

The Department seeks comments from all parties, especially from potential accrediting entities, on the regulations governing the accreditation and approval process. In particular, potential accrediting entities should comment on the practical issues these regulations may present for them if they seek to become designated as accrediting entities.

### 3. Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

(a) Authorized Providers. Subpart C explains what agencies and persons are subject to the IAA's accreditation and approval requirements and under what conditions they may provide adoption services in Convention cases. Section 201 of the IAA mandates that, once the Convention enters into force for the United States, no agency or person may offer or provide "adoption services," as defined § 96.2(e), in connection with a Convention adoption in the United States unless that agency or person is accredited or temporarily accredited or approved pursuant to these regulations. If the agency or person is not accredited, temporarily accredited, or approved, it must (1) be providing adoption services under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person ("a supervised provider"); (2) be performing an activity that is exempted from the accreditation or approval requirements; or (3) be operating as a public body.

The requirement to be accredited, temporarily accredited, or approved applies regardless of the number of adoption cases for which the agency or person is offering or providing "adoption services." The provision of an adoption service in one Convention adoption case is sufficient to trigger this requirement. Conversely, if an agency or person does not provide "adoption services" in any cases subject to the Convention, this requirement does not apply. If an agency or person is providing adoption services in both Convention and non-Convention cases, the requirement applies.

It is critical to note that the requirements pertaining to accreditation and approval are triggered when an agency or person offers or provides any single one of the six services listed in the definition of "adoption services." (Pub. L. 106-279, section 3(3)). The IAA's definition, which is adopted by these regulations, lists six core, but limited functions, that it calls "adoption services." (Pub. L. 106-279, section 3(3)). Services that are not listed in the definition given in § 96.2(e) of these

regulations are not considered "adoption services" for the purpose of the IAA and therefore do not trigger the requirement that the agency or person providing the service be accredited, temporarily accredited, or approved or be operating under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person. Therefore, for example, if an agency or person provides only services not listed in the definition of adoption services (such as post-placement counseling, a medical evaluation of a child's records or of a video of the child provided by the child's country of residence, pre-adoptive parent training courses or meetings, or post-adoption services for children whose adoptions were dissolved), that agency or person is not required to be accredited, temporarily accredited, or approved or to operate under the supervision and responsibility of an accredited agency, temporarily accredited agency or approved person. Conversely, if a service provided by an agency or person is listed as any one of the six adoption services in the definition of adoption services, the agency or person must be accredited, temporarily accredited, or approved or it must act under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or is only performing an exempted service). For example, securing necessary consents to termination of parental rights and to adoption is one of the defined six adoption services. Thus, a lawyer, who may provide this service now as a legal service, may not do so in Convention cases unless he or she is approved or is doing so as part of an accredited agency, temporarily accredited agency, or an approved person or is acting under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person.

When determining whether an activity is included in the definition of adoption services, the reader must pay close attention to the language used in the list of services. For example, post-placement monitoring, but not post-placement counseling, is included in the definition of "adoption services." Therefore, the former triggers the requirement, but the latter does not. Similarly, one listed adoption service is "identifying and arranging an adoption." An agency or person that both identifies a child for adoption and arranges the adoption would be covered by the requirement. On the other hand, a magazine or TV show or newsletter,

which simply posts pictures and information about children waiting for adoptive placements on behalf of other agencies, persons, or public bodies, would not be covered. These media companies are not covered because they are only communicating information on a child awaiting placement, rather than both identifying a child for adoption and arranging the adoption.

Although some of the preliminary public input asserted that Congress did not intend for each single, named adoption service to trigger the accreditation, approval, or supervision requirement, the Department has rejected such an interpretation of the IAA. Instead, the Department interprets the IAA as mandating that the provision of any one of these six adoption services triggers the requirement that an agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or is only performing an exempted service). The alternative reading—that the requirement is triggered only when an agency or person actually provides all six services—would nullify the protective intention, capacity, and effect of the IAA. Such a reading would permit an agency or person to decline to provide one of the enumerated adoption services and thereby evade the requirement.

(b) Accreditation and Approval Versus Acting as a Supervised Provider. Although the IAA is clear that an agency or person wishing to offer or provide adoption services in cases subject to the Convention must be accredited, temporarily accredited, or approved or operate under the supervision of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or providing only an exempted service), it does not provide guidance on how to choose between these options. The Department understands that each agency or person will face a difficult choice in making this decision and is not able to provide specific advice on what is best for each individual agency or person. However, the Department believes it is helpful to underscore the ramifications of choosing between being accredited/approved and being a supervised provider. First, agencies and persons that do not become accredited, temporarily accredited, or approved must be supervised by an accredited agency, temporarily accredited agency, or approved person (unless they are a public body or are providing only an exempted service in the case). Second,