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DEPARTMENT OF STATE

Public Notice: 9640

Memorandum of Agreement between the U.S. Department of State Bureau of Consular Affairs and the Council on Accreditation

AGENCY: Department of State

ACTION: Notice

SUMMARY: The Department of State (the Department) is the lead Federal agency for implementation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention), the Intercountry Adoption Act of 2000 (IAA), and the Intercountry Adoption Universal Accreditation Act of 2012 (UAA). Among other things, the IAA and UAA give the Secretary of State responsibility, by entering into agreements with one or more qualified entities and designating such entities as accrediting entities, for the accreditation of agencies and approval of persons to provide adoption services in intercountry adoptions. This notice is to inform the public that on July 11, 2016, the Department entered into an agreement with the Council on Accreditation (COA) designating COA as an accrediting entity (AE) for an additional five years.

The Memorandum of Agreement between the U.S. Department of State Bureau of Consular Affairs and the Council on Accreditation (2016 MOA) remains largely consistent with the terms of the MOA signed on July 12, 2006 by Maura Harty, Assistant Secretary for Consular Affairs, U.S. Department of State and signed on July 6, 2006 by Richard Klarberg, President and Chief Executive Officer, COA. However, the 2016

MOA has been updated to reflect enactment of the UAA and to remove obsolete references, while further refining the role and responsibilities of the accrediting entity and taking into account subsequent updates to the intercountry adoption accreditation regulations in 22 CFR Part 96. The text of the 2016 MOA is included in its entirety at the end of this Notice.

FOR FUTURE INFORMATION CONTACT: Valerie Barlow at 202-485-6347.

Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department, pursuant to section 202(a) of the IAA, must enter into an agreement with at least one qualified entity and designate it as an accrediting entity. Accrediting entities may be (1) nonprofit private entities with expertise in developing and administering standards for entities providing child welfare services; or (2) state adoption licensing bodies that have expertise in developing and administering standards for entities providing child welfare services and that accredit only agencies located in that state. Both nonprofit accrediting entities and state accrediting entities must meet any other criteria that the Department may by regulation establish. COA is a nonprofit private entity with expertise in developing and administering standards for entities providing child welfare services throughout the United States.

The final rule on accreditation of agencies and approval of persons (22 CFR Part 96) was published in the *Federal Register* (71 FR 8064-8066, February 15, 2006) and became effective on March 17, 2006. The final rule establishes the regulatory framework for the accreditation and approval function and provides the standards that the designated

accrediting entities will follow in accrediting or approving adoption service providers.

Under the UAA, adoption service providers working with prospective adoptive parents in non-Convention adoption cases need to comply with the same accreditation requirement and standards that apply in Convention adoption cases.

Through the Department's ongoing monitoring and oversight of COA, which includes an annual performance review, the Department observed that COA's performance of its duties as an accrediting entity is in substantial compliance with the IAA, UAA and regulations set forth in Title 22 of the Code of Federal Regulations, part 96. Therefore, the Department has renewed the designation of COA as an AE.

**MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF
STATE BUREAU OF CONSULAR AFFAIRS AND THE COUNCIL ON
ACCREDITATION**

Parties & Purpose of the Agreement

The Department of State, Bureau of Consular Affairs (Department), and the Council on Accreditation (COA), with its principal office located at 45 Broadway, 29th floor, New York, N.Y. 10006, hereinafter the "Parties," are entering into this agreement for the purpose of designating COA as an accrediting entity under the Intercountry Adoption Act of 2000 (IAA), Public Law 106-279, and 22 CFR Part 96.

Authorities

The Department enters into this agreement pursuant to Sections 202 and 204 of the IAA, 22 CFR Part 96, and Delegation of Authority 261. COA has full authority to enter into this MOA pursuant to a resolution passed by its Board of Trustees dated July 6, 2016, which resolution authorizes Richard Klarberg as its President & CEO to execute this

agreement on behalf of COA.

Definitions

For purposes of this memorandum of agreement, terms used here that are defined in 22 CFR 96.2 shall have the same meaning as they have in 22 CFR 96.2.

The Parties **AGREE AS FOLLOWS:**

Article 1

Designation of the Accrediting Entity

The Department hereby designates COA as an accrediting entity and thereby authorizes it to accredit agencies and approve persons to provide adoption services in intercountry adoption cases, in accordance with the procedures and standards set forth in 22 CFR Part 96, and to perform all of the accrediting entity functions set forth in 22 CFR 96.7(a).

Article 2

Accreditation Responsibilities and Duties of the Accrediting Entity

- 1) COA agrees to perform all accrediting entity functions set forth in 22 CFR 96.7(a) and to perform its functions in accordance with the Convention, the IAA, the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), Public Law 112-276, Part 96 of 22 CFR, and any other applicable regulations, and as additionally specified in this agreement. In performing these functions, COA will operate under policy direction from the Department regarding U.S. obligations under the Convention and regarding the functions and responsibilities of an accrediting entity under the IAA, UAA, and any other applicable regulations.
- 2) COA will take appropriate staffing, funding, and other measures to allow it to carry out all of its functions and fulfill all of its responsibilities, and will use the adoptions

tracking system and the Complaint Registry (ATS/CR) as directed by the Department, including by updating required data fields in a timely fashion.

- 3) In carrying out its accrediting entity functions COA will:
 - a) make decisions on accreditation and approval in accordance with the procedures set forth in 22 CFR Part 96 and using only the standards in subpart F of 22 CFR Part 96 and the substantial compliance weighting system approved by the Department pursuant to para.5, Article 3 below;
 - b) charge applicants for accreditation or approval only fees approved by the Department pursuant to para. 4, Article 3 below;
 - c) review complaints, including complaints regarding conduct alleged to have occurred overseas, in accordance with subpart J of 22 CFR Part 96 and the additional procedures approved by the Department pursuant to paragraphs 3c) and 3d) in Article 3, below. COA will exercise its discretion in determining which methods are most appropriate to review complaints regarding conduct alleged to have occurred overseas. This may, when appropriate, include a referral to the Department and/or other appropriate law enforcement authorities for potential investigation of complaints relating to possible civil or criminal violation of IAA section 404 or other possible criminal activity;
 - d) take adverse actions against accredited agencies and approved persons in accordance with subpart K of 22 CFR Part 96, and cooperate with the Department in any case in which the Department considers exercising its adverse action authorities because the accrediting entity has failed or refused after consultation with the Department to take what the Department considers to be appropriate

- enforcement action;
- e) assume full responsibility for defending adverse actions in court proceedings, if challenged by the adoption service provider or the adoption service provider's board or officers;
 - f) refer an adoption service provider to the Department for debarment if, but only if, it concludes after review that the adoption service provider's conduct meets the standards for action by the Secretary set out in 22 CFR 96.85;
 - g) promptly report any change in the accreditation or approval status of an adoption service provider to the relevant state licensing authority;
 - h) maintain and use only the required procedures approved by the Department and those procedures presented to the Department pursuant to Article 3 of this agreement whenever they apply;
 - i) COA may consult with the Department, when needed, to solicit greater clarity regarding the meaning of relevant laws and regulations.

Article 3

Training, Procedures, and Fees

- 1) **Accreditation Materials and Training:** In coordination with the Department and any other designated accrediting entities, COA will:
 - a) maintain forms, training materials, and evaluation practices;
 - b) assist in conducting or participate in any joint training sessions;
 - c) develop and maintain resources to assist applicants for accreditation and approval in achieving substantial compliance with the applicable standards.
- 2) **Internal Review Procedure:** COA will maintain procedures that have been

approved by the Department and use these procedures to determine whether to terminate adverse actions against an accredited agency or approved person on the grounds that the deficiencies necessitating the adverse action have been corrected.

3) **Other Procedures:** COA will maintain procedures approved by the Department and update these, subject to the Department's approval, as needed:

- a) to evaluate whether a candidate for accreditation meets the applicable eligibility requirements set forth in 22 CFR Part 96;
- b) to carry out its annual monitoring duties;
- c) to review complaints or information referred to it through the Complaint Registry or from the Department directly;
- d) to review complaints that it receives about its own actions as an accrediting entity for adoption service providers;
- e) to make the public disclosures required by 22 CFR 96.91; and
- f) to ensure the reasonableness of charges for the travel and maintenance of its site evaluators, such as for travel, meals, and accommodations, which charges shall be in addition to the fees charged under 22 CFR 96.8.

4) **Fee Schedule:**

- a) COA will maintain a fee schedule for accreditation and approval services that meets the requirements of 22 CFR 96, and update these, subject to approval by the Department. Fees will be set based on the principle of recovering no more than the full cost, as defined in OMB Circular A-25 paragraph 6(d)(1), of accreditation and approval services. COA will maintain a fee schedule developed using this methodology together with comprehensive documentation, and will provide

justification of the proposed fees to the Department for the Department's approval.

b) The approved fee schedule can be amended with the approval of the Department.

5) Substantial Compliance Weighting Systems:

a) COA will maintain and update a substantial compliance weighting system as described in 22 CFR 96 and as approved by the Department.

b) In maintaining the systems described in paragraph (a) of this section, COA will coordinate with any other accrediting entities, and consult with the Department to ensure consistency between the systems used by accrediting entities. These systems can be amended with the approval of the Department.

Article 4

Data Collection, Reporting and Records

1) Adoptions Tracking System/Complaint Registry (ATS/CR):

a) COA will maintain and fund a computer and internet connection for use with the ATS/CR that meets system requirements set by the Department;

b) The Department will provide software or access tokens needed by individuals for secure access to the ATS/CR and facilitate any necessary training for use of the ATS/CR.

2) **Annual Report:** COA will report on dates agreed upon by the Parties, in a mutually agreed upon format, the information required in 22 CFR 96.93 as provided in that section through ATS/CR.

3) **Additional Reporting:** COA will provide any additional status reports or data as reasonably required by the Department, and in a mutually agreed upon format.

- 4) **Accrediting Entity Records:** COA will retain all records related to its accreditation functions and responsibilities in printed or electronic form in accordance with the electronic recordkeeping policy that applies to Federal acquisition contracts under Federal Acquisition Regulation 4.703 for a minimum of six years after their creation, or until any litigation, claim, or audit related to the records filed or noticed within the six-year period is finally terminated, whichever is longer.

Article 5

Department Oversight and Monitoring

- 1) To facilitate oversight and monitoring by the Department, COA will:
- a) provide copies of its forms and other materials to the Department and give Department personnel the opportunity to participate in any training sessions for its evaluators or other personnel;
 - b) allow the Department to inspect all records relating to its accreditation functions and responsibilities and provide to the Department copies of such records as requested or required for oversight, including to evaluate renewal or maintenance of the accrediting entity's designation, and for purposes of transferring adoption service providers to another accrediting entity;
 - c) submit to the Department by a date agreed upon by the Parties an annual declaration signed by the President and Chief Executive Officer confirming that COA is complying with the IAA, UAA, 22 CFR Part 96, any other applicable regulations, and this agreement in carrying out its functions and responsibilities;
 - d) make appropriate senior-level officers available to attend a yearly performance review meeting with the Department;

- e) immediately report to the Department events that have a significant impact on its ability to perform its functions and responsibilities as an accrediting entity, including financial difficulties, changes in key personnel or other staffing issues, legal or disciplinary actions against the organization, and conflicts of interest;
 - f) notify the Department of any requests for information relating to its role as an accrediting entity under the IAA and UAA or Department functions or responsibilities that it receives from Central Authorities of other countries that are party to the Convention, or any other competent authority (except for routine requests concerning accreditation, temporary accreditation, or approval status or other information publicly available under subpart M of Part 96), and consult with the Department before releasing such information;
 - g) consult immediately with the Department about any issue or event that may affect compliance with the IAA, UAA, or U.S. compliance with obligations under the Convention.
- 2) **Departmental Approval Procedures:** In all instances in which the Department must approve a policy, system, fee schedule, or procedure before COA can bring it into effect or amend it, COA will submit the policy, system, fee schedule, or procedure or amendment in writing to the Department's AE Liaison via email where possible. The AE Liaison will coordinate the Department's approval process and arranging any necessary meetings or telephone conferences with COA. Formal approval by the Department will be expeditiously conveyed in writing by the Deputy Assistant Secretary for Overseas Citizens Services or her or his designee.

- 3) **Suspension or Cancellation:** When the Department is considering suspension or cancellation of COA's designation:
- a) the Department will notify COA in writing of the identified deficiencies in its performance and the time period in which the Department expects correction of the deficiencies;
 - b) COA will respond in writing to either explain the actions that it has taken or plans to take to correct the deficiencies or to demonstrate that the Department's concerns are unfounded within 10 business days;
 - c) upon request, the Department also will meet with the accrediting entity by teleconference or in person;
 - d) if the Department, in its sole discretion, is not satisfied with the actions or explanation of COA, it will notify COA in writing of its decision to suspend or cancel COA's designation and this agreement;
 - e) COA will stop or suspend its actions as an accrediting entity as directed by the Department in the notice of suspension or cancellation, and cooperate with any Departmental instructions in order to transfer adoption service providers it accredits (including temporarily accredits) or approves to another accrediting entity, including by transferring fees collected by COA for services not yet performed.
- 4) COA will follow its procedures for reviewing complaints against COA received by the Department or referred to the Department because the complainant was not satisfied with COA's resolution of the complaint. These complaint procedures may be incorporated into the Department's general procedures for handling instances in

which the Department is considering whether a deficiency in the accrediting entity's performance may warrant suspension or cancellation of its designation.

Article 6

Other Issues Agreed By the Parties

1) Conflict of interest provisions:

a) COA shall disclose to the Department the name of any organization of which it is a member that also has as members intercountry adoption service providers.

COA shall demonstrate to the Department that it has procedures in place to prevent any such membership from influencing its actions as an accrediting entity and shall maintain and use these procedures.

b) COA shall identify for the Department all members of its board of directors or other governing body, employees, and site evaluators who also serve as officers, directors, employees, or owners of adoption service providers. COA shall demonstrate it has procedures in place to ensure that any such relationships will not influence any accreditation or approval decisions, and shall maintain and use these procedures.

c) COA shall disclose to the Department any other situation or circumstance that may create the appearance of a conflict of interest.

2) **Liability:** COA agrees to maintain sufficient resources to defend challenges to its actions as an accrediting entity, including by maintaining liability insurance for its actions as an accrediting entity brought by agencies and/or persons seeking to be accredited or approved or who are accredited or approved, and to inform the Department immediately of any events that may affect its ability to defend itself (e.g.,

change in or loss of insurance coverage, change in relevant state law). COA agrees that it will consult with the Department immediately if it becomes aware of any other legal proceedings related to its acts as an accrediting entity, or of any legal proceedings not related to its acts as an accrediting entity that may threaten its ability to continue to function as an accrediting entity.

Article 7

Liaison Between the Department and the Accrediting Entity

- 1) COA's principal point of contact for communications relating to its functions and duties as an accrediting entity will be the Director of Intercountry Adoption Accreditation. The Department's principal point of contact for communication is the Accrediting Entity Liaison officer in the Office of Children's Issues, Office of Overseas Citizens Services, Bureau of Consular Affairs, U.S. Department of State.
- 2) The parties will keep each other currently informed in writing of the names and contact information for their principal points of contact. As of the signing of this Agreement, the respective principal points of contact are as set forth in Attachment 1.

Article 8

Certifications and Assurances

- 1) COA certifies that it will comply with all requirements of applicable State and Federal law.

Article 9

Agreement, Scope, and Period of Performance

- 1) **Scope:**

- a) This agreement is not intended to have any effect on any activities of COA that are not related to its functions as an accrediting entity for adoption service providers providing adoption services in intercountry adoptions.
 - b) Nothing in this agreement shall be deemed to be a commitment or obligation to provide any Federal funds.
 - c) All accrediting entity functions and responsibilities authorized by this agreement are to occur only during the duration of this agreement.
 - d) Nothing in this agreement shall release COA from any legal requirements or responsibilities imposed on the accrediting entity by the IAA, UAA, 22 CFR Part 96, or any other applicable laws or regulations.
- 2) **Duration:** COA's designation as an accrediting entity and this agreement shall remain in effect for five years from signature, unless terminated earlier by the Department in conjunction with the suspension or cancellation of the designation of COA. The Parties may agree mutually in writing to extend the designation of the accrediting entity and the duration of this agreement. If either Party does not wish to renew the agreement, it must provide written notice no less than one year prior to the termination date, and the Parties will consult to establish a mutually agreed schedule to transfer adoption service providers to another accrediting entity, including by transferring a reasonable allocation of collected fees for the remainder of the accreditation or approval period of such adoption service providers.
- 3) **Changed Circumstances:** If unforeseen circumstances arise that will render COA unable to continue to perform its duties as an Accrediting Entity, COA will immediately inform the Department of State. The Parties will consult and make an

effort to find a solution that will enable COA to continue to perform until the end of the contract period. If no such solution can be reached, the contract may be terminated on a mutually agreed date or, if mutual agreement cannot be reached, on not less than 14 months written notice from COA.

- 4) **Severability:** To the extent that the Department determines, within its reasonable discretion, that any provision of this agreement is inconsistent with the Convention, the IAA, the UAA, the regulations implementing the IAA and UAA, or any other provision of law, that provision of the agreement shall be considered null and void and the remainder of the agreement shall continue in full force and effect as if the offending portion had not been a part of it.
- 5) **Entirety of Agreement:** This agreement is the entire agreement of the Parties and may be modified only upon written agreement of the Parties.

Dated: July 11, 2016

Michele Thoren Bond,
Assistant Secretary for
Consular Affairs,
U.S. Department of State

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