

Title: 96.35(a) Ethical Practice Policy
Effective Date: 04/01/2008
Revision Dates: 12/01/2012; 07/09/2017; 10/05/2020; 03/21/2024

Standard 96.35(a):

The agency or person provides adoption services ethically and in accordance with the Convention's principles of:

- (1) ensuring that intercountry adoptions take place in the best interests of children; and
- (2) preventing the abduction, exploitation, sale, or trafficking of children.

Technical Guidance C.1:

The preamble to the proposed rule 22 CFR Part 96 included the following guidance on 96.35:

An agency or person must demonstrate to the accrediting entity that it provides adoption services ethically and in accordance with the Convention's goals of ensuring that intercountry adoptions take place in the best interests of children and preventing the abduction, exploitation, sale of, or trafficking in children. To permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person must disclose the specified information about itself and about its directors, officers, and employees. The Department believes that it is critical for the accrediting entity to have full information about the applicant before making a final decision. Because suitability is a matter of ongoing concern, the agency or person must also update the information required by this section within thirty business days of learning of a change in the information.

The standards do not require automatic disqualification of an agency or person for any particular behavior, activity, or event. Instead, consistent with the accreditation scheme employed, the standards give the accrediting entity the discretion and flexibility to examine the factual circumstances underlying the conduct and to determine whether accreditation or approval is appropriate. Where an agency or person has committed an egregious or illegal act or has engaged in a pattern of behavior that is inconsistent with protecting the best interests of children, accreditation or approval is likely to be inappropriate. Yet it is impossible for the Department to list every type of non-conforming or unethical behavior that would fall into this category. Therefore, in addition to specific disclosures, the standards mandate disclosure of any other businesses or activities currently carried out by the agency or person, affiliate organizations, or any entity in which it has an ownership or control interest that are inconsistent with the principles of the Convention. These principles include the proposition that in no instance is the abduction, sale, exploitation, or trafficking of children permissible. Such activities would include, for example, distributing pornography or operating a Web site that contains pornography, regardless of whether such activity is legal or not, and trafficking in individuals, either into or out of the United States, for pernicious purposes.

Thus, while suitability disclosures set forth in 96.35(b)-(d) inform the rating of compliance with this broad standard, nothing in the regulations limits the scope of conduct that may be considered in rating 96.35(a). This standard is not limited to conduct that relates to the agency or person's activities in a Convention case. For instance, egregious or illegal conduct by an agency or person in a non-Convention country may call into question whether the agency or person provides

adoption services ethically and in accordance with the Convention's principles and can raise an issue of substantial compliance with the standard. Furthermore, the regulations do not define the term "ethically," and myriad types of conduct may impact the enumerated Convention principles.

With respect to rating 96.35(a):

1) If the conduct in question relates to compliance with another standard(s) in subpart F, the accrediting entity generally uses that standard(s) to evaluate the conduct. In this way, the AE uses the specific practice standard for the purpose for which it was written. The AE also has discretion to consider whether the conduct in question additionally impacts the rating of 96.35(a), i.e., because it is so pervasive or egregious.

2) If the conduct in question does not relate to another standard, the AE considers the nature of the conduct as well as the factual circumstances around the conduct (including, as relevant, remedial efforts the agency or person has taken to mitigate the conduct, and any factors that might show a pattern of conduct) to determine whether the conduct impacts the rating of 96.35(a).

Technical Guidance C.6:

Question: The issue posed for clarification is whether 96.45(a)(3) and 96.46(a)(3) require supervised and foreign supervised providers to disclose ALL information set forth in 96.35(a)-(d), or whether there are exceptions. For example, the accrediting entities (AEs) asked if foreign supervised providers would not be subject to criminal background check and FBI form requirements in 96.35(c)(3) and (c)(4), whether that information would not need to be disclosed. Also, AEs posed question of what to do if a supervised provider's State limits authorized uses of criminal background checks and accreditation falls outside the description of authorized uses.

Response: Sections 96.45(a)(3) and 96.46(a)(3) require supervised and foreign supervised providers, respectively, to disclose the suitability information required by 96.35. The language of 96.35(c)(3) requires the disclosure of the results of "a State criminal background check and a child abuse clearance for any such individual in the United States in a senior management position or who works directly with parents(s) and/or children..." (emphasis added). Likewise, the language in 96.35(c)(4) with respect to the completed FBI Form FD-258 applies to "each such individual in the United States in a senior management position or who works directly with parent(s) and/or children..." (emphasis added). Therefore, foreign supervised providers who are not located in the United States would not be subject to these requirements, while supervised providers located in the United States would. In addition, both of these provisions are directed only at those individuals 1) who are in senior management positions; or 2) who work directly with parents or children. Thus, while there are no explicit exceptions to sections 96.45(a)(3) and 96.46(a)(3), the language of those provisions together with the language of 96.35 do not cover all directors, officers and employees of a supervised provider or a foreign supervised provider. If State law prohibits a supervised provider from disclosing the criminal background checks of its employees in accordance with Part 96, the agency or person would need to show evidence to this effect. The preamble to the regulations, in discussing 96.35, specifically addresses this point: "To be clear, 96.35(c)(3) does not supersede or supplant any other Federal or State statute or regulation that might otherwise restrict access to or consideration of background checks. If the State Criminal background check is unavailable by operation of State law, the agency or person can so demonstrate." See 71 FR 8092, response to Comment 9.

Technical Guidance C.7:

Question: What evidence can an agency or person use to show that it is not engaged in child buying?

Response: In accordance with the regulations, the evaluators will evaluate evidence required for sections 96.36(a) and (b), including policies and procedures prohibiting child-buying, employee training curricula, interviews of appropriate personnel, and evidence that, when acting as a primary provider, the agency or person has a written agreement with any foreign supervised providers that requires them to adhere to the standard prohibiting child buying, in accordance with 96.46(b)(3). We note that the standard in 96.36(a) and (b) is a mandatory standard.

Policy:

Global Adoption Services, Inc. (Global) provides adoption services ethically and in accordance with the Convention's goals of ensuring that intercountry adoptions take place in the best interests of children while preventing the abduction, exploitation, sale, or trafficking of children. Global has policies and procedures in place to ensure that persons associated with the Agency conduct business affairs with such standards of integrity that no conflict of interest exists or can be reasonably implied or construed. Global is dedicated to providing adoption services ethically and in accordance with local, state, national and international laws, and regulations.

Unethical business conduct, actions, or even the appearance of unethical behavior is unacceptable under any conditions. The reputation of the Agency depends on each associate applying common sense in situations where specific rules of conduct are insufficient to provide clear direction. A strong sense of personal ethics, which should extend beyond compliance with applicable laws, is necessary to guide the behavior of every person working in connection with the Agency. These persons shall include, but are not limited to, directors, managers, employees, and fee for service workers, both foreign and domestic, or persons operating in countries which are parties to the Convention or not.

Ensuring Intercountry Adoptions Take Place in the Best Interests of Children

Global takes measures to ensure that intercountry adoptions take place in the best interests of the children. Some steps Global takes to ensure this practice include:

- Thoroughly researching country programs prior to opening to ensure that the process is known, transparent, and that the child study will contain sufficient information so that a family can reasonably assess whether they can meet the needs of the child.
- Thoroughly reviews home studies and screens families to ensure that they will meet the best interests of the child.
- Has open communication with the families regarding the difficulties of adoption to set expectations for parenting a child from a hard place.
- Supervising FSPs by providing training, timely communication, performance reviews as pertaining to shared cases, and review of evaluations provided by families.

Disclosure of Suitability

Disclosure of suitability pursuant to 96.45(a)(3) and 96.46(a)(3) as set forth in 96.35(a)-(d) is required before entering into an agreement with supervised providers and foreign supervised providers. If the information requested is prohibited from being disclosed by the laws of the state or foreign country in which the supervised provider operates, other means of proving suitability should be required. An affidavit or a copy of the law which precludes the information from being disseminated may be obtained if other means of proving suitability is not available.

Adherence to State, Federal and International Rules and Regulations

Global is a non-profit 501(c)(3) agency and adheres to all state, federal and international guidelines. The Agency follows the Rules and Regulations of the Department of Human Services, Office of Licensing and Monitoring for the State of Maryland. Refer to the Code of Maryland Regulations Title .07.05.01-.04 and Title .07.02.21.

International Adoptions are facilitated through the Foreign Government or Central Authority. Each Foreign Government or Central Authority has rules and regulations in place to assure that adoptions are completed according to strict ethical guidelines. Children must be legally defined as orphans according to the country's law to be placed for adoption.

Global retains copies of applicable state law, federal law, and foreign laws on file. These laws have been reviewed by Global staff to ensure knowledge of the requirements. Global has provided training on applicable laws.

Employee Training

Global ensures that its employees are trained and understand the ethical issues involved in international adoption. This is a part of the initial orientation as well as ongoing training. All employees that provide social services are properly qualified with either a Bachelors or Master's Degree in a related social science and previous experience in adoption services or in family and children's services. A well-qualified and trained staff ensures that our clients are provided with professional and ethical services in the best interests of children.

Our policy is to have every employee take regular training on ethical practices. Although there are numerous trainings which satisfy ethical practices, if the requirement has not been satisfied, we are currently using NCFA's *Foreign Supervised Provider Training*, which covers the following topics:

- Hague Convention on Adoption
- Hague and non-Hague adoption process
- U.S. agency accreditation
- U.S. adoption laws and regulations
- Six adoption services,
- Role of foreign supervised providers
- Contracts and Agreements
- Prohibition on child-buying
- Foreign Corrupt Practices Act.

We will have regular discussions on Ethical Practices during meetings with all applicable staff, supervised providers, and foreign partners to discuss best practices, identify potential areas of concern and potential improvement, and discuss implementation of those improvements as needed. These meetings will help Global identify any situations that involve ethical dilemmas, or present challenges in the ethical delivery of services to ensure that the highest level of ethical standards and services are being provided. Continued discussions of the core ethical values of the agency and profession helps to maintain Global's ability to respond to new and emerging ethical challenges in the most relevant and up-to-date manner as possible.

Prohibition on Child-Buying

Global strictly prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individuals, or an entity as payment for the child or as an inducement to release the child. If permitted, or required by the child's country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child.

Each employee, country representative, and supervised provider is provided training regarding the buying, trafficking, exploitation, or abduction of children. These principles include that in no instance is the sale, trafficking, exploitation, or abduction of children permissible. Global does not offer gifts or money in exchange for child placements. Any employee or supervised provider who is found to have offered money or other consideration, directly or indirectly, to a child's parents or other individual or an entity as payment for a child or to release a child will be terminated immediately. This policy is strictly enforced. We are currently using NCFA's *Foreign Supervised Provider Training* to teach our staff on the prohibition of child-buying.

Where appropriate, such an infraction from this policy shall be reported to the proper authorities, which may include, but not limited to, state licensing, police, Federal Bureau of Investigations, CEAS, Department of Homeland Security, Department of State, USCIS, and/or the Foreign Government or Central Authority.

Reporting Suspected Violations

Any allegation or violation of Global's ethical practice policies, and the basis for the allegation, shall be communicated confidentially to the Executive Director. Measures shall be taken to ensure that no adverse action is taken, either directly or indirectly, against a complainant who makes allegations in good faith.

Fees and Services

Global outlines all fees and services provided to Prospective Adoptive Parents (PAPs) prior to beginning the adoption process. The fees and services are included in Global's Adoption Service Agreement and are provided to the PAPs upon initial inquiry. With such transparency, Global provides families with great assurance that their adoption is predictable and ethical. Global works to ensure that adoption costs for the families stay within the parameters of the service agreement. If extra services are needed, the PAPs are made fully aware of the costs of said service.

See 96.40(g) Policy for Charging Additional Fees and Expenses Beyond Those Disclosed in the Adoption Services Contract.

Fees for adoption services performed by a Foreign Supervised Provider are paid to the FSPs directly by the PAPs in accordance with the fee schedule. The PAPs send payment to the FSP via electronic wiring/banking as instructed in the invoice or to Global when applicable.

Compensation

Global has a Board of Directors that consists of volunteers whose only compensation is the reimbursement of meeting or travel expenses for company business. For each supervised provider that works in collaboration with Global, there is a Provider Agreement in place that outlines the compensation by using a breakdown of fees for services for that Supervised Provider. Employees are paid an hourly wage, fee for service, or salaried, depending on the position. There are no fees paid on a contingent basis. ***See 96.34(a)-(f) Compensation.***

Charitable Donations (See also 96.33(f) Charitable Contributions)

Global as an organization, its board members, officers, and employees are strictly prohibited from accepting any donation for the purpose of influencing a child placement decision. Decisions to place a child will never be influenced by any donation from anyone. If someone is found to have violated this policy, the person will be terminated immediately. The following safeguards are in place to ensure that donations do not influence child placement decisions:

- Charitable donations from PAPs or current client families will not be accepted prior to the finalization of their adoption unless the donation is in-kind (or cash to be used to provide in-kind donations) to be directly provided to children in need.
- Employees responsible for answering inquiries and handling donations are trained on Global's donation policy. Charitable donations do not influence any child placement decisions.
- Global does not accept any donation if the donor expresses that he/she intends to influence Global's child placing decisions with the donation.
- All child-placing employees are trained on this policy in order to prevent decision-making which is influenced by a donation.

Global accepts donations from the public for its Haiti charity program. These donations are deposited into a banking account separate from Global's account for adoption placement programs. Each donation is noted as to who made the donation, in what amount and for what program.

Global accepts donations from charitable organizations or persons on behalf of parents when designated by a donor. The donations accepted by charitable organizations are used specifically for adoption fees outlined in Global's fee schedules and comply with state and federal regulations as well as the wishes of the charitable organizations or persons. These donations do not influence child placement decisions in any way; all decisions in relation to child placement are made wholly by the Foreign Government/Foreign Central Authority and that Global has no control over this decision making process.

Upon receipt of any donation, a charitable donation receipt for tax purposes will be sent to the person or persons making the donation, upon request. This letter is to be generated by Global's Director of Agency Support Services.

Global again certifies that child placement decisions will never be influenced by any donation from anybody. If someone is found to have violated this policy, the person will be terminated immediately.

Global will immediately notify the appropriate authorities if there is reason to believe that any child is being abused, neglected, exploited, sold, abducted, or trafficked. Appropriate authorities may include, State Child Protective Services, local or state police, Federal Bureau of Investigations, Department of Homeland Security, Department of State, and/or Citizenship and Immigration Services. Upon making such a notification, Global will officially suspend all interaction with the agency or individual who is under investigation. The suspension will continue until the concerns have been cleared by the appropriate authorities.