

the IAA. As noted, the Department has concluded that there must be a single "primary provider" for each Convention adoption. Thus, under these regulations, if a supervised provider violates the standards, the primary provider's accreditation, temporary accreditation, or approval may be in jeopardy. It seems also appropriate that, in tort, contract, or similar legal action in which the performance of an adoption service provider is challenged, the primary provider should assume legal responsibility for the acts of the supervised providers (domestic and foreign) that it has chosen to work with. The Department believes that the primary provider will do a better job of supervising if it is deemed automatically to be legally responsible for the acts of its supervised providers in both the accreditation and approval context and with respect to tort, contract, and similar civil claims.

Through Acton Burnell and others, the Department has heard concerns that agencies and persons carry sufficient liability insurance to cover the risks of providing adoption services. The regulations require the agency or person to have a professional assessment of the risks it assumes, including the risk of assuming legal responsibility for its supervised providers in the United States and abroad, and to carry an amount of insurance that is reasonably related to that risk but in no event less than one million dollars per occurrence or claim. In addition, to protect against financial irregularities, the Chief Executive Officer, Chief Financial Officer, and all other officers and employees who have direct responsibility for financial transactions or financial management of the agency or person must be bonded.

The Department recognizes that these standards allocating legal risk, mandating insurance coverage, and setting the floor amount of one million dollars for insurance coverage are sensitive and will require changes in current practice. The Department welcomes public comment, including from insurance experts, actuaries, associations, and agencies and persons, on these issues. Agencies and persons may specifically wish to encourage their insurance providers to comment on these proposed regulations.

The Department also wishes to call special attention to the standard relating to cash reserves in § 96.33(e). A standard of a reserve of three months is proposed. Commenters may wish to address whether this period is too long or too short.

Section 96.35: Suitability of Agencies and Persons to Provide Adoption

Services Consistent with the Convention: 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 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.

Section 96.37: Education and Experience Requirements for Social Service Personnel: This section sets forth the required qualifications for

individuals performing adoption-related social service functions. The qualifications are divided into categories that correspond to the individual's function, role, and position. These standards substantially upgrade the requirements for social workers, both supervisors and non-supervisors, performing certain tasks by requiring them in many cases to have a master's degree from an accredited program of social work education or to meet other educational or work experience requirements. The required qualifications for individuals performing home studies or child background studies differ from those for individuals performing other social service functions. All individuals performing home studies or child background studies are subject to the requirements in § 96.37, unless they are exempt pursuant to § 96.13. The standards exceed the current qualifications required for home study preparers under the regulations for the INA (*see* 8 CFR 204.3(b) (home study preparer)). Specifically, the new rules as proposed require individuals performing home studies or child background studies to have a minimum of a master's degree in social work education.

Section 96.40: Fee Policies and Procedures: The standards in this section address fee practices. The preliminary public comment included complaints about the charging of large fees, last-minute fee changes that were not disclosed to clients in advance and practices that require prospective adoptive parent(s) to travel abroad with large amounts of cash to pay for adoption services to be rendered in the country of origin. In addition, frustrations were expressed with differences in the ways that fees are categorized, which makes it impossible for clients to compare fees for similar services.

The standards impose a number of requirements to address these concerns. In particular, they require prior disclosure of fees and provide guidelines for how and when fees may be charged. These standards help to ensure that agencies and persons disclose how fees are disbursed. There are also specific provisions governing when and how additional fees may be assessed beyond the original fee, and how unexpended fees must be refunded. The standards also require the agency or person to have a mechanism in place for transferring funds to other Convention countries whenever the financial institutions of that country so permit so that direct cash transactions by prospective adoptive parent(s) are