FOCUS ON ADOPTION

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U.S. Department of State
CA/OCS/PRI
Adoptions Regulations Docket Room SA-29
2201 C Street N.W.
Washington DC 20520

To Whom It May Concern:

Attached are **Focus On Adoption**'s comments on the proposed Hague Treaty Regulations.

Focus On Adoption is a National intercountry adoption advocacy organization, composed of adoption service providers and adoptive parents, dedicated to the following principles and beliefs:

* all children deserve the opportunity to grow and develop within a loving and nurturing family
* when a child cannot remain with its birth family, intercountry adoption is a better solution than institutional care or foster care
* where parental relinquishment for adoption exists as a legal right, it should be inviolate
* abandoned or orphaned children should have the opportunity to be adopted and have permanency in a loving family as soon as possible
* all public and private adoption services should be predicated on these principles and conducted with humane consideration for the child, the birth family, and the adoptive family within an ethical, legal, and transparent framework

FOA has observed that the well intentioned and necessary attempts to regulate intercountry adoption (ICA), by establishing uniform principles and standards (as in the Hague Treaty) has had results, particularly in "sending countries" but also in receiving countries, which can be described as "unintended consequences", one of which is that the adoption process has been impeded, without the corresponding benefits of family reunification, effective national adoption campaigns, or increased services to children in need.

While we have deplored the hasty implementation of the Hague Treaty in many countries, which seems to concentrate on the letter rather than the spirit of the Treaty, and be inadequately funded, without supportive infrastructure; we have commended the long and essentially democratic process in the U.S., which has included commentary and involvement from the entire adoption community. Therefore, we appreciate this opportunity to share our opinions about some aspects of the proposed regulations before us.

For the most part, our comments are focused on areas of the regulations which we believe will have the "unintended consequences" described above - regulations which not only can have

negative consequences, but will not bring about the intended result of improving standards of practice.

*We offer significant comment on the Liability Regulations and make recommendations which we believe will accomplish the goal of increasing accountability on the part of Adoption Service Providers.

*We recommend a mandated uniform Risk Disclosure document, developed for each Country's unique conditions, which each accredited entity must share with adoptive families.

*We recommend a mandated Post Placement Policy which protects children with known medical, psychological, or educational problems. We recommend a mandated Disruption Policy, which will provide uniform protections to children when their adoptions disrupt.

* We recommend a Federal Mandate for all State Licensing Departments to become accrediting entities, therefore assuring development of a consistent standard of practice in regard to ICA, regardless of whether the service provider participates in Hague Convention countries.

The attached commentary expands on our recommendations. We are also requesting that there be another interim regulation published after review of current commentary, with opportunity for further public comment.

Thank you for your consideration,

Respectfully Submitted:

Hannah D. Wallace, President

Focus On Adoption

December 8, 2003

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TO: U.S. Department of State
CA/OCS/PRI
Adoption Regulations Docket Room, SA-29
2201 C Street, NW.
Washington, DC 20520

FROM: **Focus On Adoption**
601 S. 10th Street
Philadelphia, PA. 19147

RE: **Docket State/AR-01/96: Comments to Risk and Liability Provisions of Hague Regulations**

Introduction

Focus on Adoption (FOA) is a national organization dedicated to the advocacy of ethical and professional practice of intercountry adoption and child welfare services. Our mission is to advocate on behalf of children worldwide in need of permanent families and to provide a collective response on behalf of the entire adoption community to global factors affecting intercountry adoption.

FOA embraces many of the principles embodied in the Hague Convention on Protection of Children and the proposed regulations provide some excellent guidelines for governance of intercountry adoptions. Especially, FOA embraces the principle that intercountry adoption protects children while ensuring that adoption, rather than institutionalization or long term foster care, is the preferred alternative for orphaned children worldwide. To some extent however, FOA is also concerned that some of the regulations as stated, could also have a negative impact on intercountry adoption, and we hope to serve in an advisory capacity on several specific issues for the Department's consideration.

To this effect, we respectfully request that the Department consider issuance of an "interim ruling with public comment" to allow for a more cooperative and collaborative effort with the adoption community before the finalization of regulations.

FOA believes it is important to streamline the regulatory process so as not to unnecessarily create additional hardship and expense to the adoption service providers, which in turn, ultimately are passed on to the adoptive families, or serve to discourage qualified service providers from seeking accreditation or approval. Specifically, we respectfully request that certain provisions that cover risk and liability issues be carefully examined and, if necessary, amended to more accurately reflect the structure of intercountry adoption services and the negative impact that the regulations, as written, may ultimately place on the service providers, adoptive families and the very children that the Convention seeks to protect.

Specifically, the proposed regulations do the following:

22 CFR PART 96, SUBPART F

Standards for Convention Accreditation and Approval

Preamble, p. 54077. Notwithstanding this important recognition, the drafters propose implementation of a financial framework that goes far beyond the scope of the legislation and endangers the service providers' very existence. Specifically, the financial framework does the following:

(i) Channels all liability of adoption service providers throughout the system to a single "primary provider;"

(ii) Statutorily assigns all risk between adoptive parents and their service providers/service providers to the agency/service providers;

(iii) Limits the ability of service providers to share risks within the system with adoptive parents by prohibiting informed waiver and indemnity provisions; and

(iv) Requires maintenance of $1,000,000 per occurrence of insurance coverage without measures to ensure the commercial availability and affordability of such coverage to service providers.

Imposition of these requirements should be handled in a manner that considers the impact they will have on service providers of all sizes by minimizing the costs for proposed additional regulations that could have a negative financial impact on the industry. We believe these objectives are not achieved with the Regulations as drafted and, instead, the Regulations present service providers, especially small service providers, with substantial challenges

Therefore, it is the collective opinion of FOA, that the Regulations as drafted may result in a financial environment that effectively prevents smaller service providers from continuing to operate and as such, this outcome would be in direct contradiction to the legislative intent of the Convention by unnecessarily limiting the availability of intercountry adoption services, and in doing so, reducing the effectiveness of the Convention in its entirety.

a. Implementation of the Strict Liability Framework Exceeds the Authority of the State Department.

FOA respectfully submits that implementation of the proposed risk and liability framework in section 96.45(c)(1) and 96.46(c)(1) goes far beyond the scope of the Hague Convention Treaty and the Intercountry Adoption Act of 2000 (the "IAA") and that the

State Department would be exceeding its authority to implement such a structure. The majority of the proposed regulations accomplish this mandate successfully and properly within the scope of the IAA; however, certain risk and liability provisions exceed far beyond permissible boundaries. Specifically, the proposed regulations require that service providers "assume[] tort, contract, and other civility liability to the prospective adoptive parents for the ... supervised provider's provisions of the contracted adoption services and its compliance with the standards in this subpart F." See 96.45(c)(1) & 96.46(c)(1). This language creates a strict liability scheme, as it requires that accredited service providers that are primary providers be held financially responsible for all risks within the intercountry adoption process without regard to their fault.

Under standard principles of common law evolved over the decades, a plaintiff must demonstrate that a defendant was negligent in order to hold such defendant legally responsible for resulting damages. Such plaintiff must prove the defendant's negligence by a preponderance or greater weight of the credible evidence standard and that such negligence was a proximate cause of the incident that caused the alleged damage. The Proposed Regulations alter basic principles of tort law by removing the need for adoptive parents to demonstrate any fault whatsoever on the part of their accredited service provider in order to collect a judgment. Adoptive parents need merely assert a claim for damages incurred to collect against their accredited agency. Indeed, the proposed scheme would bestow upon parents a greater legal guarantee than they would have if their adopted child had been conceived biologically.

Creation of a strict liability scheme is a public policy decision vested solely in the legislative branch of government - Congress. The legislative process and accountability are the cornerstones of the democratic process which justify Congress' role as a lawmaker. Congress, an elected body of officials accountable to their constituents, alone has the authority and accountability to dictate public policy. Unlike the legislative process, rulemaking by administrative service providers does not involve the collaborative effort of elected officials but the views of officials appointed by other branches of government. Accordingly, administrative service providers do not have the authority to dictate public policy, but rather to expound upon public policy already established by Congress. Accord Chambers v. St. Mary's School, 697 N.E.2d 198 (Ohio 1998). FOA respectfully submits that the State Department's proposal and adoption of regulations that create a strict liability standard is an unconstitutional usurpation of legislative authority.

b. The Risk and Liability Provisions Have Disastrous Implications for the Future of Intercountry Adoption

The drafters' stated goals in proposing the risk and liability provisions of the proposed Regulations were: (i) to "improve supervision," by American service providers over its counterparts in the U.S. and abroad, Preamble, at p. 54081, and (ii) to give parents "legal recourse against a single entity." Preamble, at 54081. The drafters' proposed solutions present enormous dangers for a number of reasons.

First, the proposed liability framework will not cause primary provider service

providers to improve supervision over their U.S.-based supervised home study providers. Rather, primary provider service providers will avoid using supervised provider service providers who do only home study, parent preparation and post-placement services altogether. Given a choice between utilizing the services of another accredited provider for these functions and utilizing an unaccredited supervised provider, most accredited service providers would be unwilling to accept the legal responsibility and liability that using supervised providers would entail under the proposed regulatory scheme. If these small service providers and social workers (who collectively provide services to thousands of families) are unable to procure written agreements with accredited service providers, they will surely go out of business. The drafters must recognize that these small providers are a vital link in the intercountry adoption community, and without them, many children and adoptive parents will be lost to one another.

Second, imposition of blanket liability on primary provider service providers will not improve supervision over foreign contacts. Service providers have little meaningful control over the events in foreign lands that can cause a problem with an adoption case to arise. In addition to obvious language and cultural barriers, many foreign agency contacts do not have access to the money, resources, health care, training, record keeping, or legal services that are in anyway comparable to those that we have in the United States. Through intercountry adoption, service providers cannot be present for every abandonment in order to seek birth parent background and medical information or ask about their pre-natal care, nor can they visit every orphanage, supervise every doctors' visit, and file every paper for every child eligible for intercountry adoption. If resources were available to help children in foreign lands to this extent, there would not be such an enormous need for intercountry adoption to help the children of these nations to find homes in the first place. The ability for service providers to successfully police and supervise the events in foreign lands and their foreign counterparts is extraordinarily difficult to accomplish, and this purpose will not be accomplished effectively by imposition of an extraordinary level of liability on American primary provider service providers.

We do however, agree with the Regulations that take the well-justified step of requiring that American service providers execute written agreements with their supervised providers in the U.S. and abroad that impose certain predefined requirements and certifications that are consistent with the Convention goals. Proposed Reg. Sec. 96.45(b) & 96.46(b). In short, absent the liability provisions, the Hague Regulations already propose a schema for reasonable supervision which American service providers can reasonably and effectively impose over their U.S.-based and foreign supervised providers, and this schema does not endanger service providers in the manner they are impacted by the liability provisions.

Third, the drafters have placed an enormous financial burden on the service providers that they may not reasonably be able to assume. Most service providers are not deep pockets - they are non-profit corporations with inherently limited resources. Service providers are in business to promote the charitable purpose of "unit[ing] children living in terrible conditions in foreign orphanages with parents who want them." Howard M.

Cooper, "Enforcement of Contractual Release and Hold Harmless Language in 'Wrongful Adoption' Cases," Boston Bar Journal, May/June 2000. For this reason, the state and federal government have granted such service providers non-profit status so that they can fulfill this important mission.

If anything, non-profit corporations deserve protection from liability in this already overly litigious society. In recognition of this policy, some states have enacted statutes that provide non-profits with immunity from liability for its own negligence. For instance, the New Jersey Charitable Immunity statute provides as follows:

"No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees... shall ... be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation ... where such person is a beneficiary, to whatever degree, of the works of such nonprofit..." See N.J. 2A:53A-7. Non-profit immunity statutes codify the public policy that ensures that the dedicated staff of not for-profit corporations can accomplish their charitable purpose free of fear from litigation due to negligence.

Fourth, the language of Sections 96.45(c) and 96.46(c), statutorily shifts all risk undertaken by prospective adoptive parents in pursuing foreign adoption to their service providers and creates a statutory cause of action for them. See section I(b)(1)(a), above. This strict liability standard could encourage litigation from adoptive parents against the very service providers that are trying to help them build a family.

Moreover, the drafters have already - appropriately - proposed a schema that will ensure that service providers maintain equitable standards, ensure they work with third parties who maintain ethical standards, and be punished in the event they fail to comply with Hague standards. See Hague Regulations Subpart J, K and M. Specifically, the Proposed Regulations already contain a system that permits adoptive parents to file complaints against service providers, that ensures their timely investigation, and that permits imposition of adverse actions or other sanctions. The drafters do not need to layer the liability provisions on top of this solid framework to provide for agency accountability any more than states need to upgrade sentencing standards from life imprisonment to the death penalty in order to deter crime.

Those who advocate for recourse through liability may further suggest that the liability provisions are an appropriate mechanism to compensate the parents for economic losses resulting from the acts of the foreign coordinators. However, why should the service providers be forced to accept fiscal responsibility for all participants throughout the entire system? The service providers are serving the greater good of carrying out their charitable mission of finding homes for the orphaned children of the world. If the drafters wish for parents to have a means of compensation in the event of a tragic result, more reasonable alternatives exist.

Finally, the flaws discussed above are not remedied by the drafters' permitting the service providers to retain the right to seek indemnification against their providers. See Proposed Regulation 96.45(d) and 96.46(d). The service providers will be long out of business before they could ever make use of these tools.

2. Prohibition Against Contractual Waivers

In addition to statutorily assigning all risk to service providers that normally is shared with parents, the drafters further prohibit reallocation of this risk by contract. Specifically, the Regulations state "the agency or person [may] not require a client or prospective client to sign a blanket waiver of liability in connection with the provision of adoption services in Convention cases." Section 96.39(d).

FOA strongly believes in the practice of full disclosure of risk and therefore believes it should be a requirement for all service providers to implement a known risk waiver which will serve to properly advise their clients that intercountry adoption is not a risk-free means of growing their families. Moreover, these known risk waivers should cite the universal risk of developmental delays in orphanage children and the possibility of unknown or undiagnosed medical and psychological conditions of the children due to factors beyond their control. After acknowledging the possible risks, prospective adoptive parents may choose to proceed despite the known obstacles.

Once again, the drafters have altered current practice substantially, and prohibited adoption service providers from protecting themselves in this abundantly reasonable manner. Simply stated, service providers must be able to share the risk and to protect themselves contractually from the threat of excessive and unreasonable litigation by adoptive parent(s).

Imposition of a statutory prohibition such as that proposed in the Regulations is inappropriate interference with well-justified business practice. This principle has been recognized by various courts who have determined that exculpatory provisions in this precise context are appropriate and consistent with public policy. See Howard M. Cooper, "Enforcement of Contractual Release and Hold Harmless Language in 'Wrongful Adoption' Cases," Boston Bar Journal, May/June 2000 (citing Forbes v. The Alliance for Children, Inc., et al, Suffolk County, Civil Action No. 97-04869B; Regensburger v. China Adoption Consultant ltd., 138 F.3d 1201 (7th Cir. 1999); French v. World Child, Inc., 977 F. Supp. 56 (D.D.C. 1997), aff'd. No. 97-7167 (D. D.C. Cir. Sept. 10, 1998)).

3. Insurance Requirements

The Regulations further mandate coverage at a prohibitively high amount of insurance coverage - $1 million per occurrence. FOA is concerned that this requirement will be impossible to satisfy in today's insurance climate with most service providers already reporting difficulty in obtaining or renewing professional liability and Directors and Officers existing policies and/or purchasing new policies. Imposition of a $1,000,000 floor, combined with the other risk and liabilities provisions proposed in the Regulations would have the unintended result of reducing the availability of intercountry

adoption services. FOA would ask the State Department to work with the insurance industry to ensure availability and affordability of these policies before requirements at this level are mandated.

FOA submits that there may be a number of effective tools available to provide a safety net for adoptive parents if an unforeseen event occurs and they suffer a loss. FOA believes that a solution to this challenging issue is attainable if the State Department works closely with the insurance industry, service providers and other parties involved in the process. Moreover, we believe these solutions can be achieved without compromising the integrity of the Regulations or the interests of the children and their families.

FOA supports provisions that provide financial protection to adoptive parents and that ensure accountability of service providers. However we do not believe that litigation is the best means to accomplish this goal and would like to recommend the following proposed solutions to further explore with the State Department:

(i) FOA requests the State Department to request the insurance industry to analyze underwriting Intercountry Adoption Insurance policies to adoptive parents to individually defray the known risks of intercountry adoption. Ultimately, with the spread of risk among parties in the process, the insurers may once again be willing to provide service providers with professional liability and officers' policies with the knowledge of shared risk.

(ii) The accommodation in the Regulations to allow contractual binding arbitration provisions (subject to capped awards) between adoptive parents and service providers, in lieu of litigation. This step may create more of an overall willingness for insurance providers to consider underwriting risks for intercountry adoption.

(iii) Permitting specific waivers of liability with regulation of mandatory known risk disclosure.

(iv) Removal of minimum requirement of $1,000,000 per occurrence in liability insurance, although at this point obtaining any liability coverage is proving difficult to impossible for many service providers.

(v) Establishment of a federally backed Intercountry Adoption Professional Liability Insurance Plan. FOA would like to point to the National Flood Insurance Program as an example of such a federally backed program.

4. Additional Comments Concerning Risk and Liability Provisions

We would, however, respectfully ask the Department of State to also factor into its assessment the real world circumstances that the legitimate service providers are now being asked to police. Indeed, the same circumstances that lead to children becoming available for intercountry adoption create the inherent risk in the intercountry adoption

process itself. Service providers can not change the fact that birthmothers feel forced to abandon their children due to extreme poverty, or that a country does not have the resources to provide adequate care for its young, or that a birthmother had some degree of substandard pre or post natal care/nutrition, or possible undiagnosed genetic conditions. The term "abandonment" alone dictates that often very little information may be known about a child's medical history or genetic disposition. Orphanage workers are usually not skilled, trained medical professionals, but often volunteers or low-paid labor providing basic care only. Orphanages staff spend their time and resources in meeting the basic life-sustaining needs of the children and are usually ill-equipped to focus on extensive and accurate medical evaluations and diagnosis. In many instances, adequate testing to determine true levels of physical, development and/or emotional delays is not readily available in third world countries, too cost-prohibitive for under-funded orphanages, or is viewed as an unnecessary expense to waste on the country's unwanted children. These are the real world circumstances that service providers and adoptive families navigate everyday. Service providers will not suddenly become empowered to bring third world countries up to the medical and practical standards of the western world by a burdensome strict liability scheme.

FOA would like to ask the State Department to consider and recognize that the tremendous need that intercountry adoption has filled to date bringing almost 160,000 children to the United States for adoption from foreign countries since 1989. See State Department Website, http://travel.state.gov/orphan_numbers.html. Moreover, we would like the Department of State to consider that intercountry adoption improves not only the lives of adoptive parents and the adoptees, but those of the millions of children who remain in the orphanages around the world. Because of donations by adoptive parents to their adopted childrens' orphanages and communities, and the humanitarian aid projects and assistance provided by the intercountry adoption service providers, the orphanages receive greater resources for medicine, medical care, bedding, clothes, food and education. Since China began its intercountry adoption programs, infant mortality rates have plummeted for institutionalized children largely because of the generosity of adoptive parents to the homelands of their children via their service providers. Accordingly, the Proposed Regulations that will undoubtedly close service providers threaten the future of not only adoptive parents and potential adoptees, they threaten the lives of all of the children in the orphanages who will no longer enjoy the benefits of donations from an enormous pool of grateful new families around the world.

We believe that the imposition of these impossible standards will have a tragic effect on the very children who the service providers, and the drafters of the Hague legislation, seek to help.

C. Proposed Alternative Solutions

The Hague Regulations can accomplish the purpose of the Hague Convention, and even some of the new purposes that apparently were added when drafting the Hague Regulations, by striking the following provisions:

(i) Strike sections 96.45(b)(8) & (c) and 96.46(b)(9) & (c) - These are the key

provisions which assign all risk between adoptive parents and their service providers to the service providers, and channel that liability to the primary providers;

(ii) Strike section 96.39(d), which prohibits blanker waiver provisions and replace with regulations mandating disclosure of risks through known risk waivers.; and

(iii) Strike section 96.33(h) - Requiring $1,000,000 per occurrence of insurance coverage. Insurance at this level should not be a requirement unless the Department of State can propose a reasonable amount of coverage that is reasonably related to compensatory damages and will not encourage litigation, and until the Department of State can guaranty the availability and affordability of such policies.

As stated previously, the justifications for these provisions are accomplished effectively and appropriately by other provisions in the Regulations. The requirements of sections 96.45 and 96.46 (without sections 96.45(b)(8) and (c) and 96.46(b)(9) and (c)) accomplish effectively the drafters' desire to gain control and supervision over supervised providers here and abroad. The provisions are bolstered by Subsections J, K and M, which demand that all service providers conduct themselves with the highest of standards or risk losing their reputations or, worse, their licenses and/or accreditation.

The requirement for insurance coverage and prohibition against waivers forces the service providers to accept substantial risk that could effectively be spread throughout others in the process. Parents (of all income levels) should be able to consider intercountry adoption as an affordable means of growing their families, and make a knowing decision whether to proceed in the face of uncontrollable world conditions. Service providers should be able to pursue their charitable purposes without the threat of constant litigation.

II. Additional Comments Regarding Other Provisions of Proposed Regulations

FOA requests that the next round of changes to the Proposed Regulations from the State Department be issued as an Interim Ruling, together with publication and an appropriate comment period. The current draft differs substantially from the Acton Burnell draft that has been circulating for the last several months, and raises entirely new issues that warrant a more thorough analysis and exchange of ideas.

A. Costs

FOA would like the Department of State to consider the economic impact of the Proposed Regulations. Without factoring in the risk and liability issues and insurance requirements raised FOA is concerned that the balance of the framework, while reasonable, will likely raise administrative costs substantially, which will, in turn be passed onto adoptive families. Some industry experts have estimated cost increases could be in the range of $4,500 per case ($3000 per case for accreditation purposes and another $1,500 per case for additional work to maintain Hague standards on an ongoing basis). John Towriss, "The Hague: Noble Treaty or Flawed Concept," Adoption Today

September 2003) (quoting Carl Jenkins, an attorney specializing in adoption law).

These costs will increase even further if and when service providers procure professional liability policies and if such policies would cover the acts of third party supervised providers, as suggested by the risk and liability provisions described above. 30, 2003 (copied with permission). The cost increase to be allocated to adoptive parents will clearly be substantial. FOA fears that intercountry adoption will become a privilege available only to the rich and elite while potentially wonderful parents of lesser means are foreclosed from the prospect of intercountry adoption entirely due to cost.

A. Masters Degree

Section 96.37(f) of the Proposed Regulations requires that home study personnel have a minimum of a master's degree. FOA believes that this provision will greatly restrict the qualified applicant pool for such positions since many geographic areas, particularly in rural parts of the country, do not have master's level candidates available to hire. Adoption is not a practice area that is taught in many programs, and most professionals learn primarily on the job through experience in the industry. While a master's degree may provide some helpful tools for social workers performing home studies, it does not provide a guaranty of appropriate knowledge on intercountry adoption or adoption issues.

Moreover, master's level social workers will be more expensive for service providers to hire and retain, and such costs will again be passed on to adoptive families. Finally, this provision can not be reconciled with 96.37(e) of the Proposed Regulations, which states a homestudy supervisor can have a bachelor's degree, as long as they also have appropriate other experience. Retention of these two provisions would have the incongruous result of requiring social work personnel to have a master's degree while their supervisors have a bachelors degree. For all of these reasons, FOA believes that section 36.37(f) should be modified and alternating the requirements of 96.37(e) to allow social workers who perform home studies to have a bachelor's degree, provided they have prior experience in family and children's services, adoption or intercountry adoption and requiring the home study or social work supervisor to have a minimum of a Master's Degree, or equivalent education and experience in providing pre-adoption preparation to families.

A. Adverse Actions

FOA further submits that Subpart K of the Proposed Regulations does not comply with the corresponding provisions in the IAA and does not afford service providers due process with respect to adverse actions issued by accrediting service providers. The IAA section 204(a)(1) states that the Department of State can suspend or cancel designation of accreditation status if it finds an agency to be "substantially out of compliance with the Convention, this Act, other applicable laws, or implementing regulations under this Act." IAA 204(a)(2). Further, an agency may be debarred if and only if it demonstrates a pattern of serious, willful or grossly negligent failures to comply or other aggravating circumstances indicated that continued accreditation or approval would not be in the best interests of the children or family concerned." IAA 204(c)(1).

In contrast, the corresponding provisions in the Proposed Regulations set forth no threshold standards or guidelines to justify the imposition of adverse actions. Rather, the standards provide each accrediting entity no guidance whatsoever regarding which adverse actions to impose (suspension, cancellation of accreditation, non-renewal, or ceasing provision of services) under which circumstances. They simply state that the accrediting entity may "decide... based on the seriousness and type of violation" and on the extent to which the accredited agency corrected the deficiency. Section 96.76(a). Further, the Proposed Regulations permit an accrediting entity to impose adverse sanctions that require the agency to cease operations immediately, regardless of the merit of the cause for such action. Section 96.77(a). While the Proposed Regulations permit an accredited agency to respond to notice, Section 96.76(b), the agency will be forced to close its doors before it ever gets a chance to refute the charged deficiency.

FOA requests that the Department of State modify the language of the Proposed Regulations to incorporate the standards and guidelines set forth in the IAA, and to further set forth which violations warrant imposition of which adverse actions. The process should be modified not only so it is fair to the service providers, but so it is consistently applied by various accrediting entities nationwide.

Finally, we respectfully request that the Department delineate standard and specific procedures that accrediting entities must follow to afford service providers with due process of law. FOA requests that the procedures set forth time frames for adequate notice, response deadlines, standards of proof, and and an administrative hearing board and procedures. Hearings should be held before an objective fact-finder and include procedures for expedited consideration, perhaps similar to hearings for temporary restraining orders/preliminary injunctions in order for an accrediting agency to have the authority to demand an agency cease operations. Moreover, the accrediting entity should be required to demonstrate a high threshold requirement, such as clear and imminent danger to a child at stake, to receive expedited consideration of the adverse action.

A. Post-Placement

FOA asks that the Department of State, together with Congress, impose a statutory or regulatory framework that service providers can use to mandate that adoptive parents comply with post placement supervision with the requirements of the countries from which they adopt. To effectively accomplish the mandate of the Hague Convention, service providers need a means of securing their clients' future compliance with country requirements long after they have adopted their children. American service providers are forced to pay the price when adoptive parents choose to avoid such requirements by facing the threat of being foreclosed from future adoptions in such countries. American service providers are left with virtually no means of forcing their clients' compliance with country post-placement requirements, and contractual provisions have proven to be ineffective and difficult to enforce. Accordingly, FOA respectfully requests that the Department of State, together with the legislature, take this issue into account when

finalizing the regulatory framework that implements the Hague Convention.

Furthermore, FOA believes that certain uniform standards of practice regarding Post Placement services and accountability should be mandated, especially in regard to medical, educational and psychological issues as well as disruptions of adoptions. Current standards and practices, in FOA's opinion, do not provide adequate protection to the children in the case of disruptions. FOA recommends that the regulations mandate a contractual agreement between adoptive parents and placement agency that parents must notify the placement agency of disruption decisions and that placement agency and parents have delineated and mutual responsibilities in developing a plan for the child.

A. Accrediting Entities

As our final comment , FOA would respectfully ask the State Department to consider federally mandating State Licensing Units as mandatory accrediting entities. This would serve several very important functions.

(i) FOA believes in the development of a consistent standards of practice that will be shared throughout the intercountry adoption community regardless of whether the service provider participates in Hague Conventions countries and regardless of accreditation. At present, there is no consistency to standards or implementation of State regulations for service providers. This has left an ability for some service providers to successfully avoid meeting minimum standards of practice by locating in States which have the least regulatory influence. In many ways, this has left a large gap in the regulations intent of increasing accountability among all service providers, by focusing only on providers that seek full Hague accreditation.

(ii) Creation of a State mandated accreditation process will not only determine a national level of standards of practice which will be uniformly shared by all states, but will also serve as a solution to the problem of RSI applicants concerns over liability issues being passed on to them, as the accrediting body. In this manner, the State would hold the same indemnification from legal action that is offered through other federal programs and would also serve to ensure that a monopoly was not created of accrediting entities.

(iii) Designation of a State mandated accreditation process could allow the States to qualify for federal funding, thereby helping to ensure that the accreditation costs do not prohibitively increase adoption costs whereby having a negative affect on the very children the Convention seeks to protect.

FOA appreciates the State Department's consideration of the issues raised herein, and looks forward to participating in a productive dialogue regarding our concerns.

Respectfully submitted,

Focus on Adoption, Inc.

Hannah Wallace, President