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that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s). The accrediting entity must ensure that its officers, employees, contractors, and evaluators who have access to information or documents provided by the agency or person have signed a non-disclosure agreement reflecting the requirements of § 96.26(a) and (b). The accrediting entity must maintain an accurate record of the agency's or person's application, the supporting documentation, and the basis for its decision.

§ 96.27 Substantive criteria for evaluating applicants for accreditation or approval.

(a) The accrediting entity may not grant an agency accreditation or a person approval, or permit an agency's or person's accreditation or approval to be maintained, unless the agency or person demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the standards in subpart F of this part.

(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 re-application 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.

(c) The standards contained in subpart F of this part apply during all the stages of accreditation and approval, including, but not limited to, when the accrediting entity is evaluating an applicant for accreditation or approval, when it is determining whether to renew an agency's or person's accredi-

tation or approval, when it is monitoring the performance of an accredited agency or approved person, and when it is taking adverse action against an accredited agency or approved person. Except as provided in § 96.25 and paragraphs (e) and (f) of this section, the accrediting entity may only use the standards contained in subpart F of this part when determining whether an agency or person may be granted or permitted to maintain accreditation or approval.

(d) The Secretary will ensure that each accrediting entity performs its accreditation and approval functions using only a method approved by the Secretary that is substantially the same as the method approved for use by each other accrediting entity. Each such method will include: an assigned value for each standard (or element of a standard); a method of rating an agency's or person's compliance with each applicable standard; and a method of evaluating whether an agency's or person's overall compliance with all applicable standards establishes that the agency or person is in substantial compliance with the standards and can be accredited or approved. The Secretary will ensure that the value assigned to each standard reflects the relative importance of that standard to compliance with the Convention, the IAA, and the UAA and is consistent with the value assigned to the standard by other accrediting entities. The accrediting entity must advise applicants of the value assigned to each standard (or elements of each standard) at the time it provides applicants with the application materials.

(e) If an agency or person has previously been denied accreditation or approval, has withdrawn its application in anticipation of denial, or is re-applying for accreditation or approval after cancellation, refusal to renew, or temporary debarment, the accrediting entity may take the reasons underlying such actions into account when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval on the basis of the previous action.

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(f) If an agency or person that has an ownership or control interest in the applicant, as that term is defined in section 1124 of the Social Security Act (42 U.S.C. 1320a-3), has been debarred pursuant to § 96.85, the accrediting entity may take into account the reasons underlying the debarment when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval or refuse to renew accreditation or approval on the basis of the debarment.

(g) The standards contained in subpart F of this part do not eliminate the need for an agency or person to comply fully with the laws of the jurisdictions in which it operates. An agency or person must provide adoption services in intercountry adoption cases consistent with the laws of any State in which it operates and with the Convention, the IAA and the UAA. Persons that are approved to provide adoption services may only provide such services in States that do not prohibit persons from providing adoption services. Nothing in the application of subparts E and F should be construed to require a State to allow persons to provide adoption services if State law does not permit them to do so.

[71 FR 8131, Feb. 15, 2006, as amended at 79 FR 40634, July 14, 2014]

§ 96.28 [Reserved]

Subpart F—Standards for Intercountry Adoption Accreditation and Approval

§ 96.29 Scope.

The provisions in this subpart provide the standards for accrediting agencies and approving persons.

[79 FR 40634, July 14, 2014]

LICENSING AND CORPORATE GOVERNANCE

§ 96.30 State licensing.

(a) The agency or person is properly licensed or otherwise authorized by State law to provide adoption services in at least one State.

(b) The agency or person follows applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services.

(c) If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only:

(1) Through agencies or persons that are licensed or authorized by State law to provide adoption services in that State and that are exempted providers or acting as supervised providers; or

(2) Through public domestic authorities.

(d) In the case of a person, the individual or for-profit entity is not prohibited by State law from providing adoption services in any State where it is providing adoption services, and does not provide adoption services in foreign countries that prohibit individuals or for-profit entities from providing adoption services.

[71 FR 8131, Feb. 15, 2006, as amended at 79 FR 40634, July 14, 2014]

§ 96.31 Corporate structure.

(a) The agency qualifies for nonprofit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or qualifies for nonprofit status under the laws of any State.

(b) The person is an individual or is a for-profit entity organized as a corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity under the laws of any State.

[71 FR 8131, Feb. 15, 2006, as amended at 79 FR 40634, July 14, 2014]

§ 96.32 Internal structure and oversight.

(a) The agency or person has (or, in the case of an individual, is) a chief executive officer or equivalent official who is qualified by education, adoption service experience, and management credentials to ensure effective use of resources and coordinated delivery of the services provided by the agency or person, and has authority and responsibility for management and oversight of the staff and any supervised providers in carrying out the adoption-related functions of the organization.

(b) The agency or person has a board of directors or a similar governing body that establishes and approves its mission, policies, budget, and programs; provides leadership to secure