American Academy of Adoption Attorneys

Office of Legal Affairs, Overseas Citizens Services,
U.S. Department of State, CA/OCS/L, SA-17, Floor 10
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The American Academy of Adoption Attorneys submits the following comments in response to Proposed Rule 22 CFR part 9: Intercountry Adoptions: Regulatory Change to Accreditation and Approval Regulations to Clarify Authorization to Act in Countries of Origin, to Provide For Country-Specific Authorization, and to Expand Preparation of Prospective Adoptive Parents for Success in Intercountry Adoption (September 8, 2016.)

Who we are

The American Academy of Adoption Attorneys ("Academy") is a not-for-profit organization of attorneys, judges and law professors throughout the United States and Canada, who have distinguished themselves in the field of adoption law and who are dedicated to the highest standards of practice. The Academy's mission is to support the rights of children to live in safe, permanent homes with loving families, to protect the interests of all parties to adoption, and to assist in the orderly and legal process of adoption. The Academy's work includes promoting the reform of adoption laws and disseminating information on ethical adoption practices. The Academy monitors developments and trends in state, national, and international adoption and assisted reproduction law, and advocates for legislative reform and ethical practices in this area of family formation law, and for protecting the rights of all parties, particularly the children.

Summary of concerns

The Academy believes the proposed rules greatly exceed the statutory authority granted to the U.S. Department of State ("Department") by Congress in the Immigration and Nationality Act, the Intercountry Adoption Act, and the Universal Accreditation Act. See 18 Fed. Reg. 174 (proposed Sept. 8, 2016)(to be codified at 40 C.F.R. pt. 96). Congress granted the Department limited rule-making authority to promulgate rules relevant to the re-assumption of tribal jurisdiction under 25 U.S.C. §1918, and other minor rules relevant to grant-making — not to enact a wholesale takeover. But even if the proposed rules were deemed to be within the jurisdiction of the Department to author, they are contrary to the best interests of orphan children, American adopting families, and the adoption service providers who serve them. These proposed rules will also foster increased litigation and constitutional challenges, as well as further reduce the number of orphan children being internationally adopted each year by American families.

The Academy's comments fall into two sections: the first, concerning the limits of the Department's jurisdiction to enact the proposed rules generally; and the second, concerning the merits of proposed subparts.

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The Department of State lacks statutory authority to promulgate the proposed rules.
The stated purpose of the *Intercountry Adoption Act* of 2000 ("IAA") was:

> (1) to provide for implementation by the United States of the [Hague] Convention ("Convention"); (2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions subject to the Convention, and to ensure that such adoptions are in the children's best interests; and (3) **to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad**. . .

42 U.S.C. §14901(b).

In order to implement the express purpose of the IAA, the IAA provided the Department with the limited authority to "prescribe such regulations as may be necessary to carry out central authority functions on behalf of the United States." 42 U.S.C. §14911(c). Towards that end, Congress issued a mandate to the Secretary of State to establish, by regulation, standards and procedures to be used by accrediting entities in accrediting agencies and approving persons to provide adoption services in the United States in cases subject to the Convention. 42 U.S.C. §14923(a)(1). The law requires the Department to specify the standards and procedures to be used, and does not give the Department unfettered discretion to do so. 42 U.S.C. §14923(a)(2). Indeed, the IAA requires that the Secretary of State consult with outside experts, provide the opportunity for notice and comment (consistent with 5 U.S.C. §553), and to consider the views of individuals and entities with interest and expertise in international adoptions and family social services. *Id.* The proposed regulations have been created in a vacuum without meaningful input from or consultation with those experts in the area of international adoptions, as required by Congress.

The *Universal Accreditation Act* of 2014 ("UAA") expanded Sections II and IV to apply to all intercountry adoptions, regardless of whether the sending or receiving country was a Hague partner. Importantly, the UAA did not expand the authority or powers of the Secretary of State to promulgate regulations beyond the authority granted in the IAA.

When the regulations were first drafted, proposed and implemented, they underwent a rigorous, lengthy and collaborative process spearheaded by Acton Burnell, now called CACI AB, Inc., a company that specializes in system integration and network assurance. Under contract with the Department, Acton Burnell worked to get the input from all sectors of the adoption community to assist in writing regulations that would be widely accepted. A history of the project from 2001 to 2003 is available at http://web.archive.org/web/20050404093301/www.hagueregs.org/History.htm (last visited Feb. 18, 2008)"

Without waiving objection to the proposed rule as being in excess of the Department's authority, the Academy provides comments to specific subparts as discussed below.

Proposed Rule 96.2 Definitions

Country specific authorization (CSA) means authorization by a U.S. accrediting entity of an accredited agency or approved person in the United States to act as a primary provider under § 96.14(a) in connection with an intercountry adoption involving a specific foreign country identified by the Secretary, according to subpart N of this part. While CSA requires compliance with all requirements imposed by a foreign country in relation to intercountry adoption, CSA does not constitute authorization from a foreign government to engage in activities related to intercountry adoption, where such authorization is required. CSA ceases automatically and immediately upon the corresponding foreign country's withdrawal or cancellation of its authorization of the agency or person.

18 Fed. Reg. 174 (proposed Sept. 8, 2016)(to be codified at 40 C.F.R. pt. 96)

Academy Comment: Congress plainly intended to create a system by which adoption service providers would be accredited and supervised in accordance with the standards set forth in the Hague Convention. However, CSA provides a heightened additional level of accreditation that goes far beyond that which was expressly provided for by Congress in enacting both the IAA and the UAA. The Academy believes that this proposed rule exceeds the statutory authority of the Department and further believes that this proposed rule will have a chilling effect on international adoptions, making adoptions more expensive and more time consuming while serving fewer children in need.

> **Proposed Rule § 96.6 Performance criteria for designation as an accrediting entity**.
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> An entity that seeks to be designated as an accrediting entity must demonstrate to the Secretary:
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> (c) That it can monitor the performance of agencies it has accredited and persons it has approved (including their use of any supervised providers ***and verification of adoption services provided by foreign providers***) to ensure their continued compliance with the Convention, the IAA, the UAA, and the regulations implementing the IAA or UAA; ***it can also monitor the performance of those accredited agencies and approved persons to which it has granted country specific authorization***;

Id. (emphasis added).

Academy Comment: The Academy is unsure what is being required of the accrediting entity with regard to "verification of adoption services provided by foreign providers." At a minimum, the verification requirement should be clearly defined. As it stands, the Academy is concerned that there is no reasonable way for an accrediting entity to verify adoption services by foreign providers. The accreditation process today requires that verification of adoption services occurs through lengthy and costly site visits to adoption service providers, the cost of which is borne by the respective adoption service providers. Will the accrediting entity travel abroad to verify adoption services by foreign providers? Will the accrediting entity need to hire staff conversant in the laws and language of foreign countries where foreign providers operate? The Academy also objects to the CSA designation in all respects, and would therefore strike the proposed rule change which requires the accrediting entity to "monitor the performance of those accredited agencies and approved persons to which it has granted country specific authorization."

Proposed Rule § 96.15 Examples.

The following examples illustrate the rules of §§ 96.12 - 96.14:

Example 2.

Foreign supervised providers. Agency X, a U.S. agency, works in a foreign country with orphanage Y, facilitator A, orphanage director B, and driver/translator C. Agency X must supervise Orphanage Y, a private, non-governmental organization in a foreign country, if Agency X has established a formal or informal relationship or arrangement whereby Orphanage Y **provides information or services** to help Agency X match a particular child with an adoptive family. In that case, Orphanage Y, which is not a public foreign authority or a competent authority, is providing at least one adoption service (identifying a child and arranging an adoption). Throughout the adoption process, Facilitator A and Orphanage Director B work together to prepare documentation on the child and move the adoption paperwork through various ministries and government offices. Because "providing" an adoption service includes "facilitating" the provision of an adoption service, **all the contributing services involved in placing a particular child with a particular family are considered the provision of an adoption service**, and therefore must be supervised if not performed by the primary provider or public foreign authority. When Agency X uses foreign providers to provide adoption services, it must treat them as supervised providers in accordance with § 96.46(a) and (b), unless it is using the foreign providers in accordance with § 96.14(c)(3). By contrast, when the prospective adoptive parents arrive in the foreign country to adopt the child, Driver/Translator C drives them to various adoption-related appointments and serves as a translator. He does not, however, assist with transmitting documents, paying fees, or any other action related to the provision of adoption services. Agency X does not need to treat Driver/Translator C as a foreign supervised provider, because he is not providing or facilitating the provision of adoption services.

Example 3.

Foreign supervised providers. Individual Y works in Foreign Country A **gathering** documentation on children eligible for adoption, including reports on the child prepared by orphanages and medical reports. Agency X, a U.S. agency, sends Individual Y information on prospective adoptive parents. Individual Y **takes documents** for a set of prospective adoptive parents, and for an eligible child, to the Ministry with the authority to match parents and children. The Ministry reviews the proposed match and issues documentation to assign the child to the prospective adoptive parent. Agency X must

> treat Individual Y as a foreign supervised provider in accordance with § 96.46(a) and (b) because Individual Y is providing adoption services.

Id.

Academy Comment: Examples 2 and 3 are illustrative of how the Department defines providing and/or facilitating an adoption service, and notably include menial, unskilled and clerical actions, such as "providing information," "gathering documentation" and "tak[ing] documents… to the Ministry." Further, in addition, the Department has expanded the definition to mean that "**all the contributing services involved in placing a particular child with a particular family are considered the provision of an adoption service."**

The Academy is concerned that these Examples represent an unauthorized expansion of the statutorily defined term "adoption service." Pursuant to 14 U.S.C. §14902(3), an adoption service is expressly defined as:

> (A) identifying a child for adoption and arranging an adoption; (B) securing necessary consent to termination of parental rights and to adoption; (C) performing a background study on a child or a home study on a prospective adoptive parent, and reporting on such a study; (D) making determinations of the best interests of a child and the appropriateness of adoptive placement for the child; (E) post-placement monitoring of a case until final adoption; and (F) where made necessary by disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement. The term ''providing'', with respect to an adoption service, includes facilitating the provision of the service.

The Academy believes these Examples make clear that the Department, through the proposed rules, intends to define an adoption service in a manner that exceeds the scope of plain language of the statute defining adoption services or any reasonable interpretation of the statute. Had Congress intended to define adoption service to include **all the contributing services** involved in placing a particular child with a particular family, it surely could have done so in enacting the UAA or IAA. If the definition is expanded by the proposed rule, the requirements of §14 USC 14902 (3) will be rendered superfluous. See *Asiana Airlines v. FAA*, 134 F.3d 393, 398 (D.C.Cir.1998) (holding "A cardinal principle of statutory interpretation requires us to construe a statute 'so that no provision is rendered inoperative or superfluous, void or insignificant.") (quoting C.*F. Commc'ns Corp. v. FCC*, 128 F.3d 735, 739 (D.C.Cir.1997)). Indeed, a well-established canon of statutory interpretation resolves this issue: "[I]t is a commonplace of statutory construction that the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384(1992).

Moreover, this exact provision was considered during the lengthy consideration of the initial regulations in 2001 to 2003, and was ultimately rejected. The Academy notes that "each draft of the DOS regulations—from the unofficial proposed regulations written by Acton Burnell in 2001 to the official proposed regulations in 2003—required accredited U.S. providers to take legal responsibility for the actions of their overseas agents. However, the final draft rejected this notion, presumably because it is

untenable." Trish Maskew, *The Failure of Promise: The U.S. Regulations on Intercountry Adoption Under the Hague Convention*, 60 Admin. L. Review. 487(2008).

The process that led to this liability for foreign providers being discarded previously was far more rigorous and comprehensive than the 60-day comment period made available now, and if contrary to Congressional intent, as argued by some, why then has Congress done nothing to correct this omission in the intervening years, despite subsequently passing the UAA and several other adoption-related measures? In the end, the final rules set forth accreditation standards and use the threat of losing that accreditation to control an adoption service provider's unethical or illegal activity, as opposed to creating uninsurable liability for adoption service providers. The Academy believes that the problem, if it exits, is in the oversight provided by the Department and accrediting entity. If agencies are bad actors, they can and should be shut down under the framework that exists today.

> **Proposed Rule § 96.15 Examples.**
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> The following examples illustrate the rules of §§ 96.12 through 96.14:
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> Example 9.
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> Legal services exemption. Attorney X (not employed with an accredited agency or approved person) provides advice and counsel to Prospective Adoptive Parent(s) Y on filling out DHS paperwork required for an intercountry adoption. Among other papers, Attorney X prepares an affidavit of consent to termination of parental rights and to adoption of Child W to be signed by the birth mother in the United States. Attorney X must be approved or supervised because securing consent to termination of parental rights is an adoption service. In contrast, Attorney Z (not employed with an accredited agency or approved person) assists Adoptive Parent(s) T to complete an adoption in the State in which they reside, after they have been granted an adoption in Child V's foreign country of origin. Attorney Z is exempt from approval or supervision because she is providing legal services, but no adoption services.

18 Fed. Reg. 174 (proposed Sept. 8, 2016)(to be codified at 40 C.F.R. pt. 96)**Academy Comment:** Example 9 conflates the provision of legal services with the provision of adoption services, and therefore subjects attorneys to the requirements of the IAA and UAA improperly. The Academy believes that this this proposed rule could greatly limit an adoptive parent's access to independent and expert advocacy as they navigate their adoption process.

The UAA and IAA expressly exclude 'legal services' from accreditation or supervision requirements, though the term is not defined. However, the INA does define legal services to include the concepts of "preparation" and "practice." 8 C.F.R. pt.1001.1(i) and (k). "Preparation" is defined as the research of facts and laws, and any advice, relating to the completion of immigration forms. 8 C.F.R. pt. 1001.1(k). "Practice" includes preparing any brief or other document, paper, application, or petition. 8 C.F.R. pt.

1001.1(i). Further, and perhaps most importantly, the INA limits practice and preparation to attorneys, and would preclude any non-attorney from providing such services. Indeed, the provision of legal services by a non-attorney would constitute the unauthorized practice of law, and potentially subject the individual to criminal and/or civil penalties.

In Example 9, a private attorney retained by a prospective adoptive parent drafts a document for execution by the birth mother in furtherance of the intercountry adoption but does not assist in its presentation or explanation to the birth mother, or its execution by the birth mother. Nonetheless, the Department finds this to be the adoption service of "securing consent to termination of parental rights." The Academy objects to such a finding, and instead argues that the drafting of legal documents is a purely legal function exempt from the requirements of supervision or accreditation found in the UAA and IAA.

Proposed Rule § 96.40 Fee policies and procedures.

(f) If the agency or person provides support to orphanages or child-welfare centers in a foreign country for the care of children including, but not limited to, costs for food, clothing, shelter and medical care, or foster care services:

(1) The amounts paid should not be unreasonably high in relation to the services actually rendered, taking into account what such services actually cost in the country in which the services are provided; and

(2) The agency or person may not require prospective adoptive parents to pay fees or make contributions that are connected to the care of a particular child or are based on the length of time an adoption takes to complete, nor may they arrange, facilitate, or encourage such payments between prospective adoptive parents or any individual, entity or orphanage.

18 Fed. Reg. 174 (proposed Sept. 8, 2016)(to be codified at 40 C.F.R. pt. 96)

Academy Comment: In this proposed rule, the Department seeks to prohibit prospective adoptive parents from providing for a child's care prior to the completion of the adoption process, citing these care payments as a disincentive for expeditious processing of an adoption and creating a risk that families could be paying for long-term care of child who is not in fact eligible for international adoption. There is absolutely no evidence that this is an actual problem that needs to be solved, and instead this proposed rule has the very real potential to subject children who are being internationally adopted to subpar living conditions. Further, it may eliminate the child's access to the best possible care during the adoption process, which could make a lengthy adoption process less traumatic and the transition to family more successful. This proposed rule runs counter to serving the best interests of children, and should be rejected.

Proposed Rule § 96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.

(a)(1) The agency or person verifies that prospective adoptive parent(s) have satisfactorily completed the training required by their State of actual or proposed residence in the United States to adopt a child through the State's child welfare system, or an equivalent where a State program is unavailable for prospective adoptive parent(s) who wish to complete an intercountry adoption. The agency or person shall not refer a child or charge for or contractually obligate the prospective adoptive parent(s) to pay for the following adoption services until the training required under this paragraph has been completed:

(i) Identifying a child for adoption and arranging an adoption;

(ii) Monitoring of a case after a child has been placed with prospective adoptive parent(s) until final adoption; and

(iii) Where made necessary by disruption before final adoption, assuming custody and providing (including facilitating provision of) child care or any other social service pending an alternative placement.

(2) This section does not preclude an agency or person from providing adoption services in cases in which that agency or person was not involved prior to the identification of a particular child or in cases where documented, compelling, urgent, and extraordinary circumstances involving the child's best interests require an expedited referral. Upon referral in such cases, the primary provider will be required to ensure the necessary training has been completed in a reasonable time.

(b) The agency or person also provides the prospective adoptive parent(s) with at least seven additional hours (independent of the home study) of preparation and training, as described in this paragraph, designed to promote a successful intercountry adoption. The agency or person provides such training before the prospective adoptive parent(s) travel to adopt the child or the child is placed with the prospective adoptive parent(s) for adoption. The preparation and training provided by the agency or person includes a combination of interactive discussion, counseling, and development of solution-oriented strategies to address the following topics:

(1) The intercountry adoption process, the general characteristics and needs of children awaiting adoption, and the in-country conditions that affect children in the foreign country from which the prospective adoptive parent(s) plan to adopt;

(2) The effects and long-term impact on children of the behavioral, medical, and emotional difficulties that may be prevalent in children who have faced the following:

(i) Malnutrition, relevant environmental toxins, maternal substance abuse, any other known genetic, health, emotional, and developmental risk factors associated with children from the expected country of origin;

(ii) Leaving familiar ties and surroundings and the grief, loss, and identity issues that children may experience in intercountry adoption;

(iii) Institutionalization, including the effect on children of the length of time spent in an institution and of the type of care provided in the expected country of origin;

(iv) Attachment disorders and other emotional problems that institutionalized or traumatized children and children with a history of multiple caregivers may experience, before and after their adoption;

(3) The general characteristics of successful intercountry adoptive placements, including information on the financial resources, time, and insurance coverage necessary for handling the child's and family's adjustment and medical, therapeutic, and educational needs, including language acquisition;

(4) The family's experience with adoption and discussion of any previous intercountry or domestic adoptions, anticipated future plans for bringing additional children into the family, the prospective adoptive parent(s) past and present parenting experience, the number and ages of other children, prior home study approvals and denials, past compliance with post-placement reporting required by the country of origin, and any medical, educational, or therapeutic needs of the current members of the family;

(5) Post-placement and post-adoption services that may assist the family to respond effectively to adjustment, behavioral, and other difficulties that may arise after the child is placed with the adoptive parent(s);

(6) General information about disruption of placement and dissolution of adoption and discussion of issues that may lead to disruption or dissolution, including how parent(s) may locate appropriate resources and specific points of contact for support;

(7) Any disrupted placements or dissolved adoptions in which the prospective adoptive parent(s) were involved, reasons for the past disruption or dissolution, and information about the welfare and whereabouts of any previously adopted children;

(8) The laws and adoption processes of the expected country or countries of origin, including foreseeable delays and impediments to finalization of an adoption; U.S. immigration processes and procedures relevant to the expected country (or countries)

of origin; and the prospective adoptive parent(s)' rights and responsibilities in the event they determine not to proceed after arriving in the child's country of origin;

(9) The long-term implications for a family that has become multicultural through intercountry adoption;

(10) For prospective adoptive parent(s) seeking approval to adopt two or more unrelated children, the differing needs of such children based on their respective ages, backgrounds, length of time outside of family care, and the time management requirements and other challenges that may be presented in such an adoption plan; and

(11) Any reporting requirements associated with intercountry adoptions, including any post-placement or post-adoption reports required by the expected country of origin.

(c)(1) In order to prepare prospective adoptive parent(s) as fully as possible for the adoption of a particular child, the agency or person provides:

(i) At least three additional hours of training that:

(A) Take place after identification of a particular child and prior to acceptance of the referral by the prospective adoptive parent(s); and

(B) Include counseling on:

(1) The child's history and cultural, racial, religious, ethnic, and linguistic background;

(2) The known health risks in the specific region or country where the child resides; and

(3) Any other medical, social, background, birth history, educational data, developmental history, or any other data known about the particular child; and

(ii) A statement from the primary provider suitable for submission with the immigrant petition signed under penalty of perjury under United States law, indicating that all of the preparation and training provided for in § 96.48 has been completed.

(2) This section does not preclude an agency or person from providing adoption services in cases in which that agency or person was not involved prior to the identification of a particular child. If the child was referred prior to the involvement of an agency or person, the agency or person must complete this training requirement within a reasonable time after the agency or person is engaged to provide adoption services or must verify that it has already been completed. The agency or person may not continue to provide adoption services if a reasonable time has elapsed without completing the training.

(d) The agency or person provides such training through a combination of appropriate methods, including:

(1) Collaboration among agencies or persons to share resources to meet the training needs of prospective adoptive parents;

(2) Group seminars offered by the agency or person or other agencies or training entities;

(3) Individual counseling sessions; and

(4) Video, computer-assisted, or distance learning methods using standardized curricula; not to exceed 25 percent of the total training time for prospective adoptive parent(s) residing in the United States.

(e) The agency or person provides additional in-person, individualized counseling and preparation, as needed, to meet the needs of the prospective adoptive parent(s) in light of the particular child to be adopted and his or her special needs, and any other training or counseling needed in light of the child background study or the home study.

(f) The agency or person provides the prospective adoptive parent(s) with additional training or counseling, if requested by the prospective adoptive parent(s), and information about print, internet, and other resources available for continuing to acquire information about common behavioral, medical, and other issues; connecting with parent support groups, adoption clinics and experts; crisis intervention and respite care; and seeking appropriate help when needed, including points of contact for assistance to disrupt a placement for adoption or dissolve an adoption in a manner that ensures the best interests of the child.

(g) The agency or person shall not exempt prospective adoptive parent(s) from all or part of the verification requirements in paragraph (a)(1) of this section, from the training requirements in paragraph (c)(1)(i) of this section, or from the certification requirements in paragraph (c)(1)(ii) of this section, but may exempt prospective adoptive parents from completing all or part of the training requirements referenced in paragraphs (a) and (b) of this section when:

(1) The agency or person confirms that no more than 24 months have elapsed since the prospective adoptive parent(s) satisfactorily completed identical training; and

(2) The agency or person determines that such previous training was adequate.

(h) The agency or person records the dates, nature, and extent of the training and preparation provided to the prospective adoptive parent(s) including, but not limited to, all of the training required in paragraphs (a) through (c) and (e) and (f) of this section in the adoption record.

Id.

Academy Comment: The Academy believes that training for prospective adoptive parents is critical to ensure successful outcomes in international placements. The Academy supports increasing the number of hours of training required by prospective adoptive families, and agrees with the enumerated list of topics to be covered. However, the Department has proposed that prospective adoptive parents will receive the best training if they submit to their home-state foster-parent training. The Academy views this as problematic for a variety of reasons: 1) the subject matter of the training is not tailored to the needs of an internationally adopted child, a demographic trending toward older and special needs children in recent history; 2) the availability of the trainings is entirely unknown, and dependent upon the specific jurisdictions to determine when and where trainings will be held as opposed to being catered to the needs and timeline of a waiting child or prospective adoptive parent; 3) even where training may be available, there is great uncertainty as to whether a prospective adoptive parent intending to adopt internationally would be permitted to participate in the foster-parent training given that the purpose of the state training is to recruit and educate foster parents; and 4) there is no articulated problem solved by this new requirement. The Department has proposed this new rule without consulting with any States to confirm that families seeking to adopt internationally could avail themselves of this training.

Further, according to the Child Welfare Information Gateway, only 44 States and the District of Columbia require that prospective foster parents complete a course of orientation and training prior to foster parent licensure. Only half of the States require the completion of a specific number of hours of training prior to foster parent licensure. The topics addressed in the training typically include matters of no consequence to international adoptions such as foster licensure requirements, state agency policies and procedures, and the roles and responsibilities of foster parents. See https://www.childwelfare.gov/pubPDFs/homestudyreqs.pdf. The Academy is concerned that this requirement will make the adoption process longer and more costly, without improving the success for the small fraction of cases that are disrupted or dissolved.

Proposed Rule Subpart N

§ 96.95—Scope

This subpart applies when the Secretary, in his or her discretion, and in consultation with the Secretary of Homeland Security, determines that it is necessary to designate one or more countries for which an accredited agency or approved person must have country-specific authorization (CSA) in addition to accreditation or approval to act as primary provider under § 96.14(a) in connection with an intercountry adoption in those specified countries. Accreditation or approval is required for all agencies or persons who offer, provide, or facilitate the provision of any adoption service in the United States in connection with an intercountry adoption case, unless such agencies or persons are acting as supervised providers or exempted providers in that case. CSA is required for accredited agencies or approved persons to offer, provide, facilitate, verify, or supervise

the provision of adoption services, except as a supervised provider or an exempted provider, in intercountry adoption cases with respect to a particular country designated for CSA.

§ 96.96 —Country specific authorization determined by the Secretary.

(a) The Secretary may, in his or her discretion, in consultation with the Secretary of Homeland Security, determine that CSA is required for accredited agencies or approved persons to act as a primary provider in intercountry adoption cases with a particular foreign country. The Secretary will publish in the Federal Register a list of countries for which CSA is required. Changes to that list will also be announced via a Federal Register notice.

(b) An accredited agency or approved person that has received CSA from an accrediting entity and meets the requirements of § 96.97, may act as a primary provider in intercountry adoption cases with respect to the specific foreign country.

(c) In each intercountry adoption case with a country designated by the Secretary as requiring CSA, an accredited agency or approved person with the applicable CSA must act as the primary provider.

(d) CSA does not constitute authorization from a foreign government to engage in activities related to intercountry adoption. However, CSA ceases automatically and immediately upon the corresponding foreign country's withdrawal or cancellation of its authorization of the agency or person.

(e) To receive CSA, accrediting entities may also require an accredited agency or approved person to demonstrate that it is in substantial compliance with one or more selected accreditation and approval standards in subpart F of this part, as determined using a method approved by the Secretary, in consultation with the Secretary of Homeland Security, that may include:

(1) Increasing the weight of selected standards from subpart F; and

(2) Requiring the provision of additional or specified evidence to support compliance with selected standards from subpart F.

§ 96.97 —Application for CSA, length of CSA, reapplication.

(a) Application procedures. The accrediting entity will establish application procedures for CSA. The procedures must be consistent with this section and be approved by the Secretary. Application for CSA is subject to any relevant provisions of an accrediting entity's fee schedule. CSA is governed by the relevant terms of the accrediting entity's

rating method in § 96.27(d) and any applicable addenda thereto that contain country specific compliance criteria, published by the accrediting entity and approved by the Secretary.

(b) Timing of application for CSA. The application procedures for CSA may provide that application occurs, to the extent possible, concurrently with the initial application for accreditation or approval in accordance with subpart D or at renewal pursuant to the process outlined in subpart H. These procedures must also establish the process for an accredited agency or approved person to apply for CSA for a foreign country after its initial application for accreditation or approval or its renewal application.

(c) The accrediting entity must routinely inform applicants in writing of its decisions on their CSA applications—whether an application has been granted or denied—when those decisions are finalized. The accrediting entity must routinely provide this information to the Secretary in writing.

(d) The accrediting entity may, in its discretion, communicate with agencies and persons that have applied for CSA about the status of their pending applications to afford them an opportunity to correct deficiencies that may hinder or prevent approval of CSA.

(e) Length of CSA. The initial period of CSA will extend from the date CSA is granted until the end of the agency's or person's current period of accreditation or approval, except that a grant of CSA will not be for less than three years and will not exceed five years. In cases where an agency's accreditation or a person's approval will end before the minimum three years for CSA has passed, CSA will be suspended until the accreditation or approval has been renewed. Notwithstanding the CSA period granted, the CSA period ends upon the suspension or cancellation of the agency's accreditation or person's approval or the agency's or person's debarment by the Secretary.

(f) Review of decisions to deny CSA. (1) There is no administrative or judicial review of an accrediting entity's decision to deny an application for CSA. As provided in § 96.107, the decision to deny includes:

(i) A denial of the agency's or person's initial application for CSA;

(ii) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(iii) A denial of an application made after cancellation or debarment by the Secretary.

(2) The agency or person may petition the accrediting entity for reconsideration of a denial. The accrediting entity must establish internal review procedures that provide an opportunity for an agency or person to petition for reconsideration of the denial.

§ 96.98 —Renewal of CSA; transfer of cases when renewal not sought.

(a) The accrediting entity must advise accredited agencies and approved persons that it monitors the date by which they should seek renewal of CSA so that the renewal process can reasonably be completed prior to the expiration of the agency's or person's current accreditation or approval. Consistent with § 96.63, if the accredited agency or approved person does not wish to renew CSA, it must immediately notify the accrediting entity and take all necessary steps to complete its intercountry adoption cases and to transfer its pending intercountry adoption cases and adoption records to other accredited agencies or approved persons with the applicable CSA, or a State archive, as appropriate, under the oversight of the accrediting entity, before its CSA expires.

(b) The accredited agency or approved person may seek renewal of CSA from a different accrediting entity than the one that handled its prior application. If it changes accrediting entities, the accredited agency or approved person must so notify the accrediting entity that handled its prior application by the date on which the agency or person must (pursuant to paragraph (a) of this section) seek renewal of its status. The accredited agency or approved person must follow the new accrediting entity's instructions when submitting a request for renewal and preparing documents and other information for the new accrediting entity to review in connection with the renewal request.

(c) The accrediting entity must process the request for CSA renewal in a timely fashion. Before deciding whether to renew CSA, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or prevent its renewal and defer a decision to allow the agency or person to correct the deficiencies. The accrediting entity must notify the accredited agency, approved person, and the Secretary in writing when it renews or refuses to renew an agency's or person's CSA.

(d) Sections 96.24, 96.25, and 96.26, which relate to evaluation procedures and to requests for and use of information, and § 96.27, which relates to the procedures and substantive criteria for evaluating applicants for accreditation or approval or CSA will govern determinations about whether to renew accreditation or approval or make a CSA determination.

§ 96.99 —Oversight of CSA by the accrediting entity.

(a) The accrediting entity must monitor agencies to whom it has granted CSA at least annually to ensure that they are in substantial compliance with the compliance criteria

for the standards in subpart F of this part, as determined using a method approved by the Secretary in accordance with § 96.27(d). The accrediting entity must review complaints about accredited agencies and approved persons, as provided in subpart J of this part.

(b) An accrediting entity may, on its own initiative, conduct site visits to inspect an agency's or person's premises or programs, with or without advance notice, for purposes of random verification of its continued compliance with respect to CSA or to investigate a complaint relating to compliance with CSA. The accrediting entity may consider any information about the agency or person that becomes available to it about the compliance of the agency or person. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

(c) The accrediting entity must require accredited agencies or approved persons to attest annually that they have remained in substantial compliance with applicable CSA criteria and to provide supporting documentation to indicate such ongoing compliance with the applicable standards in subpart F of this part.

§ 96.100 —Oversight of CSA through filing of complaints against accredited agencies and approved persons.

Oversight of CSA through filing of complaints against accredited agencies and approved persons.

(a) Complaints relating to CSA will be subject to review by the accrediting entity pursuant to § 96.101, when submitted as provided in this section and § 96.70.

(b) Complaints related to compliance with CSA against accredited agencies and approved persons that raise an issue of compliance with one or more of the accreditation and approval standards in subpart F of this part may be submitted in accordance with § 96.69.

(c) An individual who is not party to a specific intercountry adoption case but who has information about an accredited agency or approved person may provide that information by filing it in the form of a complaint with the Complaint Registry in accordance with § 96.70.

(d) A Federal, State, or local government official or a foreign Central Authority may file a complaint with the Complaint Registry in accordance with § 96.70, or may raise the matter in writing directly with the accrediting entity, who will record the complaint in the Complaint Registry, or with the Secretary, who will record the complaint in the Complaint Registry, if appropriate, and refer it to the accrediting entity for review pursuant to § 96.71 or take such other action as the Secretary deems appropriate.

§ 96.101 —Review by the accrediting entity of complaints relating to compliance with CSA against accredited agencies and approved persons.

(a) The accrediting entity must establish written procedures, including deadlines, for recording, reviewing, and acting upon complaints relating to compliance with CSA that it receives pursuant to §§ 96.69 and 96.70(b)(1). The procedures must be consistent with this section and be approved by the Secretary. The accrediting entity must make written information about its complaint procedures available upon request.

(b) If the accrediting entity determines that a complaint relating to CSA raises an issue of compliance with one or more of the accreditation and approval standards in subpart F of this part:

(1) The accrediting entity must verify whether the complainant has already attempted to resolve the complaint as described in § 96.69(b) and, if not, may refer the complaint to the agency or person, or to the primary provider, for attempted resolution through its internal complaint procedures;

(2) The accrediting entity may conduct whatever investigative activity (including site visits) it considers necessary to determine whether any relevant accredited agency or approved person holding CSA may maintain CSA as provided in § 96.27. The provisions of §§ 96.25 and 96.26 govern requests for and use of information. The accrediting entity must give priority to complaints submitted pursuant to § 96.69(d); and

(3) If the accrediting entity determines that the agency or person may not maintain CSA, it must take adverse action pursuant to section § 96.103.

(c) When the accrediting entity has completed its complaint review process, it must provide written notification of the outcome of its investigation, and any actions taken, to the complainant, or to any other entity that referred the information.

(d) The accrediting entity will enter information about the outcomes of its investigations and its actions on complaints into the Complaint Registry as provided in its agreement with the Secretary.

(e) The accrediting entity may not take any action to discourage an individual from, or retaliate against an individual for, making a complaint, expressing a grievance, questioning the conduct of, or expressing an opinion about the performance related to compliance with CSA of an accredited agency, an approved person, or the accrediting entity.

§ 96.102 —Referral of complaints relating to CSA to the Secretary and other authorities.

(a) An accrediting entity must report promptly to the Secretary any substantiated complaint related to compliance with CSA that:

(1) Reveals that an accredited agency or approved person has engaged in a pattern of serious, willful, grossly negligent, or repeated failures to comply with the increased evidentiary requirements and weight of standards in subpart F of this part; or

(2) Indicates that continued CSA would not be in the best interests of the children and families concerned.

(b) An accrediting entity must, after consultation with the Secretary, refer, as appropriate, to a State licensing authority, the Attorney General, or other law enforcement authorities any substantiated complaints related to compliance with CSA that involve conduct that is:

(1) Subject to the civil or criminal penalties imposed by section 404 of the IAA (42 U.S.C. §14944);

(2) In violation of the INA (8 U.S.C. §1101 et seq.); or

(3) Otherwise in violation of Federal, State, or local law.

(c) When an accrediting entity makes a report pursuant to paragraph (a) or (b) of this section, it must indicate whether it is recommending that the Secretary take action to debar the agency or person, either temporarily or permanently.

§ 96.103 —Adverse action against accredited agencies or approved persons not in substantial compliance with CSA.

Adverse action against accredited agencies or approved persons not in substantial compliance with CSA.

(a) The accrediting entity must take adverse action when it determines that an accredited agency or approved person with CSA may not maintain CSA as provided in § 96.27(d). The accrediting entity is authorized to take any of the following actions against an accredited agency or approved person whose compliance the entity oversees. Each of these actions by an accrediting entity is considered a CSA-related adverse action for purposes of the regulations in this part:

(1) Suspending CSA;

(2) Canceling CSA;

(3) Refusing to renew CSA;

(4) Requiring an accredited agency or approved person to take a specific corrective action with respect to CSA to bring itself into compliance; and

(5) Imposing other sanctions including, but not limited to, requiring an accredited agency or approved person to cease providing adoption services in a particular case or in a specific foreign country.

(b) A CSA-related adverse action taken under this section relates only to an agency's or person's CSA. Such adverse action may be relevant to, but is not controlling of, adverse action related to accreditation and approval under § 96.75.

§ 96.104 —Procedures governing CSA-related adverse action by the accrediting entity.

(a) The accrediting entity must decide which CSA-related adverse action to take based on the seriousness and type of violation and on the extent to which the accredited agency or approved person has corrected or failed to correct deficiencies of which it has been previously informed. The accrediting entity must notify an accredited agency or approved person in writing of its decision to take a CSA-related adverse action against the agency or person. The accrediting entity's written notice must identify the deficiencies prompting imposition of the CSA-related adverse action.

(b) Before taking a CSA-related adverse action, the accrediting entity may, in its discretion, advise an accredited agency or approved person in writing of any deficiencies in its performance that may warrant a CSA-related adverse action and provide it with an opportunity to demonstrate that a CSA-related adverse action would be unwarranted before the CSA-related adverse action is imposed. If the accrediting entity takes the CSA-related adverse action without such prior notice, it must provide a similar opportunity to demonstrate that the CSA-related adverse action was unwarranted after the CSA-related adverse action is imposed, and may withdraw the CSA-related adverse action based on the information provided.

(c) The provisions in §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.105 —Responsibilities of the accredited agency, approved person, and accrediting entity following CSA-related adverse action by the accrediting entity.

(a) If the accrediting entity takes a CSA-related adverse action against an agency or person, the action will take effect immediately unless the accrediting entity agrees to a later effective date.

(b) If the accrediting entity suspends or cancels the agency's or person's CSA, the agency or person must immediately, or by any later effective date set by the accrediting entity, cease to provide adoption services in all intercountry adoption cases relating to the corresponding foreign country. All procedures in § 96.77(b) governing the transfer of cases apply, except that the accredited agencies or approved persons that assume responsibility for transferred cases must have the applicable CSA.

(c) If the accrediting entity refuses to renew the CSA of an agency or person, the agency or person must cease to provide adoption services in all foreign countries corresponding to that CSA by the expiration of the earlier of either the agency's or person's CSA or the agency's or person's accreditation or approval. It must take all necessary steps to complete its intercountry adoption cases in those foreign countries before its CSA expires. All procedures in § 96.77(c) governing the transfer of cases apply, except that, to the extent possible, the accredited agencies or approved persons that assume responsibility for transferred cases must have the applicable CSA.

(d) The accrediting entity must notify the Secretary, in accordance with procedures established in its agreement with the Secretary, when it takes an adverse action that changes the CSA status of an agency or person. The accrediting entity must also notify the relevant State licensing authority as provided in the agreement.

§ 96.106 —Accrediting entity procedures to terminate CSA-related adverse action.

(a) The accrediting entity must maintain internal petition procedures, approved by the Secretary, to give accredited agencies and approved persons an opportunity to terminate CSA-related adverse actions on the grounds that the deficiencies necessitating the adverse action have been corrected. The accrediting entity must inform the agency or person of these procedures when it informs them of the CSA-related adverse action pursuant to § 96.104(a). An accrediting entity is not required to maintain procedures to terminate CSA-related adverse actions on any other grounds, or to maintain procedures to review its CSA-related adverse actions, and must obtain the consent of the Secretary if it wishes to make such procedures available.

(b) An accrediting entity may terminate a CSA-related adverse action it has taken only if the agency or person demonstrates to the satisfaction of the accrediting entity that the deficiencies that led to the CSA-related adverse action have been corrected. The accrediting entity must notify an agency or person in writing of its decision on the petition to terminate the CSA-related adverse action.

(c) If the accrediting entity described in paragraph (b) of this section is no longer providing accreditation or approval services, the agency or person may petition any accrediting entity with jurisdiction over its application.

(d) If the accrediting entity cancels or refuses to renew CSA, and does not terminate the CSA-related adverse action pursuant to paragraph (b) of this section, the agency or person may reapply for CSA. Before doing so, the agency or person must request and obtain permission to make a new application from the accrediting entity that cancelled or refused to renew its CSA or, if such entity is no longer designated as an accrediting entity, from any alternate accrediting entity designated by the Secretary to give such permission. The accrediting entity may grant such permission only if the agency or person demonstrates to the satisfaction of the accrediting entity that the specific deficiencies that led to the CSA cancellation or refusal to renew CSA have been corrected.

(e) If the accrediting entity grants the agency or person permission to reapply, the agency or person may file an application with that accrediting entity in accordance with subpart D of this part.

(f) Nothing in this section shall be construed to prevent an accrediting entity from withdrawing a CSA-related adverse action if it concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the accrediting entity will take appropriate steps to notify the Secretary and the Secretary will take appropriate steps to notify the relevant authorities or entities.

§ 96.107 —Administrative or judicial review of adverse action relating to CSA by the accrediting entity.

(a) Except to the extent provided by the procedures in § 96.106, a CSA-related adverse action by an accrediting entity shall not be subject to administrative review.

(b) Section 202(c)(3) of the IAA (42 U.S.C. §14922(c)(3)) provides for judicial review in Federal court of adverse actions by an accrediting entity, regardless of whether the entity is described in § 96.5(a) or (b). When any petition brought under section 202(c)(3) raises as an issue whether the deficiencies necessitating the CSA-related adverse action have been corrected, the procedures maintained by the accrediting entity pursuant to § 96.106 must first be exhausted. CSA-related adverse actions are only those actions listed in § 96.103. There is no judicial review of an accrediting entity's decision to deny CSA, including:

(1) A denial of an initial application;

(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(3) A denial of an application made after cancellation or debarment by the Secretary.

(c) In accordance with section 202(c)(3) of the IAA (42 U.S.C. §14922(c)(3)), an accredited agency or approved person that is the subject of a CSA-related adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action imposed by the accrediting entity. When an accredited agency or approved person petitions a United States district court to review the CSA-related adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.108 —Oversight and monitoring of CSA by the Secretary.

(a) The Secretary's response to CSA related actions by the accrediting entity. There is no administrative review by the Secretary of an accrediting entity's decision to deny CSA, or of any decision by an accrediting entity to take CSA-related adverse action.

(b) Suspension or cancellation of CSA by the Secretary. (1) The Secretary must suspend or cancel the CSA granted by an accrediting entity when the Secretary finds, in the Secretary's discretion, that the agency or person is substantially out of compliance with the relevant standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take action.

(2) The Secretary may suspend or cancel CSA granted by an accrediting entity if the Secretary finds that such action:

(i) Will protect the interests of children;

(ii) Will further U.S. foreign policy or national security interests; or

(iii) Will protect the ability of U.S. citizens to adopt children.

(3) If the Secretary suspends or cancels the CSA of an agency or person, the Secretary will take appropriate steps to notify the accrediting entity, the Permanent Bureau of the Hague Conference on Private International Law, and the applicable foreign country, as appropriate.

(c) Reinstatement of CSA after suspension or cancellation by the Secretary. (1) An agency or person may petition the Secretary for relief from the Secretary's suspension or cancellation of CSA on the grounds that the deficiencies necessitating the suspension

or cancellation have been corrected. If the Secretary is satisfied that the deficiencies that led to the suspension or cancellation have been corrected, the Secretary shall, in the case of a suspension, terminate the suspension or, in the case of a cancellation, notify the agency or person that it may reapply for CSA to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may reapply to any accrediting entity with jurisdiction over its application. If the Secretary terminates a suspension or permits an agency or person to reapply for CSA, the Secretary will so notify the appropriate accrediting entity as well as the applicable foreign country, as appropriate.

(2) Nothing in this section shall be construed to prevent the Secretary from withdrawing a cancellation or suspension if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity, the Permanent Bureau of the Hague Conference on Private International Law, and the applicable foreign country, as appropriate.

§ 96.109 —Effective dates; transition.

(a) When the Secretary designates a country for CSA, the Secretary, in consultation with the Secretary of Homeland Security, will establish and announce through a Federal Register notice an effective date by which CSA for that country is required.

(b) On and after the effective date described in paragraph (a) of this section, CSA is required in accordance with this subpart, except:

(1) In the case of a child immigrating to the United States, CSA is not required if the prospective adoptive parents of the child filed the applicable immigration related application or petition as prescribed by USCIS before the effective date described in paragraph (a) of this section, and the Secretary, in consultation with the Secretary of Homeland Security, determines that the circumstances underlying CSA do not compel requiring CSA for that case; or

(2) In the case of a child emigrating from the United States, CSA is not required if the prospective adoptive parents of the child initiated the adoption process in their country of residence with the filing of an appropriate application before the effective date described in paragraph (a) of this section and the Secretary determines that the circumstances underlying CSA do not compel requiring CSA for that case.

Id.

Academy Comment: The Department claims that CSA is "designed to enhance existing protections in the intercountry adoption process." However, the Department provides no indication or justification for this "designed enhancement." The only standard for designating a CSA that can be discerned in the proposed rules is that the Department deems "it necessary and beneficial." The Academy believes that the CSA scheme is designed to further limit and reduce adoptions, as well as limit and reduce the number of adoption service providers. The CSA scheme grants unfettered and unlimited discretion to the Department.

The Academy believes that the CSA scheme, as defined in Subpart N, runs counter to the authority granted to the Department in the INA, IAA, and UAA. First, the *Immigration and Nationality Act* ("INA"), Sections 1103 and 1104, (INA) grant Department limited rule-making authority:

> (a) Secretary of Homeland Security
>
> . . .
>
> (3) He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter.
>
> a) Powers and duties
>
> The Secretary of State … shall establish such regulations; prescribe such forms of reports, entries and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions. …

8 U.S.C. §§ 1103 – 1104.

Further, under 8 U.S.C. § 1154(b), the Department is further limited in that it is given a specific mandate to adjudicate every duly filed orphan petition. See 8 U.S.C. § 1154(b) ("After an investigation of the facts [by DOS and/or USCIS] in each case . . . the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien on behalf of whom the petition is made is an immediate relative specified in section 1151(b) of this title, . . . approve the petition and forward one copy thereof to the [DOS]. The Secretary of State shall then authorize the consular office concerned to grant the preference status."); see also 8 C.F.R. §204.3(k) ("An I-604 investigation must be completed in every orphan case.") The proposed rule would potentially serve to eliminate the opportunity for families to file orphan cases in CSA-designated countries.

Despite the expansive powers the Department seeks to give itself, the INA clearly contemplates that American families could seek to emigrate an adopted orphan from any non-Hague country by filing an I-600 Petition. The UAA and IAA did nothing to abridge that right, and instead simply required that families be assisted by accredited or supervised adoption service providers. Recognizing that vulnerable children could be orphaned in any number of tragic ways, Congress chose to make this path available to any child adopted by a United States citizen who is "under the age of sixteen at the time a petition is filed …, who is an orphan because of the death or disappearance of, abandonment or desertion by, or

separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age. . .” 8 U.S.C. §1101. Reading this provision in concert with 8 U.S.C. §§1103, 1104 and 1154 further establishes that Congress did not grant the Department the authority to limit a class of orphans from eligibility for immigration benefits due to their country of origin. Under 8 U.S.C. § 1101(b)(1)(F)(i), there is no statutory preference or hierarchy that permits the Department to grant preferential treatment to an orphan located in one country versus an orphan located in another country, as the Department attempts to do with this proposed CSA scheme.

Looking beyond the issues of overreach by the Department in proposing the CSA scheme, the Academy also takes issue with the absence of any meaningful, articulated standard by which countries will be selected for CSA-designation or by which adoption service providers will be selected to work in CSA-designated countries. This scheme is so poorly defined that the Department itself finds that “it is not possible to project” what the costs to individual adoption service providers would be because “the standards implicated are likely to vary with each iteration of CSA.”

Conclusions

The American Academy of Adoption Attorneys believes that the proposed rules run afoul of the laws enacted by Congress to govern international adoptions, and constitute a gross overreach by the Department of State. The proposed rules, if enacted, could greatly harm international adoptions and the vulnerable children served by them. The proposed rules lack clear, enunciated criteria for application, and instead allow the Department to decide in every case what is reasonable and necessary without any way for the accredited agencies and other professionals to know. The proposed rules should be withdrawn entirely, and any future proposed rules should be drafted in collaboration with subject matter experts and adoption stakeholders, reflect the intent of Congress, and serve the best interests of children.

Respectfully submitted,

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