

a State entity, may impose the following adverse actions: Suspend accreditation or approval; cancel accreditation or approval; refuse to renew accreditation or approval; require specific corrective action to improve deficiencies; or impose other sanctions. Under the IAA, these specific adverse actions are not subject to any type of administrative review (*i.e.*, they are not subject to review by the Department), and the regulations reinforce this point. The IAA does provide, however, that these specific adverse actions are subject to judicial review in a United States district court.

Denial of an agency's or person's initial request for accreditation or approval is not listed as an adverse action in the IAA. (Pub. L. 106-279, 202(3)). Clearly, however, there is the possibility that agencies and persons will be denied accreditation or approval. Thus, the regulations permit the accrediting entity to deny accreditation or approval and make clear that, because denial is not listed as an adverse action under section 202(3) of the IAA, it is subject to neither judicial review nor administrative review. This approach is consistent with the Department's understanding that the IAA distinguishes, intentionally, between agencies and persons actively providing Convention adoption services pursuant to accreditation or approval, on the one hand, and agencies and persons not so engaged. Adverse actions imposed on the former are, in effect, sanctions, whereas denial to the latter is not a sanction, but merely a decision that certain standards have not been met, leaving open the possibility that they will be met later. The former have interests in preserving their ability to continue their work, and the IAA protects these interests by providing judicial review of the enumerated adverse actions. The IAA does not similarly protect the interests of agencies and persons in the second category, *i.e.*, those not engaged in providing Convention adoption services pursuant to accreditation or approval. To permit agencies and persons judicial review of denial decisions would significantly add to the costs of accreditation and approval. Limiting access to judicial review to agencies and persons that have already been accredited or approved, and that have developed the resources to provide adoption services, will conserve the accrediting entity's limited resources. This limitation will enable the accrediting entity to focus on and monitor the performance of agencies and persons actually providing adoption

services on an ongoing basis rather than devoting its resources to defending in time-consuming litigation its decisions to deny accreditation or approval. This limitation will also reduce the number of cases in this new area of Federal regulation subject to the jurisdiction of the Federal courts. The regulations, however, do permit the agency or person to petition the accrediting entity for reconsideration of the denial, pursuant to the accrediting entity's internal review procedures.

Denial of a reapplication for accreditation or approval after cancellation or refusal to renew is treated the same as denial of an initial application. In both instances, the applicant will not be currently engaged in providing Convention adoption services pursuant to accreditation or approval, and thus will not have the kind of interest in providing continued services that the IAA protects by making judicial review available. In contrast, an accrediting entity may cancel or refuse to renew the accreditation or approval of an agency or person, but the agency or person in that case has an interest in providing continued services and, under the IAA, may seek judicial review of the cancellation or the refusal to renew. Alternatively, that agency or person, instead of seeking judicial review of the cancellation or refusal to renew, may choose to reapply for accreditation or approval. If the accrediting entity denies that reapplication for accreditation or approval, the denial is not subject to administrative or judicial review. Again, the regulations permit the agency or person to petition the accrediting entity for reconsideration of the denial, pursuant to the accrediting entity's internal review procedures.

In summary, all adverse actions (suspension, cancellation, refusal to renew, corrective action, or other sanction) are subject to judicial review, consistent with the fact that all affect an accredited agency or approved person with an interest in continuing the provision of Convention adoption services pursuant to previously granted accreditation or approval. Prior to seeking judicial review and consistent with the normal requirements for judicial review under the APA, the regulations require agencies and persons to exhaust non-judicial remedies before the accrediting entity. Specifically, the agency or person must petition the accrediting entity to terminate the adverse action on the grounds that the deficiencies necessitating the adverse action have been corrected. If the deficiencies that led to the adverse action have been corrected, the accrediting entity may terminate the

adverse action. It is only when the accrediting entity does not terminate the adverse action that the agency or person may seek judicial review.

If an agency or person challenges cancellation of or refusal to renew its accreditation or approval in Federal court, its only remedy if the court denies its petition is to reapply to an accrediting entity for accreditation or approval. Permission to reapply, however, is not automatic. The accrediting entity may grant such permission only if the agency or person demonstrates that the specific deficiencies that led to the cancellation or refusal to renew have been corrected. Any denial of these re-applications, as noted previously, is not subject to judicial review.

If an agency or person is challenging the imposition of a suspension, corrective action, or other sanction by an accrediting entity in Federal court, it has no avenue for reversing such action other than review by a United States district court, which must review any challenged adverse actions in accordance with the APA, 5 U.S.C. 706. For purposes of judicial review, the accrediting entity will be treated as a Federal agency as defined in 5 U.S.C. 701.

#### 12. Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

The Department may impose the following adverse actions: suspension, cancellation, or temporary or permanent debarment. Under the IAA, these specific adverse actions are not subject to any type of administrative review by the Department or otherwise, and the regulations reinforce this point. Under the IAA, these final adverse actions are subject to judicial review in a United States district court.

The IAA administrative enforcement scheme provides, in section 204(b)(1) of the IAA, that the Department may suspend or cancel accreditation or approval when the accrediting entity has failed or refused to act. The IAA does not give the Secretary a role in reviewing or changing the adverse action decisions or denial actions actually imposed by the accrediting entity. The Department must, however, suspend or cancel the accreditation or approval granted by the accrediting entity when the Department finds that agency or person is substantially out of compliance with the standards in subpart F and the accrediting entity has failed or refused, after consultation with the Department, to take action. (Pub. L. 106-279, section 204(b)(1)).