

consultations with the public and formulated suggestions for the proposed accreditation regulations in the form of an initial draft. Acton Burnell undertook extensive research and consultation that included review of current, private accreditation standards, analysis of applicable State regulations, and solicitation of input from members of the adoption community, including adoption service providers, professional membership organizations, advocacy groups, coalition groups, birth parents, adoptive parents, adoptees, legal, medical, and social work professionals, Federal and State public bodies, and standard-setting and regulatory professionals.

The Department requested that Acton Burnell establish a multi-disciplinary team of experts in accreditation and intercountry adoption and use an open process designed to ensure that all segments of the adoption community had a full opportunity to provide input at public meetings and to articulate their opinions and concerns. In response, Acton Burnell set up an interactive Web site to keep the public informed about the project. It also created and disseminated two surveys in conjunction with the public meetings—one for agencies and persons and one for prospective adoptive parents, adoptive parents, birth parents, and adoptees. Acton Burnell then announced and convened a public meeting on April 2, 2001, to gather input for the regulations. Any person was permitted to send in statements or other material prior to the first meeting, and copies of such statements were made available to attendees. Additionally, all interested persons were welcome to attend and had the opportunity to address the Acton Burnell team and other attendees. Acton Burnell received considerable public input, including actual proposed standards from various coalition groups as well as statements from adoption research organizations and input from other advocacy groups. It considered the input from all of these sources and used it to produce draft proposed regulations that were made available to the public on a Web site at <http://www.haguereg.org>.

After publishing an initial draft of the regulations, Acton Burnell convened a second set of public meetings on June 18 and 19, 2001, and invited all interested persons to submit written statements. Department personnel attended these meetings. Submitted statements were circulated amongst the attendees and those that had been provided in electronic form were posted on the Web site. After considering all of

the input provided, including, but not limited to, the information from the surveys, the content from written statements sent, and the oral statements given at the public meetings, Acton Burnell produced another draft of the regulations which it submitted to the Department on July 31, 2001. The Acton Burnell team then engaged in extensive consultations with the Department and produced further revised recommended draft regulations. The Department permitted the revised draft regulations to be posted on the Web site in October and December of 2001. The revised draft regulations were posted on the Web site for informational purposes, but not for additional public comment. The multiple draft regulations produced by Acton Burnell and posted on its Web site were not subject to the notice and comment provisions of the APA, 5 U.S.C. 553, because it was understood that the Department would use the Acton Burnell product to formulate its own version of the proposed regulations, which would be subject to APA notice and comment.

B. The Department's Preparation of the Proposed Regulations

The Department has considered all of the public input and the substantive recommendations and proposed draft regulations published by Acton Burnell and submitted to the Department for review. The Department also relied heavily upon the standards for accreditation and approval listed in section 203(b) of the IAA to determine what performance and organizational standards to include in the regulations. It also looked to the legislative history of the IAA, as appropriate, and consulted with interested congressional staff. Most important, the Department looked to the guiding principles provided by the Convention. Where the Convention delineates certain tasks that must be completed for an adoption to proceed, the regulations set a standard governing how accredited agencies and approved persons must complete those tasks.

The Department also tried to ensure that the regulations fully reflect the Federal government's obligations under the Convention and the IAA. Further, the Department crafted the regulations to facilitate practical implementation. The Department also sought to ensure that the regulations protected birth parents, adoptive parents, and children involved in a Convention adoption. In particular, the regulations address certain undesirable and problematic practices that the Department has observed through its current work with intercountry adoptions.

Also, when considering the regulations applicable to accrediting entities, the Department kept in mind the need to find competent and willing accrediting entities. The Department did not want to create inflexible regulations that would discourage any accrediting entity from seeking to be designated. Therefore, the Department examined the current practices of accrediting entities and attempted to create uniform procedures without completely modifying current practice. As a variety of organizations, including State entities, may seek designation, the regulations are intended to be as flexible as feasible to encourage many entities to seek designation. The Department would prefer to have a number of accrediting entities, in order to expedite the initial accreditation and approval phase, to avoid a bottleneck of applicants, and to ensure geographical diversity and competition with respect to fees and services.

The Department recognizes that by proposing to regulate accrediting entities, in addition to entering into the anticipated Agreements between the Department and the accrediting entities, the Department is binding potential accrediting entities to certain practices in advance of their designation. Potential accrediting entities should be aware that they will be bound by the final regulations and that the Department's flexibility in negotiating Agreements will be limited by the final regulations. The Department is mindful that these procedures may be different from the practices that prospective accrediting entities use in other, non-Convention contexts. The Department welcomes public comment on the substance and level of the regulation of accrediting entities and the tasks expected of them, especially from any potential private accrediting entities or State entities that are considering becoming designated accrediting entities.

Finally, the Department considered the views of all members of the adoption community. The Department recognizes that there are many areas of consensus within the adoption community as well as a number of critical issues on which some elements of the community remain divided. The regulations had to draw a number of difficult compromises that are likely to evoke comment or dissent from one or more segments of the adoption community. While preparing the proposed regulations, the Department has tried to balance all the input received and also craft proposed regulations that are consistent with the Convention and the IAA. Also, the