

Office of Children's Issues

U.S. Department of State, Bureau of Consular Affairs

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Intercountry Adoption Accreditation and Maintenance Entity
(IAAME)



THE REVISED SUBSTANTIAL COMPLIANCE SYSTEM:

**Demonstrating Capacity and Performance in
Reviews**

TRAINING OBJECTIVES

Adoption service providers (ASPs) will leave today's training with knowledge of:

- Under what circumstances it is appropriate to demonstrate capacity to meet a standard versus performance
- How an ASP must demonstrate capability to act as a primary provider, if they do not currently act as one.
- How capacity to meet a standard is demonstrated by an ASP and assessed by IAAME
- How performance is demonstrated by an ASP and assessed by IAAME

INTERCOUNTRY ADOPTION ACT OF 2000 (IAA)

IAA 203(b)(1)(B): "CAPACITY TO PROVIDE ADOPTION SERVICES. The agency has, directly or through arrangements with other persons, a sufficient number of appropriately trained and qualified personnel, sufficient financial resources, appropriate organizational structure, and appropriate procedures to enable the agency to provide, in accordance with this Act, all adoption services in cases subject to the Convention". (The Universal Accreditation Act of 2012 extends this to countries not party to the Hague Adoption Convention)

22 CFR 96.44(b) "The agency or person has an organizational structure, financial and personnel resources, and policies and procedures in place that demonstrate that the agency or person is capable of acting as a primary provider in any intercountry adoption case and, when acting as the primary provider, provides appropriate supervision to supervised providers and verifies the work of other foreign providers in accordance with §§96.45 and 96.46."

INTERCOUNTRY ADOPTION ACT OF 2000 (IAA)

The FAQ: "[Clarification Regarding Primary Provider Rules for Incoming Adoptions](#)" available at adoption.state.gov states:

"The IAA and its implementing regulations establish that every accredited/approved adoption service provider is expected to be capable of acting as a primary provider."

"For purposes of section 96.44(b) of the accreditation regulations on primary providers, the Department of State interprets "capability" to indicate present ability. Thus, a provider must show that it could act as a primary provider with little action or delay."

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.”

ACTING AS THE PRIMARY PROVIDER

- **Pursuant to 96.14(a), ...** *"If just one accredited agency or approved person is involved in providing adoption services, the sole accredited agency or approved person must act as the primary provider."*
- Thus, if only one ASP is identified as providing adoption services (defined in 96.2), that sole ASP is the primary provider.

DEMONSTRATING COMPLIANCE THROUGH PERFORMANCE

- What does it mean to demonstrate compliance through “performance”?
- IAAME may consider the following when assessing the ASP’s performance:
 - Current implementation within practice
 - Prior implementation within practice

DEMONSTRATING CAPACITY TO MEET THE REQUIREMENTS OF A STANDARD

- 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.
- What does it mean to demonstrate compliance through “capacity”?
- IAAME may consider the following when assessing the ASP’s capacity:
 - Present ability to produce/implement
 - Proficiency and competency

DEMONSTRATING CAPACITY TO MEET THE REQUIREMENTS OF A STANDARD

- When demonstrating capacity, the ASP should:
 - Establish all required policies and procedures (see IAAME Tables of Evidence),
 - Ensure employees have been trained, educated, and informed on how to implement the Standard as necessary, and
 - Develop necessary tools and resources to implement the standard.

DEMONSTRATING CAPACITY TO MEET THE REQUIREMENTS OF A STANDARD

IAAME Tables of Evidence Example

Service Planning and Delivery: 96.45(b)

Standard	Evidence to be submitted as a part of Application Part B	Evidence to be submitted and Interviews to be Conducted During Site Visit
Critical 96.45 (b) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider operates under a written agreement with the primary provider that: (1) Identifies clearly the adoption service(s) to be provided by the supervised provider and requires that the service(s) be provided in accordance with the applicable service standard(s) for accreditation and approval (for	<ul style="list-style-type: none">• Procedures for entering into agreements with supervised providers• Executive Verification• Sample written agreement or draft of agreement• Collaborative Relationships Profile• Signed written agreements with current supervised providers	Interviews with: <ul style="list-style-type: none">• CEO/Executive Director• Personnel responsible for supervised providers• Supervised providers, as applicable <ul style="list-style-type: none">• Signed written agreements with current supervised providers

CAPABILITY TO ACT AS A PRIMARY PROVIDER

"How do I show capability to act as a primary provider to the Accrediting Entity?"

Department of State Website: *FAQ: Clarification Regarding Primary Provider Rules for Incoming Adoptions:*

[Travel.State.Gov](#) > [Intercountry Adoption](#) > [Adoption Reference](#) > [Adoption FAQs](#) > FAQ: Clarification Regarding Primary Provider Rules for Incoming Adoptions

CAPABILITY TO ACT AS A PRIMARY PROVIDER

"How do I show capability to act as a primary provider to the Accrediting Entity?"

"Personnel resources:

- Sufficient staff with appropriate education and training to provide all 6 adoptive service itself or supervision to supervised providers and/or verification of the work of other foreign providers,
- An ASP does not need to employ superfluous staff for services it does not intend to perform.
- But To show capability ASPs must have personnel within their organization (such as an executive director or someone with extensive experience in intercountry adoption) with the training or expertise to provide appropriate supervision to supervised providers (when used), verify the work of other foreign providers, and ensure that any studies performed by exempted providers will be appropriately approved;"

CAPABILITY TO ACT AS A PRIMARY PROVIDER

"How do I show capability to act as a primary provider to the Accrediting Entity?"

"Financial resources:

- An adoption service provider will need to show how existing financial resources are adequate to meet the needs of service plans and maintain the capability to act as a primary provider.
- The cost of maintaining the capability to provide or arrange through other appropriate providers all six Hague adoption services will vary depending on a variety of factors (e.g., size, volume of cases, experience/background of management and caseworkers, extent to which outside resources must be accessed to create or demonstrate capability)."

CAPABILITY TO ACT AS A PRIMARY PROVIDER

"How do I show capability to act as a primary provider to the Accrediting Entity?"

"Policies and procedures:

- An adoption service provider must have policies and procedures in place defining how it will act as a primary provider.
- These policies might include defining lines of responsibility/supervision, plans for ensuring that staff will meet training requirements, and plans for how existing staffing would be augmented or realigned to take on the additional responsibilities."

DEMONSTRATING COMPLIANCE THROUGH PERFORMANCE

- **When** is an ASP required to demonstrate compliance with a Standard through actual performance?
 - During the Accreditation or Approval Renewal Process
 - In response to a request for evidence as a result of a complaint filed in the Hague Complaint Registry
 - Other M&O Activities: (i.e. self-reports, semi-annual report on complaints)
 - In response to a Notice of Deficiencies that may result from a completed renewal process or during monitoring and oversight

DEMONSTRATING COMPLIANCE THROUGH PERFORMANCE

- **How does an ASP demonstrate compliance with a Standard through actual performance?**
- **During the Accreditation and Approval Renewal Process:**
 - Policies and procedures: meet the Standard as written; are consistently applied; personnel are informed of the policies and procedures
 - Performance meets the standards as written
- **In response to a Notice of Deficiencies:**
 - Verification of ASP informing, training, and/or educating staff and/or clients on any changes to policy/procedure and or practice.
 - Evidence of implementation within practice
- **M&O Activities:**
 - Providing evidence of performance, where applicable, in response to a notice of compliant filed in the Hague Complaint Registry
 - Submitting self-reports and other activities with required evidence

DEMONSTRATING CAPACITY TO COMPLY WITH THE REQUIREMENTS OF A STANDARD

- **When is an ASP required to demonstrate capacity to meet the Standard:**
- **During the Initial Accreditation and Approval and Renewal Process:**
 - Policies and procedures: meet the standard as written; have sufficient detail; personnel are informed and knowledgeable of the policies and procedures.
- **In Response to a Notice of Deficiencies:**
 - If an ASP was required to demonstrate capacity during the renewal review, and failed to do so adequately, the Notice of Deficiencies would require the ASP to demonstrate capacity to meet the Standard.
 - An ASP may also not have evidence of performance available at the time a response is provided.

EXAMPLES FROM THE STANDARDS IN SUBPART F

**Demonstrating Capacity
and
Demonstrating Performance**

EXAMPLE: 96.38(C)

- Weight changing from Foundational to Critical
- Capacity to meet this Standard could **ONLY** be assessed if a first-time applicant
- **96.38(c)** *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.*

EXAMPLE: 96.41(D)

- **Weight changing from Foundational to Critical**
- **Capacity to meet the Standard may be assessed when:** The ASP has not received any complaints during the current accreditation/approval cycle, or the agency/person is an initial applicant.
- **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.*

EXAMPLE: 96.42(E)

- **Weight changing from Foundational to Mandatory**
- **Capacity to meet the Standard may be assessed when:** the ASP is currently providing intercountry adoption services and has not ceased providing any intercountry adoption services during the current accreditation/approval cycle.
- **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.*

EXAMPLE: 96.52(A)

- **Weight changing from Foundational to Critical**
- **Capacity to meet this Standard may be assessed when:** The ASP has not acted as the primary provider in any intercountry adoption case and is not in agreement to perform any of the functions of the standard; and/or is an initial applicant.
- **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.*

EXAMPLE: 96.55(A)

- **Weight changing from Foundational to Critical**
- *If an ASP has not conducted ANY outgoing services in the accreditation/approval cycle and has no plan to do so, IAAME may assess this Standard as “not applicable” to the ASP, and the ASP is not required to demonstrate compliance through performance or capacity.*
- **Capacity may be assessed when:** The ASP has not acted as the primary provider of in the accreditation/approval cycle; has acted as a supervised provider and is not in agreement to perform any of the functions of the standard; and/or is a first-time applicant.
- **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.*

REVISED SCS INFORMATION

- Department of State website: [Travel.State.Gov](#) > [Intercountry Adoption](#) > [Adoption Professionals](#) > [For Adoption Agencies](#) > Substantial Compliance System

Where to locate Standards in 22 CFR 96 Subpart F:

- [ecfr.gov](#) (Browse: Title 22)
- IAAME website: [IAAME.net](#) > Accreditation and Approval

Where to locate the Hague Technical Guidance:

- [Travel.State.Gov](#) > [Intercountry Adoption](#) > [Adoption Professionals](#) > [For Adoption Agencies](#) > Hague Accreditation Technical Guidance

Where to locate the Tables of Evidence:

IAAME.net > <https://www.iaame.net/accreditation/>

QUESTIONS?

- ASPs will have the opportunity to ask questions related to training via a survey provided following each training session.
- All surveys related to the three SCS trainings must be completed by October 12, 2020, to give IAAME adequate time to process each response.
- IAAME will be conducting a Q&A session on October 29, 2020 to answer questions submitted by ASPs related to each of the three SCS trainings provided.
- ASPs will also be provided with an opportunity to complete a training evaluation following each training session.