

§ 96.103

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§ 96.103 Oversight by accrediting entities.

(a) The accrediting entity must oversee an agency that it has temporarily accredited by monitoring whether the agency is in substantial compliance with the standards contained in § 96.104 and through the process of assessing the agency's application for full accreditation when it is filed. The accrediting entity must also investigate any complaints or other information that becomes available to it about an agency it has temporarily accredited. Complaints against a temporarily accredited agency must be handled in accordance with subpart J of this part. For purposes of subpart J of this part, the temporarily accredited agency will be treated as if it were a fully accredited agency, except that:

(1) The relevant standards will be those contained in § 96.104 rather than those contained in subpart F of this part; and

(2) Enforcement action against the agency will be taken in accordance with § 96.105 and § 96.107 rather than in accordance with subpart K of this part.

(b) The accrediting entity may determine, in its discretion, that it must conduct a site visit to investigate a complaint or other information or otherwise monitor the agency.

(c) The accrediting entity may consider any information that becomes available to it about the compliance of the agency. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.104 Performance standards for temporary accreditation.

The accrediting entity may not maintain an agency's temporary accreditation unless the agency demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the following standards:

(a) The agency follows applicable licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(b) It does not engage in any improper conduct related to the provision of intercountry adoption services, as evidenced in part by the following:

(1) It maintains its State license without suspension or cancellation for misconduct;

(2) It is not subject to a finding of fault or liability in any administrative or judicial action; and

(3) It is not the subject of any criminal findings of fraud or financial misconduct;

(c) It adheres to the standards in § 96.36 prohibiting child buying;

(d) It adheres to the standards for responding to complaints in accordance with § 96.41;

(e) It adheres to the standards on adoption records and information relating to Convention cases in accordance with § 96.42;

(f) It adheres to the standards on providing data to the accrediting entity in accordance with § 96.43;

(g) When acting as the primary provider in a Convention adoption it complies with the standards in §§ 96.44 and 96.45 when using supervised providers in the United States and it complies with the standards in §§ 96.44 and 96.46 when using supervised providers or, to the extent permitted by § 96.14(c), other foreign providers in a Convention country;

(h) When performing or approving a home study in an incoming Convention case, it complies with the standards in § 96.47;

(i) When performing or approving a child background study or obtaining consents in an outgoing Convention case, it complies with the standards in § 96.53;

(j) When performing Convention functions in incoming or outgoing cases, it complies with the standards in § 96.52 or § 96.55;

(k) It has a plan to transfer its Convention cases and adoption records if it ceases to provide or is no longer permitted to provide adoption services in Convention cases. The plan includes provisions for an organized closure and reimbursement to clients of funds paid for services not yet rendered;

(l) It is making continual progress toward completing the process of obtaining full accreditation by the time its temporary accreditation expires; and

(m) It takes all necessary and appropriate measures to perform any tasks

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in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

§ 96.105 Adverse action against a temporarily accredited agency by an accrediting entity.

(a) If the accrediting entity determines that an agency it has temporarily accredited is substantially out of compliance with the standards in § 96.104, it may, in its discretion, withdraw the agency's temporary accreditation.

(b) The accrediting entity must notify the agency in writing of any decision to withdraw the agency's temporary accreditation. The written notice must identify the deficiencies necessitating the withdrawal. Before withdrawing the agency's temporary accreditation, the accrediting entity may, in its discretion, advise a temporarily accredited agency in writing of any deficiencies in its performance that may warrant withdrawal and provide it with an opportunity to demonstrate that withdrawal would be unwarranted before withdrawal occurs. If the accrediting entity withdraws the agency's temporary accreditation without such prior notice, it must provide a similar opportunity to demonstrate that the withdrawal was unwarranted after the withdrawal occurs, and may reinstate the agency's temporary accreditation based on the information provided.

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

(d) The accrediting entity must notify the Secretary, in accordance with procedures established in its agreement with the Secretary, when it withdraws or reinstates an agency's temporary accreditation. The accrediting entity must also notify the relevant State licensing authority as provided in the agreement.

§ 96.106 Review of the withdrawal of temporary accreditation by an accrediting entity.

(a) A decision by an accrediting entity to withdraw an agency's temporary

accreditation shall not be subject to administrative review.

(b) Withdrawal of temporary accreditation is analogous to cancellation of accreditation and is therefore an adverse action pursuant to § 96.75. In accordance with section 202(c)(3) of the IAA (42 U.S.C. 14922(c)(3)), a temporarily accredited agency that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located to set aside the adverse action imposed by the accrediting entity. The United States district court shall review the adverse action in accordance with 5 U.S.C. 706. When a temporarily accredited agency petitions a United States district court to review the 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.

§ 96.107 Adverse action against a temporarily accredited agency by the Secretary.

(a) The Secretary may, in the Secretary's discretion, withdraw an agency's temporary accreditation if the Secretary finds that the agency is substantially out of compliance with the standards in § 96.104 and the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(b) The Secretary may also withdraw an agency's temporary accreditation if the Secretary finds that such action;

(1) Will protect the interests of children;

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

(3) Will protect the ability of U.S. citizens to adopt children under the Convention.

(c) If the Secretary withdraws an agency's temporary accreditation, the Secretary will notify the accrediting entity.