

## DEPARTMENT OF STATE NOTICE

### Intercountry Adoption Act of 2000 (IAA) 22 CFR Part 96 Accreditation and Approval Regulations

DEPARTMENT OF STATE NOTICE (4) TO APPLICANTS THAT APPLIED FOR ACCREDITATION/APPROVAL UNDER THE INTERCOUNTRY ADOPTION ACT

*Frequently Asked Questions: Clarification Regarding Primary Provider Rules for Incoming Adoptions*

**1. Q: I am a small adoption service provider. I only want to provide one or two of the six adoption services specified in the Intercountry Adoption Act and its implementing regulations. I would prefer to be accredited/approved, even though I do not plan to be a primary provider - ever. Do I have to be in substantial compliance with the primary provider provisions of 22 CFR 96.44 (b)?**

A: The short answer is yes. Adoption service providers seeking accreditation/approval who intend to provide only a limited number of the defined adoption services must nonetheless substantially comply with 22 CFR 96.44(b), which requires them to be capable of acting as a primary provider in any Convention case. (The Department of State interprets capability as present ability; see the answer to question number 3 for more detail on capability.)

The IAA and its implementing regulations created the accreditation process to accredit agencies and to approve persons to act as primary providers in Convention cases. The intent was to give prospective adoptive parents one accredited/approved adoption service provider that would be responsible for implementing a service plan to provide (either directly or through arrangements with other providers) all of the adoption services in connection with a Convention adoption. Although an accredited/approved adoption service provider may not be the primary provider in every case in which it participates, the IAA and its implementing regulations establish that every accredited/approved adoption service provider is expected to be capable of acting as a primary provider.

The categories supervised and exempted providers were specifically created by the IAA and its implementing regulations to enable smaller or specialized providers to operate under the Hague system in the United States and to work in concert with primary providers. The fact that such a provider is not "accredited" or "approved" does not reflect negatively on the provider's ability to provide a particular adoption service. It simply reflects the fact that such a provider is not in a position to act as a primary provider.

**2. Q: So even if I plan only to provide one or two services, I must still show I am capable of acting as a primary provider to be accredited or approved?**

A: That is correct.

**3. Q: What does it mean to be "capable of" acting as a primary provider?**

A: For purposes of section 96.44(b) of the accreditation regulations on primary providers, the Department of State interprets "capability" to indicate present ability. Thus, a provider must show that it could act as a primary provider with little action or delay.

**4. Q: How do I show capability to act as a primary provider to the Accrediting Entity?**

A: The Accrediting Entities are assessing whether adoption service providers are in substantial compliance with the applicable standards, in this case, section 96.44(b). This standard refers to infrastructure factors such as organizational structure, financial and personnel resources and policies and procedures. According to the Accrediting Entities, these structural factors will indicate whether an adoption service provider has the capability or not. Some considerations:

- \* Organizational structure: The organizational structure of the adoption service provider should show who is responsible for providing or overseeing each of the six defined Hague adoption services and reflect how the adoption service provider has integrated this capability within your organization;

- \* Personnel resources: Accrediting Entities will look closely to see whether an adoption service provider has enough personnel, with appropriate experience and training, either to provide all six of the defined adoptions services itself or to provide appropriate supervision to supervised providers and/or verification of the work of other foreign providers, consistent with the regulations. To show capability, an adoption service provider does not need to employ superfluous staff for services it does not intend to perform. But adoption service providers must have personnel within their organization (such as an executive director or someone with extensive experience in intercountry adoption) with the training or expertise to provide appropriate supervision to supervised providers (when used), verify the work of other foreign providers, and ensure that any studies performed by exempted providers will be appropriately approved;

- \* Financial resources: An adoption service provider will need to show how existing financial resources are adequate to meet the needs of service plans and maintain the capability to act as a primary provider. The cost of maintaining the capability to provide or arrange through other appropriate providers all six Hague adoption services will vary depending on a variety of factors (e.g., size, volume of cases, experience/background of management and caseworkers, extent to which outside resources must be accessed to create or demonstrate capability).

- \* Policies and procedures: An adoption service provider must have policies and procedures in place defining how it will act as a primary provider. These policies might include defining lines of responsibility/supervision, plans for ensuring that staff will meet training requirements, and plans for how existing staffing would be augmented or realigned to take on the additional responsibilities.

**5. Q: Assuming my adoption service agency is capable of acting as a primary provider, even if it never intends to, my agency's current direct experience does not include all six defined services. How can I show substantial compliance with 22 CFR 44(a) (primary provider service plans), 22 CFR 45 ("using supervised providers in the United States") and 22 CFR 46 ("using providers in Convention countries")?**

A: The Accrediting Entities recognize that some adoption service providers may not be able to document through case files or other physical evidence that they are in substantial compliance with the standards in 96.44(a), 96.45, and 96.46. The Accrediting Entities will be providing an evidence chart and additional information showing how adoption service providers may demonstrate substantial compliance with these requirements. In lieu of documented experience and performance, we understand that applicants will have the option of submitting the following in support of substantial compliance:

- \* A sworn executive verification stating that the adoption service provider does not intend to act as a primary provider in any cases, will not use any supervised providers or other foreign providers, and will notify the Accrediting Entity if its plans change and it intends to act as a primary provider.

**6. Q: If I provide the sworn executive verification, after I am accredited/approved can I be a primary provider later?**

A: No. Those who file a sworn executive verification must not act as a primary provider. The showing of capability to act as a primary provider does not mean that an adoption service provider accredited or approved on the basis of the affidavit may later unilaterally start acting as a

primary provider. Any such proposed change must be brought to the immediate attention of the Accrediting Entity for its approval.

**7. Q: My organization does not want to waste its limited resources to become capable of acting as a primary provider. We just want to be accredited and do what we do best. Why make this so difficult?**

A: The Intercountry Adoption Act - the Federal law implementing the Hague Adoption Convention - profoundly changed the status quo with respect to intercountry adoptions covered by the Convention. As noted above, under the IAA, an adoption service provider seeking Hague accreditation/approval must be capable of taking on the role of primary provider. The IAA created three basic categories for providers: fully accredited/approved adoption service providers (including temporarily accredited agencies); supervised adoption service providers; and exempted providers. The Department of State and the Accrediting Entities are bound by the IAA and its implementing regulations.

Agencies and persons who do not want to be primary providers may operate as supervised providers or, if they provide only home or background studies, can act as exempted providers, neither of which requires accreditation/approval. We encourage agencies and persons to choose the path that makes the most sense for their organization.

**8. Q: What if I apply for accreditation and fail to receive it? Can I apply again?**

A: Yes. In accordance with 22 CFR 96.21(b)(i), you may apply again in the future to the same Accrediting Entity to which you first applied.

**9. Q: What if I withdraw my application for accreditation? Can I apply again?**

A: Yes. If you withdraw your application in anticipation of denial, you must apply to the same Accrediting Entity to whom you originally applied. If you otherwise withdraw your application, you may apply in the future to any Accrediting Entity with jurisdiction over your application.