



HAGUE ACCREDITATION AND APPROVAL

Demonstrating Capacity: Standard Where an Evaluation of Capacity is Appropriate

22 CFR 96 Subpart F includes a provision acknowledging that relevant evidence of actual performance may not be available for review during the accreditation or approval evaluation process. The provision is in 22 CFR §96.27(b):

“When the agency or person makes its initial application for accreditation or approval under the standards contained in subpart F of this part, the accrediting entity may measure the capacity of the agency or person to achieve substantial compliance with these standards where relevant evidence of its actual performance is not yet available. Once the agency or person has been accredited or approved pursuant to this part, the accrediting entity must, for the purposes of monitoring, renewal, enforcement, and reapplication after adverse action, consider the agency's or person's actual performance in deciding whether the agency or person is in substantial compliance with the standards contained in subpart F of this part, unless the accrediting entity determines that it is still necessary to measure capacity because adequate evidence of actual performance is not available.”

Per 96.27(b), an assessment of capacity is only appropriate when actual evidence of performance is not available. A plan to implement the standard is not sufficient to demonstrate capacity, as the Adoption Service Provider (ASP) must demonstrate that it has the capacity to implement the standard, not just intent to implement the standard.

IAAME Tables of Evidence should first be reviewed to determine what evidence is required for a particular standard. If the ASP does not have the required evidence because evidence of actual performance is not available, this document should be used to guide the alternative evidence that can be provided.

When demonstrating capacity, the ASP should:

- Establish all required policies and procedures,
- Demonstrate that ASP staff have been trained on how to implement the standard,
- Develop necessary tools and resources to implement the standard.

An example of a situation where measuring capacity is necessary *during the initial accreditation/approval process* would include the following:

- The standard provides a timeframe/deadline for compliance but it has not passed yet at the time of the initial on-site review (e.g., 96.38(c) requires at least 30 hours of training every 2 years);

Examples of situations where measuring capacity may be necessary *during the initial accreditation/approval and renewal* would include the following:

- The ASP has not had an opportunity to provide a service addressed in the standard (e.g. 96.50(g) the provider has not worked on a case involving post-placement reporting);
- The standard governs how services are implemented, but does not require the services to be provided (e.g., Standards governing the use of the internet and standards governing how staff are exempt from training requirements).



The following list identifies all standards for which a demonstrating capacity would indicate substantial compliance. The adoption service provider or Evaluator must contact the accrediting entity with questions about any standards that are not included on this list.

Standards for which an Assessment of Capacity may be Appropriate

96.30 (c)
If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only: (1) through agencies or persons that are licensed or authorized by State law to provide adoption services in that State and that are exempted providers or acting as supervised providers; or (2) through public domestic authorities.
Rationale for Evaluating Capacity
<ul style="list-style-type: none"> ▪ The ASP doesn't currently provide intercountry adoption services in a State in which it is not itself licensed.
Questions for Evaluators to Consider:
<ul style="list-style-type: none"> ▪ Does the ASP have a plan for how they would operate if they opened an intercountry case for a family in a state where they are not licensed/authorized? ▪ Does the ASP have a process for determining if state law authorizes the agencies/persons to operate?
96.33 (f)
If it accepts charitable donations, the agency or person has safeguards in place to ensure that such donations do not influence child placement decisions in any way.
Rationale for Evaluating Capacity
The ASP has a policy in place that it does accept charitable donations, and has not accepted charitable donations in the recent past.
Questions for Evaluators to Consider:
<ul style="list-style-type: none"> ▪ What is the ASP's policy/procedure for accepting donations? ▪ If the ASP has not received donations in the last year, can the ASP provide documentation for donations received in the past? ▪ If the ASP changed its policy and began to accept donations, who would be responsible for managing such donations? ▪ Are staff informed and aware of the ASP's policy?
96.38(a)
The agency or person provides newly hired employees who have adoption-related responsibilities involving the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement, and other similar services) with a comprehensive orientation to intercountry adoption that includes training on: (1) the requirements of the Convention, the IAA, the UAA, the regulations implementing the IAA or UAA, and other applicable Federal regulations; (2) the INA regulations applicable to the immigration of children adopted from a Convention country; (3) the adoption laws of any Convention country where the agency or person provides adoption services; (4) relevant State laws;



<p>(5) ethical considerations in intercountry adoption and prohibitions on child-buying;</p> <p>(6) the ASP's goals, ethical and professional guidelines, organizational lines of accountability, policies, and procedures; and</p> <p>(7) the cultural diversity of the population(s) served by the ASP.</p>
<p>Rationale for Evaluating Capacity</p>
<p>The ASP has not hired any new staff since its last accreditation/approval renewal or for initial applicants; the ASP has not hired any new staff for the 2 years prior to the ASP's application for accreditation.</p>
<p>Questions for Evaluators to Consider:</p>
<ul style="list-style-type: none"> ▪ When was the last time the ASP hired a new intercountry adoption staff member? ▪ To what extent did training offered by the ASP previously address the elements outlined in the standard? ▪ Does the ASP have a curriculum for the orientation? ▪ Has the ASP identified who will provide the orientation, and is this specified in the job description?
<p>96.38(c)</p>
<p>The agency or person ensures that employees who provide adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement and other similar services) also receive, in addition to the orientation and initial training described in paragraphs (a) and (b) of this section, no less than thirty hours of training every two years, or more if required by state law, on current and emerging adoption practice issues through participation in seminars, conferences, documented distance learning courses, and other similar programs. Continuing education hours required under State law may count toward the thirty hours of training as long as the training is related to current and emerging adoption practice issues.</p>
<p>Rationale for Evaluating Capacity</p>
<p>The ASP is a first time applicant for accreditation/approval.</p>
<p>Questions for Evaluators to Consider:</p>
<ul style="list-style-type: none"> ▪ What is the ASP's plan for ensuring that employees receive the required training within two years? ▪ What steps has the ASP taken to implement this plan? ▪ Does the ASP plan to fund the training? If so, has the ASP segregated funds for training purposes in its current budget? ▪ Has the ASP made staff aware of the requirements? ▪ What is the role of the individual staff person in meeting the training requirement?
<p>96.41(a)</p>
<p>The agency or person has written complaint policies and procedures that incorporate the standards in paragraphs (b) through (h) of this section and provides a copy of such policies and procedures, including contact information for the Complaint Registry, to client(s) at the time the adoption services contract is signed.</p>
<p>Rationale for Evaluating Capacity</p>
<p>The ASP is an initial applicant and has not had any new clients in the six months preceding the application.</p>
<p>Questions for Evaluators to Consider:</p>



- Has the ASP provided clients in the past with its policies and procedures for complaints?
- Does the ASP plan to provide clients with the information in the future?

96.41(c, d)

96.41 (c) The agency or person responds in writing to complaints received pursuant to paragraph (b) of this section within thirty days of receipt, and provides expedited review of such complaints that are time-sensitive or that involve allegations of fraud.

96.41 (d) The agency or person maintains a written record of each complaint received pursuant to paragraph (b) of this section and the steps taken to investigate and respond to it and makes this record available to the accrediting entity or the Secretary upon request adoption service provider can comply with these standards now by just handling complaints as required.

Rationale for Evaluating Capacity

The accredited/approved ASP has not received any complaints or an initial applicant has not received complaint(s) in the last six months.

Questions for Evaluators to Consider:

- Who in the ASP is responsible for responding to complaints?
- Are staff aware of the ASP internal procedures regarding complaints?

96.41(f)

The agency or person provides to the accrediting entity and the Secretary, on a semi-annual basis, a summary of all complaints received pursuant to paragraph (b) of this section during the preceding six months (including the number of complaints received and how each complaint was resolved) and an assessment of any discernible patterns in complaints received against the agency or person pursuant to paragraph (b) of this section, along with information about what systemic changes, if any, were made or are planned by the agency or person in response to such patterns.

Rationale for Evaluating Capacity

The ASP is a first time applicant for accreditation/approval.

Questions for Evaluators to Consider:

- Does the ASP have procedures in place regarding compiling a Semi Annual Reports on Complaints (SARC)?
- Is the ASP familiar with IAAME’s procedures for submission of SARCs?
- Has the ASP put in place record keeping practices to capture the information about complaints required in the standard?

96.42(e)

The agency or person notifies the accrediting entity and the Secretary in writing within thirty days of the time it ceases to provide or is no longer permitted to provide adoption services and provides information about the transfer of its adoption records.

Rationale for Evaluating Capacity

The ASP is currently providing intercountry adoption services.

Questions for Evaluators to Consider:

- Is the ASP familiar with IAAME’s procedures for submission of self-reports?
- Is the ASP’s plan for transfer of adoption records detailed enough that it could be enacted immediately? (e.g., how will it be funded and to whom will the files be transferred)?



<ul style="list-style-type: none"> ▪ Does the ASP have a plan in place to regularly review its plans for the transfer of intercountry adoption records?
96.43(a)
When acting as the primary provider, the agency or person maintains all the data required (in this section in a format approved by the accrediting entity) and provides it to the accrediting entity on an annual basis.
Rationale for Evaluating Capacity
The accredited/approved ASP has not acted as a primary provider or the ASP is an initial applicant.
Questions for Evaluators to Consider:
<ul style="list-style-type: none"> ▪ What systems are in place to collect the information and who in the ASP is responsible for data collection? ▪ Who in the ASP is responsible for entering the data into the Adoption Tracking Service (ATS) and does that person have access to the ATS?
96.47(a)
The agency or person ensures that a home study on the prospective adoptive parent(s) (which for purposes of this section includes the initial report and any supplemental statement submitted to DHS) is completed and includes the following:
(1) information about the prospective adoptive parent(s)' identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom the prospective adoptive parent(s) would be qualified to care (specifying in particular whether they are willing and able to care for a child with special needs);
(2) a determination whether the prospective adoptive parent(s) are eligible and suited to adopt;
(3) a statement describing the counseling and training provided to the prospective adoptive parent(s);
(4) the results of a criminal background check on the prospective adoptive parent(s) and any other individual for whom a check is required by 8 CFR 204.3(e);
(5) a full and complete statement of all facts relevant to the eligibility and suitability of the prospective adoptive parent(s) to adopt a child under any specific requirements identified to the Secretary by the Central Authority of the child's country of origin; and
(6) a statement in each copy of the home study that it is a true and accurate copy of the home study that was provided to the prospective adoptive parent(s) or DHS.
Rationale for Evaluating Capacity
The ASP has not completed any home studies in intercountry adoption cases.
Questions for Evaluators to Consider:
<ul style="list-style-type: none"> ▪ How does the ASP plan to address all facts relevant to requirements identified by the child's country of origin? ▪ Have staff responsible for writing and reviewing home studies been trained on the elements that must be included in a home study?
96.47 (c)
Where the home study is not performed in the first instance by an accredited agency, the agency or person ensures that the home study is reviewed and approved in writing by an accredited agency. The written approval must include a determination that the home study:



<p>(1) includes all the information required by paragraph (a) of this section and is performed in accordance with 8 CFR 204.3(e), and applicable State law; and</p> <p>(2) was performed by an individual who meets the requirements in Section 96.37(f), or, if the individual is an exempt provider, ensures that the individual meets the requirements for home study providers established by 8 CFR 204.3(b)</p>
<p>Rationale for Evaluating Capacity</p>
<p>The ASP has not used any home studies that were not performed by accredited agencies/approved persons or the provider is an initial applicant.</p>
<p>Questions for Evaluators to Consider:</p>
<ul style="list-style-type: none"> ▪ Who will complete home studies for the ASP– Does the ASP plan to accept home studies from exempted providers or approved persons? ▪ How does the ASP plan to achieve compliance with applicable state laws? ▪ What procedures are in place for the review/approval of home studies not performed in the first instance by an accredited agency or approved person? ▪ Who is responsible for home study reviews/approvals? ▪ Have relevant staff been trained on the ASP’s procedures?
<p>96.51(d)</p>
<p>The agency or person does not return from the United States an adopted child whose adoption has been dissolved unless the Central Authority of the country of origin and the Secretary have approved the return in writing.</p>
<p>Rationale for Evaluating Capacity</p>
<p>The ASP has not had any dissolved adoptions where the child’s return to the country of origin was considered as an option since April 2008 or the provider is an initial applicant.</p>
<p>Questions for Evaluators to Consider:</p>
<ul style="list-style-type: none"> ▪ What policies/procedures has the ASP put in place to be able to comply with the standard? ▪ Have relevant staff been trained on the ASP’s procedures? ▪ Are these policies/procedures reflected in the ASP’s contracts and training with prospective adoptive parents?
<p>96.52(a),(b),(e)</p>
<p>96.52 (a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.</p> <p>96.52 (b) The agency or person takes all appropriate measures, consistent with the procedures of the U.S. Central Authority and of the Convention country, to:</p> <p>(1) transmit on a timely basis the home study to the Central Authority or other competent authority of the child's country of origin;</p> <p>(2) obtain the child background study, proof that the necessary consents to the child's adoption have been obtained, and the necessary determination that the prospective placement is in the child's best interests, from the Central Authority or other competent authority in the child's country of origin;</p> <p>(3) provide confirmation that the prospective adoptive parent(s) agree to the adoption to the Central Authority or other competent authority in the child's country of origin; and</p>



(4) transmit the determination that the child is or will be authorized to enter and reside permanently in the United States to the Central Authority or other competent authority in the child's country of origin.
96.52 (e) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, the UAA, or any regulations implementing the IAA or UAA.
Rationale for Evaluating Capacity
The ASP has not acted as the primary provider in any intercountry adoption cases; has acted as a supervised/exempt provider in intercountry adoption cases and has not been asked to perform any of the functions of the standards; and/or is an initial applicant.
Questions for Evaluators to Consider:
<ul style="list-style-type: none"> ▪ How has the ASP communicated to authorities in the past? ▪ What communications/coordination mechanisms has the ASP put in place to comply with these standards? ▪ What are the ASP's policies or procedures related to securing and transmitting child background studies, proof of consents, best interest determination, etc.? ▪ Who in the ASP will be responsible for communication and coordination functions, and are they aware of the standards' requirements? ▪ What training on the Convention requirements has been provided/is available to any parties that will fulfill these functions?
96.53(b)
Where the child background study is not prepared in the first instance by an accredited agency, the agency or person ensures that the child background study is reviewed and approved in writing by an accredited agency. The written approval must include a determination that the background study includes all the information required by paragraph (a) of this section.
Rationale for Evaluating Capacity
The ASP has not used any background studies that were not performed by accredited agencies or temporarily accredited agencies or the provider is a first time applicant.
Questions for Evaluators to Consider:
<ul style="list-style-type: none"> ▪ What procedures are in place for the review/approval of child background studies not performed in the first instance by an accredited agency or approved person? ▪ Who oversees child background study reviews/approvals?
96.54(k)
The agency or person consults with the Secretary before arranging for the return to the United States of any child who has emigrated to a Convention country in connection with the child's adoption.
Rationale for Evaluating Capacity
The ASP has not had any dissolved adoptions where the child's return to the country of origin was considered as an option since April 2008 or the provider is an initial applicant.
Questions for Evaluators to Consider:
<ul style="list-style-type: none"> ▪ What policies/procedures has the agency/person put in place to be able to comply with the standard once the Convention enters into force for the United States? ▪ What has the agency/person done to train on/disseminate these policies/procedures?



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96.55(a),(b),(f)

96.55 (a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

96.55 (b) The agency or person ensures that:

- (1) copies of all documents from the State court proceedings, including the order granting the adoption or legal custody, are provided to the Secretary;
- (2) any additional information on the adoption is transmitted to the Secretary promptly upon request; and
- (3) it otherwise facilitates, as requested, the Secretary's ability to provide the certification that the child has been adopted or that custody has been granted for the purpose of adoption, in accordance with the Convention and the IAA.

96.55 (f) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

Rationale for Evaluating Capacity

The adoption service provider has not acted as the primary provider in any Convention cases; has acted as a supervised/exempt provider in Convention cases and has not been asked to perform any of the functions of the standards; and/or is a first time applicant.

Questions for Evaluators to Consider:

- What communications/coordination mechanisms has the agency put in place to comply with these standards once the Convention enters into force for the United States?
- Who will be responsible for submissions to the Secretary? Communication and coordination functions generally? Are they aware of the standards' requirements?