

States, the primary provider may work with: (1) Other U.S. accredited agencies, temporarily accredited agencies, and approved persons; (2) agencies and persons acting under its supervision and responsibility (U.S. supervised providers); (3) public bodies; and (4) exempted providers. In another Convention country, the primary provider may work with: (1) Agencies, persons, or other entities accredited by the other Convention country; (2) Convention country public authorities or competent authorities; and (3) agencies, persons, or other entities acting under the primary provider's supervision and responsibility ("foreign supervised providers"). As noted, the conditions on the use of these agencies, persons, or other entities, whether domestic or foreign, are listed in §§ 96.45 and 96.46.

(d) Supervised Providers. Agencies and persons that do not become accredited or approved may provide adoption services in the United States in cases subject to the Convention only under the supervision and responsibility of the accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case (unless they are a public body or are only performing an exempted service). These agencies or persons are called "supervised providers." Supervised providers are not required to be in substantial compliance with all of the accreditation and approval standards set forth in subpart F. However, these regulations do set forth requirements that apply when a primary provider uses a supervised provider to provide adoption services in a Convention case. Those requirements are set forth in §§ 96.45 and 96.46.

The following entities are not considered supervised providers: (1) Agencies or persons that are accredited, temporarily accredited, or approved in the United States; (2) public bodies; (3) agencies, persons, or entities accredited by other Convention countries; and (4) public authorities and competent authorities of other Convention countries. Such entities are not required to act as supervised providers; that is, they are not required to act under what in these regulations is referred to as the supervision and responsibility of the primary provider. Primary providers are not required to provide supervision and responsibility for them when they provide adoption services in a Convention case. Only non-accredited and non-approved entities that do not fall into one of these categories are considered supervised providers for the purpose of these regulations. While the

primary provider will have legal responsibility for the work of its supervised providers, it will not have legal responsibility for the work of other accredited/approved providers; public bodies; agencies, persons, or entities accredited by other Convention countries, and public authorities and competent authorities of other Convention countries, except to the extent that the primary provider must ensure that all six adoption services are provided.

(e) Activities That Do Not Require Accreditation, Approval, or Supervision. The IAA highlights four types of activities that, under specified circumstances, do not give rise to 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. These activities are: (1) The completion of a home study or child background study; (2) the provision of child welfare services where the agency or person is not performing any other adoption service in the case; (3) the provision of legal services where the agency or person is not performing any adoption service in the case; or (4) activities undertaken by prospective adoptive parent(s) acting on their own behalf.

Home Study or Child Background Study. Even though it is listed as an adoption service in the IAA definition of adoption services, the performance of a home study or child background study, by itself, does not require the agency or person to be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider, where the agency or person is not performing any other adoption service (as defined) in the case. (Pub. L. 106–279, 3(3) and 201(b)(1)). The reader should note that this exception only applies where the agency or person is not also providing any other service listed as an adoption service in the case. (Pub. L. 106–279, 201(b)(1)). If the agency or person is performing another adoption service in addition to the home study or child background study, it must be accredited, temporarily accredited, or approved or it must perform the service under the supervision and responsibility of the primary provider. Agencies or persons that operate under the home study/child background study exemption are called "exempted providers." The home study or child background study, as well as any related reports or updates, from an exempted provider must be approved by an accredited agency or temporarily

accredited agency. This approval requirement is included to satisfy the requirements of Article 22(5) of the Convention and section 201(b)(1) of the IAA.

A number of practitioners suggested to Acton Burnell that the regulations should exempt agencies and persons (both individuals and for-profits) that perform both home studies and post-placement monitoring from the requirement to be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider. The Department does not read the IAA to permit such an expansion of the exemption. The language of section 201(b)(1) of the IAA on its face makes clear that providing another adoption service in addition to the home study or child background study triggers the requirement. Because post-placement monitoring (before the legal adoption takes place) is explicitly defined as an adoption service, those agencies and persons providing both the home study and post-placement monitoring must either be accredited, temporarily accredited, or approved, or operate under the supervision and responsibility of the primary provider.

Child Welfare Services and Legal Services. Child welfare services and legal services, in accordance with the IAA definitions, are not "adoption services." Therefore, they do not by themselves trigger the requirement that the agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider. The IAA specifically highlights that the provision of child welfare services and legal services does not trigger this requirement, so long as the agency or person is not also performing in the case a service listed as an adoption service.

If the agency or person is also providing an adoption service in the case, however, it must be accredited, temporarily accredited, approved, or supervised. Acton Burnell received some comments arguing that the provision of a home study and a child welfare service in the same case should not trigger this requirement. The Department nevertheless reads the IAA as not allowing the child welfare exemption to apply if any one of the adoption services, including the home study, in addition to a child welfare service, is provided. Thus, for example, if an agency provides post-adoption evaluations but does not provide the home study or any of the other six adoption services, it is not required to be accredited or supervised. In contrast, if an agency provides both the home