

#### 9. Subpart I—Routine Oversight by Accrediting Entities

Subpart I covers routine oversight of accredited agencies and approved persons. The accrediting entity is expected to take a more assertive role than is typically the case in the current, purely voluntary accreditation process in monitoring accredited agencies and approved persons. For example, the accrediting entity must monitor the accredited agencies and approved persons at least annually to ensure that they may maintain their accreditation or approval. The accrediting entity must also investigate complaints in accordance with subpart J. As part of its oversight, the accrediting entity may conduct random site visits and consider any information that becomes available about the agency's or person's compliance.

#### 10. Subpart J—Oversight Through Review of Complaints

Subpart J sets out extensive procedures for making complaints about accredited agencies or approved persons. Subpart J was added to the regulations specifically in response to requests from elements of the adoption community asking for more avenues to express complaints about unsatisfactory practices and to reduce the potential for litigation by giving parties a complaint resolution mechanism. The Department recognizes that the handling of complaints against agencies and persons is a major concern to some members of the adoption community. The Department has heard claims that State-licensing authorities and accrediting entities do not respond adequately to complaints about intercountry adoption practices and that current complaint processes are not sufficiently transparent. The Department has been urged to establish a mechanism through which the Department would itself, outside of the IAA-mandated accreditation and approval process, investigate complaints and penalize unacceptable conduct.

The IAA does not give the Department the authority to set up an entirely separate enforcement scheme with non-statutory remedies outside of the accreditation and approval process and use of adverse action and the IAA civil and criminal penalties. In particular, the IAA specifically developed a structure under which the Department for the most part would not directly regulate agencies or persons. Instead, it relies on private or State-based accrediting entities to regulate agencies and persons using the standards developed by the Department. Where those entities do not

act, the IAA provides for the Department to suspend or cancel accreditation or approval by acting directly. Furthermore, the IAA permits the Department temporarily or permanently to debar agencies or persons.

These enforcement devices, along with the adverse actions that may be imposed by the accrediting entity, are sufficient to enforce the standards without creating a duplicative process. In any event, the Department could not manage such additional proposed responsibilities given its primary mission as a foreign affairs agency responsible for the conduct of diplomatic and consular relations. Moreover, the funding for such a major, non-statutorily mandated role for the Department would be uncertain. The Department lacks the capacity to create and assume such a role in dispute resolution and imposition of remedies. The Department therefore believes that the enforcement scheme established in the IAA should be given a chance to work.

The Department does, however, take the community's request for a complaint process very seriously. Thus, the regulations adopt a suggestion that the Department establish a complaint service to receive, screen, and monitor action on complaints. Specifically, the regulations provide for the establishment of a Complaint Registry, which may be funded in whole or in part by fees collected by the accrediting entities or the Department. The Complaint Registry will record complaints that are not resolved through the internal processes of the service providers and ensure that they are brought to the attention of the accrediting entities or others as appropriate. The accrediting entity is obligated to report the outcome of complaints it receives to the Complaint Registry so that the Department can monitor whether and how the accrediting entity is addressing complaints. The Complaint Registry will also be charged with identifying any patterns of complaints and other egregious behavior and reporting them as appropriate for further action. The precise functions of the Complaint Registry will be detailed in an agreement between the Department and the Complaint Registry.

The regulations prescribe how the complaint process will work. Generally, complaining parties, other than Federal agencies, public bodies, law enforcement or licensing authorities, or foreign Central Authorities must first file their complaints with the agency or person providing adoption services and,

if the agency or person is a supervised provider, with the primary provider in the case. If the complaint is not resolved at this level, then the complaint may be filed with the Complaint Registry, which will screen and record the complaints and refer them, as appropriate, to the accrediting entity or other authorities. Federal agencies, public bodies, law enforcement or licensing authorities, or foreign Central Authorities may make complaints directly to the Complaint Registry or the accrediting entity. The accrediting entity must investigate the complaint and may conduct a site visit if necessary. If an accrediting entity determines that the agency or person is out of compliance, it must take adverse action pursuant to subpart K. When an accrediting entity has completed its investigation, it must provide written notification to the complainant, the Complaint Registry, and any other entity that referred the complaint and include information on the outcome and any actions taken. The accrediting entity must also establish written procedures to respond to complaints. Finally, the accrediting entity must refer certain types of substantiated complaints to the Secretary or appropriate law enforcement authorities. The regulations prescribe the standard for determining when to make such referrals.

The Department believes that one critical benefit of these complaint procedures will be to promote the resolution of complaints about adoption service providers in a way that will minimize, if not eliminate, the need for an accrediting entity or the Department to take adverse action, which may be challenged by an affected agency or person in Federal court. Thus, the procedures may also have the effect of reducing litigation.

#### 11. Subpart K—Adverse Action by Accrediting Entities

Subpart K describes how and when an accrediting entity may impose an adverse action. To enforce the accreditation and approval standards in subpart F, the IAA gives both designated accrediting entities and the Department the power to impose adverse actions. An accrediting entity is authorized to take certain actions against agencies and persons. The Department has the authority to take some of the same adverse actions as an accrediting entity, along with the additional authority to temporarily or permanently debar an agency or person. The Department's enforcement authorities are addressed in subpart L.

An accrediting entity, whether it is a private, non-profit accrediting entity or