

# HAGUE ACCREDITATION/APPROVAL STANDARDS

## FREQUENTLY ASKED QUESTIONS

*Updated December 2007*

These questions and answers were developed by the Accrediting Entities together with the State Department. These answers provide a general overview of key elements of 22 CFR Part 96, the regulation governing the accreditation and approval of intercountry adoption service providers under the Intercountry Adoption Act of 2000. It is not a substitute for the actual regulation, nor is it a comprehensive summary of the regulation. In the case of any inconsistencies between these answers and the regulation itself, the language of the regulation governs.

Standard	Question	Answer
96.5	If only one parent travels to China, the child enters the U.S. on a IR-4 visa versus a IR-3 visa and the adoption needs to be re-finalized in the U.S. In these instances, even though China considers the adoption final, would it be considered a disruption (versus a dissolution) prior to re-finalization in the U.S?	If the child is entering the U.S. on an IR-4 Visa and there is a need for adoption in the U.S. but there is no threat of interference with the placement, then there is no disruption. The need for adoption in the U.S. itself is not an "interruption" in the placement. There is no dissolution unless the adoptive parent(s)'s parental rights are terminated after an adoption. See the definitions of "disruption" and "dissolution" under 22 CFR 96.2.
96.32 (b)	Are there any restrictions for who can be a board member? Are there any restrictions on who can be a voting member? Can an Executive Director be a voting member of the Board of Directors?	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.
96.32(b)	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)?	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.
96.32 (d)	What's the difference between "oversee" and "monitor"?	To oversee is to supervise, and to monitor is to have methods to check & verify activity/performance.
96.32 (e) (2)	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, direct care staff of a residential program?	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 AEs may decide that an agency or person achieves substantial compliance (a rating of 2) by submitting the required information

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		for all directors and any managers and employees who provide adoption-related services.
96.33 (a)	The standard requires the agency to disclose in its budget, the remuneration paid to it's 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?	Yes, such funds should be disclosed in the Agency's budget. ASPs can consult with their financial advisors as to whether separate disclosures of pass-through funds can be considered part of the budget.
96.33 (b)	When must the audit be completed?	<p>The audit is required evidence for applicants for Full Hague Accreditation/Approval. If the audit is not available during the site visit, the ASP will be rated out-of-compliance, and can submit the completed audit in its response to the PCR report.</p> <p>Since the audit is required to be conducted every 4 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 4-year requirement) as part of the annual monitoring and oversight requirements.</p> <p>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 4 years at the time of the site visit.</p>
96.33 (b)	Can the audit be limited to the ASP's intercountry adoption services only?	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.
96.33 (e)	A newly established agency (less than a year) is having trouble meeting the cash reserves, assets, or other financial resources to meet its operating expenses for two months standard, 96.33(e). They say they are "just short". What can they do to meet this standard?	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.
96.33 (e)	Are there any unrestricted funds, such as can we use funds allocated to another line item in our budget to	The standard requires an agency or person "to maintain on average sufficient cash reserves, assets, or other financial resources to meet its operating

Standard	Question	Answer
	cover operating expenses if need be?	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.
96.33 (e)	How do you define operating expenses?	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 or computer systems or construction or remodeling of a facility.
96.33 (e) Updated 12.7.07	Can accounts receivable count toward the cash reserve standard?	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.
96.33 (i)	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?	No. Bonding is not the same as liability insurance. However, an insurance policy (just not a <i>liability</i> 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 ASP'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.
96.34 (a)	Can an 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.	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.

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96.34 (f)	How do you define "referral?" An agency states that they might offer a list with names on it, but they are clear that they are resources, not referrals.	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).
96.35 (c)	Do board members need to have their fingerprints done?	96.35(c)(3) and 96.35(c)(4) both refer in different ways to fingerprints. 96.35(c)(3) requires State criminal background 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) 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.
96.35 (c) (2)	Does the FBI fingerprint form need to be submitted for evaluation, or just completed by the employee and left in the personnel record?	The form needs to be completed and placed in the employees' personnel files ready for use in the event of future allegations warrant submission of the form for a Federal criminal background check.
96.35 (c) (4)	Does the FBI form need to be completed for both those in senior management and those who work directly with parents & children. There is some confusion over the word "or" in the standard.	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.
96.35, 96.45(a)(3), and 96.46(a)(3)	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, would foreign supervised providers be subject to criminal background check and FBI form requirements in 96.35(c)(3), (c)(4)?	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 <i>in the United States</i> 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

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	<p>What if a supervised provider's state limits authorized uses of criminal background checks and accreditation falls outside the description of authorized uses?</p>	<p>respect to the completed FBI Form FD-258 applies to "each such individual <i>in the United States</i> 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.</p>
96.36 (a)	<p>How is "agent" defined?</p>	<p>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 express (e.g., written) or implied.</p>
96.36 (b)	<p>How detailed should training be on child buying in training curricula?</p>	<p>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 US 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</p>

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		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.
96.37	Does this standard apply to contract workers?	If the 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 8 CFR 204.3(b).
96.37 (d)	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 he/she still be considered an incumbent to/at the new job?	The standards for supervisors addressed in Section 96.37 includes social work supervisors without masters 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 enters 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.
96.38	Does 96.38 apply to contract workers?	The 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

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		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.
96.38 (a) (1)	What does "other Federal regulations" refer to/include?	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.
96.38 (c)	From when does one start calculating the 2 yr. period?	The standards do not specify the timeframe by which the agency or person starts counting the 2 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.
96.39 (a)	Can we post this information on our website?	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.
96.39 (c )	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?	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.
96.40(g)	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)?	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.
96.41	We would like to specify in our complaint procedures that signed, dated complaints must be sent within thirty (30) days of the disputed matter. Is it allowable for us to specify a given timeframe for	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:

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	complaints to be filed?	<p>“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....”</p> <p>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 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).</p>
96.41 (b) Updated 12.7.07	Must a complainant completely exhaust an agency or person’s complaint processes before filing a complaint with the Complaint Registry?	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 thirty 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.
96.41 (c) Updated 12.7.07	This standard gives a thirty-day timeframe for the agency or person to respond in writing to complaints. Must the response provided within this time frame be a full response/resolution of the complaint, or can it be an initial response (e.g., “We have received your complaint	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,

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	and we are investigating it internally.”)?	<p>2006) (Comments and Responses to 96.41). In light of this, it is expected that the response provided at the end of thirty days would as close to a complete response as possible. Moreover, under the standard, certain complaints are to be addressed through an expedited review.</p> <p>The agency or person’s complaint procedures may, however, provide for appeals processes that extend beyond the thirty-day time frame.</p>
96.42 (b)	Agencies are uncertain what this is about or how to comply since in other standards all available information must already be provided to the prospective adoptive parents.	This disclosure provision pertains specifically to disclosure to adoptees, though it also includes adoptive parents. Information agencies and persons must retain in their files relating to the background and health history of the adoptee 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.
96.42 (d)	Should the agency store Convention Country completed Dossiers along with the adoption records?	<p>Yes. “Adoption records” is defined in 96.2 and includes any information related to a specific Convention adoption case.</p> <p>The regulations <i>do not</i> require that accredited agencies and approved persons maintain files of Convention adoption completed dossiers separate from other adoption case records.</p> <p>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 ASP can protect of the sensitive information required in 96.42(b) and (c) without maintaining separate files for Convention adoption country completed dossiers, it may do so.</p>
96.43 (b) (5)	Regarding the calculation 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 that if the match is made pre-birth?	<p>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 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.</p> <p>As for matches made “pre-birth,” such matches are</p>

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		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.
96.44-96.46	<p>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?</p> <p>This is the practice sometimes referred to as "umbrella" or "partnership" which both may have slightly different meanings.</p>	<p>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.</p> <p>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.</p>
96.44-96.46	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?	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 can not be an exempted provider since the definition of exempted provider says that exempted providers conduct home studies In the United States.
96.45 (a)	If a supervised provider in the U.S. is Hague-accredited, does the primary provider have to secure all the info regarding ensuring 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?	ASP's are not yet accredited and when/if they do become accredited, there are differences in the timing cycles of accreditation. The status of an asp's accreditation could also change over time. The burden lies with the primary provider to secure the information cited in the standards.
96.45 (b) (7)	This standard requires the supervised provider to meet the same personnel qualifications as accredited	Yes. When acting as a supervised provider, certain employees must be supervised by a qualified employee of the primary provider, not solely by an

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	<p>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 (accredited/approved) agency in addition to whatever existing supervision they receive from the supervised provider?</p>	<p>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.</p>
96.45-96.46	<p>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?</p>	<p>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.</p>
96.46	<p>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?</p>	<p>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 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.</p>
96.46	<p>The on-site document [required by COA] for 96.45 is signed, written agreements with U.S. supervised providers. 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?</p>	<p>COA and Colorado 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</p>

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		<p>Department, clearly require signed agreements for both supervised providers in the United States and foreign supervised providers. [Note: the fact that the word “signed” does not appear in the evidence for foreign supervised provider agreements does not mean that the required written agreements do not need to be signed; they do.</p>
96.46 (a) (3)	<p>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?</p>	<p>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.</p>
96.46	<p>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)?</p>	<p>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 IAA, that accreditation and approval within the U.S. system cannot guarantee good conduct. The</p>

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		<p>verification requirement in §96.46(c) recognizes, however, that as a 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.</p> <p>To recognize these possibilities and to avoid requiring that such services are reperformed 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</p>

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		<p>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.</p>
96.47	<p>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?</p>	<p>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.</p> <p>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))</p>
96.47 (c)	<p>If the home study is performed by an accredited agency, does the primary provider need to review &amp; approve it?</p>	<p>No, the standard only requires the primary provider to review and approve home studies that are not conducted by accredited providers. However, AE 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.</p>
96.48 (a)	<p>At what point in time do adoption service providers need to make sure their prospective adoptive parents are receiving 10 hours of pre-adopt training?</p>	<p>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.</p>
96.48d	<p>Can the entire 10 hours of parent training be provided through video or</p>	<p>The regulations are silent on how ASPs provide the required training. If training using electronic formats</p>

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	computer?	is permissible under any relevant State regulations, they may be used as the ASP sees fit.
96.50 (d)	Do we need to have a policy regarding handling of disruptions when we work with countries where dissolution is what applies?	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.
96.50 (d)	Will the State Department accept an agency's plan to have the local Child Protective Services program or another State entity providing foster care to child?	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.
96.50 (d, e)	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?	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 IAA. An accredited agency or approved person may use a supervised provider for the responsibilities outlined in 96.50(d) and e? [(f)], 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.
96.50 (h)	Does this in any way impact the finalization of the adoptions in each of the sending countries? Can the adoption service provider get a copy (not an original) of the order declaring the adoption final from the parents? Does the adoption service provider	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

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	<p>need to notify the State Department anywhere along the time line of the adoption so that the State Department is expecting this final order?            When will the adoption service provider know how to enter the order in compliance of IAA section 301(c)?            Will the certificate cost anything?            How will the adoption service provider notify the secretary after they have entered the order of adoption?</p>	<p>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 the Department of State within 30 days of the entry of the order. See also proposed rule 22 CFR 42.24(j).</p>
96.52	<p>What are the applicable regulations for a US agency placing infants from Guatemala in the United Kingdom or Ireland? Is this an incoming or outgoing case?</p>	<p>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 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 ASP 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.</p>
96.53 (a)	<p>When an agency is doing a newborn adoption there is usually little information about the child. In some cases a "birth parent" study is produced. Can this be used to meet the standard, or does the study need to be called a "child study?"</p>	<p>In accordance with 96.53(a), ASPs 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)).</p>
96.53 (a)	<p>What is a "medical history?" Is this a synopsis of significant medical events in a child's life (e.g., immunizations,</p>	<p>A “medical history” is generally understood to mean an account of all medical events a person has experienced. While other standards use the term</p>

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	illnesses, surgeries)? Are actual medical records expected?	“medical records” (e.g., 96.49), this one does not.
96.53 (c)	What about unnamed fathers, fathers who cannot be located? Sometimes in these cases, the 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.	This standard reflects Article 4 of the Convention. Pursuant to it, the consent of any persons whose consent is necessary for the adoption is obtained. Requirements related to the consent of the birth father (including cases of unnamed fathers and/or fathers who cannot be located) are State law-specific. 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).
96.53 (e)	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 6 months.	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 <i>placement</i> . This may indeed be the best practice. The agency/person must also comply with State law.
96.54 (e)	This standard wants the agency 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 reconcile this with the Multi-Ethnic Placement Act (MEPA) of 1994, as amended by the Removal of Barriers to Interethnic Adoption (IEP) provisions included in the Small Business Job Protection Act of 1996?	<p>96.54(e) requires the agency or 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.”</p> <p>For purposes of this standard, appropriate measures should be understood to mean measures that comport with other applicable Federal laws.</p> <p>The federal Multi-Ethnic Placement Act (MEPA) of 1994, as amended by the Removal of Barriers to Interethnic Adoption (IEP) provisions included in the Small Business Job Protection Act of 1996, aims to remove barriers to permanent placement for children in the child protective system. MEPA-IEP has several components, one of which seeks to eliminate discrimination in the placement of children for adoption by prohibiting the delay or denial of a foster care or adoptive placement on the basis of the child’s or the prospective adoptive parent’s race, color, or national origin. (Ethnicity is considered part of these categories). MEPA-IEP does not address consideration of upbringing or religion. HHS has provided guidance that MEPA-IEP does not prohibit nondiscriminatory consideration of culture in making placement decisions (i.e., culture is not considered to be the same as race, color or national origin).</p> <p>MEPA-IEP applies to any state, public or <i>private</i></p>

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		<p>agency or other entity that receives funds from the federal government and is involved in adoptive or foster care placements. For this reason, agencies and persons may in individual cases decide to consider as appropriate measures those that are consistent with the MEPA-IEP legal requirements.</p>
96.54 (e)	<p>This standard wants the agency 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 reconcile this with any State laws that may prohibit the due consideration of the child’s ethnic, religious, and cultural background?</p>	<p>Section 503(a) of the Intercountry Adoption Act 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...”</p> <p>ASPs should consult with their lawyers as to whether the relevant State law is inconsistent with the Convention or the IAA and is thus preempted.</p>
96.54 (k)	<p>The standard requires the agency to “consult” with the State Department before arranging for the return to the US of any child who has emigrated to a Convention country in connection with the child’s adoption.</p> <p>Does this apply to cases where the child is transported to the Convention country before and after the adoption is finalized?</p> <p>What role will DOS undertake with regards to “consultation” What issues will be under consultation?</p> <p>Will escorts be required to transfer a child back to the U.S., and if so, will DOS assist in arranging for escorts?</p>	<p>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.</p> <p>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 <a href="http://www.state.gov">www.state.gov</a>.</p> <p>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</p>

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		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.
96.55 (b)	This standard requires that copies of documentation of the state court order granting the adoption, proceedings etc. be provided to the Secretary. If the state laws prohibit identifying birthparent information from being released will a redacted copy of the information be acceptable?	<p>With respect to an outgoing Convention case, the Convention and the IAA require 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 is case-specific and obligates the receiving Convention country to recognize the adoption or grant of custody.</p> <p>The Secretary 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. Extensive information on the procedures for outgoing cases is provided in the DOS final rule for 22 CFR Part 97.</p> <p>Redacted State court documents that omit birthparent identification information may or may not have sufficient information necessary for DOS to issue a Hague Adoption Certificate (HAC) or Hague Custody Declaration (HCD) in accordance with 22 CFR Part 97. The Department will make this determination at the time the family applies for a HAC or an HCD.</p> <p>If a State law completely prohibits the release of identifying information on the child or the adoptive parents, without any exception, DOS will be unable to issue a HAC or HCD.</p>
96.55 (d)	The standard requires that certain evidence be provided to the state courts. Regarding element (4, 5), many agencies either do not currently receive written evidence that the child will be authorized to enter and reside permanently in the Convention country or that the Central Authority has agreed to the adoption. What types of evidence could be provided here? Does the documentation need to be authenticated in any way?	Agencies and persons should have copies of 22 CFR Part 97 and be familiar with it. The requirements in 22 CFR Part 97 and 22 CFR Part 96.55(d)(4)-(5) derive directly from Articles 5 of the Convention. 96.55(d)(4) requires “[e]vidence that the child will be authorized to enter and reside permanently in the Convention country or on the same basis as that of the prospective adoptive parent(s).” Because the provision of this evidence is an explicit Hague Convention requirement applicable to any receiving country, once the Convention enters into force for the United States, other Convention countries (as defined) will provide the Article 5 notice to the parties.

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		DOS plans to accept a receiving country's determination that a particular type of letter, email, notice, or other document is its Article 5 document.