

**Additional Recommendations to the State Department & Acton Burnell re:  
Implementation of the Intercountry Adoption Act of 2000**

**Evan B. Donaldson Adoption Institute**

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The Evan B. Donaldson Adoption Institute (Institute) strongly recommends that Acton Burnell revise the preliminary draft of 22 CFR Part 96 (Regulations), the Draft Convention Accreditation and Approval Procedures (Procedures) and the Draft Statement of Work to provide for a formal, escalating complaint resolution procedure with mandated time frames for each stage of the process. Such a tiered complaint process should be comprised of the following levels of review: accredited agencies/approved persons (AAs/APs), accrediting entities for Ombudsman services and formal appeal, if necessary, and, within specific parameters, the State Department (either the Office of Children's Issues or Office of Inspector General). The Regulations should not give AAs/APs virtually unchecked authority to police their own actions. The Regulations should also explicitly delineate the following elements of an effective complaint mechanism: the State Department's and accrediting entities' complaint review responsibilities, timelines for reviewing complaints, education of consumers about the complaint process, record keeping, reporting, and sanctions.

At the June 18-19<sup>th</sup> meeting, Acton Burnell expressed interest in considering additional complaint resolution mechanisms that were described by the Institute representative and speakers from other organizations, and invited the Institute to submit a more detailed written proposal, which follows.

The Intercountry Adoption Act (IAA) Section 202 (b)(2) specifically requires that accrediting entities, as a function of their oversight responsibility, review complaints against AAs/APs. It is the Institute's position that the complaint process in the current draft does not effectively implement the IAA. The Regulations do not provide an adequate and meaningful complaint process that insures that AAs/APs adhere to regulatory standards. It also does not provide prospective adoptive families, birth parents and other aggrieved parties with a forum in which to seek redress.

Section 96.13.F of the Regulations describes internal complaint review mechanisms required for AAs/APs. This section is deficient in at least four ways.

1. F.1 confers on "clients" the "opportunity to lodge complaints or appeals directly to the agency or person". Clients are not defined in the Regulations. The Institute recommends that consideration be given to using a different term, because it is conceivable that birth parents and possibly others might have reason to file a complaint based on interactions with AAs'/APs' staff or subcontractors.
2. F.2 should specify time frames for an internal review procedure. The Institute recommends that complaints that are not time-sensitive be resolved within 30 days, and that the Regulations should specify expedited review within 7 days for complaints that are of an urgent nature. (Ex. Demand for substantial additional charges as a condition of completing an imminent adoption.)

3. F.4 should be rewritten to provide that complainants can appeal any complaint to the accrediting entities if the AAs/APs do not satisfactorily resolve their complaint within 30 days of its written submission. If the complaint falls outside the ambit of the Convention, IAA, Regulations and other accreditation requirements, the accrediting entities may decline to review the complaint, but must provide a written explanation to the complainant.
4. F.6 should be amended to require that the AAs/APs forward complaints on a quarterly basis in a standard format (developed by the accrediting entities) to the accrediting entities. Annual receipt of AAs'/APs' complaints is simply not sufficient to meet the accrediting entities' "oversight" responsibility.

As the Institute pointed out at the meeting, the accrediting entities' complaint review requirements described in the Procedures do not dovetail with the regulatory requirements for the AAs/APs. The Procedures and Scope of Work should be revised to include the following features:

1. An Ombudsman should be a required oversight service provided by the accrediting entities. The Ombudsman would be the first level of oversight for reviewing and *resolving* complaints that were not satisfactorily resolved by the AAs/APs. The Ombudsman would review each complaint referred to the accrediting entities, collect all necessary information, try to satisfactorily resolve the complaint in a timely manner (not to exceed 30 days for non-urgent complaints and 7 days for urgent complaints), and, if unsuccessful, forward the complaint to the appropriate person within the accrediting entities for review of the appeal. The Ombudsman would also be responsible for analyzing and identifying patterns of complaints involving specific agencies and persons, as well as patterns of complaints that may be indicative of systemic problems in adhering to regulatory standards. Such information should be reported to the State Department on no less than an annual basis.
2. The accrediting entities should be required to designate an appropriate person to review appeals referred by the Ombudsman and such review should be completed within 30 days, with expedited complaints reviewed within 7 days.
3. The accrediting entities should be required to publish information on the types and prevalence of complaints system-wide, as well as the number of, the rate for and type of complaints for each AA/AP in an accessible and comparative format.
4. Responsibility for education of the public about the complaint review process should not reside solely with the AAs/APs. Rather, it should be a required service of the accrediting entities and/or State Department.
5. In addition to imposing sanctions with respect to accreditation and approval, the accrediting entities should be required to immediately refer substantiated complaints involving violation of regulatory standards by AAs/APs to the State Department and Attorney General for appropriate action.

The Institute recommends that there be a final level of appeal of complaints at the State Department. Additionally, the Scope of Work should specify the types and frequency of reports to be provided by the accrediting entities to the State Department, so as to enable the State Department to effectively oversee this important component of the accrediting entities' scope of work.

We appreciate your serious consideration of our recommendations.