

Code of 1986, as amended, that has expertise in developing and administering standards for entities providing child welfare services; or

(b) A public entity (other than a Federal entity), including, but not limited to, any State or local government or governmental unit or any political subdivision, agency, or instrumentality thereof, that is responsible for licensing adoption agencies in a State and that has expertise in developing and administering standards for entities providing child welfare services.

§ 96.6 Performance criteria for designation as an accrediting entity.

An entity that seeks to be designated as an accrediting entity must demonstrate to the Secretary:

(a) That it has a governing structure, the human and financial resources, and systems of control adequate to ensure its reliability;

(b) That it is capable of performing the accreditation or approval functions or both on a timely basis and of administering any renewal cycle authorized under § 96.60;

(c) That it can monitor the performance of agencies it has accredited or temporarily accredited and persons it has approved (including their use of any supervised providers) to ensure their continued compliance with the Convention, the IAA, and the regulations implementing the IAA;

(d) That it has the capacity to take appropriate adverse actions against agencies it has accredited or temporarily accredited and persons it has approved;

(e) That it can perform the required data collection, reporting, and other similar functions;

(f) Except in the case of a public entity, that it operates independently of any agency or person that provides adoption services, and of any membership organization that includes agencies or persons that provide adoption services;

(g) That it has the capacity to conduct its accreditation, temporary accreditation, and approval functions fairly and impartially;

(h) That it can comply with any conflict-of-interest prohibitions set by the Secretary in its agreement;

(i) That it prohibits conflicts of interest with agencies or persons or with any membership organization that includes agencies or persons that provide adoption services; and

(j) That it prohibits its employees or other individuals acting as site evaluators, including, but not limited to, volunteer site evaluators, from becoming employees or supervised providers of an agency or person for at least one year after they have evaluated such agency or person for accreditation, temporary accreditation, or approval.

§ 96.7 Authorities and responsibilities of an accrediting entity.

(a) An accrediting entity may be authorized by the Secretary to perform some or all of the following functions:

(1) Determining whether agencies are eligible for accreditation and/or temporary accreditation;

(2) Determining whether persons are eligible for approval;

(3) Overseeing accredited agencies, temporarily accredited agencies, and/or approved persons by monitoring their compliance with applicable requirements;

(4) Investigating and responding to complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers);

(5) Taking adverse action against an accredited agency, temporarily accredited agency, or approved person, and/or referring an accredited agency, temporarily accredited agency, or approved person for possible action by the Secretary;

(6) Determining whether accredited agencies and approved persons are eligible for renewal of their accreditation or approval on a cycle consistent with § 96.60;

(7) Collecting data from accredited agencies, temporarily accredited agencies, and approved persons, maintaining records, and reporting information to the Secretary, State courts, and other entities; and

(8) Assisting the Secretary in taking appropriate action to help an agency or person in transferring its Convention cases and adoption records.

(b) The Secretary may require the accrediting entity:

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(1) To utilize the Complaint Registry as provided in subpart J of this part; and

(2) To fund a portion of the costs of operating the Complaint Registry with fees collected by the accrediting entity pursuant to the schedule of fees approved by the Secretary as provided in § 96.8.

(c) An accrediting entity must perform all responsibilities in accordance with the Convention, the IAA, the regulations implementing the IAA, and its agreement with the Secretary.

§ 96.8 Fees charged by accrediting entities.

(a) An accrediting entity may charge fees for accreditation or approval services under this part only in accordance with a schedule of fees approved by the Secretary. Before approving a schedule of fees proposed by an accrediting entity, or subsequent proposed changes to an approved schedule, the Secretary will require the accrediting entity to demonstrate:

(1) That its proposed schedule of fees reflects appropriate consideration of the relative size and geographic location and volume of Convention cases of the agencies or persons it expects to serve;

(2) That the total fees the accrediting entity expects to collect under the schedule of fees will not exceed the full costs of accreditation or approval under this part (including, but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities).

(b) The schedule of fees must:

(1) Establish separate non-refundable fees for Convention accreditation and Convention approval;

(2) Include in each fee for full Convention accreditation or approval the costs of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees based on actual costs in-

curred may be charged for the travel and maintenance of evaluators; and

(3) If the accrediting entity provides temporary accreditation services, include fees as required by § 96.111 for agencies seeking temporary accreditation under subpart N of this part.

(c) An accrediting entity must make its approved schedule of fees available to the public, including prospective applicants for accreditation or approval, upon request. At the time of application, the accrediting entity must specify the fees to be charged to the applicant in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become accredited or approved.

(d) Nothing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity pursuant to a schedule of fees approved by the Secretary.

§ 96.9 Agreement between the Secretary and the accrediting entity.

An accrediting entity must perform its functions pursuant to a written agreement with the Secretary that will be published in the FEDERAL REGISTER. The agreement will address:

(a) The responsibilities and duties of the accrediting entity;

(b) The method by which the costs of delivering the accreditation, temporary accreditation, or approval services may be recovered through the collection of fees from those seeking accreditation, temporary accreditation, or approval, and how the entity's schedule of fees will be approved;

(c) How the accrediting entity will address complaints about accredited agencies, temporarily accredited agencies, and approved persons (including their use of supervised providers) and complaints about the accrediting entity itself;

(d) Data collection requirements;

(e) Matters of communication and accountability between both the accrediting entity and the applicant(s) and between the accrediting entity and the Secretary; and

(f) Other matters upon which the parties have agreed.