicable. As noted above, authorization of foreign accredited bodies to undertake intercountry adoptions from the United States (*i.e.*, when the United States is the State of origin) would be a question of the law of the relevant U.S. state. To the

¹ “Where a body accredited in one Contracting State is, in accordance with Article 12, authorised to act in another Contracting State, such authorisation should be communicated to the Permanent Bureau by the competent authorities of both States without delay”, Recommendation No 3 of the 2005 Special Commission (reaffirming Recommendation No 2 of the 2000 Special Commission).

best of the U.S. federal government's knowledge, this situation does not occur, *i.e.*, no U.S. state grants "authorization" to "adoption accredited bodies" of receiving States.

30. **As a State of origin, is the foreign accredited body required to be fully accredited by your State and by your procedures, rather than simply "authorised"?**

With certain exceptions, U.S. law requires a body that provides any defined adoption service in the United States to be an accredited body or approved (non-accredited) person or to be supervised by such a body or person. *See* U.S. response to question 4, above; and 22 CFR 96.12, Accreditation and Approval Requirements for the Provision of Adoption Services: Authorized adoption service providers⁵¹. Specifically with respect to adoption cases involving the United States as the State of origin, a body that provides only a child background study would be exempt from this requirement. *See* 22 CFR 96.13, Accreditation and Approval Requirements for the Provision of Adoption Services: Circumstances in which accreditation, approval or supervision is not required⁵².

31. **As a State of origin, how do you decide how many foreign accredited bodies are needed in your State?**

The United States does not impose any limits on the number of bodies or persons that are granted accreditation or approval. *See* U.S. responses to questions 8 and 30 above.

32. **Countries of origin: If you authorise a foreign accredited body to "act" in your State, does this mean:**

- a) **the foreign accredited body must establish an office with professional staff (nationals of the State of origin or of the receiving State)?**
- b) **the foreign accredited body can "act" in your State through an individual facilitator or intermediary**
- c) **the foreign accredited body does not have an office or intermediary in the State of origin and it liaises directly with the Central Authority?**

See U.S. response to question 30 above.

33. **Countries of origin: have you experienced any difficulties with foreign accredited bodies working with or in your State?**

No. Foreign accredited bodies – and the central authorities they work with – have worked well with, and in, the United States.

E. Supervision and review of accredited bodies

34. **How do you supervise bodies accredited in your State (Art. 11 c))? Are regular reports required such as annual reports (including financial reports) from the accredited body to the supervising authority?**

The accrediting entities supervise and oversee accredited bodies and approved (non-accredited) persons on several levels:

Accrediting entities conduct routine oversight of accredited bodies and approved (non-accredited) persons to ensure that each body remains in substantial compliance with applicable U.S. accreditation and approval standards. *See* 22 CFR Part 96, Subpart I,

Routine Oversight by Accrediting Entities⁵³. Among other things,

- Accredited bodies and approved (non-accredited) persons make an annual attestation of substantial compliance with applicable accreditation and approval standards, including specific attestations to individual standards, to the relevant accrediting entity.
- The relevant accrediting entity may on its own initiative conduct site visits to inspect an accredited body's or approved (non-accredited) person's premises or programs, with or without advance notice for random verification of compliance or to investigate complaints (see below).
- The accrediting entities require accredited bodies and approved (non-accredited) persons to report incidents to the relevant accrediting entities as they occur, *i.e.*, significant occurrences or changes, relating to, for example, its financial status, U.S. state license or authorization, or leadership⁵⁴.

Accrediting entities also conduct oversight through review of complaints. *See* 22 CFR Part 96, Subpart J, Oversight Through Review of Complaints⁵⁵.

- The U.S. Central Authority maintains a web-based complaint registry. Complaints that come through the registry are subject to review in accordance with U.S. regulations as well as procedures agreed upon between the U.S. Department of State and the accrediting entities.
- Complaints must relate to the 1993 Hague Convention, the Intercountry Adoption Act, or the accreditation regulations.
- The relevant accrediting entity reviews complaints according to written procedures, conducts investigations and takes adverse action as appropriate, and reports the outcome of any investigation to the complainant.
- If the relevant accrediting entity's review of complaints reveals that an accredited body or approved (non-accredited) person has engaged in a pattern of serious, willful, grossly negligent, or repeated failures to comply with the accreditation and approval standards, or indicates that continued accreditation or approval would not be in the best interests of the children and families concerned, it must report the substantiated complaint to the Secretary of State⁵⁶.

U.S. accreditation and approval regulations also require the Secretary of State to suspend or cancel the accreditation or approval granted by an accrediting entity when the Secretary finds, in the Secretary's discretion, that the accredited body or approved (non-accredited) person is substantially out of compliance with the standards in the accreditation regulations and that the relevant accrediting entity has failed or refused, after consultation with the Secretary, to take action. *See* 22 CFR 96.83, Oversight of Accredited Agencies and Approved Persons by the Secretary: Suspension or Cancellation of accreditation or approval by the Secretary⁵⁷.

“The Secretary may suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that such action:

- (1) Will protect the interests of children;
- (2) Will further U.S. foreign policy or national security interests; or
- (3) Will protect the ability of U.S. citizens to adopt children under the [1993 Hague] Convention.” 22 CFR 96.83(b).

See also 22 CFR 96.39(e) (accredited bodies and approved (non-accredited) persons

cooperate with reviews, inspections and audits by the accrediting entity or the Secretary⁵⁸).

35. **What supervision occurs in the State of origin of authorised foreign accredited bodies?**

See U.S. responses concerning “authorization” in question 1 and to question 30 above.

36. **How is the performance of the accredited body assessed or evaluated?**

Through the oversight mechanisms outlined in the U.S. response to question 34 above, the relevant accrediting entity determines whether the accredited body or approved (non-accredited) person is in substantial compliance with applicable U.S. accreditation and approval standards.

37. **Does the supervising authority have the power to make regular inspections of and reports on the accredited bodies? Have secrecy or privacy laws hindered inspections?**

In accordance with 22 CFR 96.66⁵⁹, the accrediting entity may on its own initiative make site visits to inspect an accredited body’s or approved (non-accredited) person’s premises or programs, with or without advance notice, for purposes of random verification of continued substantial compliance with applicable U.S. accreditation and approval standards or to investigate a complaint. U.S. accreditation and approval regulations require bodies and persons to give the relevant accrediting entity access to information and documents that it requires to perform its oversight functions. *See* 22 CFR 96.25⁶⁰.

38. **Do you require accredited bodies to report on any problems with intercountry adoptions, such as problems with particular countries, procedural problems or problems with implementation of the 1993 Hague Convention (see Convention Art. 33)?**

Accredited bodies and approved (non-accredited) persons interact with the U.S. Central Authority, U.S. immigration and consular officials abroad, other central authorities and the relevant accrediting entity on a regular basis and share concerns, observations, and questions about implementation of the 1993 Hague Convention. As the U.S. Central Authority, the U.S. Department of State encourages accredited bodies and approved (non-accredited) persons to report problems with intercountry adoptions or problems with implementation of the 1993 Hague Convention. A dedicated email address for receiving communications related to the 1993 Hague Convention is available for this purpose: AdoptionUSCA@State.gov.

39. **Does your law have provisions to deal with breach of duties or breach of the conditions of accreditation by accredited bodies? E.g., Suspension or revocation of accreditation or authorisation? Other penalties / measures? Please give details.**

U.S. accreditation and approval regulations require the relevant accrediting entity to take “adverse action” when it determines that an accredited body or approved (non-accredited) person is no longer in substantial compliance with applicable accreditation and approval standards. Adverse actions include suspending or cancelling accreditation or approval; refusing to renew accreditation or approval; and requiring an accredited body or approved (non-accredited) person to take a specific corrective action to bring itself into compliance. *See* 22 CFR 96.75, Adverse Action by the

Accrediting Entity: Adverse action against accredited bodies or approved persons not in substantial compliance⁶¹.

40. **If accreditation has been suspended or withdrawn and is later re-instated, what conditions, if any, apply after re-instatement?**

If an accredited body's or approved (non-accredited) person's accreditation or approval were suspended or cancelled and later reinstated, no additional conditions would be placed on the accreditation or approval. As with other accredited bodies or approved (non-accredited) persons, the body or person whose accreditation or approval was reinstated would have to maintain its substantial compliance with applicable accreditation and approval standards.

41. **Is it possible to suspend or withdraw accreditation if the general situation in the State no longer offers the necessary guarantees for intercountry adoptions?**

No. Since the United States does not accredit bodies or approve persons to provide adoption services in specific States of origin, such accreditation or approval would not be withdrawn if the general situation in a State of origin no longer offered the necessary guarantees for intercountry adoption. However, if the United States determined that the provisions of the 1993 Hague Convention were no longer being observed in a particular State of origin, the United States would suspend adoptions from that State as it could not meet U.S. requirements under those circumstances.

42. **Are there restrictions upon activities of accredited bodies (e.g., advertising their services; advertising, including on the internet, of adoptable children; limits on amounts that can be charged for fees and other expenses)?**

Yes. U.S. accreditation and approval standards provide for certain restrictions on the activities of accredited bodies and approved (non-accredited) persons. *See, e.g., 22 CFR 96.36, Ethical Practices and Responsibilities: Prohibition on child buying*⁶².

U.S. accreditation and approval standards also have specific provisions covering the use of the internet resources. *See 22 CFR 96.39(f), Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Information disclosure and quality control practices*⁶³.

While U.S. accreditation and approval standards have provisions on the fees and other expenses charged by accredited bodies and approved (non-accredited) persons, they address itemization and disclosure of fees and expenses rather than amounts. *See 22 CFR 96.40, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Fee policies and procedures*⁶⁴.

Accredited bodies and approved (non-accredited) persons are subject not only to U.S. accreditation and approval regulations, but also to the laws of individual U.S. states and territories governing licensure of adoption professionals, which may include provisions covering, for example, limitations on the participation of attorneys in the adoption process and fee arrangements.

43. **Are you aware of any acts or behaviour by accredited bodies that contravened your accreditation criteria? Please also provide details of any sanctions or penalties applied?**

The United States is not aware of any acts or behavior by accredited bodies or approved (non-accredited) persons that contravened U.S. accreditation and approval standards⁶⁵.

44. **What are the means used by the authorities supervising accredited bodies in order to improve good practices or remedy breaches in relation to requirements for accreditation or as regards to behaviour?**

As discussed above, accrediting entities monitor and oversee accredited bodies or approved (non-accredited) persons throughout their accreditation and approval periods, including through the review and investigation of complaints, to ensure that they maintain substantial compliance with applicable U.S. accreditation and approval standards. *See* U.S. response to question 34 above. If the relevant accrediting entity notes a lack of substantial compliance, it may advise an accredited body or approved (non-accredited) person in writing of any deficiencies that may warrant adverse action and provide it with an opportunity to demonstrate that an adverse action would be unwarranted. *See* 22 CFR 96.76(b)⁶⁶; *see also* 22 CFR 96.75, Adverse Action by the Accrediting Entity: Adverse action against accredited agencies or approved persons not in substantial compliance⁶⁷. In addition, the accrediting entities provide ongoing guidance on good practices to accredited bodies and approved (non-accredited) persons.

45. **Is there collaboration among the accredited bodies working in the same State of origin, or in different countries? If so, what kind of collaboration?**

Some accredited bodies or approved (non-accredited) persons do collaborate in a particular adoption case in a State of origin. When this happens, one of the bodies is designated the “primary provider” in the case and is responsible, in accordance with 22 CFR 96.14⁶⁸, for ensuring that all six of the defined adoption services are provided in accordance with the 1993 Hague Convention, the Intercountry Adoption Act and U.S. accreditation and approval regulations. *See* U.S. response to question 4 above. In such circumstances, the primary provider may supervise another accredited body or approved (non-accredited) person under a supervisory agreement. *See* the discussion on collaboration among accredited bodies or approved (non-accredited) persons in Section B above.

46. **Is the information on each accredited body’s website regularly checked by the supervising authority? By an authority in the State of origin with which it co-operates?**

U.S. accreditation and approval regulations do not directly address this issue, though during the accreditation and approval process the relevant accrediting entity reviews a body’s or person’s internet website(s) to assess the body’s or person’s substantial compliance with applicable U.S. accreditation and approval standards, including those on internet use in the placement of individual children found in 22 CFR 96.39(f)⁶⁹.

F. Financial issues

47. **How are your accredited bodies financed?**

Accredited bodies are generally funded through fees from adoptive families and through charitable donations. Approved (non-accredited) persons are individuals and for-profit entities who also support their operations through fees.

48. **How are fees and charges set? E.g., by accredited bodies themselves, by a public authority. Is there bilateral co-operation between your State and other countries to establish appropriate fees for the 2 countries concerned?**

Fees are set by the individual accredited body or approved (non-accredited) person under the oversight of the relevant accrediting entity.

49. **Is detailed information about all the fees, charges and costs associated with an intercountry adoption available easily to adoptive candidates and other authorities?**

Transparency and disclosure of fees to adoptive candidates is one of the hallmarks of U.S. accreditation and approval standards. *See* U.S. response to question 42 above; 22 CFR 96.39, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Information disclosure and quality control practices⁷⁰; and 22 CRR 96.40, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Fee policies and procedures⁷¹.

50. **How and when is that information provided to adoptive candidates?**

U.S. accreditation and approval standards provide for accredited bodies and approved (non-accredited) persons to disclose, prior to an adoptive candidate's filing of an application for adoption services, a written schedule of expected total fees and estimated expenses and an explanation of the conditions under which the fees or expenses may be charged, waived, reduced, or refunded, and of when and how the fees and expenses must be paid. *See* 22 CFR 96.40(a)⁷².

51. **How is financial transparency and accountability of accredited bodies achieved? E.g, by standard bookkeeping? Receipts and proof of purchases? Reports submitted with financial statement?**

As discussed above, accredited bodies and approved (non-accredited) persons must be in substantial compliance with applicable U.S. accreditation and approval standards, one of which covers fee policies. *See* U.S. response to question 42 above; and 22 CFR 96.40, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Fee policies and procedures⁷³. In addition, U.S. accreditation and approval standards provide for an accredited body's or approved (non-accredited) person's finances to be subject to an annual internal review and an independent audit every four years. *See* 22 CFR 96.33(b)⁷⁴.

52. **Do you allow donations to be paid to children's homes by the accredited bodies or prospective adoptive parents? Under what conditions?**

U.S. law does not prohibit accredited bodies or approved (non-accredited) persons from making donations to children's homes, if such donations are permitted by the State of origin.

53. **The costs relating to adoption are extremely difficult to evaluate. Can you state the average amount or range (smallest to highest amount payable) for the following items.**

U.S. data on costs relating to adoption do not neatly align with the categories listed below in the questionnaire. To be responsive, the United States instead provides data collected for U.S. fiscal year 2007-08, which concluded September 30, 2008. The amounts reflected in the chart below include fees for adoption cases where the United States was either a receiving State or a State of origin. (N.B. Cases in which the United States was a State of origin represent less than 1% of all cases.)

Fee Type	Maximum Fee	Mean Fee	Median Fee
Adoption Expenses in the United States	\$42,000	\$3,730	\$2,500
Care of Child	\$6,950	\$1,640	\$900
Contributions to Child Welfare Service Programs in the Child's State of Origin	\$10,000	\$2,135	\$1,500
Foreign Country Program Expenses	\$35,790	\$7,485	\$6,000
Home Study Fee	\$5,200	\$1,410	\$1,500
Post-Placement & Post-Adoption Reports, if any	\$5,575	\$1,025	\$750
Third-Party Fees	\$22,000	\$1,785	\$830
Translation & Document Expenses	\$5,910	\$1,005	\$750
Travel & Accommodation Expenses	\$23,000	\$4,880	\$4,200

54. **What is the relation between adoption fees (and contributions) and actual costs? Is it calculated for the whole budget of the accredited body, or per State, or does each adoption carry its own costs? How is the relation between fees and actual costs supervised?**

Each individual accredited body or approved (non-accredited) person sets its own fees according to its own methodology. The United States does not collect this information.

55. **What general comments can you give about costs of intercountry adoption (from the perspective of your own State and in other countries?)**

The first goal of the United States is transparency. The United States is refining the categories of fee information collected in order to better compare fees charged across all accredited bodies and approved (non-accredited) persons.

State of origin questions

56. **In the State of origin, who is responsible for the co-ordination of the costs: an accredited body's employee? A third-party? In case of a third-party, how is he selected? How is he financed? How is he evaluated? What mechanisms are in place to ensure that these costs are reasonable and transparent? What are the factors that make these costs vary from one adoptive file to another?**

Each accredited body or approved (non-accredited) person providing services in a case where the United States is the State of origin is responsible for ensuring that its own fee structure is reasonable and transparent. The accrediting entities monitor the bodies and persons on this issue as with all other accreditation and approval issues. Costs vary significantly from one part of the United States to another for a variety of reasons, such as prevailing economic conditions, availability of professional staff, distances involved in home study preparation and post placement reporting, and competitive factors.

G. Operational issues

57. **Which are the tasks carried out by accredited bodies in your State? Tick boxes if applicable. For countries of origin, please specify if your own national accredited bodies or foreign accredited bodies perform the tasks.**

Receiving State questions

- Determination of eligibility of prospective adoptive parents (legal criteria)**
- Evaluation of suitability of prospective adoptive parents (psychosocial criteria)⁷⁵**
- Decision granting approval for the prospective adoptive parents to adopt**
- Information and preparation of adoptive parents for intercountry adoption⁷⁶**
- Make the matching decision**
- Counselling of PAPs about child proposed to them (the proposed match)**
- Agreements under article 17 of the 1993 Hague Convention**
- Arrange to file documents with Court or authority of State of origin**
- Report to supervising authority on status of the adoption**
- Assist PAPs with Travel preparations**
- Follow, know, understand, and supervise the procedure for the adoption**
- Other tasks: please provide details**

State of origin questions

Bodies and persons that have been accredited or approved to provide adoption services in cases where the United States is the State of origin may, depending on relevant U.S. state law, perform items checked below in a particular case, in whole or in part.

- Assessment of the adoptability of a Work with birth parents on family preservation to avoid adoption of the child⁷⁷**
- Decision on the adoptability of a child (in conjunction with domestic public authorities where appropriate)**
- Counselling and information for birth parents / consequences of consent**

- Obtaining Consent**
- Search for parents in cases of abandonment**
- Assume responsibility for the child prior to the adoption**
- Prepare the child for adoption**
- Agreements under Article 17 of the 1993 Hague Convention**
- File adoption documents with court or authority**
- Search for socio-biological background information of child and birth family and reunion with birth family**
- Make the matching decision⁷⁸**
- Preparation of the adoptive child**
- Assistance provided to the adoptive parents during their stay**
- Other tasks: please provide details.**

H. Post adoption services and reports

58. **What post adoption services do your accredited bodies offer (e.g., counselling and family support)? Is provision of post adoption services one of the conditions of accreditation?**

U.S. accreditation and approval standards address post-adoption services in cases in which the United States is the State of origin in 22 CFR 96.51, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Post-adoption services in incoming cases⁷⁹. In accordance with the standard, an accredited body or approved (non-accredited) person informs prospective adoptive parent(s) whether it will provide any post-adoption services. (NB U.S. accreditation and approval standards address post-placement activities in a different standard, 22 CFR 96.50.) The additional services that accredited bodies and approved (non-accredited) persons offer varies, depending on the needs of the family and prevailing practice in the jurisdiction where the body or person is licensed.

59. **Are there any publicly funded post adoption services?**

Under Title IV E of the Social Security Act, administered by the U.S. Department of Health and Human Services (HHS), children in the U.S. foster care system who are eligible for Title IV E funding retain eligibility for that funding when adopted by a family overseas. The funds under this program follow the child. In addition, HHS provides one-time funding for costs associated with adoption. Funding ranges from \$200 to \$2,000 and is disbursed as part of both U.S. state and Federal programs. The case worker assists adoptive parents to seek reimbursement for costs such as a home study and update, required training or parent preparation classes, criminal checks, court costs, attorney fees, health and psychological exams for the adoptive parents, travel and miscellaneous or unexpected expenses.

Receiving State questions

60. **Do accredited bodies have to provide regular reports on the child? To whom are the reports sent e.g., Central Authorities of State of origin and of receiving State? Other?**

U.S. accreditation and approval standards provide that accredited bodies and approved (non-accredited) persons include in the adoption services contract with the prospective adoptive family a requirement for post-adoption reports when such reports are required by the child's State of origin. *See* 22 CFR 96.51(c)⁸⁰. Bodies and persons are also to encourage adoptive parent(s) to provide such reports. The U.S. Central Authority does not receive copies of any reports.

61. **Do your accredited bodies prepare the post adoption report or do they ask the adoptive parents to prepare it and send it to the State of origin? If a public authority is responsible for post adoption reporting, please explain.**

When post adoption reports are required by States of origin, accredited bodies and approved (non-accredited) persons include preparation of reports in their service agreements with prospective adoptive parents⁸¹. Professional social workers prepare the reports, which are then submitted to the appropriate entity in the State of origin.

62. **How do you monitor the obligation to the State of origin to send post adoption reports?**

The U.S. Central Authority does not monitor the provision of post-adoption reports.

J. Approved (non accredited) bodies and persons²

63. **Does your State permit approved (non-accredited) bodies or persons (see Art. 22(2)) to arrange intercountry adoptions. If not, go to Question 68. If yes,**

Yes. *See* U.S. "Introduction" in Section A above. The United States has responded to questions 65-68 in the context of its responses to questions 1-59.

64. **Have you informed the Permanent Bureau of the details of approved (non-accredited) bodies or persons in your State, as required by Article 22(3)? Is the information which is currently on the Hague Conference website up to date?**

Yes.

65. **What are the guidelines by which approval is granted?**

See U.S. response to question 63 above.

66. **What is the process by which approval is granted and renewed?**

See U.S. response to question 63 above.

67. **How is the supervision of approved (non-accredited) bodies or persons carried out in your State (Art. 22(2))?**

See U.S. responses to questions 63 and 34 above.

68. **Has your State made a declaration under Article 22(4) to prohibit the involvement of approved (non-accredited) bodies or persons in intercountry adoptions?**

No.

² The term "non-accredited person" was used in the Explanatory Report of Professor Parra-Aranguren to refer to the person in Art. 22(2). Some countries now employ the term "approved person" when referring to person in Art. 22(2). However, the 2005 Questionnaire responses revealed enormous confusion when the term "approved persons" was used. Consequently, the Guide to Good Practice has followed the usage of the Explanatory Report to try to improve the public's understanding of the functions of these particular persons. The term "approved (non-accredited) person" is a compromise to retain the precision of the Explanatory Report, but recognises the usage by some countries of the term "approved person".

69. **Are you aware of any acts or behaviour by approved (non-accredited) bodies or persons that contravened their conditions of approval? Please also provide details of any sanctions or penalties applied.**

See U.S. response to question 63 above.

State of origin questions

70. **As a State of origin, do you allow approved (non-accredited) persons or bodies from abroad to “act” in your State (as a similar procedure to authorisation of accredited bodies under Art. 12)?**

Yes. *See also U.S. responses to questions 1 on authorization and questions 5 and 30 above.*

K. Development aid activities

71. **Are accredited bodies required to or permitted to engage in humanitarian projects or development co-operation activities in countries of origin?**

U.S. accreditation and approval regulations do not address humanitarian projects and development by accredited bodies and approved (non-accredited) persons; bodies and persons are thus neither required to nor prohibited from engaging in such activities.

72. **What types of activities are undertaken?**

Many accredited bodies and approved (non-accredited) persons engage in a wide variety of humanitarian work, including building or renovating orphanages, contributing to the care of older children less likely to be adopted, contributing to multinational humanitarian non-governmental organizations, and contributing to projects identified by the State of origin.

73. **How do you ensure that the humanitarian aid does not influence or jeopardize the integrity of the intercountry adoption process (e.g., by the expectation of a regular “supply” of children in exchange for regular humanitarian or development aid)?**

Accrediting entities assess this question as part of the accreditation and approval process, including through monitoring, review of complaints and review for renewals. *See U.S. response to question 34.* As always, an accrediting entity may impose an adverse action if it determines that an accredited or approved (non-accredited) body is not in substantial compliance with applicable U.S. accreditation and approval standards, including, in particular 22 CFR 96.35(a), Ethical Practices and Responsibilities, Suitability of agencies and persons to provide adoption services consistent with the [1993 Hague] Convention⁸².

L. Co-operation between countries

74. **Have you experienced any difficulties in obtaining assistance or co-operation from other Central Authorities in regard to accredited bodies?**

No. U.S. efforts to date have focused on clarifying to States of origin our 1993 Hague Convention adoption system and the U.S. declaration that certain central authority functions may be performed by accredited bodies and approved (non-accredited) persons, in light of questions about their competence.

75. **Have you experienced any difficulties or concerns regarding the supervision of accredited bodies in other countries?**

No.

76. **Have you experienced any difficulties with other countries or Central Authorities because you do not use accredited bodies?**

Not applicable.

77. **Are there any particular aspects of your accreditation procedures e.g., good practices that you would like to bring to the attention of other States?**

See U.S. responses to questions above.

78. **Do you have any other comments about any of the topics covered by this Questionnaire?**

No.

State of origin questions

79. **Have you experienced any pressure from foreign accredited bodies?**

No.

ENDNOTES

¹ An electronic copy of the Intercountry Adoption Act of 2000 is provided with this questionnaire.

² **22 CFR 96.12(a) and (b), Accreditation and Approval Requirements for the Provision or Adoption Services: Authorized adoption service providers.**

(a) Once the Convention has entered into force for the United States, except as provided in section 505(b) of the IAA (relating to transitional cases), an agency or person may not offer, provide, or facilitate the provision of any adoption service in the United States in connection with a Convention adoption unless it is:

(1) An accredited agency, a temporarily accredited agency, or an approved person;

(2) A supervised provider; or

(3) An exempted provider, if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency pursuant to Sec. 96.47(c) or 96.53(b).

(b) A public domestic authority may also offer, provide, or facilitate the provision of any such adoption service.

³ **22 CFR 96.31, Licensing and Corporate Governance: Corporate structure.**

(a) The agency qualifies for nonprofit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for nonprofit status under the laws of any State.

(b) The person is an individual or is a for-profit entity organized as a corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity under the laws of any State.

⁴ **22 CFR 96.37, Professional Qualifications and Training for Employees: Education and experience requirements for social service personnel.**

(a) The agency or person only uses employees with appropriate qualifications and credentials to perform, in connection with a Convention adoption, adoption-related social service functions that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services).

(b) The agency's or person's employees meet any State licensing or regulatory requirements for the services they are providing.

(c) The agency's or person's executive director, the supervisor overseeing a case, or the social service employee providing adoption-related social services that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services) has experience in the professional delivery of intercountry adoption services.

(d) Supervisors. The agency's or person's social work supervisors have prior experience in family and children's services, adoption, or intercountry adoption and either:

(1) A master's degree from an accredited program of social work;

(2) A master's degree (or doctorate) in a related human service field, including, but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling; or

(3) In the case of a social work supervisor who is or was an incumbent at the time the Convention enters into force for the United States, the supervisor has significant skills and experience in intercountry adoption and has regular access for consultation purposes to an individual with the qualifications listed in paragraph (d)(1) or paragraph (d)(2) of this section.

(e) Non-supervisory employees. The agency's or person's non-supervisory employees providing adoption-related social services that require the application of clinical skills and judgment other than home studies or child background studies have either:

(1) A master's degree from an accredited program of social work or in another human service field; or

(2) A bachelor's degree from an accredited program of social work; or a combination of a bachelor's degree in any field and prior experience in family and children's services, adoption, or intercountry adoption; and

(3) Are supervised by an employee of the agency or person who meets the requirements for supervisors in paragraph (d) of this section.

(f) Home studies. The agency's or person's employees who conduct home studies:

(1) Are authorized or licensed to complete a home study under the laws of the States in which they practice;

(2) Meet the INA requirements for home study preparers in 8 CFR 204.3(b); and

(3) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

(g) Child background studies. The agency's or person's employees who prepare child background studies:

(1) Are authorized or licensed to complete a child background study under the laws of the States in which they practice; and

(2) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

⁵ **22 CFR 96.38, Professional Qualifications and Training for Employees: Training requirements for social service personnel.**

(a) The agency or person provides newly hired employees who have adoption-related responsibilities involving the application of clinical skills and judgment (home studies, child

background studies, counselling services, parent preparation, post-placement and other similar services) with a comprehensive orientation to intercountry adoption that includes training on:

- (1) The requirements of the Convention, the [Intercountry Adoption Act], the regulations implementing the [Intercountry Adoption Act], and other applicable Federal regulations;
- (2) The INA regulations applicable to the immigration of children adopted from a Convention country;
- (3) The adoption laws of any Convention country where the agency or person provides adoption services;
- (4) Relevant State laws;
- (5) Ethical considerations in intercountry adoption and prohibitions on child-buying;
- (6) The agency's or person's goals, ethical and professional guidelines, organizational lines of accountability, policies, and procedures; and
- (7) The cultural diversity of the population(s) served by the agency or person.

(b) In addition to the orientation training required under paragraph (a) of this section, the agency or person provides initial training to newly hired or current employees whose responsibilities include providing adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) that addresses:

- (1) The factors in the countries of origin that lead to children needing adoptive families;
- (2) Feelings of separation, grief, and loss experienced by the child with respect to the family of origin;
- (3) Attachment and post-traumatic stress disorders;
- (4) Psychological issues facing children who have experienced abuse or neglect and/or whose parents' rights have been terminated because of abuse or neglect;
- (5) The impact of institutionalization on child development;
- (6) Outcomes for children placed for adoption internationally and the benefits of permanent family placements over other forms of government care;
- (7) The most frequent medical and psychological problems experienced by children from the countries of origin served by the agency or person;
- (8) The process of developing emotional ties to an adoptive family;
- (9) Acculturation and assimilation issues, including those arising from factors such as race, ethnicity, religion, and culture and the impact of having been adopted internationally; and
- (10) Child, adolescent, and adult development as affected by adoption.

(c) The agency or person ensures that employees who provide adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) also receive, in addition to the orientation and initial training described in paragraphs (a) and (b) of this section, no less than thirty hours of training every two years, or more if required by State law, on current and emerging adoption practice issues through participation in seminars, conferences, documented distance learning courses, and other similar programs. Continuing education hours required under State law may count toward the thirty hours of training as long as the training is related to current and emerging adoption practice issues.

⁶ **22 CFR 96.32, Licensing and Corporate Governance: Internal structure and oversight.**

(a) The agency or person has (or, in the case of an individual, is) a chief executive officer or equivalent official who is qualified by education, adoption service experience, and management credentials to ensure effective use of resources and coordinated delivery of the services provided by the agency or person, and has authority and responsibility for management and oversight of the staff and any supervised providers in carrying out the

adoption-related functions of the organization.

(b) The agency or person has a board of directors or a similar governing body that establishes and approves its mission, policies, budget, and programs; provides leadership to secure the resources needed to support its programs; includes one or more individuals with experience in adoption, including but not limited to, adoptees, birth parents, prospective adoptive parent(s), and adoptive parents; and appoints and oversees the performance of its chief executive officer or equivalent official. This standard does not apply where the person is an individual practitioner.

(c) The agency or person keeps permanent records of the meetings and deliberations of its governing body and of its major decisions affecting the delivery of adoption services.

(d) The agency or person has in place procedures and standards, pursuant to Sec. 96.45 and Sec. 96.46, for the selection, monitoring, and oversight of supervised providers.

(e) The agency or person discloses to the accrediting entity the following information:

(1) Any other names by which the agency or person is or has been known, under either its current or any former form of organization, and the addresses and phone numbers used when such names were used;

(2) The name, address, and phone number of each current director, manager, and employee of the agency or person, and, for any such individual who previously served as a director, manager, or employee of another provider of adoption services, the name, address, and phone number of such other provider; and

(3) The name, address, and phone number of any entity it uses or intends to use as a supervised provider.

⁷ **22 CFR 96.35, Ethical Practices and Responsibilities: Suitability of Agencies and persons to provide services consistent with the Convention.**

(a) The agency or person provides adoption services ethically and in accordance with the Convention's principles of:

(1) Ensuring that intercountry adoptions take place in the best interests of children; and

(2) Preventing the abduction, exploitation, sale, or trafficking of children.

(b) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person discloses to the accrediting entity the following information related to the agency or person, under its current or any former name:

(1) Any instances in which the agency or person has lost the right to provide adoption services in any State or country, including the basis for such action(s);

(2) Any instances in which the agency or person was debarred or otherwise denied the authority to provide adoption services in any State or country, including the basis and disposition of such action(s);

(3) Any licensing suspensions for cause or other negative sanctions by oversight bodies against the agency or person, including the basis and disposition of such action(s);

(4) For the prior ten-year period, any disciplinary action(s) against the agency or person by a licensing or accrediting body, including the basis and disposition of such action(s);

(5) For the prior ten-year period, any written complaint(s) related to the provision of adoption-related services, including the basis and disposition of such complaints, against the agency or person filed with any State or Federal or foreign regulatory body and of which the agency or person was notified;

(6) For the prior ten-year period, any known past or pending investigation(s) (by Federal authorities or by public domestic authorities), criminal charge(s), child abuse charge(s), or lawsuit(s) against the agency or person, related to the provision of child welfare or adoption-related services, and the basis and disposition of such action(s).

(7) Any instances where the agency or person has been found guilty of any crime under

Federal, State, or foreign law or has been found to have committed any civil or administrative violation involving financial irregularities under Federal, State, or foreign law;

(8) For the prior five-year period, any instances where the agency or person has filed for bankruptcy; and

(9) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that have been or are currently carried out by the agency or person, affiliate organizations, or by any organization in which the agency or person has an ownership or controlling interest.

(c) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person (for its current or any former names) discloses to the accrediting entity the following information about its individual directors, officers, and employees:

(1) For the prior ten-year period, any conduct by any such individual related to the provision of adoption-related services that was subject to external disciplinary proceeding(s);

(2) Any convictions or current investigations of any such individual who is in a senior management position for acts involving financial irregularities;

(3) The results of a State criminal background check and a child abuse clearance for any such individual in the United States in a senior management position or who works directly with parent(s) and/or children (unless such checks have been included in the State licensing process); and

(4) A completed FBI Form FD-258 for each such individual in the United States in a senior management position or who works directly with parent(s) and/or children, which the agency or person must keep on file in case future allegations warrant submission of the form for a Federal criminal background check of any such individual.

(5) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that are known to have been or are currently carried out by current individual directors, officers, or employees of the agency or person.

(d) In order to permit the accrediting entity to evaluate the suitability of a person who is an individual practitioner for approval, the individual:

(1) Provides the results of a State criminal background check and a child abuse clearance to the accrediting entity;

(2) Completes and retains a FBI Form FD-258 on file in case future allegations warrant submission of the form for a Federal criminal background check;

(3) If a lawyer, for every jurisdiction in which he or she has ever been admitted to the Bar, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation and immediately reports to the accrediting entity any disciplinary action considered by a State bar association, regardless of whether the action relates to intercountry adoption; and

(4) If a social worker, for every jurisdiction in which he or she has been licensed, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation.

(e) In order to permit the accrediting entity to monitor the suitability of an agency or person, the agency or person must disclose any changes in the information required by Sec. 96.35 within thirty business days of learning of the change.

⁸ See end note 3 (22 CFR 96.31).

⁹ See end note 6 (22 CFR 96.32).

¹⁰ **22 CFR 96.33, Financial and Risk Management: Budget, audit, insurance, and risk assessment requirements.**

(a) The agency or person operates under a budget approved by its governing body, if applicable, for management of its funds. The budget discloses all remuneration (including perquisites) paid to the agency's or person's board of directors, managers, employees, and supervised providers.

(b) The agency's or person's finances are subject to annual internal review and oversight and are subject to independent audits every four years. The agency or person submits copies of internal financial review reports for inspection by the accrediting entity each year.

(c) The agency or person submits copies of each audit, as well as any accompanying management letter or qualified opinion letter, for inspection by the accrediting entity.

(d) The agency or person meets the financial reporting requirements of Federal and State laws and regulations.

(e) The agency's or person's balance sheets show that it operates on a sound financial basis and maintains on average sufficient cash reserves, assets, or other financial resources to meet its operating expenses for two months, taking into account its projected volume of cases and its size, scope, and financial commitments. The agency or person has a plan to transfer its Convention cases if it ceases to provide or is no longer permitted to provide adoption services in Convention cases. The plan includes provisions for an organized closure and reimbursement to clients of funds paid for services not yet rendered.

(f) If it accepts charitable donations, the agency or person has safeguards in place to ensure that such donations do not influence child placement decisions in any way.

(g) The agency or person assesses the risks it assumes, including by reviewing information on the availability of insurance coverage for Convention-related activities. The agency or person uses the assessment to meet the requirements in paragraph (h) of this section and as the basis for determining the type and amount of professional, general, directors' and officers', errors and omissions, and other liability insurance to carry.

(h) The agency or person maintains professional liability insurance in amounts reasonably related to its exposure to risk, but in no case in an amount less than \$1,000,000 in the aggregate.

(i) The agency's or person's chief executive officer, chief financial officer, and other officers or employees with direct responsibility for financial transactions or financial management of the agency or person are bonded.

¹¹ **22 CFR 96.34, Financial and Risk Management: Compensation.**

(a) The agency or person does not compensate any individual who provides intercountry adoption services with an incentive fee or contingent fee for each child located or placed for adoption.

(b) The agency or person compensates its directors, officers, employees, and supervised providers who provide intercountry adoption services only for services actually rendered and only on a fee-for-service, hourly wage, or salary basis rather than a contingent fee basis.

(c) The agency or person does not make any payments, promise payment, or give other consideration to any individual directly or indirectly involved in provision of adoption services in a particular case, except for salaries or fees for services actually rendered and reimbursement for costs incurred. This does not prohibit an agency or person from providing in-kind or other donations not intended to influence or affect a particular adoption.

(d) The fees, wages, or salaries paid to the directors, officers, employees, and supervised providers of the agency or person are not unreasonably high in relation to the services actually rendered, taking into account the country in which the adoption services are provided and norms for compensation within the intercountry adoption community in that country, to the extent that such norms are known to the accrediting entity; the location, number, and qualifications of staff; workload requirements; budget; and size of the agency or person.

(e) Any other compensation paid to the agency's or person's directors or members of its

governing body is not unreasonably high in relation to the services rendered, taking into account the same factors listed in paragraph (d) of this section and its for-profit or nonprofit status.

(f) The agency or person identifies all vendors to whom clients are referred for non-adoption services and discloses to the accrediting entity any corporate or financial arrangements and any family relationships with such vendors.

¹² **22 CRR 96.40, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Fee policies and procedures.**

(a) The agency or person provides to all applicants, prior to application, a written schedule of expected total fees and estimated expenses and an explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded and of when and how the fees and expenses must be paid.

(b) Before providing any adoption service to prospective adoptive parent(s), the agency or person itemizes and discloses in writing the following information for each separate category of fees and estimated expenses that the prospective adoptive parent(s) will be charged in connection with a Convention adoption:

(1) Home study. The expected total fees and estimated expenses for home study preparation and approval, whether the home study is to be prepared directly by the agency or person itself, or prepared by a supervised provider, exempted provider, or approved person and approved as required under Sec. 96.47;

(2) Adoption expenses in the United States. The expected total fees and estimated expenses for all adoption services other than the home study that will be provided in the United States. This category includes, but is not limited to, personnel costs, administrative overhead, operational costs, training and education, communications and publications costs, and any other costs related to providing adoption services in the United States;

(3) Foreign country program expenses. The expected total fees and estimated expenses for all adoption services that will be provided in the child's Convention country. This category includes, but is not limited to, costs for personnel, administrative overhead, training, education, legal services, and communications, and any other costs related to providing adoption services in the child's Convention country;

(4) Care of the child. The expected total fees and estimated expenses charged to prospective adoptive parent(s) for the care of the child in the country of origin prior to adoption, including, but not limited to, costs for food, clothing, shelter and medical care; foster care services; orphanage care; and any other services provided directly to the child;

(5) Translation and document expenses. The expected total fees and estimated expenses for obtaining any necessary documents and for any translation of documents related to the adoption, along with information on whether the prospective adoptive parent(s) will be expected to pay such costs directly or to third parties, either in the United States or in the child's Convention country, or through the agency or person. This category includes, but is not limited to, costs for obtaining, translating, or copying records or documents required to complete the adoption, costs for the child's Convention court documents, passport, adoption certificate and other documents related to the adoption, and costs for notarizations and certifications;

(6) Contributions. Any fixed contribution amount or percentage that the prospective adoptive parent(s) will be expected or required to make to child protection or child welfare service programs in the child's Convention country or in the United States, along with an explanation of the intended use of the contribution and the manner in which the transaction will be recorded and accounted for; and

(7) Post-placement and post-adoption reports. The expected total fees and estimated expenses for any post-placement or post-adoption reports that the agency or person or

parent(s) must prepare in light of any requirements of the expected country of origin.

(c) If the following fees and estimated expenses were not disclosed as part of the categories identified in paragraph (b) of this section, the agency or person itemizes and discloses in writing any:

(1) Third party fees. The expected total fees and estimated expenses for services that the prospective adoptive parent(s) will be responsible to pay directly to a third party. Such third party fees include, but are not limited to, fees to competent authorities for services rendered or Central Authority processing fees; and

(2) Travel and accommodation expenses. The expected total fees and estimated expenses for any travel, transportation, and accommodation services arranged by the agency or person for the prospective adoptive parent(s).

(d) The agency or person also specifies in its adoption services contract when and how funds advanced to cover fees or expenses will be refunded if adoption services are not provided.

(e) When the agency or person uses part of its fees to provide special services, such as cultural programs for adoptee(s), scholarships or other services, it discloses this policy to the prospective adoptive parent(s) in advance of providing any adoption services and gives the prospective adoptive parent(s) a general description of the programs supported by such funds.

(f) The agency or person has mechanisms in place for transferring funds to Convention countries when the financial institutions of the Convention country so permit and for obtaining written receipts for such transfers, so that direct cash transactions by the prospective adoptive parent(s) to pay for adoption services provided in the Convention country are minimized or unnecessary.

(g) The agency or person does not customarily charge additional fees and expenses beyond those disclosed in the adoption services contract and has a written policy to this effect. In the event that unforeseen additional fees and expenses are incurred in the Convention country, the agency or person charges such additional fees and expenses only under the following conditions:

(1) It discloses the fees and expenses in writing to the prospective adoptive parent(s);

(2) It obtains the specific consent of the prospective adoptive parent(s) prior to expending any funds in excess of \$1000 for which the agency or person will hold the prospective adoptive parent(s) responsible or gives the prospective adoptive parent(s) the opportunity to waive the notice and consent requirement in advance. If the prospective adoptive parent(s) has the opportunity to waive the notice and consent requirement in advance, this policy is reflected in the written policies and procedures of the agency or person; and

(3) It provides written receipts to the prospective adoptive parent(s) for fees and expenses paid directly by the agency or person in the Convention country and retains copies of such receipts.

(h) The agency or person returns any funds to which the prospective adoptive parent(s) may be entitled within sixty days of the completion of the delivery of services.

¹³ **22 CFR 96.45, Service Planning and Delivery: Using supervised providers in the United States.**

(a) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider:

(1) Is in compliance with applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(2) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of

children; and

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in Sec. 96.35.

(b) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the supervised provider and requires that the service(s) be provided in accordance with the applicable service standard(s) for accreditation and approval (for example: home study (Sec. 96.47); parent training (Sec. 96.48); child background studies and consent (Sec. 96.53));

(2) Requires the supervised provider to comply with the following standards regardless of the type of adoption services it is providing: Sec. 96.36 (prohibition on child-buying), Sec. 96.34 (compensation), Sec. 96.38 (employee training), Sec. 96.39(d) (waivers of liability), and Sec. 96.41(b) through (e) (complaints);

(3) Identifies specifically the lines of authority between the primary provider and the supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(4) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the supervised provider;

(5) Specifies whether the supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(6) Provides that, if billing the client(s) directly for its service, the supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within sixty days of the completion of the delivery of services;

(7) Requires the supervised provider to meet the same personnel qualifications as accredited agencies and approved persons, as provided for in Sec. 96.37, except that, for purposes of Sec. 96.37(e)(3), (f)(3), and (g)(2), the work of the employee must be supervised by an employee of an accredited agency or approved person;

(8) Requires the supervised provider to limit the use of and safeguard personal data gathered or transmitted in connection with an adoption, as provided for in Sec. 96.42;

(9) Requires the supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(10) Requires the supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(11) Requires the supervised provider to disclose promptly to the primary provider any changes in the suitability information required by Sec. 96.35;

(12) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the supervised provider is not in compliance with the agreement or the requirements of this section.

¹⁴ **22 CFR 96.46, Service Planning and Delivery: Using providers in Convention countries.**

(a) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in Convention countries, ensures that each such foreign supervised provider:

(1) Is in compliance with the laws of the Convention country in which it operates;

(2) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children;

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in Sec. 96.35, taking into account the authorities in the Convention country that are analogous to the authorities identified in that section;

(4) Does not have a pattern of licensing suspensions or other sanctions and has not lost the right to provide adoption services in any jurisdiction for reasons germane to the Convention; and

(5) Is accredited in the Convention country in which it operates, if such accreditation is required by the laws of that Convention country to perform the adoption services it is providing.

(b) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in Convention countries, ensures that each such foreign supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the foreign supervised provider;

(2) Requires the foreign supervised provider, if responsible for obtaining medical or social information on the child, to comply with the standards in Sec. 96.49(d) through (j);

(3) Requires the foreign supervised provider to adhere to the standard in Sec. 96.36(a) prohibiting child buying; and has written policies and procedures in place reflecting the prohibitions in Sec.

96.36(a) and reinforces them in training programs for its employees and agents;

(4) Requires the foreign supervised provider to compensate its directors, officers, and employees who provide intercountry adoption services on a fee-for-service, hourly wage, or salary basis, rather than based on whether a child is placed for adoption, located for an adoptive placement, or on a similar contingent fee basis;

(5) Identifies specifically the lines of authority between the primary provider and the foreign supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(6) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the foreign supervised provider;

(7) Specifies whether the foreign supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(8) Provides that, if billing the client(s) directly for its service, the foreign supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the service is not completed, and will return any funds collected to which the client(s) may be entitled within sixty days of the completion of the delivery of services;

(9) Requires the foreign supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(10) Requires the foreign supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(11) Requires the foreign supervised provider to disclose promptly to the primary provider any changes in the suitability information required by Sec. 96.35; and

(12) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the foreign supervised provider is not in compliance with

the agreement or the requirements of this section.

(c) The agency or person, when acting as the primary provider and, in accordance with Sec. 96.14, using foreign providers that are not under its supervision, verifies, through review of the relevant documentation and other appropriate steps, that:

(1) Any necessary consent to termination of parental rights or to adoption obtained by the foreign provider was obtained in accordance with applicable foreign law and Article 4 of the Convention;

(2) Any background study and report on a child in a case involving immigration to the United States (an incoming case) performed by the foreign provider was performed in accordance with applicable foreign law and Article 16 of the Convention.

(3) Any home study and report on prospective adoptive parent(s) in a case involving emigration from the United States (an outgoing case) performed by the foreign provider was performed in accordance with applicable foreign law and Article 15 of the Convention.

¹⁵ See end note 10 (22 CFR 96.33).

¹⁶ **22 CFR 96.39, Information Disclosure, Fee Practices, and Quality Control Policies and Practices: Information disclosure and quality control practices.**

(a) The agency or person fully discloses in writing to the general public upon request and to prospective client(s) upon initial contact:

(1) Its adoption service policies and practices, including general eligibility criteria and fees;

(2) The supervised providers with whom the prospective client(s) can expect to work in the United States and in the child's country of origin and the usual costs associated with their services; and

(3) A sample written adoption services contract substantially like the one that the prospective client(s) will be expected to sign should they proceed.

(b) The agency or person discloses to client(s) and prospective client(s) that the following information is available upon request and makes such information available when requested:

(1) The number of its adoption placements per year for the prior three calendar years, and the number and percentage of those placements that remain intact, are disrupted, or have been dissolved as of the time the information is provided;

(2) The number of parents who apply to adopt on a yearly basis, based on data for the prior three calendar years; and

(3) The number of children eligible for adoption and awaiting an adoptive placement referral via the agency or person.

(c) The agency or person does not give preferential treatment to its board members, contributors, volunteers, employees, agents, consultants, or independent contractors with respect to the placement of children for adoption and has a written policy to this effect.

(d) The agency or person requires a client to sign a waiver of liability as part of the adoption service contract only where that waiver complies with applicable State law. Any waiver required is limited and specific, based on risks that have been discussed and explained to the client in the adoption services contract.

(e) The agency or person cooperates with reviews, inspections, and audits by the accrediting entity or the Secretary.

(f) The agency or person uses the internet in the placement of individual children eligible for adoption only where:

(1) Such use is not prohibited by applicable State or Federal law or by the laws of the child's country of origin;

(2) Such use is subject to controls to avoid misuse and links to any sites that reflect practices that involve the sale, abduction, exploitation, or trafficking of children;

(3) Such use, if it includes photographs, is designed to identify children either who are

currently waiting for adoption or who have already been adopted or placed for adoption (and who are clearly so identified); and

(4) Such use does not serve as a substitute for the direct provision of adoption services, including services to the child, the prospective adoptive parent(s), and/or the birth parent(s).

¹⁷ See end note 10 (22 CFR 96.33).

¹⁸ **22 CFR 96.30, Licensing and Corporate Governance: State Licensing.**

(a) The agency or person is properly licensed or otherwise authorized by State law to provide adoption services in at least one State.

(b) The agency or person follows applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services.

(c) If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only:

(1) Through agencies or persons that are licensed or authorized by State law to provide adoption services in that State and that are exempted providers or acting as supervised providers; or

(2) Through public domestic authorities.

(d) In the case of a person, the individual or for-profit entity is not prohibited by State law from providing adoption services in any State where it is providing adoption services, and does not provide adoption services in Convention countries that prohibit individuals or for-profit entities from providing adoption services.

¹⁹ **22 CFR 96.36, Ethical Practices and Responsibilities: Prohibition on child buying.**

(a) The agency or person prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child. If permitted or required by the child's country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child.

(b) The agency or person has written policies and procedures in place reflecting the prohibitions in paragraph (a) of this section and reinforces them in its employee training programs.

²⁰ **22 CFR 96.41, Responding to Complaints and Records and Reports Management: Procedures for responding to complaints and improving service delivery.**

(a) The agency or person has written complaint policies and procedures that incorporate the standards in paragraphs (b) through (h) of this section and provides a copy of such policies and procedures, including contact information for the Complaint Registry, to client(s) at the time the adoption services contract is signed.

(b) The agency or person permits any birth parent, prospective adoptive parent or adoptive parent, or adoptee to lodge directly with the agency or person signed and dated complaints about any of the services or activities of the agency or person (including its use of supervised providers) that he or she believes raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA, and advises such individuals of the additional procedures available to them if they are dissatisfied with the agency's or person's response to their complaint.

(c) The agency or person responds in writing to complaints received pursuant to paragraph

(b) of this section within thirty days of receipt, and provides expedited review of such complaints that are time-sensitive or that involve allegations of fraud.

(d) The agency or person maintains a written record of each complaint received pursuant to paragraph (b) of this section and the steps taken to investigate and respond to it and makes this record available to the accrediting entity or the Secretary upon request.

(e) The agency or person does not take any action to discourage a client or prospective client from, or retaliate against a client or prospective client for: making a complaint; expressing a grievance; providing information in writing or interviews to an accrediting entity on the agency's or person's performance; or questioning the conduct of or expressing an opinion about the performance of an agency or person.

(f) The agency or person provides to the accrediting entity and the Secretary, on a semi-annual basis, a summary of all complaints received pursuant to paragraph (b) of this section during the preceding six months (including the number of complaints received and how each complaint was resolved) and an assessment of any discernible patterns in complaints received against the agency or person pursuant to paragraph (b) of this section, along with information about what systemic changes, if any, were made or are planned by the agency or person in response to such patterns.

(g) The agency or person provides any information about complaints received pursuant to paragraph (b) of this section as may be requested by the accrediting entity or the Secretary.

(h) The agency or person has a quality improvement program appropriate to its size and circumstances through which it makes systematic efforts to improve its adoption services as needed. The agency or person uses quality improvement methods such as reviewing complaint data, using client satisfaction surveys, or comparing the agency's or person's practices and performance against the data contained in the Secretary's annual reports to Congress on intercountry adoptions.

²¹ **22 CFR 96.42, Responding to Complaints and Records and Reports Management: Retention, preservation, and disclosure of adoption records.**

(a) The agency or person retains or archives adoption records in a safe, secure, and retrievable manner for the period of time required by applicable State law.

(b) The agency or person makes readily available to the adoptee and the adoptive parent(s) upon request all non-identifying information in its custody about the adoptee's health history or background.

(c) The agency or person ensures that personal data gathered or transmitted in connection with an adoption is used only for the purposes for which the information was gathered and safeguards sensitive individual information.

(d) The agency or person has a plan that is consistent with the provisions of this section, the plan required under Sec. 96.33, and applicable State law for transferring custody of adoption records that are subject to retention or archival requirements to an appropriate custodian, and ensuring the accessibility of those adoption records, in the event that the agency or person ceases to provide or is no longer permitted to provide adoption services under the Convention.

(e) The agency or person notifies the accrediting entity and the Secretary in writing within thirty days of the time it ceases to provide or is no longer permitted to provide adoption services and provides information about the transfer of its adoption records.

²² **22 CFR 96.43, Responding to Complaints and Records and Reports Management: Case tracking, data management, and reporting.**

(a) When acting as the primary provider, the agency or person maintains all the data required in this section in a format approved by the accrediting entity and provides it to the accrediting entity on an annual basis.

(b) When acting as the primary provider, the agency or person routinely generates and

maintains reports as follows:

(1) For cases involving children immigrating to the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

- (i) The Convention country or other country from which the child emigrated;
- (ii) The State to which the child immigrated;
- (iii) The State, Convention country, or other country in which the adoption was finalized;
- (iv) The age of the child; and
- (v) The date of the child's placement for adoption.

(2) For cases involving children emigrating from the United States, information and reports on the total number of intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

- (i) The State from which the child emigrated;
- (ii) The Convention country or other country to which the child immigrated;
- (iii) The State, Convention country, or other country in which the adoption was finalized;
- (iv) The age of the child; and
- (v) The date of the child's placement for adoption.

(3) For each disrupted placement involving a Convention adoption, information and reports about the disruption, including information on:

- (i) The Convention country from which the child emigrated;
- (ii) The State to which the child immigrated;
- (iii) The age of the child;
- (iv) The date of the child's placement for adoption;
- (v) The reason(s) for and resolution(s) of the disruption of the placement for adoption, including information on the child's re-placement for adoption and final legal adoption;
- (vi) The names of the agencies or persons that handled the placement for adoption; and
- (vii) The plans for the child.

(4) Wherever possible, for each dissolution of a Convention adoption, information and reports on the dissolution, including information on:

- (i) The Convention country from which the child emigrated;
- (ii) The State to which the child immigrated;
- (iii) The age of the child;
- (iv) The date of the child's placement for adoption;
- (v) The reason(s) for and resolution(s) of the dissolution of the adoption, to the extent known by the agency or person;
- (vi) The names of the agencies or persons that handled the placement for adoption; and
- (vii) The plans for the child.

(5) Information on the shortest, longest, and average length of time it takes to complete a Convention adoption, set forth by the child's country of origin, calculated from the time the child is matched with the prospective adoptive parent(s) until the time the adoption is finalized by a court, excluding any period for appeal;

(6) Information on the range of adoption fees, including the lowest, highest, average, and the median of such fees, set forth by the child's country of origin, charged by the agency or person for Convention adoptions involving children immigrating to the United States in connection with their adoption.

(c) If the agency or person provides adoption services in cases not subject to the Convention that involve a child emigrating from the United States for the purpose of adoption or after an adoption has been finalized, it provides such information as required by the Secretary directly to the Secretary and demonstrates to the accrediting entity that it has provided this information.

- (d) The agency or person provides any of the information described in paragraphs (a)

through (c) of this section to the accrediting entity or the Secretary within thirty days of request.

²³ See end note 5 (22 CFR 96.38).

²⁴ See end note 14 (22 CFR 96.46(a)).

²⁵ See end note 14 (22 CFR 96.46).

²⁶ **22 CFR 96.27(g), Evaluation of Applicants for Accreditation and Approval: Substantive criteria for evaluating applicants for accreditation or approval.**

(g) The standards contained in subpart F of this part do not eliminate the need for an agency or person to comply fully with the laws of the jurisdictions in which it operates. An agency or person must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA. Persons that are approved to provide adoption services may only provide such services in States that do not prohibit persons from providing adoption services. Nothing in the application of subparts E and F should be construed to require a State to allow persons to provide adoption services if State law does not permit them to do so.

²⁷ See end note 5 (22 CFR 96.38).

²⁸ See end note 5 (22 CFR 96.38).

²⁹ See end note 4 (22 CFR 96.37).

³⁰ See end note 5 (22 CFR 96.38).

³¹ See end note 6 (22 CFR 96.32).

³² See end note 7 (22 CFR 96.35).

³³ See end note 4 (22 CFR 96.37).

³⁴ See end note 16 (22 CFR 96.39).

³⁵ See end note 12 (22 CFR 96.40).

³⁶ See end note 20 (22 CFR 96.41).

³⁷ **22 CFR 96.48, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Preparation and training of prospective adoptive parent(s) in incoming cases.**

(a) The agency or person provides prospective adoptive parent(s) with at least ten hours (independent of the home study) of preparation and training, as described in paragraphs (b) and (c) of this section, designed to promote a successful intercountry adoption. The agency or person provides such training before the prospective adoptive parent(s) travel to adopt the child or the child is placed with the prospective adoptive parent(s) for adoption.

(b) The training provided by the agency or person addresses the following topics:

(1) The intercountry adoption process, the general characteristics and needs of children

awaiting adoption, and the in-country conditions that affect children in the Convention country from which the prospective adoptive parent(s) plan to adopt;

(2) The effects on children of malnutrition, relevant environmental toxins, maternal substance abuse, and of any other known genetic, health, emotional, and developmental risk factors associated with children from the expected country of origin;

(3) Information about the impact on a child of leaving familiar ties and surroundings, as appropriate to the expected age of the child;

(4) Data on institutionalized children and the impact of institutionalization on children, including the effect on children of the length of time spent in an institution and of the type of care provided in the expected country of origin;

(5) Information on attachment disorders and other emotional problems that institutionalized or traumatized children and children with a history of multiple caregivers may experience, before and after their adoption;

(6) Information on the laws and adoption processes of the expected country of origin, including foreseeable delays and impediments to finalization of an adoption;

(7) Information on the long-term implications for a family that has become multicultural through intercountry adoption; and

(8) An explanation of any reporting requirements associated with Convention adoptions, including any post-placement or post-adoption reports required by the expected country of origin.

(c) The agency or person also provides the prospective adoptive parent(s) with training that allows them to be as fully prepared as possible for the adoption of a particular child. This includes counseling on:

(1) The child's history and cultural, racial, religious, ethnic, and linguistic background;

(2) The known health risks in the specific region or country where the child resides; and

(3) Any other medical, social, background, birth history, educational data, developmental history, or any other data known about the particular child.

(d) The agency or person provides such training through appropriate methods, including:

(1) Collaboration among agencies or persons to share resources to meet the training needs of prospective adoptive parents;

(2) Group seminars offered by the agency or person or other agencies or training entities;

(3) Individual counseling sessions;

(4) Video, computer-assisted, or distance learning methods using standardized curricula; or

(5) In cases where training cannot otherwise be provided, an extended home study process, with a system for evaluating the thoroughness with which the topics have been covered.

(e) The agency or person provides additional in-person, individualized counseling and preparation, as needed, to meet the needs of the prospective adoptive parent(s) in light of the particular child to be adopted and his or her special needs, and any other training or counseling needed in light of the child background study or the home study.

(f) The agency or person provides the prospective adoptive parent(s) with information about print, internet, and other resources available for continuing to acquire information about common behavioral, medical, and other issues; connecting with parent support groups, adoption clinics and experts; and seeking appropriate help when needed.

(g) The agency or person exempts prospective adoptive parent(s) from all or part of the training and preparation that would normally be required for a specific adoption only when the agency or person determines that the prospective adoptive parent(s) have received adequate prior training or have prior experience as parent(s) of children adopted from abroad.

(h) The agency or person records the nature and extent of the training and preparation provided to the prospective adoptive parent(s) in the adoption record.

States (Incoming Cases): Placement and post-placement monitoring until final adoption in incoming cases.

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the prospective adoptive parent(s).

(b) In the post-placement phase, the agency or person monitors and supervises the child's placement to ensure that the placement remains in the best interests of the child, and ensures that at least the number of home visits required by State law or by the child's country of origin are performed, whichever is greater.

(c) When a placement for adoption is in crisis in the post-placement phase, the agency or person makes an effort to provide or arrange for counseling by an individual with appropriate skills to assist the family in dealing with the problems that have arisen.

(d) If counseling does not succeed in resolving the crisis and the placement is disrupted, the agency or person assuming custody of the child assumes responsibility for making another placement of the child.

(e) The agency or person acts promptly and in accord with any applicable legal requirements to remove the child when the placement may no longer be in the child's best interests, to provide temporary care, to find an eventual adoptive placement for the child, and, in consultation with the Secretary, to inform the Central Authority of the child's country of origin about any new prospective adoptive parent(s).

(1) In all cases where removal of a child from a placement is considered, the agency or person considers the child's views when appropriate in light of the child's age and maturity and, when required by State law, obtains the consent of the child prior to removal.

(2) The agency or person does not return from the United States a child placed for adoption in the United States unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

(f) The agency or person includes in the adoption services contract with the prospective adoptive parent(s) a plan describing the agency's or person's responsibilities if a placement for adoption is disrupted. This plan addresses:

(1) Who will have legal and financial responsibility for transfer of custody in an emergency or in the case of impending disruption and for the care of the child;

(2) If the disruption takes place after the child has arrived in the United States, under what circumstances the child will, as a last resort, be returned to the child's country of origin, if that is determined to be in the child's best interests;

(3) How the child's wishes, age, length of time in the United States, and other pertinent factors will be taken into account; and

(4) How the Central Authority of the child's country of origin and the Secretary will be notified.

(g) The agency or person provides post-placement reports until final adoption of a child to the Convention country when required by the Convention country. Where such reports are required, the agency or person:

(1) Informs the prospective adoptive parent(s) in the adoption services contract of the requirement prior to the referral of the child for adoption;

(2) Informs the prospective adoptive parent(s) that they will be required to provide all necessary information for the report(s); and

(3) Discloses who will prepare the reports and the fees that will be charged.

(h) The agency or person takes steps to:

(1) Ensure that an order declaring the adoption as final is sought by the prospective adoptive parent(s), and entered in compliance with section 301(c) of the IAA (42 U.S.C. 14931(c)); and

(2) Notify the Secretary of the finalization of the adoption within thirty days of the entry of

the order.

³⁹ **22 CFR 96.51, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Post-adoption services in incoming cases.**

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s).

(b) The agency or person informs the prospective adoptive parent(s) in the adoption services contract whether the agency or person will or will not provide any post-adoption services. The agency or person also informs the prospective adoptive parent(s) in the adoption services contract whether it will provide services if an adoption is dissolved, and, if it indicates it will, it provides a plan describing the agency's or person's responsibilities.

(c) When post-adoption reports are required by the child's country of origin, the agency or person includes a requirement for such reports in the adoption services contract and makes good-faith efforts to encourage adoptive parent(s) to provide such reports.

(d) The agency or person does not return from the United States an adopted child whose adoption has been dissolved unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

⁴⁰ **22 CFR 96.52, Standards for Cases in Which a Child is Immigrating to the United States (Incoming Cases): Performance of Convention communication and coordination functions in incoming cases.**

(a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person takes all appropriate measures, consistent with the procedures of the U.S. Central Authority and of the Convention country, to:

(1) Transmit on a timely basis the home study to the Central Authority or other competent authority of the child's country of origin;

(2) Obtain the child background study, proof that the necessary consents to the child's adoption have been obtained, and the necessary determination that the prospective placement is in the child's best interests, from the Central Authority or other competent authority in the child's country of origin;

(3) Provide confirmation that the prospective adoptive parent(s) agree to the adoption to the Central Authority or other competent authority in the child's country of origin; and

(4) Transmit the determination that the child is or will be authorized to enter and reside permanently in the United States to the Central Authority or other competent authority in the child's country of origin.

(c) The agency or person takes all necessary and appropriate measures, consistent with the procedures of the Convention country, to obtain permission for the child to leave his or her country of origin and to enter and reside permanently in the United States.

(d) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(e) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

⁴¹ See end note 21 above (22 CFR 96.42).

⁴² See end note 21 above (22 CFR 96.42).

⁴³ **22 CFR 96.5, Selection, Designation, and Duties of Accrediting Entities: Requirement that accrediting entity be a nonprofit or public entity.**

An accrediting entity must qualify as either:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has expertise in developing and administering standards for entities providing child welfare services; or

(b) A public entity (other than a Federal entity), including, but not limited to, any State or local government or governmental unit or any political subdivision, agency, or instrumentality thereof, that is responsible for licensing adoption agencies in a State and that has expertise in developing and administering standards for entities providing child welfare services.

⁴⁴ **22 CFR 96.6, Selection, Designation, and Duties of Accrediting Entities: Performance criteria for designation as an accrediting entity.**

An entity that seeks to be designated as an accrediting entity must demonstrate to the Secretary:

(a) That it has a governing structure, the human and financial resources, and systems of control adequate to ensure its reliability;

(b) That it is capable of performing the accreditation or approval functions or both on a timely basis and of administering any renewal cycle authorized under Sec. 96.60;

(c) That it can monitor the performance of agencies it has accredited or temporarily accredited and persons it has approved (including their use of any supervised providers) to ensure their continued compliance with the Convention, the IAA, and the regulations implementing the IAA;

(d) That it has the capacity to take appropriate adverse actions against agencies it has accredited or temporarily accredited and persons it has approved;

(e) That it can perform the required data collection, reporting, and other similar functions;

(f) Except in the case of a public entity, that it operates independently of any agency or person that provides adoption services, and of any membership organization that includes agencies or persons that provide adoption services;

(g) That it has the capacity to conduct its accreditation, temporary accreditation, and approval functions fairly and impartially;

(h) That it can comply with any conflict-of-interest prohibitions set by the Secretary in its agreement;

(i) That it prohibits conflicts of interest with agencies or persons or with any membership organization that includes agencies or persons that provide adoption services; and

(j) That it prohibits its employees or other individuals acting as site evaluators, including, but not limited to, volunteer site evaluators, from becoming employees or supervised providers of an agency or person for at least one year after they have evaluated such agency or person for accreditation, temporary accreditation, or approval.

⁴⁵ **22 CFR 96.7, Selection, Designation and Duties of Accrediting Entities: Authorities and responsibilities of an accrediting entity.**

(a) An accrediting entity may be authorized by the Secretary to perform some or all of the following functions:

(1) Determining whether agencies are eligible for accreditation and/or temporary accreditation;

(2) Determining whether persons are eligible for approval;

(3) Overseeing accredited agencies, temporarily accredited agencies, and/or approved persons by monitoring their compliance with applicable requirements;

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- (4) Investigating and responding to complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers);
 - (5) Taking adverse action against an accredited agency, temporarily accredited agency, or approved person, and/or referring an accredited agency, temporarily accredited agency, or approved person for possible action by the Secretary;
 - (6) Determining whether accredited agencies and approved persons are eligible for renewal of their accreditation or approval on a cycle consistent with Sec. 96.60;
 - (7) Collecting data from accredited agencies, temporarily accredited agencies, and approved persons, maintaining records, and reporting information to the Secretary, State courts, and other entities; and
 - (8) Assisting the Secretary in taking appropriate action to help an agency or person in transferring its Convention cases and adoption records.
- (b) The Secretary may require the accrediting entity:
 - (1) To utilize the Complaint Registry as provided in subpart J of this part; and
 - (2) To fund a portion of the costs of operating the Complaint Registry with fees collected by the accrediting entity pursuant to the schedule of fees approved by the Secretary as provided in Sec. 96.8.
 - (c) An accrediting entity must perform all responsibilities in accordance with the Convention, the [Intercountry Adoption Act], the regulations implementing the [Intercountry Adoption Act], and its agreement with the Secretary.

⁴⁶ **22 CFR 96.8, Selection, Designation, and Duties of Accrediting Entities: Fees charged by accrediting entities.**

- (a) An accrediting entity may charge fees for accreditation or approval services under this part only in accordance with a schedule of fees approved by the Secretary. Before approving a schedule of fees proposed by an accrediting entity, or subsequent proposed changes to an approved schedule, the Secretary will require the accrediting entity to demonstrate:
 - (1) That its proposed schedule of fees reflects appropriate consideration of the relative size and geographic location and volume of Convention cases of the agencies or persons it expects to serve;
 - (2) That the total fees the accrediting entity expects to collect under the schedule of fees will not exceed the full costs of accreditation or approval under this part (including, but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities).
- (b) The schedule of fees must:
 - (1) Establish separate non-refundable fees for Convention accreditation and Convention approval;
 - (2) Include in each fee for full Convention accreditation or approval the costs of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators; and
 - (3) If the accrediting entity provides temporary accreditation services, include fees as required by Sec. 96.111 for agencies seeking temporary accreditation under subpart N of this part.
- (c) An accrediting entity must make its approved schedule of fees available to the public, including prospective applicants for accreditation or approval, upon request. At the time of application, the accrediting entity must specify the fees to be charged to the applicant in a contract between the parties and must provide notice to the applicant that no portion of the fee

will be refunded if the applicant fails to become accredited or approved.

(d) Nothing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity pursuant to a schedule of fees approved by the Secretary.

⁴⁷ **22 CFR 96.9, Selection, Designation, and Duties of Accrediting Entities: Agreement between the Secretary and the accrediting entity.**

An accrediting entity must perform its functions pursuant to a written agreement with the Secretary that will be published in the Federal Register. The agreement will address:

- (a) The responsibilities and duties of the accrediting entity;
- (b) The method by which the costs of delivering the accreditation, temporary accreditation, or approval services may be recovered through the collection of fees from those seeking accreditation, temporary accreditation, or approval, and how the entity's schedule of fees will be approved;
- (c) How the accrediting entity will address complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers) and complaints about the accrediting entity itself;
- (d) Data collection requirements;
- (e) Matters of communication and accountability between both the accrediting entity and the applicant(s) and between the accrediting entity and the Secretary; and
- (f) Other matters upon which the parties have agreed.

⁴⁸ **22 CFR 96.10, Selection, Designation, and Duties of Accrediting Entities: Suspension or cancellation of the designation of an accrediting entity by the Secretary.**

(a) The Secretary will suspend or cancel the designation of an accrediting entity if the Secretary concludes that it is substantially out of compliance with the Convention, the IAA, the regulations implementing the IAA, other applicable laws, or the agreement with the Secretary. Complaints regarding the performance of the accrediting entity may be submitted to the Department of State, Bureau of Consular Affairs. The Secretary will consider complaints in determining whether an accrediting entity's designation should be suspended or canceled.

(b) The Secretary will notify an accrediting entity in writing of any deficiencies in the accrediting entity's performance that could lead to the suspension or cancellation of its designation, and will provide the accrediting entity with an opportunity to demonstrate that suspension or cancellation is unwarranted, in accordance with procedures established in the agreement entered into pursuant to Sec. 96.9.

(c) An accrediting entity may be considered substantially out of compliance under circumstances that include, but are not limited to:

- (1) Failing to act in a timely manner when presented with evidence that an accredited agency or approved person is substantially out of compliance with the standards in subpart F of this part or a temporarily accredited agency is substantially out of compliance with the standards in Sec. 96.104;
- (2) Accrediting or approving significant numbers of agencies or persons whose performance results in intervention of the Secretary for the purpose of suspension, cancellation, or debarment;
- (3) Failing to perform its responsibilities fairly and objectively;
- (4) Violating prohibitions on conflicts of interest;
- (5) Failing to meet its reporting requirements;
- (6) Failing to protect information or documents that it receives in the course of performing its responsibilities; and

(7) Failing to monitor frequently and carefully the compliance of accredited agencies, temporarily accredited agencies, and approved persons with the home study requirements of the Convention, section 203(b)(1)(A)(ii) of the IAA (42 U.S.C. 14923(b)(1)(A)(ii)), and Sec. 96.47.

(d) An accrediting entity that is subject to a final action of suspension or cancellation may petition the United States District Court for the District of Columbia or the United States district court in the judicial district in which the accrediting entity is located to set aside the action as provided in section 204(d) of the IAA (42 U.S.C. 14924(d)).

⁴⁹ As part of the accreditation process, the relevant accrediting entity conducts a “site visit,” *i.e.*, evaluators travel to the headquarters of the applicant to inspect case records, meet with and interview the applicant’s leadership, case workers and adoptive parents who have worked with the applicant. During the site visit, the accrediting entity verifies information provided in writing in advance of the visit.

⁵⁰ See U.S. “Introduction” in Section A.

⁵¹ **22 CFR 96.12, Accreditation and Approval Requirements for the Provision of Adoption Services, Authorized adoption service providers.**

(a) Once the Convention has entered into force for the United States, except as provided in section 505(b) of the IAA (relating to transitional cases), an agency or person may not offer, provide, or facilitate the provision of any adoption service in the United States in connection with a Convention adoption unless it is:

- (1) An accredited agency, a temporarily accredited agency, or an approved person;
- (2) A supervised provider; or
- (3) An exempted provider, if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency pursuant to Sec. 96.47(c) or 96.53(b).

(b) A public domestic authority may also offer, provide, or facilitate the provision of any such adoption service.

(c) Neither conferral nor maintenance of accreditation, temporary accreditation, or approval, nor status as an exempted or supervised provider, nor status as a public domestic authority shall be construed to imply, warrant, or establish that, in any specific case, an adoption service has been provided consistently with the Convention, the IAA, or the regulations implementing the IAA. Conferral and maintenance of accreditation, temporary accreditation, or approval under this part establishes only that the accrediting entity has concluded, in accordance with the standards and procedures of this part, that the agency or person conducts adoption services in substantial compliance with the applicable standards set forth in this part; it is not a guarantee that in any specific case the accredited agency, temporarily accredited agency, or approved person is providing adoption services consistently with the Convention, the IAA, the regulations implementing the IAA, or any other applicable law, whether Federal, State, or foreign. Neither the Secretary nor any accrediting entity shall be responsible for any acts of an accredited agency, temporarily accredited agency, approved person, exempted provider, supervised provider, or other entity providing services in connection with a Convention adoption.

⁵² **22 CFR 96.13, Accreditation and Approval Requirements for the Provision of Adoption Services: Circumstances in which accreditation, approval, or supervision is not required.**

(a) Home studies and child background studies. Home studies and child background studies, when performed by exempted providers, may be performed without accreditation,

temporary accreditation, approval, or supervision; provided, however, that an exempted provider's home study must be approved by an accredited agency or temporarily accredited agency in accordance with Sec. 96.47(c), and an exempted provider's child background study must be approved by an accredited agency or temporarily accredited agency in accordance with Sec. 96.53(b).

(b) Child welfare services. An agency or person does not need to be accredited, temporarily accredited, approved, or operate as a supervised provider if it is providing only child welfare services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a child welfare service and any adoption service in the United States in a Convention adoption case, it must be accredited, temporarily accredited, or approved or operate as a supervised provider unless the only adoption service provided is preparation of a home study and/or a child background study.

(c) Legal services. An agency or person does not need to be accredited, temporarily accredited, approved, or to operate as a supervised provider if it is providing only legal services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a legal service and any adoption service in the United States in a Convention adoption case, it must be accredited, temporarily accredited, or approved or operate as a supervised provider unless the only adoption service provided is preparation of a home study and/or a child background study. Nothing in this part shall be construed:

(1) To permit an attorney to provide both legal services and adoption services in an adoption case where doing so is prohibited by State law; or

(2) To require any attorney who is providing one or more adoption services as part of his or her employment by a public domestic authority to be accredited or approved or operate as a supervised provider.

(d) Prospective adoptive parent(s) acting on own behalf. Prospective adoptive parent(s) may act on their own behalf without being accredited, temporarily accredited, or approved unless so acting is prohibited by State law or the law of the Convention country. In the case of a child immigrating to the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State in which the prospective adoptive parent(s) reside and the laws of the Convention country from which the parent(s) seek to adopt. In the case of a child emigrating from the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State where the child resides and the laws of the Convention country in which the parent(s) reside.

⁵³ **22 CFR 96.65, Routine Oversight by Accrediting Entities: Scope.**

The provisions in this subpart establish the procedures for routine oversight of accredited agencies and approved persons. Temporary accreditation is governed by the provisions of subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in this subpart do not apply to temporarily accredited agencies.

⁵⁴ **22 CFR 96.66, Routine Oversight by Accrediting Entities: Oversight of accredited agencies and approved persons by the accrediting entity.**

(a) The accrediting entity must monitor agencies it has accredited and persons it has approved at least annually to ensure that they are in substantial compliance with the standards in subpart F of this part, as determined using a method approved by the Secretary in accordance with Sec. 96.27(d). The accrediting entity must investigate complaints about accredited agencies and approved persons, as provided in subpart J of this part.

(b) An accrediting entity may, on its own initiative, conduct site visits to inspect an agency's or person's premises or programs, with or without advance notice, for purposes of random verification of its continued compliance or to investigate a complaint. The accrediting

entity may consider any information about the agency or person that becomes available to it about the compliance of the agency or person. The provisions of Sec. 96.25 and 96.26 govern requests for and use of information.

(c) The accrediting entity must require accredited agencies or approved persons to attest annually that they have remained in substantial compliance and to provide supporting documentation to indicate such ongoing compliance with the standards in subpart F of this part.

⁵⁵ **22 CFR 96.68 through 96.72, Subpart J – Oversight Through Review of Complaints. 22 CFR 96.68, Oversight Through Review of Complaints: Scope.**

The provisions in this subpart establish the procedures that the accrediting entity will use for processing complaints against accredited agencies and approved persons (including complaints concerning their use of supervised providers) that raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA, as determined by the accrediting entity or the Secretary, and that are therefore relevant to the oversight functions of the accrediting entity or the Secretary. Temporary accreditation is governed by the provisions of subpart N of this part; as provided in Sec. 96.103, procedures for processing complaints on temporarily accredited agencies must comply with this subpart.

22 CFR 96.69 Oversight Through Review of Complaints: Filing of complaints against accredited agencies and approved persons.

(a) Complaints described in Sec. 96.68 will be subject to review by the accrediting entity pursuant to Sec. Sec. 96.71 and 96.72, when submitted as provided in this section and Sec. 96.70.

(b) Complaints against accredited agencies and approved persons by parties to specific Convention adoption cases and relating to that case must first be submitted by the complainant in writing to the primary provider and to the agency or person providing adoption services, if a U.S. provider different from the primary provider. If the complaint cannot be resolved through the complaint processes of the primary provider or the agency or person providing the services (if different), or if the complaint was resolved by an agreement to take action but the primary provider or the agency or person providing the service (if different) failed to take such action within thirty days of agreeing to do so, the complaint may then be filed with the Complaint Registry in accordance with Sec. 96.70.

(c) An individual who is not party to a specific Convention adoption case but who has information about an accredited agency or approved person may provide that information by filing it in the form of a complaint with the Complaint Registry in accordance with Sec. 96.70.

(d) A Federal, State, or local government official or a foreign Central Authority may file a complaint with the Complaint Registry in accordance with Sec. 96.70, or may raise the matter in writing directly with the accrediting entity, who will record the complaint in the Complaint Registry, or with the Secretary, who will record the complaint in the Complaint Registry, if appropriate, and refer it to the accrediting entity for review pursuant to Sec. 96.71 or take such other action as the Secretary deems appropriate.

22 CFR 96.70, Oversight Through Review of Complaints: Operation of the Complaint Registry.

(a) The Secretary will establish a Complaint Registry to support the accrediting entities in fulfilling their oversight responsibilities, including the responsibilities of recording, screening, referring, and otherwise taking action on complaints received, and to support the Secretary in the Secretary's oversight responsibilities as the Secretary deems appropriate. The Secretary may provide for the Complaint Registry to be funded in whole or in part from fees collected

by the Secretary pursuant to section 403(b) of the IAA (42 U.S.C. 14943(b)) or by the accrediting entities.

(b) The Complaint Registry will:

(1) Receive and maintain records of complaints about accredited agencies, temporarily accredited agencies, and approved persons (including complaints concerning their use of supervised providers) and make such complaints available to the appropriate accrediting entity and the Secretary;

(2) Receive and maintain information regarding action taken to resolve each complaint by the accrediting entity or the Secretary;

(3) Track compliance with any deadlines applicable to the resolution of complaints;

(4) Generate reports designed to show possible patterns of complaints; and

(5) Perform such other functions as the Secretary may determine.

(c) Forms and information necessary to submit complaints to the Complaint Registry electronically or by such other means as the Secretary may determine will be accessible through the Department's website to persons who wish to file complaints. Such forms will be designed to ensure that each complaint complies with the requirements of Sec. 96.69.

(d) Accrediting entities will have access to, and the capacity to enter data into, the Complaint Registry as the Secretary deems appropriate.

(e) Nothing in this part shall be construed to limit the Secretary's authority to take such action as the Secretary deems appropriate with respect to complaints.

22 CFR 96.71, Oversight Through Review of Complaints: Review by the accrediting entity of complaints against accredited agencies and approved persons.

(a) The accrediting entity must establish written procedures, including deadlines, for recording, investigating, and acting upon complaints it receives pursuant to Sec. Sec. 96.69 and 96.70(b)(1). The procedures must be consistent with this section and be approved by the Secretary. The accrediting entity must make written information about its complaint procedures available upon request.

(b) If the accrediting entity determines that a complaint implicates the Convention, the IAA, or the regulations implementing the IAA:

(1) The accrediting entity must verify that the complainant has already attempted to resolve the complaint as described in Sec. 96.69(b) and, if not, may refer the complaint to the agency or person, or to the primary provider, for attempted resolution through its internal complaint procedures;

(2) The accrediting entity may conduct whatever investigative activity (including site visits) it considers necessary to determine whether any relevant accredited agency or approved person may maintain accreditation or approval as provided in Sec. 96.27. The provisions of Sec. Sec. 96.25 and 96.26 govern requests for and use of information. The accrediting entity must give priority to complaints submitted pursuant to Sec. 96.69(d);

(3) If the accrediting entity determines that the agency or person may not maintain accreditation or approval, it must take adverse action pursuant to subpart K of this part.

(c) When the accrediting entity has completed its complaint review process, it must provide written notification of the outcome of its investigation, and any actions taken, to the complainant, or to any other entity that referred the information.

(d) The accrediting entity will enter information about the outcomes of its investigations and its actions on complaints into the Complaint Registry as provided in its agreement with the Secretary.

(e) The accrediting entity may not take any action to discourage an individual from, or retaliate against an individual for, making a complaint, expressing a grievance, questioning the conduct of, or expressing an opinion about the performance of an accredited agency, an approved person, or the accrediting entity.

22 CFR 96.72, Oversight Through Review of Complaints: Referral of complaints to the Secretary and other authorities.

(a) An accrediting entity must report promptly to the Secretary any substantiated complaint that:

(1) Reveals that an accredited agency or approved person has engaged in a pattern of serious, wilful, grossly negligent, or repeated failures to comply with the standards in subpart F of this part; or

(2) Indicates that continued accreditation or approval would not be in the best interests of the children and families concerned.

(b) An accrediting entity must, after consultation with the Secretary, refer, as appropriate, to a State licensing authority, the Attorney General, or other law enforcement authorities any substantiated complaints that involve conduct that is:

(1) Subject to the civil or criminal penalties imposed by section 404 of the IAA (42 U.S.C. 14944);

(2) In violation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(3) Otherwise in violation of Federal, State, or local law.

(c) When an accrediting entity makes a report pursuant to paragraphs (a) or (b) of this section, it must indicate whether it is recommending that the Secretary take action to debar the agency or person, either temporarily or permanently.

⁵⁶ See end note 55 (22 CFR 96.72).

⁵⁷ **22 CFR 96.83, Oversight of Accredited Agencies and Approved Persons by the Secretary: Suspension or cancellation of accreditation or approval by the Secretary.**

(a) The Secretary must suspend or cancel the accreditation or approval granted by an accrediting entity when the Secretary finds, in the Secretary's discretion, that the agency or person is substantially out of compliance with the standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take action.

(b) The Secretary may suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that such action:

(1) Will protect the interests of children;

(2) Will further U.S. foreign policy or national security interests; or

(3) Will protect the ability of U.S. citizens to adopt children under the Convention.

(c) If the Secretary suspends or cancels the accreditation or approval of an agency or person, the Secretary will take appropriate steps to notify both the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

⁵⁸ See end note 16 (22 CFR 96.39).

⁵⁹ See end note 54 (22 CFR 96.66).

⁶⁰ **22 CFR 96.25, Evaluation of Applicants for Accreditation and Approval: Access to information and documents requested by the accrediting entity.**

(a) The agency or person must give the accrediting entity access to information and documents, including adoption case files and proprietary information, that it requires or requests to evaluate an agency or person for accreditation or approval and to perform its oversight, enforcement, renewal, data collection, and other functions. The agency or person must also cooperate with the accrediting entity by making employees available for interviews upon request.

(b) Accrediting entity review of adoption case files pursuant to paragraph (a) shall be limited to Convention adoption case files, except that, in the case of first-time applicants for accreditation or approval, the accrediting entity may review adoption case files related to non-Convention cases for purposes of assessing the agency's or person's capacity to comply with record-keeping and data-management standards in subpart F of this part. The accrediting entity shall permit the agency or person to redact names and other information that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s) from such non-Convention adoption case files prior to their inspection by the accrediting entity.

(c) If an agency or person fails to provide requested documents or information, or to make employees available as requested, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency, temporarily accredited agency, or approved person, take appropriate adverse action against the agency or person solely on that basis.

⁶¹ 22 CFR 96.75, Adverse Action by the Accrediting Entity: Adverse action against accredited agencies or approved persons not in substantial compliance.

The accrediting entity must take adverse action when it determines that an accredited agency or approved person may not maintain accreditation or approval as provided in Sec. 96.27. The accrediting entity is authorized to take any of the following actions against an accredited agency or approved person whose compliance the entity oversees. Each of these actions by an accrediting entity is considered an adverse action for purposes of the IAA and the regulations in this part:

- (a) Suspending accreditation or approval;
- (b) Cancelling accreditation or approval;
- (c) Refusing to renew accreditation or approval;
- (d) Requiring an accredited agency or approved person to take a specific corrective action to bring itself into compliance; and
- (e) Imposing other sanctions including, but not limited to, requiring an accredited agency or approved person to cease providing adoption services in a particular case or in a specific Convention country.

⁶² See end note 19 (22 CFR 96.36).

⁶³ See end note 16 (22 CFR 96.39(f)).

⁶⁴ See end note 12 (22 CFR 96.40).

⁶⁵ Since the 1993 Hague Convention entered into force with respect to the United States, the U.S. Central Authority's complaint registry has received forty two complaints against accredited bodies and approved (non-accredited) persons. To date (October 2009) only five of them merited active investigation by accrediting entities; these investigations are ongoing.

⁶⁶ 22 CFR 96.76, Adverse Action by the Accrediting Entity: Procedures governing adverse action by the accrediting entity.

(a) The accrediting entity must decide which adverse action to take based on the seriousness and type of violation and on the extent to which the accredited agency or approved person has corrected or failed to correct deficiencies of which it has been previously informed. The accrediting entity must notify an accredited agency or approved person in writing of its decision to take an adverse action against the agency or person. The accrediting entity's written notice must identify the deficiencies prompting imposition of the adverse action.

(b) Before taking adverse action, the accrediting entity may, in its discretion, advise an

accredited agency or approved person in writing of any deficiencies in its performance that may warrant an adverse action and provide it with an opportunity to demonstrate that an adverse action would be unwarranted before the adverse action is imposed. If the accrediting entity takes the adverse action without such prior notice, it must provide a similar opportunity to demonstrate that the adverse action was unwarranted after the adverse action is imposed, and may withdraw the adverse action based on the information provided.

(c) The provisions in Sec. Sec. 96.25 and 96.26 govern requests for and use of information.

⁶⁷ See end note 61 (22 CFR 96.75).

⁶⁸ **22 CFR 96.14, Accreditation and Approval Requirements for the Provision of Adoption Services: Providing adoption services using other providers.**

(a) Accreditation, temporary accreditation, and approval under this part require that, in each Convention adoption case, an accredited agency, a temporarily accredited agency, or an approved person will be identified and act as the primary provider. If one accredited agency, temporarily accredited agency, or approved person is providing all adoption services by itself, it must act as the primary provider. If just one accredited agency, temporarily accredited agency, or approved person is involved in providing adoption services, the sole accredited agency, temporarily accredited agency, or approved person must act as the primary provider. If adoption services in the Convention case are being provided by more than one accredited agency, temporarily accredited agency, or approved person, the agency or person that has child placement responsibility, as evidenced by the following, must act as the primary provider throughout the case:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birth parent or other legal custodian in a Convention country for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with a Convention country's Central Authority or its designees with regard to arranging an adoption; or

(4) Receiving from or sending to a Convention country information about a child that is under consideration for adoption, unless acting as a local service provider that conveys such information to parent(s) on behalf of the primary provider.

(b) Pursuant to Sec. 96.44, in the case of accredited agencies or approved persons, and Sec. 96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in the United States:

(1) A supervised provider, including an accredited agency, temporarily accredited agency, or approved person;

(2) An exempted provider, if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency pursuant to Sec. 96.47(c) or Sec. 96.53(b); or

(3) A public domestic authority.

(c) Pursuant to Sec. 96.44 of subpart F, in the case of accredited agencies or approved persons, and Sec. 96.104(g) of subpart N, in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in a Convention country:

(1) A Central Authority, competent authority, or a public foreign authority;

(2) A foreign supervised provider, including a provider accredited by the Convention country; or

(3) A foreign provider (agency, person, or other non-governmental entity) who

(i) Has secured or is securing the necessary consent to termination of parental rights and to adoption, if the primary provider verifies consent pursuant to Sec. 96.46(c); or

(ii) Has prepared or is preparing a background study on a child in a case involving immigration to the United States (incoming case) or a home study on prospective adoptive parent(s) in a case involving emigration from the United States (outgoing case), and a report on the results of such a study, if the primary provider verifies the study and report pursuant to Sec. 96.46(c).

(d) The primary provider is not required to provide supervision or to assume responsibility for:

- (1) Public domestic authorities; or
- (2) Central Authorities, competent authorities, and public foreign authorities.

(e) The primary provider must adhere to the standards contained in Sec. 96.45 (Using supervised providers in the United States) when using supervised providers in the United States and the applicable standards contained in Sec. 96.46 (Using providers in Convention countries) when using providers outside the United States.

⁶⁹ See end note 16 (22 CFR 96.39(f)).

⁷⁰ See end note 16 (22 CFR 96.39).

⁷¹ See end note 12 (22 CFR 96.40).

⁷² See end note 12 (22 CFR 96.40).

⁷³ See end note 12 (22 CFR 96.40).

⁷⁴ See end note 10 (22 CFR 96.33).

⁷⁵ In 1993 Hague Convention cases with the United States as the receiving State, U.S. Citizenship and Immigration Services (USCIS), part of the U.S. Department of Homeland Security, is responsible for evaluating U.S. citizens who wish to adopt. The regulations developed for this purpose are found in 8 CFR 240.311:

8 CFR 204.311 Convention adoption home study requirements.

(a) Purpose. For immigration purposes, a home study is a process for screening and preparing an applicant who is interested in adopting a child from a Convention country.

(b) Preparer. Only an individual or entity defined under 8 CFR 204.301 as a home study preparer for Convention cases may complete a home study for a Convention adoption. In addition, the individual or entity must be authorized to complete adoption home studies under the law of the jurisdiction in which the home study is conducted.

(c) Study requirements. The home study must:

- (1) Be tailored to the particular situation of the applicant and to the specific Convention country in which the applicant intends to seek a child for adoption. For example, an applicant who has previously adopted children will require different preparation than an applicant who has no adopted children. A home study may address the applicant's suitability to adopt in more than one Convention country, but if the home study does so, the home study must separately assess the applicant's suitability as to each specific Convention country.
- (2) If there are any additional adult members of the household, identify each of them by name, alien registration number (if the individual has one), and date of birth.
- (3) Include an interview by the preparer of any additional adult member of the household and an assessment of him or her in light of the requirements of this section.
- (4) Be no more than 6 months old at the time the home study is submitted to USCIS.
- (5) Include the home study preparer's assessment of any potential problem areas, a copy of

any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. *See* 8 CFR 204.309(a) for the consequences of failure to disclose information or cooperate in completion of a home study.

(6) Include the home study preparer's signature, in accordance with paragraph (f) of this section.

(7) State the number of interviews and visits, the participants, date and location of each interview and visit, and the date and location of any other contacts with the applicant and any additional adult member of the household.

(8) Summarize the pre-placement preparation and training already provided to the applicant concerning the issues specified in 22 CFR 96.48(a) and (b), the plans for future preparation and training with respect to those issues, or with respect to a particular child, as specified in 22 CFR 96.48(c), and the plans for post-placement monitoring specified in 22 CFR 96.50, in the event that the child will be adopted in the United States rather than abroad.

(9) Specify whether the home study preparer made any referrals as described in paragraph (g)(4) of this section, and include a copy of the report resulting from each referral, the home study preparer's assessment of the impact of the report on the suitability of the applicant to adopt, and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home.

(10) Include results of the checks conducted in accordance with paragraph (i) of this section including that no record was found to exist, that the State or foreign country will not release information to the home study preparer or anyone in the household, or that the State or foreign country does not have a child abuse registry.

(11) Include each person's response to the questions regarding abuse and violence in accordance with paragraph (j) of this section.

(12) Include a certified copy of the documentation showing the final disposition of each incident which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action for anyone subject to the home study and a written statement submitted with the home study giving details, including any mitigating circumstances about each arrest, signed, under penalty of perjury, by the person to whom the arrest relates.

(13) Contain an evaluation of the suitability of the home for adoptive placement of a child in light of any applicant's or additional adult member of the household's history of abuse and/or violence as an offender, whether this history is disclosed by an applicant or any additional adult member of the household or is discovered by home study preparer, regardless of the source of the home study preparer's discovery. A single incident of sexual abuse, child abuse, or family violence is sufficient to constitute a "history" of abuse and/or violence.

(14) Contain an evaluation of the suitability of the home for adoptive placement of a child in light of disclosure by an applicant, or any additional adult member of the household, of a history of substance abuse. A person has a history of substance abuse if his or her current or past use of alcohol, controlled substances, or other substances impaired or impairs his or her ability to fulfill obligations at work, school, or home, or creates other social or interpersonal problems that may adversely affect the applicant's suitability as an adoptive parent.

(15) Include a general description of the information disclosed in accordance with paragraph (m) of this section concerning the physical, mental, and emotional health of the applicant and of any additional adult member of the household.

(16) Identify the agency involved in each prior or terminated home study in accordance with paragraph (o) of this section, when the prior home study process began, the date the prior home study was completed, and whether the prior home study recommended for or against finding the applicant or additional adult member of the household suitable for adoption, foster care, or other custodial care of a child. If a prior home study was terminated without completion, the current home study must indicate when the prior home study began, the date

of termination, and the reason for the termination.

(d) Duty to disclose. (1) The applicant, and any additional adult members of the household, each has a duty of candor and must:

(i) Give true and complete information to the home study preparer.

(ii) Disclose any arrest, conviction, or other adverse criminal history, whether in the United States or abroad, even if the record of the arrest, conviction or other adverse criminal history has been expunged, sealed, pardoned, or the subject of any other amelioration. A person with a criminal history may be able to establish sufficient rehabilitation.

(iii) Disclose other relevant information, such as physical, mental or emotional health issues, or behavioural issues, as specified in paragraph (m) of this section. Such problems may not necessarily preclude approval of a Form I-800A, if, for example, they have been or are being successfully treated.

(2) This duty of candor is an ongoing duty, and continues while the Form I-800A is pending, after the Form I-800A is approved, and while any subsequent Form I-800 is pending, and until there is a final decision admitting the Convention adoptee to the United States with a visa. The applicant and any additional adult member of the household must notify the home study preparer and USCIS of any new event or information that might warrant submission of an amended or updated home study.

(e) State standards. In addition to the requirements of this section, the home study preparer must prepare the home study according to the requirements that apply to a domestic adoption in the State of the applicant's actual or proposed residence in the United States.

(f) Home study preparer's signature. The home study preparer (or, if the home study is prepared by an entity, the officer or employee who has authority to sign the home study for the entity) must personally sign the home study, and any updated or amended home study. The home study preparer's signature must include a declaration, under penalty of perjury under United States law, that:

(1) The signer personally, and with the professional diligence reasonably necessary to protect the best interests of any child whom the applicant might adopt, either actually conducted or supervised the home study, including personal interview(s), the home visits, and all other aspects of the investigation needed to prepare the home study; if the signer did not personally conduct the home study, the person who actually did so must be identified;

(2) The factual statements in the home study are true and correct, to the best of the signer's knowledge, information and belief; and

(3) The home study preparer has advised the applicant of the duty of candor under paragraph (d) of this section, specifically including the ongoing duty under paragraph (d)(2) of this section concerning disclosure of new events or information warranting submission of an updated or amended home study.

(g) Personal interview(s) and home visit(s). The home study preparer must:

(1) Conduct at least one interview in person, and at least one home visit, with the applicant.

(2) Interview, at least once, each additional adult member of the household, as defined in 8 CFR 204.301. The interview with an additional adult member of the household should also be in person, unless the home study preparer determines that interviewing that individual in person is not reasonably feasible and explains in the home study the reason for this conclusion.

(3) Provide information on and assess the suitability of the applicant as the adoptive parent of a Convention adoptee based on the applicant's background, family and medical history (including physical, mental and emotional health), social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the child(ren) for whom they would be qualified to care.

(4) Refer the applicant to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, clinical social worker, or professional substance abuse

counselor, for an evaluation and written report, if the home study preparer determines that there are areas beyond his or her expertise that need to be addressed. The home study preparer must also make such a referral if such a referral would be required for a domestic adoption under the law of the State of the applicant's actual or proposed place of residence in the United States.

(5) Apply the requirements of this paragraph to each additional adult member of the household.

(h) Financial considerations.

(1) Assessment of the finances of the applicant must include:

(i) A description of the applicant's income, financial resources, debts, and expenses.

(ii) A statement concerning the evidence that was considered to verify the source and amount of income and financial resources.

(2) Any income designated for the support of one or more children in the applicant's care and custody, such as funds for foster care, or any income designated for the support of another member of the household, must not be counted towards the financial resources available for the support of a prospective adoptive child.

(3) USCIS will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, USCIS reserves the right to ask for such detailed documentation.

(i) Checking available child abuse registries. The home study preparer must ensure that a check of the applicant, and of each additional adult member of the household, has been made with available child abuse registries in any State or foreign country that the applicant, or any additional adult member of the household, has resided in since that person's 18th Birthday.

USCIS may also conduct its own check of any child abuse registries to which USCIS has access. Depending on the extent of access to a relevant registry allowed by the State or foreign law, the home study preparer must take one of the following courses of action:

(1) If the home study preparer is allowed access to information from the child abuse registries, he or she must make the appropriate checks for the applicant and each additional adult member of the household;

(2) If the State or foreign country requires the home study preparer to secure permission from the applicant and each additional adult member of the household before gaining access to information in such registries, the home study preparer must secure such permission from those individuals and make the appropriate checks;

(3) If the State or foreign country will only release information directly to an individual to whom the information relates, then the applicant and the additional adult member of the household must secure such information and provide it to the home study preparer.

(4) If the State or foreign country will release information neither to the home study preparer nor to the person to whom the information relates, or has not done so within 6 months of a written request for the information, this unavailability of information must be noted in the home study.

(j) Inquiring about history of abuse or violence as an offender. The home study preparer must ask each applicant and each additional adult member of the household whether he or she has a history as an offender, whether in the United States or abroad, of substance abuse, sexual abuse, or child abuse, or family violence, even if such history did not result in an arrest or conviction. This evaluation must include:

(1) The dates of each arrest or conviction or history of substance abuse, sexual abuse or child abuse, and/ or family violence; or,

(2) If not resulting in an arrest, the date or time period (if occurring over an extended period of time) of each occurrence and

(3) Details including any mitigating circumstances about each incident. Each statement must be signed, under penalty of perjury, by the person to whom the incident relates.

(k) Criminal history. The applicant, and any additional adult members of the household, must also disclose to the home study preparer and USCIS any history, whether in the United States or abroad, of any arrest and/or conviction (other than for minor traffic offenses) in addition to the information that the person must disclose under paragraph

(j) of this section. If an applicant or an additional adult member of the household has a criminal record, the officer may still find that the applicant will be suitable as the adoptive parent of a Convention adoptee, if there is sufficient evidence of rehabilitation as described in paragraph (l) of this section.

(l) Evidence of rehabilitation. If an applicant, or any additional adult member of the household, has a history of substance abuse, sexual abuse or child abuse, and/or family violence as an offender, or any other criminal history, the home study preparer may, nevertheless, make a favorable finding if the applicant has demonstrated that the person with this adverse history has achieved appropriate rehabilitation. A favorable recommendation cannot be made based on a claim of rehabilitation while an applicant or any additional adult member of the household is on probation, parole, supervised release, or other similar arrangement for any conviction. The home study must include a discussion of the claimed rehabilitation, which demonstrates that the applicant is suitable as the adoptive parent(s) of a Convention adoptee. Evidence of rehabilitation may include:

(1) An evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, the offender's acceptance of responsibility for his or her conduct, and any type of counseling or rehabilitation programs which have been successfully completed, or

(2) A written opinion from an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker.

(m) Assessment with respect to physical, mental and emotional health or behavioral issues. The home study must address the current physical, mental and emotional health of the applicant, or any additional adult member of the household, as well as any history of illness or of any mental, emotional, psychological, or behavioural instability if the home study preparer determines, in the exercise of reasonable professional judgment, that the suitability of the applicant as an adoptive parent may be affected adversely by such history. Paragraph (g)(4) of this section, regarding referral to professionals, applies to any home study involving prior psychiatric care, or issues arising from sexual abuse, child abuse, or family violence issues if, in the home study preparer's reasonable professional judgment, such referral(s) may be necessary or helpful to the proper completion of the home study.

(n) Prior home study. The home study preparer must ask each applicant, and any additional adult member of the household, whether he or she previously has had a prior home study completed, or began a home study process in relation to an adoption or to any form of foster or other custodial care of a child that was not completed, whether or not the prior home study related to an intercountry adoption, and must include each individual's response to this question in the home study report. A copy of any previous home study that did not favorably recommend the applicant or additional adult member of the household must be attached to any home study submitted with a Form I-800A. If a copy of any prior home study that did not favourably recommend the applicant or additional adult member of the household is no longer available, the current home study must explain why the prior home study is no longer available. The home study preparer must evaluate the relevance of any prior unfavorable or uncompleted home study to the suitability of the applicant as the adoptive parent of a Convention adoptee.

(o) Living accommodations. The home study must include a detailed description of the living accommodations where the applicant currently resides. If the applicant is planning to move, the home study must include a description of the living accommodations where the child will reside with the applicant, if known. If the applicant is residing abroad at the time of the home

study, the home study must include a description of the living accommodations where the child will reside in the United States with the applicant, if known. Each description must include an assessment of the suitability of accommodations for a child and a determination whether such space meets applicable State requirements, if any.

(p) Handicapped or special needs child. A home study conducted in conjunction with the proposed adoption of a special needs or handicapped child must contain a discussion of the preparation, willingness, and ability of the applicant to provide proper care for a child with the handicap or special needs. This information will be used to evaluate the suitability of the applicant as the adoptive parent of a special needs or handicapped child. If this information is not included in the home study, an updated or amended home study will be necessary if the applicant seeks to adopt a handicapped or special needs child.

(q) Addressing a Convention country's specific requirements. If the Central Authority of the Convention country has notified the Secretary of State of any specific requirements that must be met in order to adopt in the Convention country, the home study must include a full and complete statement of all facts relevant to the applicant's eligibility for adoption in the Convention country, in light of those specific requirements.

(r) Specific approval for adoption. If the home study preparer's findings are favorable, the home study must contain his or her specific approval of the applicant for adoption of a child from the specific Convention country or countries, and a discussion of the reasons for such approval. The home study must include the number of children the applicant may adopt at the same time. The home study must state whether there are any specific restrictions to the adoption based on the age or gender, or other characteristics of the child. If the home study preparer has approved the applicant for a handicapped or special needs adoption, this fact must be clearly stated.

(s) Home study preparer's authority to conduct home studies. The home study must include a statement in which the home study preparer certifies that he or she is authorized under 22 CFR part 96 to complete home studies for Convention adoption cases. The certification must specify the State or country under whose authority the home study preparer is licensed or authorized, cite the specific law or regulation authorizing the preparer to conduct home studies, and indicate the license number, if any, and the expiration date, if any, of this authorization or license. The certification must also specify the basis under 22 CFR part 96 (public domestic authority, accredited agency, temporarily accredited agency, approved person, exempted provider, or supervised provider) for his or her authorization to conduct Convention adoption home studies.

(t) Review of home study. (1) If the law of the State in which the applicant resides requires the competent authority in the State to review the home study, such a review must occur and be documented before the home study is submitted to USCIS.

⁷⁶ See end note 37 (22 CFR 96.48).

⁷⁷ This task is usually carried out by the domestic public authority responsible for child welfare in the relevant U.S. state. Where U.S. state law so provides, accredited bodies and approved (non-accredited) persons may assist domestic public authorities in performing this task.

⁷⁸ In all cases, however, the matching decision or determination must be ratified by the relevant U.S. state family court with jurisdiction over the case, consistent with the court's authority to determine the best interests of the child.

⁷⁹ See end note 39 (22 CFR 96.51).

⁸⁰ *See* end note 39 (22 CFR 96.51).

⁸¹ *See* end note 39 (22 CFR 96.51).

⁸² *See* end note 7 (22 CFR 96.35).