Hague Accreditation Technical Guidance

Updated August 6, 2012

The following technical guidance is intended to provide answers to questions adoption service providers might have about becoming accredited or approved under the Hague Adoption Convention. The guidance is not a substitute for the actual regulation (22 CFR Part 96), nor is it a comprehensive summary of the regulation.

TABLE OF CONTENTS

Hague Accreditation Technical Guidance

Updated August 6, 2012

Index

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
A. CORPORATE GOVERNANCE STANDARDS		
A.1 Conflicts of interest in oversight of CEO by board.	**96.32(b)**	**Question:** Can oversight and performance evaluation of the CEO or equivalent official be conducted by members of a governing body who may have a conflict of interest with the CEO (e.g., a relative of the CEO or an employee who reports to the CEO)? **Response:** The accreditation and approval standards do not address this question. Boards of directors and other governing bodies are most often covered by the laws of the State in which the organization is incorporated.

Hague Accreditation Technical Guidance

Updated August 6, 2012

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
A.2 Policy Governance Model→, oversight by board of directors.	**96.32(b)**	**Question:** Does the standard prohibit an agency from using a Policy Governance→ model? If an agency does use a Policy Governance→ model, will the evidence of compliance be different? [Note: Policy Governance→ is a service mark of John Carver.] **Response:** Under Section 96.32(b), an agency or person has, among other things, a board of directors or governing body that establishes and approves its mission, policies, budget, and programs. Nothing in this standard dictates the type of governance model an agency or person follows, or prohibits an agency or person from following a Policy Governance® model, per se. Regardless of the particular model of governance it follows, an organization should demonstrate its governing body's active engagement in guiding and overseeing the organization's operation and direction as stated in the standard.
A.3 Individual practitioner exemption from 32(b) of board of directors/governing body requirements.	**96.32(b)**	**Question:** Are individual practitioners who are "persons" under section 96.2 of the regulations because they have incorporated for tax and/or liability reasons required to meet the board of directors/governing body requirements in 96.32(b), or are they eligible for the exemption for individual practitioners provided in that standard? **Response:** Individual practitioners who have incorporated for tax/liability purposes are "entities" under 96.2 and, therefore "persons" under the regulations. However, as individual practitioners, they fit the specific exception in 96.32(b) and are not subject to the board of directors/governing body requirements in that standard.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
A.3a Understanding the term individual practitioner and related issues **6-7-12**	**96.32(b)**	Under 96.32(b), an "individual practitioner" is exempt from the requirement to have a governing board to oversee the work of the adoption organization. This exemption is narrow and only available to the very smallest of adoption organizations -- one professional service provider with one or perhaps two administrative or clerical staff. If more than one person in any organization provides adoption services, defined in 96.2, the exemption does not apply, and the organization must have a board. Moreover, as a "person", an individual practitioner is subject to all other requirements for accreditation. For all other purposes whether an ASP is an individual practitioner is not a consideration. **Question**: What if I am an individual practitioner organized as a professional corporation or other corporate form? Will I still be considered to be an individual practitioner? **Response**: If an adoption service provider qualifies as an individual practitioner, defined above, she/he is exempt from the governing board requirement found in 96.32(b), regardless of the legal form she/he has adopted. We previously published guidance on this in 2007: See item A3 of this Hague Accreditation Technical Guidance, above. **Question**: May a person have employees and still be considered an individual practitioner? **Response**: An individual practitioner may have a very limited number of employees (including, but not limited to, part-time and full-time staff, paid interns and trainees, and contractors) supporting her/his Convention adoption work in clerical or administrative capacities only. An individual practitioner may not employ someone to provide adoption services; only the individual practitioner her/himself may provide such services. Factors that suggest that the approved person is NOT an individual practitioner:

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		(1) The number of administrative and clerical employees exceeds the equivalent of 2.5 full-time positions; AND/OR (2) Multiple individuals employed by the approved person are licensed by the state to provide adoption services. **Question**: Does the same rule apply to attorneys? Or is an attorney exempt from the governing board requirement if the relevant state rules of professional conduct prohibit the supervision of attorneys by non-attorneys? **Response**: The same rules apply to attorneys who provide adoption services. An attorney who provides all adoption services her/himself, with very limited administrative or clerical employees is exempt from the governing board requirement. If the attorney's organization falls outside the meaning of individual practitioner, he or she must establish a governing board to oversee the provision of adoption services. The provision of legal services (defined in 22 CFR 96.2) that are not adoption services is not subject to board oversight. Attorneys who are approved persons, but not individual practitioners will need to consider how they can organize themselves in a way as to permit oversight of adoption services by a governing board. In general, under the IAA, all persons, including lawyers, who provide adoption services in the United States must comply with the IAA. Section 201(b)(3) of the IAA states that the provision of legal services by a person "who is not providing any adoption service in the case" is exempt from the accreditation/approval requirements. The exemption does not apply, however, if the attorney is also providing (non-exempt) adoption services in the case. An attorney who provides adoption services must comply with any applicable requirements of the IAA and the implementing regulations, regardless of any professional standards or licensing or other laws that also govern the actions of the attorney.
A.4 Who can be a board member?	**96.32(b)**	**Question:** Are there any restrictions for who can be a board member? Are there any restrictions on who can be a voting member (e.g., Can an Executive Director be a voting member of the Board of Directors)? **Response:** Section 96.32(b) of the Standards addresses board composition by requiring agencies/persons to have board members with certain types of experience. The Standards do not otherwise place limitations or restrictions on board composition. Agencies should refer to their State laws for further guidance on this.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
A.5 Meaning of "similar governing body" for persons.	**96.32(b)**	**Question:** What is the meaning of "similar governing body" as it relates to persons? **Response:** The term "similar governing body" is meant to be a flexible one that includes all governing bodies that perform the functions of "establishing the mission, policies, budget, and programs; provides leadership to secure the resources needed to support its programs… and appoints and oversees the performance of its chief executive officer or equivalent official" as stated in the provision. The flexibility is meant to encompass all such bodies regardless of how the laws of the various States governing the creation and management of for-profit and non-profit corporations, associations, partnerships, etc., label them. In those cases where such boards or bodies are not mandated by State law, the standard in section 96.32(b) for Hague adoption service providers is to have one. The text of 96.32(b) expressly states that this provision does not apply where the person is an individual practitioner; 96.32(b) does apply to all other agencies and persons.
A.6 Applying governing body recordkeeping provisions to individuals.	**96.32(c)**	**Question:** How does this subsection apply to individuals? **Response:** 96.32(c) refers to keeping permanent records of the meetings, deliberations and major decisions of the agency or person's governing body. In the case of individual practitioners, they need to keep records of major decisions affecting their program.
A.7 Meaning of "oversee" and "monitor."	**96.32(d)**	**Question:** What's the difference between "oversee" and "monitor?" **Response:** To oversee is to supervise, and to monitor is to have methods to check & verify activity/performance.
A.8 Scope of disclosure requirements to include non-adoption employees.	**96.32(e)**	**Question:** Regarding the directors, managers, employees (element 2) - do we need all employees or all employees who are involved in the adoption program. For example, do we need the CFO, the HR Director, the manager of the agency's mental health clinic, and direct care staff of a residential program? **Response:** 22 CFR 96.32(e)(2) does not limit the scope of those required to submit information to only those who provide adoption-related services. Therefore, in order to achieve full compliance with the standard (a rating of 1), the agency or person must submit all required information for those persons identified in the standard. However, the accrediting entities (AEs) may decide that an agency or person achieves substantial compliance (a rating of 2) by submitting the required information for all directors and any managers and employees who provide adoption-related services.
Return to Table of Contents		

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
B. Financial and Risk Management Standards		
B.1 Pass Through Funds: Including them in the pass through funds in the budget.	**96.33(a)**	**Question:** The standard requires the agency to disclose in its budget, the remuneration paid to its supervised providers. If an agency has a separate escrow account where they maintain funds and pay supervised providers (pass through funds), would they need to include this in their budget? **Response:** Yes, such funds should be disclosed in the Agency's budget. Asps can consult with their financial advisors as to whether separate disclosures of passthrough funds can be considered part of the budget.
B.2 Independent Audit	**96.33(b)**	**Question:** What is the meaning of "independent audit?" **Response:** An audit is a process conducted in accordance with appropriate generally accepted auditing standards (GAAS) for testing of the accuracy and completeness of an organization's financial statements. The audit enables an independent certified public accountant (CPA) to issue an opinion on how fairly the agency's financial statements represent its financial position and whether the organization complies with generally accepted accounting principles (GAAP). Board members, staff, relatives, and CPAs who have prepared the financial statements cannot perform audits because their relationship with the organization compromises their independence.
B.2a Audit: By when must one be completed.	**96.33(b)**	**Question:** When must the audit be completed? **Response:** The audit is required evidence for applicants for Full Hague Accreditation/Approval. If the audit is not available during the site visit, the adoption service provider will be rated out-of-compliance, and can submit the completed audit in its response to the PCR report. Since the audit is required to be conducted every four years, the agency can submit a recent audit (conducted in the last few years), and will be required to submit a new audit (in accordance with the four-year requirement) as part of the annual monitoring and oversight requirements. If an agency has not been in operation long enough to obtain an audit before the accrediting entity makes its final decision on initial accreditation or approval, it can demonstrate that it has an audit scheduled and procedures are in place to have such an audit every four years at the time of the site visit.
B.2b Audit: How often?	**96.33(b)**	**Question:** Does an agency or person need to conduct an audit every four years *from the last audit* to

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		demonstrate compliance with 96.33(b) (the Hague standard) or every four years from *the date of Hague accreditation*? **Response:** 96.33(b) provides that "the agency's or person's finances… are subject to independent audits every four years." Thus, the standard uses the date of the previous audit and not the date of accreditation as the date from which to calculate four years.
B.2c Audit: Limited to intercountry adoption?	**96.33(b)**	**Question:** Can the audit be limited to the adoption service provider's intercountry adoption services only? **Response:** No. Section 96.33(b) does not limit the scope of the agency or person's audit to intercountry adoption services only. The Department received a great deal of public comment on this standard and, as a result, made certain modifications to the proposed rule in the final rule to "strike a balance between ensuring financial soundness and transparency and reducing the costs of annual external audits." See 71 FR 8087-88.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
B.3 Sufficient Cash Reserves	**96.33(e)**	**Question:** What does the phrase "sufficient cash reserves, assets, or other financial resources to meet its operating expenses for two months" mean? What is the meaning of the term "average" as it applies to the two-month operating expenses reserve? What part of an adoption service provider's (ASP) budget should be included? Should escrow accounts be included? **Response:** Under 96.33(e), an ASP is to "maintain 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." This subsection allows a range of financial resources to be taken into consideration when computing the two-month, average reserve. The term "average" refers to a method of calculating what would be sufficient funds to meet the average of two months of operating expenses. One appropriate method is to take the total annual operating expenses and divide by six to arrive at an average cost for two months of operating expenses. Other methods may be equally valid. To assist the accrediting entity in its evaluation, identify how you arrived at the average of two months' operating expenses. Escrow accounts by their nature, are funds set aside for specific purposes that may only be used for those purposes, and are refunded when the purpose has been accomplished or if it could not be accomplished. Because escrow funds may not be used for general operating expenses by the ASP, they may not be used to meet the operating expenses reserve standard. Unsecured lines of credit may not be used for this purpose either. The reserve standard is meant to protect prospective adoptive parents in the event the ASP suffers severe financial problems. At such a point in time, unsecured lines of credit would most likely already be exhausted or no longer available to the ASP. On the other hand, the availability of secured debt—for example, if the ASP owns its premises—may be taken into consideration as "other financial resources."
B.3a Cash reserve: Accounts receivable not included.	**96.33(e)**	**Question:** Can accounts receivable count toward the cash reserve standard? **Response:** No, accounts receivable may not count toward the cash reserve standard. Given that accounts receivable may never materialize, accounts receivable are not cash reserves, assets, or other financial resources that the agency or person can readily access and use to meet its operating expenses.

Hague Accreditation Technical Guidance

Updated August 6, 2012

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
B.3b Cash reserve standard not waivable.	**96.33(e)**	**Question:** A newly established agency (less than a year) is having trouble meeting the cash reserves, assets, or other financial resources to meet the operating expenses for two months standard, 96.33(e). There is a person who has provided a note for this start up and is willing to make it collateralized to meet this requirement. However, the agency does not have enough assets to equal the note. They say they are "just short." What can they do to meet this standard? **Response:** There is a clear need and desire to encourage new agencies and persons to become accredited or approved. However, 96.33(e) is a critical standard; it is not appropriate to measure capacity only or give leniency in some other way for new organizations when other agencies/persons will be denied accreditation if they receive a rating other than 1 or 2.
B.3c Cash reserve: Cannot use money budgeted to other purposes unless truly surplus.	**96.33(e)**	**Question:** Are there any unrestricted funds, such as, can we use funds allocated to another line item in our budget to cover operating expenses if need be? **Response:** The standard requires an agency or person "to maintain on average sufficient cash reserves, assets, or other financial resources to meet its operating expenses for two months…" The accrediting entity is using the agency's/persons' two-month reserve as a gauge of financial stability. If an agency or person has "unrestricted funds" that are truly a budget surplus and not tied to any operational or programmatic expense and that are accessible at any time, then, in theory, these funds could count toward the two-month reserve. This does not mean, however, that funds assigned to other line items can be counted. The ability to adjust line items within its budget to remain solvent, even if it means cutting a program, firing personnel, etc. does not show financial stability in the same way as two-month's worth of operating expenses in the form of cash reserves, assets, and other financial resources.
B.4 Operating Expenses defined.	**96.33(e)**	**Question:** How do you define operating expenses? **Response:** Operating expenses are the ongoing costs of running your organization and include, but are not limited to, labor costs, rents, leases, travel, utilities, and office supplies. They are different from capital expenditures, such as purchases of new equipment, computer systems, or the construction or remodeling of a facility.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
B.5 Liability insurance v. bonding.	**96.33(i)**	**Question:** Can liability insurance coverage (as an alternative to bonding) demonstrate full or substantial compliance with the standard if the liability insurance policy can offer equal or better protection than bonding? **Response:** No. Bonding is not the same as liability insurance. However, an insurance policy (just not a *liability* insurance policy) can provide the same protection as a fidelity bond if written appropriately. So, insurance that acts like a fidelity bond, i.e., protects the adoption service provider's own assets against the dishonesty, theft or fraud of certain employees may be able to satisfy 96.33(i), but the content of the policy must clearly provide the same coverage as a bond would provide.
B.6 Bonding	**96.33(i)**	**Question:** What is the meaning of the term "bonded?" What kind of bond is meant and at what dollar amount? **Response:** This standard provides for bonding for employees with direct responsibility for financial transactions or financial management of the agency or person. Bonding is a form of suretyship akin to insurance; bonds guarantee a payment or a reimbursement for financial losses resulting from dishonesty, failure to perform and other related acts. The standard does not specify the kind of bond, leaving it to the marketplace to develop an appropriate bond instrument or instruments to provide surety appropriate to the circumstances of individual adoption service providers (ASPs). Likewise, the rule does not specify a dollar surety amount. The level of bonding would depend on the financial responsibilities of the employee in question as well as the general financial responsibilities of the ASP. Typically, the companies providing bonds of this nature consider the financial position of the employee and the financial statement of the agency or person when determining an appropriate bonding instrument. Accrediting entities will not dictate to ASPs either the type of bond or its dollar value, but will evaluate an ASP's bonding in the context of the responsibilities of the employee in question and the volume of ASP's practice.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
B.7 Compensation for finding adoptive parents not prohibited.	**96.34(a)**	**Question:** Can an adoption service provider (ASP) reimburse adoptive families (whose adoptions are already finalized) for recruiting families for adoption application? They would be reimbursed for any costs related to recruiting families who end up submitting a formal application for adoption. This would be a contingent fee, but not for locating a child, not related to a particular child, and for recruiting parents, not for providing one of the six adoption services. **Response:** ASPs who provide a financial incentive in the form of reimbursement for adoption fees to adoptive families for recruiting other parents to apply for adoption services are not prohibited from doing so in 96.34. 96.34(a) prohibits compensation for locating children for adoption or for placing children, not for finding potential adoptive parents.
B.8 "Not Unreasonably High"	**96.34(d), (e)**	**Question**: What is meant by "not unreasonably high" fees, wages, or salaries? **Response:** The Preamble provides excellent guidance on this question. It reads: "The concept of 'reasonableness' does not lend itself to bright line rules, but rather requires an assessment in light of a variety of relevant factors. We have crafted standards in Sec. 96.34(d) and (e) that identify the factors the Department believes should be considered in determining if fees, wages, or salaries paid are unreasonably high in relation to services rendered. We have made one change to guide this analysis, requiring that the compensation be judged by taking into account the country in which the adoption services were provided and the relevant norms for compensation within that country, to the extent known to the accrediting entity. We have also added supervised providers to the list of those whose compensation meets the reasonableness standard of Sec. 96.34(d). We believe this approach, which avoids inappropriately setting caps or range limits on salaries and wages will be workable, particularly because accrediting entities will often have access to comparable data on agencies and persons under their authority."
B.9 "Referral" as applies to vendors of non-adoption services.	**96.34(f)**	**Question:** How do you define "referral?" An agency states they might offer a list with names on it, but they are clear that they are resources, not referrals. **Response:** Section 96.34(f) requires an agency to identify all vendors to whom clients are referred for non-adoption services and to disclose corporate or financial arrangements and/or family relationships with those vendors. The intent of this standard is to increase the transparency of the agency/person's relationship with third parties (See 71 FR 8089-8090, Comment and Response 2 to 96.34). For the purposes of 96.34(f), "refer" is not meant necessarily as a formal referral, where a client and a vendor are matched for a particular service; nor is "refer" related to the "referral" of a child for adoption. "Refer" can include providing a list of resources to clients. Referral to vendors does not include providing the information required under 96.48(f).
Return to Table of Contents		

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
C. Standards on Ethical Practices and Responsibilities		

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
C.1 When to invoke 96.35(a).	**96.35(a)**	**Issue for clarification:** Accrediting entities (AEs) become aware of a wide range of conduct in the course of an agency or person's accreditation process, through direct complaints about an agency or person to an AE, and/or through an agency/person's disclosure to the AEs of complaints the agency/person receives. Some of this conduct directly implicates elements of the suitability disclosure standards and other practice standards. In other cases, the conduct does not directly implicate a specific standard but may be so egregious that it fits under the more general provisions of 96.35(a). When should conduct affect the rating of 96.35(a), a mandatory standard? **Response:** Section 96.35(a) provides: 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. The preamble to the proposed rule 22 CFR Part 96 included the following guidance on 96.35: An agency or person must demonstrate to the accrediting entity that it provides adoption services ethically and in accordance with the Convention's goals of ensuring that intercountry adoptions take place in the best interests of children and preventing the abduction, exploitation, sale of, or trafficking in children. To permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person must disclose the specified information about itself and about its directors, officers, and employees. The Department believes that it is critical for the accrediting entity to have full information about the applicant before making a final decision. Because suitability is a matter of ongoing concern, the agency or person must also update the information required by this section within thirty business days of learning of a change in the information. The standards do not require automatic disqualification of an agency or person for any particular behavior, activity, or event. Instead, consistent with the accreditation scheme employed, the standards give the accrediting entity the discretion and flexibility to examine the factual circumstances underlying the conduct and to determine whether accreditation or approval is appropriate. Where an agency or person has committed an egregious or illegal act, or has engaged in a pattern of behavior that is inconsistent with protecting the best interests of children, accreditation or approval is likely to be inappropriate. Yet it is impossible for the Department to list every type of non-conforming or unethical behavior

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		that would fall into this category. Therefore, in addition to specific disclosures, the standards mandate disclosure of any other businesses or activities currently carried out by the agency or person, affiliate organizations, or any entity in which it has an ownership or control interest that are inconsistent with the principles of the Convention. These principles include the proposition that in no instance is the abduction, sale, exploitation, or trafficking of children permissible. Such activities would include, for example, distributing pornography or operating a Web site that contains pornography, regardless of whether such activity is legal or not, and trafficking in individuals, either into or out of the United States, for pernicious purposes. 68 Fed. Reg. 54082. Thus, while suitability disclosures set forth in 96.35(b)-(d) inform the rating of compliance with this broad standard, nothing in the regulations limits the scope of conduct that may be considered in rating 96.35(a). Furthermore, the regulations do not define the term "ethically," and myriad types of conduct may impact the enumerated Convention principles. With respect to rating 96.35(a): 1) If the conduct in question relates to compliance with another standard(s) in subpart F, the accrediting entity generally uses that standard(s) to evaluate the conduct. In this way, the AE uses the specific practice standard for the purpose for which it was written. The AE also has discretion to consider whether the conduct in question additionally impacts the rating of 96.35(a), i.e., because it is so pervasive or egregious. 2) If the conduct in question does not relate to another standard, the AE considers the nature of the conduct as well as the factual circumstances around the conduct (including, as relevant, remedial efforts the agency or person has taken to mitigate the conduct, and any factors that might show a pattern of conduct) to determine whether the conduct impacts the rating of 96.35(a).
C.2 Fingerprinting requirement does not apply to board members.	**96.35(c)**	**Question:** Do board members need to have their fingerprints done? **Response:** 96.35(c)(3) and 96.35(c)(4) both refer in different ways to fingerprints. 96.35(c)(3) requires State criminal backgrounds checks and child abuse clearance for senior management or who works directly with parents or children unless checks have been included in the State licensing process. 96.35(c)(4)

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		requires filled-out fingerprint cards for those in senior management or who work directly with parents or children. We previously clarified that 96.35(c)(4) does not apply to board members. Likewise, 96.35(c)(3) does not apply to board members. This does not relieve board members of any State requirements for background checks using fingerprints.
C.3 Who must comply with 96.35(c)?	**96.35(c)**	**Question:** Regarding the individuals in senior management positions referenced in elements 3 and 4 of 96.35(c), are all senior managers subject to the requirements or just the senior managers who are involved in the adoption program? For example, would this include the manager of an agency's mental health clinic or manager of an employee assistance program? **Response:** Section 96.35(c) covers **all** "individual directors, officers and employees," not just those involved in the adoption program, but elements 96.35(c)(3) and (4) apply only to senior management. Unlike 96.35(c)(1), however, the standard is not limited to conduct related to the provision of adoption-related services. Thus, all senior managers are subject to 96.35(3) and (4) even though they may not be involved in adoption-related services.
C.4 FBI fingerprint chart: Keep in file ready to go.	**96.35(c)(2)**	**Question:** Does the FBI fingerprint form need to be submitted for evaluation, or just completed by the employee and left in the personnel record? **Response:** The form needs to be completed and placed in the employees' personnel files ready for use in the event of future allegations warranting submission of the form for a Federal criminal background check.
C.4a FBI fingerprint chart: Who must complete one?	**96.35(c)(4)**	**Question:** Does the FBI form need to be completed for both those in senior management and those who work directly with parents and children. There is some confusion over the word "or" in the standard. **Response:** An FBI Form should be completed for individuals in the United States: 1) who are in senior management positions; or 2) who work directly with parents and/or children.
C.4b FBI Fingerprint Chart FD-258: What is required?	**96.35(c), (d)**	**Question:** What is the requirement for keeping on file a completed FBI form FD-258? **Response:** Section 96.35(c) and 96.35(d) of 22 CFR require the agency or person to keep completed (but not yet submitted, with the fingerprints already on the form) FBI form FD-258s on file for certain directors, officers, employees and individuals "in case future allegations warrant submission of the form for a Federal criminal background check of any such individual." The requirement to keep on file a prepared FD-258 ready for submission is separate and distinct from any use of that form required under State licensing procedures. Even if an FBI form FD-258 was used in a State licensing procedure, a new, completed form is required to be kept on file to assist with an investigation of wrongdoing, if needed, in the future.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
C.5 Certificates of Good Standing: Demonstrating compliance with standard where State does not issue.	**96.35(d)**	**Question:** What must a lawyer or social worker do to show substantial compliance with this subsection if the State in which s/he operates does not issue certificates of good standing? **Response:** If a State does not provide certificates of good standing, the burden is on the lawyer or social worker to clarify why a certificate cannot be obtained and to provide other evidence from the State sufficient to establish her/his good standing in all jurisdictions in which s/he is licensed.
C.6 Criminal and Child Abuse Background Checks: Are both supervised and foreign supervised providers subject to criminal and child abuse background checks?	**96.35, 96.45(a)(3), and 96.46(a)(3)**	**Question:** The issue posed for clarification is whether 96.45(a)(3) and 96.46(a)(3) require supervised and foreign supervised providers to disclose ALL information set forth in 96.35(a)-(d), or whether there are exceptions. For example, the accrediting entities (AEs) asked if foreign supervised providers would not be subject to criminal background check and FBI form requirements in 96.35(c)(3) and (c)(4), whether that information would not need to be disclosed. Also, AEs posed question of what to do if a supervised provider's State limits authorized uses of criminal background checks and accreditation falls outside the description of authorized uses. **Response:** Sections 96.45(a)(3) and 96.46(a)(3) require supervised and foreign supervised providers, respectively, to disclose the suitability information required by 96.35. The language of 96.35(c)(3) requires the disclosure of 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 parents(s) and/or children..." (emphasis added). Likewise, the language in 96.35(c)(4) with respect to the completed FBI Form FD-258 applies to "each such individual *in the United States* in a senior management position or who works directly with parent(s) and/or children..." (emphasis added). Therefore, foreign supervised providers who are not located in the United States would not be subject to these requirements, while supervised providers located in the United States would. In addition, both of these provisions are directed only at those individuals 1) who are in senior management positions; or 2) who work directly with parents or children. Thus, while there are no explicit exceptions to sections 96.45(a)(3) and 96.46(a)(3), the language of those provisions together with the language of 96.35 do not cover all directors, officers and employees of a supervised provider or a foreign supervised provider. If State law prohibits a supervised provider from disclosing the criminal background checks of its employees in accordance with Part 96, the agency or person would need to show evidence to this effect. The preamble to the regulations, in discussing 96.35, specifically addresses this point: "To be clear, 96.35(c)(3) does not supersede or supplant any other Federal or State statute or regulation that might otherwise restrict access to or consideration of background checks. If the State Criminal background check is unavailable by operation of State law, the agency or person can so demonstrate." See 71 FR 8092, response to Comment 9.

Hague Accreditation Technical Guidance

Updated August 6, 2012

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
C.7 Child Buying: Evidence to show not engaged in child buying. (Updated 08/2007)	**96.36**	**Question:** What evidence can an agency or person use to show that it is not engaged in child buying? **Response:** In accordance with the regulations, the evaluators will evaluate evidence required for sections 96.36(a) and (b), including policies and procedures prohibiting child-buying, employee training curricula, interviews of appropriate personnel, and evidence that, when acting as a primary provider, the agency or person has a written agreement with any foreign supervised providers that requires them to adhere to the standard prohibiting child buying, in accordance with 96.46(b)(3). We note that the standard in 96.36(a) and (b) is a mandatory standard.
C.7a Child Buying: training curriculum on prohibition against child buying.	**96.36(b)**	**Question:** How detailed should training be on child buying in training curricula? Agencies would like some guidance on who might be trained, and what kind of topics would be covered. This might also be a question of what should be in their policy/procedures that relate to this. **Response:** 96.36(a) states that an agency or person prohibits its employees and agents from "giving money or other consideration… to release a child for adoption purposes." It also applies to any supervised providers in the U.S. and any foreign supervised providers. The prohibition on child buying is central to the Convention and is reflected in several sections of the regulations (see Ethical Practices and Responsibilities 96.35(a)(1), Prohibition on Child Buying 96.36, Training requirements For Social Service Personnel 96.38(5)) and permeates the provisions controlling fees, complaints, and using domestic and foreign supervised providers. Policies, procedures, and training elements should address this prohibition in the broad context of the Convention and in the specific elements of adoption practice. It would be most important to show that the training was provided to any persons who are directly involved with obtaining consents for the adoption.
C.8 Agent: Definition.	**96.36(a)**	**Question:** How is "agent" defined? **Response:** The term "agent" as used in 96.36 (a) should be read broadly to include any party authorized to act on behalf of an accredited agency or approved person. Authorization may be expressed (e.g., written) or implied.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
C.9 Requiring Repayment of Medical Expenses Provided to Birth Mother when no Placement with the PAPs Occurs **4-3-12**	96.36(a) and 96.27(g)	**Q**: Under the Hague Regulations, does an agency that pays a pregnant birth mother's medical expenses prior to delivery of the child and requires repayment of the medical expenses incurred during the pregnancy if she decides not to place the child for adoption, constitute an inducement to place a child for adoption? **Response**: In the Department's view, as the Central Authority under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention), an agency or person that pays the medical expenses for a pregnant birth mother prior to delivery of the child but requires repayment of the expenses if the mother decides not to place the child for a Convention adoption violates 22 CFR 96.36(a) and 96.27(g). Under 22 CFR 96.36(a), "[i]f permitted 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". However, "[p]ermitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child." Moreover, under 22 CFR 96.27(g), "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." In accordance with Art 4(c) of the Convention, consent to an adoption must have been given "freely" and "only after the birth of the child" and "not been induced by payment or compensation of any kind." Irrespective of whether or not a contractual requirement to repay medical expenses is permitted by the child's country or state of origin, the Department considers it an "inducement to release the child" prohibited by 22 CFR 96.36(a). The obligation to repay also draws into question whether consent would be given freely, only after the birth of the child, and was not induced by payment or compensation of any kind. The Department considers such requirement to repay as prohibited by the Convention and, thus, prohibited by 22 CFR 96.27(g).

Return to Table of Contents

D. Standards on Professional Qualifications and Training for Employees

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
D.1 Contractor, supervised provider, must meet education and experience requirements of 96.37(e)	**96.37** **96.45(b)** **96.47(c)**	**Question:** Does 22 CFR 96.37 apply to contract workers? **Response:** If the adoption service provider (ASP) uses independent contractors to provide adoption services, the ASP needs to determine whether contract workers are supervised providers or exempted providers. If the contractors are supervised providers, then 96.45(b)(7) applies. This standard requires the supervised provider to meet the same personnel qualifications as accredited agencies and approved persons, as provided for in Section 96.37, except that, for purposes of Section 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. If the contractor is an exempted provider, then 96.47(c)(2) applies. That standard provides that if the home study was performed by an exempted provider, the primary provider must ensure that the individual meets the requirements for home study providers established by USCIS [which are found in 8 CFR 204.311].
D.2 96.37(e) applies to supervisors who oversee social workers.	**96.37(d)**	**Question:** Does the standard in 96.37(d) refer to all supervisors or only the supervisors who oversee social workers? **Response:** Section 96.37(d) refers to supervisors who oversee social workers who provide adoption-related social services that require the application of clinical skills and judgment (i.e., home studies, child background studies, counseling, parent preparation, post-placement, and other similar services).

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
D.3 Other acceptable human services degrees.	**96.37(d), (e)**	**Question:** What other human services degrees are acceptable? **Response:** These subsections provide education standards for social work supervisors and nonsupervisory employees providing adoption-related social services that require the application of clinical skills and judgment, other than home studies or child background studies. 96.37(d)(2) uses the phrase: "a master's degree (or doctorate) in a related human services field…" and 96.37(e)(1) uses the phrase "a master's degree from an accredited program of social work or in another human service field…" 96.37(d)(2) gives further guidance by adding the phrase: "…including, but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling…" This list is meant to be illustrative, not definitive. Other human services degrees may suffice, but the Department of State will not try to list them all. The content of the educational program—particularly the clinical components of the program—will be determinative over and above the program's label. Accrediting entities (AEs) will use common sense in determining whether a given degree program is a related human services degree. Adoption service providers having employees with such related human services degrees can assist the AEs to evaluate them by providing sufficient information about the related degree program.
D.4 Meaning of term "incumbent"	**96.37(d)**	**Question:** If an incumbent was an incumbent at another adoption service agency (at the time of this initial Hague process) and then wants to change agencies, would s/he still be considered an incumbent to/at the new job? **Response:** The standards for supervisors addressed in Section 96.37 includes social work supervisors without master's' degrees who are actually employed as a supervisor when the Convention enters into force. The language in 96.37(d) was meant to allow experienced social work supervisors to continue in a supervisory capacity if certain conditions are met, i.e., they have significant skills and experience in intercountry adoption and have regular access for consultation purposes to an individual with the qualifications listed in 96.37(d)(1) or (2). 96.37(d) provides this exception only to social work supervisors who were actually employed as social work supervisors (i.e., incumbent) at the time the Convention entered into force for the United States. This subsection does not address how long the supervisor has been engaged by the agency seeking accreditation, only the experience and other requirements s/he must have to continue to perform the supervisory function. If s/he changes employers, s/he may continue in a supervisory social worker position with the new employer as long as the conditions noted above continue to be met.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
D.5 When training requirements apply to contractors.	**96.38**	**Question:** Does 96.38 apply to contract workers? **Response:** The adoption service provider (ASP) needs to determine whether contract workers are supervised providers or exempted providers. Exempted providers must meet the definition for "exempted providers" in 96.2. If the ASP's contractors are treated as supervised providers, then, 96.45 (b)(2) provides that the primary provider must operate under an agreement with the supervised provider that requires the supervised provider to comply with 96.38.
D.6 Meaning of "other Federal regulations"	**96.38(a)(1)**	**Question:** What does "other Federal regulations" refer to/include? Are there any examples we could provide? **Response:** The term "other Federal regulations" in 96.38(a) refers to regulations that may be promulgated in the future that may have an impact on Hague Convention cases.
D.7 30 hours of training every 2 years starts at accreditation or approval.	**96.38(c)**	**Question:** From when does one start calculating the two-year period? **Response:** The standards do not specify the timeframe by which the agency or person starts counting the two years. We encourage agencies and persons to begin training as soon as possible, but for purposes of accreditation, the two-year period begins no later than the date of your accreditation or approval.
Return to Table of Contents		
E. STANDARDS ON INFORMATION DISCLOSURE, FEE PRACTICES, AND QUALITY CONTROL POLICIES AND PRACTICES		
E.1 Posting on web not same as hard copy.	**96.39(a)**	**Question:** Can we post this information on our website? **Response:** Yes, but you will need to demonstrate that you also provide written hard copies if someone requests the information and prefers to receive the information in that form rather than to access it on your website.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
E.2 Meaning of "initial contact" under 96.39(a)	**96.39(a)**	**Question:** Many prospective adoptive parents use the web to interact with adoption service providers (ASPs). Does this mean the web interface provides the "initial contact" for purposes of 96.39(a)? What is meant by "initial contact?" **Response:** Mere exposure to a website does not constitute an initial contact between the ASP and the prospective adoptive parent for purposes of this section. Initial contact refers to direct contact between the ASP and the prospective adoptive parent in person, by phone, or by fax, or by other means by which a prospective adoptive parent requests information. During such contact, the ASP must offer to provide its written fee and other information, the disclosure of which is covered in 96.39(a). If an ASP offers to provide information about its adoption services automatically by operation of a request through its website, the information delineated in 96.39(a) must be included in the information provided as such an automatic request/response would constitute an initial contact.
E.3 Reduction in fees for employees ok.	**96.39(c)**	**Question:** Does this standard prohibit an agency employee from utilizing any aspect of their employer's adoption services for their own adoption process? Would a reduction in fees to an employee utilizing their employer's adoption services constitute preferential treatment? **Response:** In accordance with Section 96.39(c), agencies and persons do not give preferential treatment to an agency or person's employees with respect to the placement of children for adoption. An agency employee can use his or her employer's adoption services for his or her own adoption process, as long as the employee is not given preferential treatment with respect to placement. A reduction in fees does not amount to preferential treatment with respect to placement, and, therefore, is consistent with this section.
E.4 Specificity in fee schedule.	**96.40(b)**	**Question:** How much specificity must the fee schedule include? Can a category (e.g., administrative expenses), be listed in the initial estimate as opposed to a more itemized listing? What categories or how much specificity should be required? Note: The Council on Accreditation concluded on site that categories should be sufficient for the estimate—but agencies should be able to produce more detailed breakdowns if requested. **Response:** Section 96.40(b) sets forth the categories of fees and estimated expenses that must be itemized and disclosed to prospective adoptive parents in writing, and the types of information each category covers (1-7). At a minimum, the agency should itemize and disclose in writing each type of information listed. The regulations do not specify at what level of specificity the disclosure should be made, but agencies should be able to produce more detailed breakdowns if requested by prospective adoptive parents.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
E.5 Must disclose third party fees.	**96.40(g)**	**Question:** Is this standard limited to fees that might be directly charged by an agency? In other words, would it apply to fees that are being directly charged to prospective adoptive parents by a third party (e.g., a foreign official or foreign agency)? **Response:** Under 96.40(g), the agency or person does not "customarily charge additional fees and expenses beyond those disclosed in the adoption services contract." If unforeseen additional fees are incurred in the Convention country, the agency or person charges them only if the enumerated conditions are met. Third-party fees—including fees to competent authorities for services rendered or Central Authority processing fees—are disclosed in writing under 96.40(c). To the extent that third-party fees are not disclosed, then they are "additional fees and expenses beyond those disclosed in the adoption services contract," and the disclosure and specific consent provisions of 96.40(g)(1) and (2) apply.
E.6 No 30-day deadline for receiving complaints.	**96.41**	**Question**: We would like to specify in our complaint procedures that signed, dated complaints must be sent within 30 days of the disputed matter. Is it allowable for us to specify a given timeframe for complaints to be filed? **Response**: No, a 30-day deadline conflicts with the requirements of 96.41(b). The regulations do not directly address the timeframe during which an agency or person must receive a complaint. However, section 96.41(b) specifies that the agency or person must "…permit 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 that he or she believes raise an issue of compliance with the Convention, the IAA, or the regulations implementing the IAA…" Practically speaking, an agency or person that institutes a 30-day statute of limitations on complaints will prevent parties who have an otherwise qualifying complaint from lodging it directly with the agency or person, because the timing associated with intercountry adoption milestones does not necessarily lend itself to making an informed complaint within 30 days of a "disputed matter" (depending on how the agency defines that term) (e.g., it is unlikely that an adoptee would truly be able to lodge a complaint within 30 days of a precipitating event). At the very least, such a deadline would certainly discourage the very complaints the standard requires agencies and persons to directly accept. Therefore, while we understand the agency's desire to set a timeframe for accepting complaints, a 30-day deadline conflicts with the requirements of 96.41(b).

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
E.6a Complaints about conduct in non-Convention cases. **Law suits against complainants making public statements against an ASP.**	**96.41 (b) – (e)**	**Questions:** Do the provisions in 96.41 cover complaints about ASP conduct in non-Convention cases? Must ASPs respond to complaints about their conduct in non-Convention cases? **Response:** 96.41(b) broadly permits a birth parent, prospective adoptive parent, adoptive parent, or adoptee to lodge signed and dated complaints directly with an agency or person. Note that 96.41(b) does not limit such complaints to Convention cases, but does require that the complainant believes that the activities of the agency or person raise issues of compliance with the Convention standards. Thus, activity in non-Convention cases that raise significant questions regarding an agency or persons ability to comply with Convention standards fall within 96.41(b) if the agency or person that is the subject of the complaint is also a Hague accredited or approved provider. The complainant needs to state the connection to the Convention, the IAA and/or the regulations in her/his written complaint. If an agency or person receives a complaint that does not expressly allege lack of compliance with the Convention standards, but on its face any elements of the complaint do in fact support such a connection, the agency or person should advise the complainant that the complaint must state the connection to the Convention, the IAA and the regulations in order to be actionable under 22 CFR 96.41. Under 96.41(c) and (d) the agency must respond to and maintain a record of any such complaints. **Question:** Can an agency sue a complainant for publicly posting defamatory statements on the Internet or elsewhere and not run contrary to the provisions of 96.41 (d) concerning discouraging complaints and retaliating when clients make complaints? **Response**: 96.41(e) limits its provisions to "clients" or "prospective clients" of accredited agencies or approved persons, but imposes a general obligation not to discourage complaints or retaliate against clients or prospective clients 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 expression an opinion about the performance of an agency or person." However, as long as any suit is brought in good faith, 96.41(e) does not limit an agency's remedies under other, generally applicable law. For instance, state law concerning libel and slander may provide a cause of action for public false statements, including those about an agency or person.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
E.7 Disclosure to adoptees.	**96.42(b)**	**Question:** Agencies are uncertain what "non-identifying information" is about or how to comply since in other standards, all available information must already be provided to the prospective adoptive parents. **Response:** This disclosure provision pertains specifically to disclosure to adoptees, though it also includes adoptive parents. Information agencies and persons must retain in their files, information relating to the background and health history of the adoptee and must be disclosed to the adoptee upon request, with the limitation that it not include identifying information about the child's birth parents. This information may have been lost by the family or not disclosed to the adoptee previously.
E.8 Scope of complaints to be included in Semi-annual Report on Complaints	**96.41(b), (f)**	**Question:** Does an agency need to include complaints related to non-Convention cases in the semi-annual report on complaints described in 96.41(f)? **Response:** Yes, the adoption service provider needs to include in its summary, and cover in its discussion of discernible patterns and systemic changes, all complaints received within the preceding six months that raise an issue of compliance with the Convention, the Intercountry Adoption Act of 2000 (IAA), or the regulations implementing the IAA. Complaints arising from non-Convention cases may fall into this category. The scope of the semi-annual summary described in 96.41(f) is those complaints: "received pursuant to paragraph (b) of [96.41] during the preceding six months…" Section 96.41(b) covers "complaints about any of the services or activities of the agency or person (including its use of supervised providers) that . . . raise an issue of compliance with the Convention, the IAA or the regulations implementing the IAA…" Thus, adoption service providers should cover in their semi-annual report on complaints any complaint received during the preceding six months in which the complaining party raises an issue of its compliance with the Convention, the IAA or the regulations implementing the IAA—even if the complaint did not arise from a Convention case. For example, complaints related to child-buying, licensing violations, or compensation practices in non-Convention cases may still raise an issue of the adoption service provider's compliance with the Convention, the IAA and implementing regulations. Section 96.41(f) also requires the adoption service providers to assess "any discernible patterns" in the relevant complaints received during that period and to provide information about what systemic changes, if any, they made or plan to make in response to those patterns.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
E.9 30 days to respond to complaint, as close to complete as possible.	**96.41(c)**	**Question:** This standard gives a 30-day timeframe for the agency or person to respond in writing to complaints. Must the response provided within this timeframe be a full response/resolution of the complaint, or can it be an initial response (e.g., "We have received your complaint and we are investigating it internally.")? **Response:** 96.41(c) provides that "[t]he agency or person responds in writing to complaints… within thirty days of receipt, and provides expedited review of such complaints that are time sensitive or that involve allegations of fraud." This standard was included to address concerns about inadequate and untimely resolution of complaints by adoption service providers. See 71 Fed. Reg. 8100-8101(Feb.15, 2006) (Comments and Responses to 96.41). In light of this, it is expected that the response provided at the end of 30 days would be as close to a complete response as possible. Moreover, under the standard, certain complaints are to be addressed through an expedited review. The agency or person's complaint procedures may, however, provide for appeals processes that extend beyond the 30-day time frame.
E.10 Permissible to keep Convention country dossiers with adoption case record.	**96.42(d)**	**Question:** Should the agency store Convention Country completed dossiers along with the adoption records? **Response:** Yes. "Adoption records" is defined in 96.2 and includes any information related to a specific Convention adoption case. The regulations *do not* require that accredited agencies and approved persons maintain files of Convention adoption completed dossiers separate from other adoption case records. Sections 96.42(b) and (c) refer to handling identifying information and personal data gathered or transmitted in connection with an adoption, but does not address whether that information/data must be stored separately from other Convention adoption case information. If the adoption service provider can protect the sensitive information required in 96.42(b) and (c) without maintaining separate files for Convention adoption country completed dossiers, it may do so.
E.11 Date match completed.	**96.43(b)(5)**	**Question:** Calculating from the time a child is matched, is this at the time of the referral or the time the referral is accepted by the prospective adoptive parents? How do you calculate if the match is made pre-birth? **Response:** The term "matching" in its broadest sense refers to the process of identifying an appropriate adoptive family for a child in need of a placement, proposing the match (the referral), and acceptance of the

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		referral. For purposes of making the calculation referred to in 96.43(b)(5), the "date the child was matched" refers to the completion of the process, i.e., the date of acceptance of the referral by the prospective adoptive parents. As for matches made "pre-birth," such matches are not consistent with the terms of either the Convention or 96.54. At the very least, a placement cannot be proposed until the child is born and any special needs have been assessed. Thus, the date the referral is accepted must occur after the child is born. This is true even with adoptions involving the voluntary relinquishment of birthparent(s) rights and relative adoptions.
Return to Table of Contents		
F. STANDARDS ON SERVICE PLANNING AND DELIVERY		
F.1 Meaning of "service plan"	**96.44(a)**	**Question:** What is the meaning of "service plan" in the context of this subsection? **Response:** The service plan referred to in this subsection is the plan developed by the accredited agency or approved person acting as the primary provider for the provision of all of the designated adoption services. The plan spells out how all the adoption services (as listed in 96.14(a)) in a given case will be carried out, either directly or through other supervised providers (as listed in 96.44(a)). • Note that the primary provider has the responsibility to "develop and implement" the plan for providing all adoption services. • The plan must be in writing. • The plan describes how all Hague adoption services will be provided. • The plan identifies the accredited agency or approved person acting as the primary provider and identifies all supervised providers for the case during every phase of the case. It must also identify any exempted providers, public domestic authorities, competent authorities, Central Authorities, and public foreign authorities providing services in the case. • The plan may evolve, i.e., it does not have to be written in stone when a case begins. • The plan is available to the accrediting entity and to the adopting family, and is transparent and detailed enough so that there is no confusion about who will provide which services, including what actions will be taken by whom and when they will be executed. • The service plan may be part of the contract with the prospective adoptive parents or separate from it.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
F.2 Providers in receiving countries	**96.44, 96.45, 96.46**	**Question:** With regards to outgoing cases, when a provider in a receiving country does the home study, can that entity be an exempt provider, foreign supervised provider, and/or a non-supervised provider whose work is verified? **Response:** The provider in the receiving country must act as either a foreign supervised provider or a foreign provider who is subject to verification. The provider in the receiving country cannot be an exempted provider since the definition of exempted provider says that exempted providers conduct home studies In the United States.
F.3 Umbrella arrangements.	**96.44-96.46**	**Question:** If a Convention country restricts the number of agencies in the U.S. who can work with them, can an agency that isn't accredited contract with another agency that is to conduct adoptions through that Convention country program? This is the practice sometimes referred to as "umbrella" or "partnership" which both may have slightly different meanings. **Response:** The agency with the direct Convention country program would be the primary provider (needs to have the contract with the client, be the one communicating with the Central Authority in the Convention country, supervising providers, etc.). Whether a Convention country will permit a primary provider to use supervised providers will depend on the rules of the Convention country. It would be the responsibility of the primary provider to determine what is permitted and whether such supervised services may occur, or not. The supervised provider networking with the primary provider should not be presenting that country program as its own. Agencies that are not accredited in a particular country must be supervised by accredited agencies or approved persons that are acting as the primary provider for the specific Convention adoption case. This relationship is clearly defined in 96.44 through 96.46.
F.4 Supervising accredited agencies.	**96.45(a)**	**Question:** If a supervised provider in the U.S. is Hague-accredited, does the primary provider have to secure all the info to ensure suitability (in element 3) or can the primary provider secure proof of that provider's accreditation and have the supervised provider (in the written agreement) agree to inform the primary provider if there are any changes in their status? **Response:** There are differences in the timing cycles of accreditation. The status of an adoption service provider's accreditation could also change over time. The burden lies with the primary provider to secure the information cited in the standards.
F.5 Working with supervised providers; letterhead – Revised 8-6-12, see F.5a	**96.45-96.47**	~~**Question:** Do the accreditation regulations require supervised providers to provide services using primary provider letterhead so that the supervised provider's identity and role is not transparent to the parties to the adoption?~~

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		~~**Response:** The accreditation standards regulations do not provide for such an arrangement; in fact the regulations aim at transparency for prospective adoptive parents, see Section 96.39 (a)(2) regarding information disclosure relating to the use of supervised providers~~.
F.5a Working with supervised providers; letterhead – Revised 8-6-12 **See F.5**	**96.47(c)**	**Question**: 22 CFR 96.47(c) requires home studies prepared by exempted or supervised providers to be reviewed and approved by an accredited agency. Agencies involved in this scenario want to know which letterhead the home study preparer may use when submitting the home study report for transmittal to USCIS. Must it be the primary provider's letterhead? **Response**: No, the accreditation regulations do not specify which letterhead an exempted or supervised home study preparer must use in Convention cases. The agencies and individuals involved in the preparation, review, and approval of the home study can decide which letterhead to use, consistent with applicable state law, licensing regulations, and social work practice. The home study must, however, disclose who conducted the home study and which accredited service provider reviewed and approved the home study. 22 CFR 96.47(c) explains that each home study prepared by an exempted or supervised provider must be reviewed and approved in writing by an accredited agency. Also, the USCIS home study regulations, in particular 8 CFR 204.311(f) and (s), establish specific requirements for disclosure and certifications to be included in the home study. The USCIS tip sheet on home study preparation gives detailed suggestions for meeting the disclosure requirements found in 8 CFR 204.311. ASPs are encouraged to clarify who conducted and who reviewed and approved the home study for country of origin officials who are unfamiliar with U.S. practices concerning exempted and supervised providers. This guidance replaces previous guidance on the use of letterhead in this technical guidance document, found at F.5.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
F.6 Home study preparers who are independent contractors – when are they supervised?	**96.45(b)** **96.14**	**Question:** Home studies and post placement reports are usually prepared by independent contractors in collaboration with home study agencies, who must review and approve them under State laws/regulations. If such home study agencies are not accredited, and/or the independent contractor is not an exempted provider, must primary providers enter into supervised provider agreements with the home study agency, the independent contractor, or both? **Response:** Note that in most cases, an independent contractor who conducts a home study will be an exempted provider. It is only when the contractor has provided an additional adoption service (as defined in 22 CFR 96.2) in the same case **before** conducting the home study that s/he can no longer be an exempted provider. This FAQ addresses this fact pattern. It also addresses independent contractors providing subsequent adoption services (e.g., post placement reporting), in the same case in which the independent contractor has conducted a home study as an exempted provider. • 96.14 establishes the framework for the provision of adoption services in Convention cases: accredited/approved primary providers may provide all six adoption services themselves or may use accredited/approved providers, supervised providers, exempted providers, or public domestic authorities. • Unless they are exempted providers, independent contractors performing adoption services in a Convention case must be accredited, approved, temporarily accredited, or supervised. If independent contractors are supervised, primary providers must enter into supervised provider agreements with each such independent contractor, even if the agency for which the contractor works must, in accordance with State law, review and approve the studies and other reports the independent contractor prepares. • When the independent contractor is a supervised provider and has a supervised provider agreement with the primary provider, the agency for whom the contractor works does not have to be a supervised provider and have an agreement with the primary provider. • Of course, home study agencies producing home studies with their own employees in a Convention case must also be accredited, approved, temporarily accredited, supervised, or exempted. • Note that home studies prepared by exempted providers must be approved by an accredited agency or a temporarily accredited agency.
		• Note also that the Department of Homeland Security's U.S. Citizenship and Immigration Services' regulations regarding home studies in Convention cases include additional requirements documenting the license or authority of home study preparers to perform home study services.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
F.7 Employees of supervised providers supervised by primary and own agency.	**96.45(b)(7)**	**Question:** This standard requires the supervised provider to meet the same personnel qualifications as accredited agencies—as provided in 96.37—except that, for purposes of 96.37(e)(3), (f)(3) and (g)(2), the work of the employee must be supervised by an employee of an accredited agency. Does this mean that the employees of the supervised provider must be supervised by another agency (accredited/approved) in addition to whatever existing supervision they receive from the supervised provider? **Response:** Yes. When acting as a supervised provider, certain employees must be supervised by a qualified employee of the primary provider, not solely by an employee of the supervised provider. 96.45(b)(7) specifies which categories of employees must be supervised directly by an employee of the primary provider, namely, non-supervisory personnel (96.37(e)(3)); home study preparers (96.37(f)(3)); and preparers of child background studies (96.37(g)(2)). The supervised provider may have a structure that provides for supervision of these services in non-Convention cases, but when acting as a supervised provider in Convention cases, its employees in the specified categories must be supervised by a qualified employee of the primary provider.
F.8 Time to get supervisory agreements signed	**96.46**	**Question:** The on-site document for 96.46 is written agreements with foreign supervised providers. Is more time being given to primary providers in securing SIGNED written agreements with foreign supervised providers due to logistics? **Response:** The Council on Accreditation and the Colorado Department of Human Service developed their respective lists of evidence required to evaluate compliance, and the Department approved those lists. According to the evidence charts, signed agreements for all current foreign supervised providers must be presented at the time of the initial site. An agency or person may add new foreign supervised providers on an ongoing basis after the initial site visit, but the agency or person must have a signed agreement with the foreign supervised provider, per 96.46, before it uses a foreign supervised provider in any Convention adoption case. The evidence charts, approved by the Department, clearly require signed agreements for both supervised providers in the United States and foreign supervised providers.
F.9 When is foreign provider a foreign supervised provider?	**96.46**	**Question:** If I am working with a foreign provider who is licensed/accredited by the foreign government, would that provider still be considered a foreign supervised provider? **Response:** Yes. In accordance with 96.14(c), a foreign provider that is accredited or licensed in another Convention country still must be treated as a foreign supervised provider by the U.S. accredited agency or approved person that is acting as the primary provider for the case. A Central Authority (CA), competent authority, or public foreign authority may be used to provide services in a Convention case as well. These public entities do not have to be treated as foreign supervised providers. The definitions of CA, competent authority, or public foreign authority are in 96.2.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
F.10 Use of master agreements with supervised providers.	**96.46**	**Question:** Are the supervised provider agreements case specific or does the supervised provider sign one master agreement with the primary provider for providing services in all related Convention cases? **Response:** The agreement can either cover all the cases the agencies plan to work together on, or it can be case specific. The evidence charts provide that for each Convention adoption case, the agency's or person's records must show who is the primary provider for the case and list all U.S. supervised providers and foreign supervised providers providing services for the particular case. Any supervised provider being used in a particular Convention adoption case must have either a master or case-specific written agreement, per 96.45 and 96.46, with the primary provider for the case before providing services in the case.
F.11 For foreign providers, when must supervise and when can verify.	**96.46**	Question: How does an agency determine if the foreign provider they are working with needs to be supervised (in accordance with 96.46(a-b)), or if their work can be verified (in accordance with 96.46(c))? Response: The preamble to the accreditation regulations includes an informative discussion of the difference between supervision and verification as they relate to 96.46. The discussion is provided here in full: Under the final rule, the primary provider must now treat all nongovernmental foreign providers, including agencies, persons, or entities accredited by a Convention country, that it uses to provide adoption services as supervised providers consistent with §96.46(a) and (b), unless the foreign provider performs a service qualifying for verification under §96.46(c) (consents, child background studies and home studies). We believe that this approach accommodates our concerns, expressed in the preamble to the proposed rule, that primary providers would have practical difficulty supervising entities in another Convention country. This approach was chosen to ensure that primary providers do not inappropriately rely on accreditation by a foreign Central Authority as a guarantee of conduct. It is consistent with the fact, recognized in this rule and the Intercountry Adoption Act of 2000, that accreditation and approval within the U.S. system cannot guarantee good conduct. The verification requirement in §96.46(c) recognizes, however, that as a

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		practical matter, a primary provider will not be able to supervise contemporaneously all adoption services that might occur in a Convention country. A limited number of adoption services will generally have been performed in a Convention country before a U.S. primary provider has been identified: In an incoming case (child immigrating to the United States) the consents to adoption and child background study will often have been prepared before intercountry adoption to the United States is specifically contemplated; in an outgoing case (child emigrating from the United States) the home study will often have been prepared before the prospective adoptive parent(s) determine that they wish to pursue intercountry adoption from the United States. To recognize these possibilities and to avoid requiring that such services are performed under supervision—that is, to avoid creating additional costs and delaying adoption placements which could, in turn, disadvantage U.S. prospective adoptive parent(s) seeking to adopt abroad and children seeking placements—the rule adopts a different approach to the primary provider's oversight of these services. The standard set forth in § 96.46(c) requires the primary provider to verify that these three adoption services, when provided by private, non-governmental providers, were performed in the Convention country consistently with the requirements of the Convention and any other applicable local law. (In many countries, all three of these services will be performed by public or competent authorities, for whom a primary provider is not required to be responsible.) The verification standard of § 96.46(c) will reinforce the protections in the Convention and U.S. law relevant to the performance of these three adoption services. (The Convention requires, for example, that all home and child background studies not prepared by a governmental authority be prepared under the responsibility of an accredited body, and that competent authorities of the State of origin ensure that consents meet Convention requirements. U.S. governmental authorities will also address the issue of consent in determining visa eligibility.) A primary provider will always have the option of treating providers of services that qualify for verification under the § 96.46(c) standard as supervised providers under § 96.46(a) and (b) instead, assuming that substantial compliance with those standards is feasible. This might occur, for example, if a primary provider has a long-standing supervisory relationship with a particular Convention country adoption service provider. As was the case in the proposed rule, primary providers are not required to treat Central Authorities, or other foreign public authorities, as foreign supervised providers. This is consistent with the scope of the Department's authority and the Convention's allocation of responsibilities.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
F.12 Suitability info from foreign supervised providers.	**96.46(a)(3), referencing 96.35**	**Question:** Does 96.35(a)(6) apply to foreign supervised providers? If foreign supervised providers are individuals, does 96.35(d)(3) apply as it relates to foreign Bars (e.g., attorneys in Guatemala) or just domestically? **Response:** Yes. 96.46(a)(3) requires foreign supervised providers to provide the suitability information in 96.35, "taking into account the authorities in the Convention country that are analogous to the authorities in that section." 96.35 mentions Federal and public domestic authorities, Federal, State, and foreign law, civil and administrative violations, crimes, external disciplinary proceedings, licensure, bar membership and disciplinary action by licensing and bar authorities. Analogous authorities in the Convention country may vary significantly, but in general, most countries have institutions and structures to provide oversight, monitoring, prosecution, investigative and disciplinary proceedings that are similar in function if not in name. Supervised providers, including Guatemalan attorneys acting as foreign supervised providers, must provide the information outlined in 96.35. Again, most countries have something equivalent to a certificate of good standing for attorneys.
Return to Table of Contents		
G. STANDARDS ON INCOMING CASES		
G.1 Outgoing military cases and home study preparers.	**96.47**	**Question:** Do the Hague standards address whether or not social workers in the U.S. are permitted to complete home studies for U.S. military and non-military families living abroad who want to adopt internationally? **Response:** If an international adoption case is covered by the Convention (i.e., if a U.S. citizen habitually resident in the United States seeks to adopt a child habitually resident in a Convention country; see 8 CFR 204.303 for more on how to determine habitual residence), 22 CFR part 96 and 8 CFR 204 include a number of provisions that apply to the preparation of home studies. Under the accreditation regulations, adoption service providers who are accredited, temporarily accredited, approved, or supervised may prepare home studies in connection with Convention adoption cases involving military and other American citizens residing abroad. (22 CFR 96.14(c); see also 8 CFR 204.311(s))

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
G.2 Conducting home studies for American citizens residing abroad in incoming/immigrating Convention cases.	**96.2** **96.14(c)** **96.37(f)** **96.46(a)** **96.47(c)**	**Question:** Does a home study preparer conducting home studies of American citizens residing abroad in Convention cases have to be authorized to conduct home studies in the United States and/or in the country where the family resides? **Response:** This guidance applies to home studies prepared abroad in "incoming / immigrating" adoption cases covered by the Hague Adoption Convention (i.e., cases in which a U.S. citizen habitually resident in the United States seeks to adopt a child habitually resident in a Convention country). Provisions of both the U.S. Department of State regulation on accreditation in Convention cases and the U.S. Citizenship and Immigration Services (USCIS) regulation on Convention cases apply to adoption service providers (ASP) conducting home studies abroad in incoming Convention cases. • Under the USCIS regulation, 8 CFR 204.313(b)(2), U.S. citizens serving in the U.S. Armed Forces or with the U.S. Government abroad are considered to be habitually resident in the United States. Under 8 CFR 204.303, there may be other situations in which a U.S. citizen living temporarily abroad can establish that he or she is habitually resident in the United States. • Thus, if a citizen who is living abroad establishes that he or she is habitually resident in the United States, and seeks to adopt a child who is habitually resident in a Convention country, that adoption is covered by the Convention and is considered an "incoming case." • Under the U.S. Department of State's accreditation regulations, an adoption service provider conducting home studies abroad in incoming Convention cases must be either the primary provider or a supervised provider, in accordance with 22 CFR 96.2 and 96.14(c). • Unlike adoption service providers conducting home studies in the United States for incoming Convention adoption cases, adoption service providers conducting home studies abroad are not authorized to conduct them as exempted providers. (See 22 CFR 96.2.) • In addition, the accreditation standards provide for adoption service providers conducting home studies abroad to be authorized or licensed to complete a home study under the laws of the States in which they practice, if any, and for supervised providers to be accredited in the Convention country where they are conducting the home study, if such accreditation is required by the laws of the Convention country. See 96.47(c)(2), 96.37(f), and 96.46(a)(5). • Under the USCIS regulation, in addition to being authorized under the accreditation regulations to conduct home studies, the adoption service provider must also be authorized to conduct home studies under the law of the jurisdiction in which the home study is conducted. 8 CFR 204.311(b). (Separately, the Convention requires authorization from the Convention country to act in that country. See Convention, Article 12.)

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		• The USCIS regulation on incoming Convention cases also requires the home study preparer to certify that he or she is authorized under 22 CFR part 96 to complete home studies for Convention adoption cases, and to provide specific details as to the license or authorization. See 8 CFR 204.311(s). • Adoption service providers, in summary, may conduct home studies abroad in Convention adoption cases for American citizens residing abroad if they are authorized to conduct home studies 1) under the accreditation regulations, and 2) under the law of the jurisdiction in which the home study is conducted. • 22 CFR 96.47(c) and 8 CFR 204.311(t) further provide that home studies prepared by supervised providers must be reviewed and approved by an accredited agency, or temporarily accredited agency, before submittal to USCIS for approval. **Examples of social work professionals who may conduct home studies abroad in incoming Convention cases when prospective adoptive parents reside abroad in Country X.** **Example 1**: A private social worker of any nationality practicing in Convention Country X who: • is a supervised provider (foreign supervised provider) who has a written agreement with the primary provider to provide home study services (22 CFR 96.46(b)); • is authorized to conduct home studies in Country X; and • is accredited in Country X, if Country X requires such accreditation. • Note: The home study must be approved by a U.S. accredited or temporarily accredited ASP, usually the primary provider. This example assumes that the social worker does not practice in any U.S. State and is not employed by the primary provider or an accredited entity. If the law of Country X requires it, the home study may also have to be "reviewed by the competent authority" in Country X. **Example 2**: An employee of a U.S. accredited or temporarily accredited agency that: • is authorized to perform home studies in accordance with the accreditation rule, 22 CFR 96.37(f); • is authorized to conduct home studies in Country X. If the law of Country X requires it, the home study may also have to be "reviewed by the competent authority" in Country X; and • is accredited in Country X, if Country X requires such accreditation.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		Example 3: A government agency of Country X that is authorized to perform home studies in Country X for U.S. citizens. Notes: Because this agency is a public foreign authority under 22 CFR 96.14(d)(2), it is not subject to supervision. The home study must be approved by a U.S. accredited or temporarily accredited ASP, usually the primary provider (22 CFR 96.46(c)). **Example 4**: A private social worker of any nationality practicing in the United States and in Convention Country X who: is a supervised provider and has a written agreement with the primary provider to provide home study services; is authorized or licensed to complete a home study under the laws of the States in which the social worker practices; is authorized to conduct home studies in Country X; and is accredited in Country X, if Country X requires such accreditation. Note: This example assumes that the social worker is not employed by the primary provider or an accredited entity. The home study must be approved by a U.S. accredited or temporarily accredited ASP, usually the primary provider. *This guidance was cleared with USCIS.*
G.3 "True and accurate copy" statement.	**96.47(a)(6)**	**Question:** 96.47(a)(6) requires that a statement be included in each copy of the home study verifying that it is a true and accurate copy of the home study that was provided to the prospective adoptive parent(s) or the Department of Homeland Security. Does the statement need to use the exact language of the standard, or can an agency elaborate or paraphrase as long as the intent of the statement is consistent with the standard? **Response:** The true and accurate copy statement requirement is meant to prohibit preparation of multiple different home studies for a given case. The preamble comments and responses on 96.47 clearly state that this section of the rule prohibits submission of different versions of the same home study to different stakeholders in the intercountry adoption process. In order to avoid this practice, 96.47(a)(6) provides for a "statement in each copy of the home study that it is a true and accurate copy of the home study that was provided to the prospective adoptive parent or DHS." The Department encourages agencies to use the language in 97.47(a)(6) and to avoid elaborating or paraphrasing the language. By hewing very closely to this language, the agency or person can avoid the perception that a home study has been altered or managed to change, hide, or elaborate on information available in the copy submitted to parents or DHS.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
G.4 Primary provider does not have to review home study prepared by accredited agency.	**96.47(c)**	**Question:** If the home study is performed by an accredited agency, does the primary provider need to review and approve it? **Response:** No, the standard only requires the primary provider to review and approve home studies that are not conducted by accredited providers. However, accrediting entity evaluators when reviewing home studies for all applicants seeking full or temporary accreditation as part of their site visit, should check all (not just spot check) home studies for consistency with 96.47 for incoming Convention cases in which the accredited/temporarily accredited agency was acting as an exempted provider or supervised provider instead of acting as the primary provider in the case. Otherwise, consistency with this critical standard will not be checked, because the primary provider will not have to review the home study.
G.5 Home study updates must be reviewed by an accredited or temporarily accredited agency.	**96.47(c)**	**Question:** Do home study updates also need to be reviewed and approved by an accredited or temporarily accredited agency if not performed in the first instance by an accredited or temporarily accredited agency? **Response:** Home study updates submitted either while the I-800A is still pending or after the I-800A has been approved must be reviewed by an accredited or temporarily accredited agency in accordance with the Department of Homeland Security rule concerning Hague Convention adoptions in 8 CFR 2.4.311(s) and (t) and consistent with 96.47(c). (See preamble to interim final rule, 8 CFR 204.300 et seq., p. 26845 of the Federal Register, Volume 72, No. 192, Thursday, October 4, 2007: "…An amended or updated home study is subject to the same review requirements, in new 8 CFR 204.311(s) and (t), that apply to the initial home study…"). Note that additional requirements apply to such amended or updated home. See 8 CFR 2.4.311(s), (t) and (u).
G.6 Use of home study summaries.	**96.47 (d)**	**Question:** How should an accredited service provider (ASP) handle those cases in which a home study summary is preferred by a country of origin, given the provision in 96.47(d) that the entire home study be provided? **Response:** If home study summaries are provided to the country of origin, they must be attached to the full home study when provided and the same summary must be provided to the Department of Homeland Security at the time the home study is submitted to it for review.
G.7 Timing of 10 hours of training for PAPs.	**96.48(a)**	**Question:** At what point in time do adoption service providers (ASPs) need to make sure their prospective adoptive parents are receiving 10 hours of pre-adoption training? **Response:** 96.48(a) states that ASPs provide the training for prospective adoption parents outlined in 96.48 "before the prospective adoptive parents travel to adopt the child or before the child is placed." These two events (travel and placement) are the outside parameters for providing the required training.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
G.8 Training PAPs electronically.	**96.48(d)**	**Question:** Can the entire 10 hours of parent training be provided through video/computer? **Response:** The regulations are silent on how adoption service providers (ASPs) provide the required training. If training using electronic formats is permissible under any relevant State regulations, they may be used as the ASP sees fit.
G.9 Meaning of "extenuating circumstances."	**96.49 (k)**	**Question:** What is meant by "extenuating circumstances?" **Response:** Examples of extenuating circumstances include, but are not limited to, a sudden change in the medical condition of a child, the need for immediate medical treatment, or a decision by the country of origin not to permit the adoption. As with other parts of the intercountry adoption process, extenuating circumstances are governed by the principle of the best interests of the child.
G.10 Need policy for disruptions and dissolutions.	**96.50(d)**	**Question:** Do we need to have a policy regarding handling of disruptions when we work with countries where dissolution is what applies? **Response:** Yes. A policy for handling disruptions is needed in the event that you work with a case in the future where only custody for the purpose of adoption is granted.
G.11 Disruption plans must have options.	**96.50(d)**	**Question:** Will the Department of State accept agency plans to have Child Protective Services or other State entity as providing foster care to the child? **Response:** 96.50(d) and (e) address responsibility and the plan to be used in the event of a disruption. These subsections do not prescribe how the agency or person should provide care for a child whose adoption has been disrupted, but it is clear that the agency or person SHOULD provide temporary care and find an eventual adoptive placement for the child. Thus, one component of a plan may include attempting to access existing State entities to provide foster care services in a disruption. However, the plan must include alternative options, such as the use of supervised providers, to provide care for a child whose adoption has disrupted. Also, besides having a plan, for the agency or person to substantially comply with the standards, it must actually provide temporary care for the child whose placement has in fact been disrupted.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
G.12 Primary provider responsibility in transfer and care of child.	**96.50(d),(e)**	**Question:** Can an adoption service provider have an arrangement with another agency for providing foster care? Does the primary provider have to have their own licensed foster homes in the case of needed temporary care? **Response:** Assuming custody and providing care or any other social service following a disruption is an adoption service under 96.2 for which an agency or person must be accredited/temporarily accredited/approved, supervised, or exempt from accreditation or approval under the Intercountry Adoption Act of 2000. An accredited agency or approved person may use a supervised provider for the responsibilities outlined in 96.50(d) and (e), including foster care pending a new placement. Thus, the primary provider, in accordance with the requirements of State law, may use its own licensed foster homes in the case of needed temporary care or may work with a supervised provider who has licensed foster homes. In either case, the primary provider retains the responsibility to ensure that the transfer and care of the child, even temporary care, are performed in a manner consistent with the regulations in 22 CFR Part 96.
G.13 Date of the entry of order in 96.50(h) refers to the date of the U.S. court order.	**96.50(h)**	**Question:** Does the date of the entry of the order declaring the adoption as final refer to the date the family finalized in the country of origin or the U.S. finalization date? **Response:** The standard in 96.50(h) applies to cases in which the child immigrates to the United States for purposes of adoption, without having finalized the adoption abroad (IR-4 visa status). Since this standard references section 301(c) of the IAA (which covers finalization of Convention adoptions by a State court), the "order declaring the adoption is final" in 96.50(h) means the U.S. State court order.
G.14 Hague certificates and entering final adoption orders in ATS.	**96.50(h)**	**Question:** Does this in any way impact the finalization of the adoptions in each of the sending countries? Can they get a copy (not an original) of the order declaring the adoption final from the parents? Do they need to notify the Department of State (DoS) anywhere along the time line of the adoption so that DoS is expecting this final order? When will they know how to enter the order in compliance of the Intercountry Adoption Act of 2000 (IAA) section 301(c)? Will the certificate cost anything? How will they notify the secretary after they have entered the order of adoption?

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		Response: The intent of this section is to ensure that prospective adoptive parents who bring children to the United States to complete an adoption actually do follow through and obtain a final order of adoption from a U.S. court. The certificate referenced in IAA 301(c) is issued by the Consular Officer during the immigrant visa process abroad and is attached to the foreign court order granting custody of the child to its prospective adoptive parents when the conditions in IAA 301(a) have been met. No U.S. court may issue a final order of adoption in such cases without this certificate. The certificate does not cost anything extra, as it is part of the larger Hague child immigrant visa process. Once the adoption has been finalized in the United States, 96.50(h)(2) requires the adoption service provider to notify DoS within 30 days of the entry of the order. See also proposed rule 22 CFR 42.24(j).
G.15 Placing children in 3rd Convention countries.	**96.52**	**Question:** What are the applicable regulations for a U.S. agency placing infants from Guatemala in the United Kingdom or Ireland? Is this incoming or outgoing? **Response:** The terms "incoming case" and "outgoing case" refer to Hague Convention adoption cases in which children immigrate to the United States or emigrate from the United States respectively. (See also definition for "Convention adoption," 22 CFR 96.2.). The Intercountry Adoption Act of 2000 (IAA) and the regulations based on the IAA and the Convention do not specifically address U.S. accredited agencies and approved persons providing Convention adoption services between two other Convention countries. In such cases, the rules for a Convention case may vary from country to country and it will be up to the adoption service provider to comply with the requirements of the non-U.S. country of origin and the non-U.S. receiving country. The U.S. agency or person must also continue to comply with any applicable U.S. State law requirements.

Return to Table of Contents

H. STANDARDS ON OUTGOING CASES

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
H.1 Child background study in newborn cases.	**96.53(a)**	**Question:** The agencies do newborn adoptions and therefore have little information about the child. Often, they produce what is called a "birth parent" study. Can this be used to meet the standard or do they need to call it a "child study?" **Response:** In accordance with 96.53(a), adoption service providers ensure that a child background study is performed that includes the content specified. This standard derives directly from Convention Article 16, which requires information on the child's identity, adoptability, background, social environment, family history, and medical history, including that of the child's family, and any special needs of the child. For the most part, information specified by the standard does not relate to the age of the child. To the extent that certain information is unknown because the child is a newborn (e.g., social environment), the child background study can so indicate. However, as stated in the Preamble to 22 CFR Part 96, "an agency or person is always responsible for ensuring that the information listed in sections 96.53(a)(1)-(3) is included in the child background study." (See 71 Fed. Reg. 8111 (Feb. 15, 2006) (Comment and Response #1 to 96.53).)
H.2 Defining "medical history."	**96.53(a)**	**Question:** What is a "medical history?" Is this a synopsis of significant medical events in a child's life (e.g., immunizations, illnesses, surgeries)? Are actual medical records expected? **Response:** A "medical history" is generally understood to mean an account of all medical events a person has experienced. While other standards use the term "medical records" (e.g., 96.49), this one does not.
H.3 Birth father consents.	**96.53(c)**	**Question:** Does the consent standard in 22 CFR 96.53(c) apply to unnamed fathers and/or fathers who cannot be located? Sometimes in these cases, the termination of parental rights (TPR) won't happen until several months later. If the child is placed with the prospective adoptive family while the TPR is pending, it is considered a legal risk placement. **Response:** Paragraph (1) of 22 CFR 96.53(c) refers to "persons, institutions, and authorities whose consent is necessary for adoption." Whether the consent of unnamed fathers and/or of fathers who cannot be located is necessary for adoption is a question of State law. If State law requires the consent of the birth father in addition to that of the birth mother, then the birth father is a "person whose consent is necessary for the adoption" under this standard. See 71 Fed. Reg. 8111 (Feb. 15, 2006)(Comment and Response #4 to 96.53).

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
H.4 Sharing child background studies before adoption when preliminary custody given.	**96.53 (e)**	**Question:** What if the child is placed with the prospective parents before adoption is finalized in an outgoing case? On average, this can take up to six months. **Response:** In the event that the agency or person places the child with the prospective adoptive parents before the adoption is finalized, an agency/person may, in accordance with 96.53(e), provide the required documentation and information prior to the child's *placement*. This may indeed be the best practice. The agency/person must also comply with State law.
H.5 Outgoing cases— reasonable efforts in domestic parent recruiting.	96.54(a) and (b) Also 97.2(b)(3) and 97.3(c)	Question: What are reasonable efforts with respect to the in-country prospective adoptive parent recruiting procedures to find a timely and qualified adoptive placement for the child in the United States for outgoing cases set forth in 96.54? Response: Section 96.54(a)(1)-(4) clearly identifies the parent recruiting procedures that will constitute "reasonable efforts" in most cases, with certain delineated exceptions. In accordance with section 96.54(b), the agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that it undertook sufficient reasonable efforts (including no efforts, when in the best interests of the child). The Department of State notes that 22 CFR 96.54(a), under "Standards for Cases in Which a Child Is Emigrating From the United States (Outgoing Cases)," does not directly address instances where adoption service providers assist birth parent(s) in identifying prospecting adoptive parent(s). Section 96.54(a) states: "Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parents(s) or in other special circumstances accepted by the State court with jurisdiction over the case, the agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States …." Specifically, if the birth parent(s) have identified specific prospective adoptive parent(s) consistent with applicable State law, the prospective adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4) do not apply. In accordance with 22 CFR 96.54(b), the accredited agency, temporarily accredited agency, or approved person (hereinafter referred to as accredited adoption service provider) that provides adoption services in a Convention case is to demonstrate to the court with jurisdiction over the adoption that the birth parent(s) identified the specific prospective adoptive parent(s) if permitted by applicable State law as part of its showing that sufficient reasonable efforts were made.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		An accredited adoption service provider may provide adoption and other services to a birth parent(s), including providing access to information on prospective adoptive parents, without jeopardizing its accreditation status. *<u>However</u>, only the birth parent(s) can identify the specific prospective adoptive parent(s) in order for the exception to the adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4) to apply.* For further background, the Preamble to the Final Rule, issued on February 15, 2006 (repeated below) is helpful. Preamble to the Final Rule, 22 CFR Part 96 Federal Register / Vol 71, No. 31, Wednesday, February 15, 2006, p. 8113-8114 11. Comment: Several commentators recommend the elimination of the exception to the reasonable efforts provided in 96.54(a), which allows birth parents to identify specific adoptive parents. Other commentators would like the birth parents to have more input on who adopts their child. Response: We have not made any changes in response to these comments, other than to clarify, in 96.54(b), that the standard does not, in fact, provide an exception to the "reasonable efforts" rule; rather it provides exceptions to the prospective adoptive parent recruiting procedures set forth in 96.54(a)(1)-(4), thereby recognizing that in some cases, "reasonable efforts" can include no efforts at all, if no such efforts are in the child's best interests. The regulations also permit a State court to accept or reject an accredited agency's or approved person's recommendation that it is not in the best interest of a particular child that the procedures set forth in 96.54(a)(1)-(4) be followed. This approach is fully consistent with the Convention, which requires merely that "due consideration" be given to placing the child in the United States, as well as with the IAA. On the question of birthparent preferences, the rule aims for consistency with current practices under State law, by allowing birth parents to select among prospective adoptive parent(s), so long as State law permits them to do so. Some birth parents may prefer that their child be placed with a relative in another country who has the capacity to provide suitable care for the child. Other birth parents may prefer a non-relative placement abroad. Nothing in the Convention or the IAA warrants taking a course different from applicable State law on the question of birthparent preferences (emphasis added).

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
H.6 Due consideration to child's upbringing v. MEPA, IEPA.	**96.54(e)**	**Question:** 22 CFR Part 96.54(e) asks the agency/person to take all appropriate measures to give due consideration to the child's upbringing and to his or her ethnic, religious, and cultural background. How can the agencies/persons reconcile this with the Multi-ethnic Placement Act (MEPA) and the Interethnic Adoption Provisions of the Small Business Job Protection Act (IEPA)? **Response:** The regulation on "due consideration" is derived directly from Article 3 of the Convention. The regulation is not inconsistent with the Federal requirements of MEPA-IEPA. A measure that is prohibited under other provisions of Federal law would not be an "appropriate measure" under this regulation.
H.7 Preemption of State law.	**96.54(e)**	**Question:** How does a State court resolve cases in which a State law conflicts with the Convention, the Intercountry Adoption Act of 2000 (IAA), or the implementing regulations for the IAA? **Response:** With respect to State law, section 503(a) of the IAA directly addresses this question. It reads: "Preemption of Inconsistent State Law.—The Convention and this Act shall not be construed to preempt any provision of the law of any State …, except to the extent that such provision of State law is inconsistent with the Convention or this Act..." If the parties or State court believe a particular IAA section or regulation is inconsistent with relevant State law, then the State court will need to determine if the State law provision is in fact inconsistent with the Convention or the IAA and thus should be preempted.
H.8 Returning a child to United States after dissolution or disruption; coordination with DOS.	**96.54(k)**	**Question:** The standard requires the agency to "consult" with the Department of State (DoS) before arranging for the return to the U.S. of any child who has emigrated to a Convention country in connection with the child's adoption. • Does this apply to cases where the child is transported to the Convention country before and after the adoption is finalized? • What role will DoS undertake with regards to "consultation?" What issues will be under consultation? • Will escorts be required to transfer a child back to the U.S., and if so, will DoS assist in arranging for escorts? **Response:** Yes, this standard applies to cases where the child is transferred to the Convention country before and after the adoption is finalized. Section 96.54(k) refers to cases of dissolution or disruption in which the child may be returned to the United States after being transferred to the receiving country following a U.S. adoption or U.S. grant of custody for the purpose of adoption abroad.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
		Disrupted and dissolved outgoing cases are likely to be sensitive and extremely traumatic for the child. These cases also involve substantial coordination with the foreign government where the child is located. The child retains U.S. citizenship, but may have acquired dual citizenship in the receiving country. Thus, the consultation requirement allows the Department of State to become aware of these situations before they happen and allows the Department to take case-specific action when appropriate. More information on the U. S. procedures for the repatriation of U.S. citizen minors is available in 7 Foreign Affairs Manual (FAM) 300, 390, 1762, and 1770. The FAM is available to the public on www.state.gov. As for the question on the escorts, the transfer of the child back to the United States, if appropriate, should take place under the same conditions and safeguards as the initial transfer to the receiving country. 96.54(h) provides that the agency or person takes 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..." These same provisions should be followed with respect to the return of children in the case of disruption or dissolution. Thus, the agency or person should have a mechanism to provide escorts to return the child to the United States when appropriate after consultation with the Department.
H.9 Reporting State court orders to the Department in outgoing cases. Cannot issue HAD, HCD without them.	**96.55(b)**	**Question**: Under 22 CFR 96.55(b), copies of documentation of the State court order granting the adoption, proceedings, etc., are to be provided to the Department. If the State laws prohibit identifying birthparent information from being released, will a redacted copy of the information be acceptable? **Response**: With respect to an outgoing case, the Intercountry Act of 2000 (IAA) requires the Secretary, upon receipt and verification of required material and information, to certify that the child was adopted or custody was granted for the purpose of adoption in accordance with the Convention and the IAA. The certification—a Hague Adoption Certificate (HAC) or a Hague Custody Declaration (HCD)—is case- specific and obligates the receiving Convention country to recognize the adoption or grant of custody, unless the adoption is manifestly contrary to its public policy, taking into account the best interests of the child. The Department needs documents from State court proceedings, including the order granting the adoption or legal custody, to certify that the adoption or grant of custody complied with the Convention and the IAA. Birthparent names are not required as part of the HAC/HCD application; however, redacted State court documents that omit birthparent identification information may or may not have sufficient information necessary for the Department to issue an HAC or HCD in accordance with 22 CFR Part 97. The Department will make this determination at the time the family applies for an HAC or an HCD.

TOPIC	RELEVANT CITATIONS	QUESTION & RESPONSE
H.10 What counts as an Article 5 (receiving country) notice in an outgoing case?	**96.55(d)**	**Question:** What types of notices will be provided from the receiving country to show that the child is eligible to enter and reside permanently in the receiving country? Who will provide such a notice to the State court? **Response:** Because the provision of this evidence is an explicit requirement under Article 5 of the Convention, applicable to any receiving country, once the Convention entered into force for the United States, the relevant receiving country will provide the entry authorization and notification of consent to the adoption to the parties. The parties must provide the Article 5 notice to the State court.
H.11 When can a complaint be posted to the complaint registry?	**96.69(b)**	**Question:** Must a complainant completely exhaust an agency or person's complaint processes before filing a complaint with the Complaint Registry? **Response:** Section 96.69(b) provides that complaints against accredited agencies and approved persons related to a specific Convention adoption case by a party to that case must first be submitted in writing to the primary provider and to the agency or person providing adoption services (if different U.S. providers). The complainant can file a complaint with the Complaint registry only if: 1) the complaint could not be resolved through the complaint processes of the primary provider or the agency or person providing the services (if different); or, 2) the complaint was resolved by an agreement to take action but the primary provider or the agency or person providing the service failed to take such action within 30 days of agreeing to do so. The phrase "complaint processes" is understood to mean all steps to address a complaint provided by an adoption service provider.
Return to Table of Contents		

INDEX

96.34(a)	B.7
96.34(d)	B.8
96.34(e)	B.8
96.35(a)	C.1
96.35(b)	F.12
96.35(c)	C.2, C.3, C.4, C.4a, C.4b, C.6
96.35(d)	C.4b, C.5
96.36(a)	C.7, C.8, C.9
96.36(b)	C.7, C.7a
96.37	D.1
96.37(d)	D.1, D.2, D.3, D.4
96.37(e)	D.3
96.37(f)	G.2
96.38	D.5
96.38(a)	D.6
96.38(c)	D.7
96.39(a)	E.1, E.2
96.39(c)	E.3
96.40(b)	E.4
96.40(g)	E.5
96.41	E.6
96.41(c)	E.9
96.42(b)	E.7, E.8
96.41(f)	E.8
96.41(d)	E.10
96.43(b)	E.11
96.44	F.2, F.3
96.44(a)	F.1
96.45	F.2, F.3, F.5
96.45(a)	C.6, F.4
96.45(b)	D.1, F.6, F.7
96.46	F.2, F.3, F.5, F.8, F.12, F.9, F.10, F.11
96.46(a)	C.6, F.12, G.2
96.47	F.5, ,F.5a, G.1
96.47(a)	G.3
96.47(c)	D.1, ,F.5a, G.2, G.4, G.5
96.47(d)	G.6
96.48(a)	G.7
96.48(d)	G.8
96.49(k)	G.9
96.50(d)	G.10, G.11, G.12
96.50(e)	G.12
96.50(h)	G.13, G.14
96.52	G.15
96.53(a)	H.1, H.2

96.53(c)	H.3
96.53(e)	H.4
96.54(a)	H.5
96.54(b)	H.5
96.54(e)	H.6, H.7
96.54(k)	H.8
97.2(b)	H.5
97.3(c)	H.5

Return to Table of Contents