



## U.S. Citizenship and Immigration Services

*Office of Public Affairs*

# USCIS Teleconference on Determining Suitability of Prospective Adoptive Parents for Intercountry Adoption Policy Guidance

January 22, 2019

On January 22, USCIS held a stakeholder teleconference to discuss the USCIS [Guidance on Determining Suitability of Prospective Adoptive Parents for Intercountry Adoption](#) policy memorandum (PM or memo) that USCIS issued on November 9, 2018. USCIS representatives provided an overview of the memorandum and addressed many questions submitted in advance. The following is a summary of the PM, questions and answers from the teleconference, and answers to the follow-up questions we received after the teleconference.

## Background

The purpose of this PM was to provide guidance on issues related to prospective adoptive parent (PAP) suitability that may arise when adjudicating intercountry adoption cases. It applies to both Hague and non-Hague adoption cases – specifically the adjudication of [Form I-600A](#) and [I-800A](#) applications, [Form I-600](#) and [I-800](#) petitions, and their related supplements.

The memo largely clarifies existing practices that were not specifically referenced in the USCIS Adjudicator's Field Manual (AFM), but it also provides information on standards USCIS will apply to four suitability issues that elaborate on existing policy and practice.

## Effective Dates

The sections that clarify existing practice were effective as of the PM publication date (November 9, 2018) since they were already in place. However, for the sections that are intended to elaborate on existing policy and practice, we delayed the effective date by 90 days in order to provide time for adoption service providers (ASPs) to ensure they have incorporated the additional information into home studies.

The following four requirements have a delayed effective date, and will be applied to all home studies completed on or after February 7, 2019:

1. Duty of disclosure notice: Home study preparers must give adult members of the household (AMHs) a full explanation of the duty of disclosure.
2. Duty of disclosure timeframe: Any change in criminal history (including arrest, conviction, other criminal history as an offender) or any change in history of substance abuse, sexual abuse, child abuse, and/or family violence as an offender by the PAPs or AMHs must be reported to USCIS as soon as practicable, but no later than 30 days after the event.
  - For other significant changes, it is best practice to notify USCIS and the home study preparer within 30 days, otherwise the PAPs must do so at the next suitability determination point (you can find a list of these points on page 5 of the memo).
  - However, if a significant change occurs after petition approval, but before the child immigrates to the United States, PAPs must notify USCIS and the home study preparer immediately. To prevent significant delays, PAPs should also notify the Department of State visa-issuing post as soon as the event occurs.
3. Unregulated custody transfer (UCT): Home study preparers must ask PAPs/AMHs targeted/tailored questions about UCT.
4. Children in the home: Home study preparers must identify each child resident in the home by name, date of birth, country of birth, alien registration number (if any), and relationship to the PAPs.
  - The home study preparer's recommendation to adopt should discuss/consider children currently in the home along with the PAP's ability to care for additional children.
  - When possible, the home study preparer should observe any child in the home during the home visit or at some point during the home study process. If observation is not possible, the home study preparer should explain why.

To recap, the four provisions described above will be effective for all home studies completed on or after February 7, 2019. To determine a home study's "completion" date, USCIS will look to the date of the home study preparer's signature. The rest of the policy memo became effective on November 9, 2018.

## Questions<sup>1</sup>

### **PM Topic – Pre-Adoption Requirements**

These questions relate to the "Pre-adoption requirements" section of the memo on page 4, which states that if a child will be coming to the United States for adoption, then the home study must:

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<sup>1</sup> These questions and answers are intended to provide generalized guidance regarding the implementation of the Guidance on Determining Suitability of Prospective Adoptive Parents for Intercountry Adoption Policy Memorandum. It should not be considered legal advice and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

- **Describe** the state pre-adoption requirements for any state in which the child will reside;
- **Describe** what requirements they will or will not have met and why, and cite any relevant state statutes and regulations; **or**
- **Explain** that the state(s) of intended residence does not have any pre-adoption requirements.

**Q1. In the past, home study preparers indicated in the home study if the state pre-adoption requirements had been met, and we cited the relevant statutes. Should we now include paragraphs (possibly one or more pages of content) from the state adoption regulations, or may we summarize the pre-adoption requirements?**

**A1.** USCIS defers to the home study preparer to decide how to best outline state pre-adoption requirements for cases in which the child will be coming to the U.S. for adoption.

Generally, full paragraphs from the state's pre-adoption requirements are not necessary unless the state requires it. However, you should provide a summary or list of all pre-adoption requirements for the state where the child will reside (e.g., residence requirements, post-placement reports, etc.).

**Q2. How can we find out what wording USCIS has on file for state pre-adoption requirements so that we can be sure our wording matches?**

**A2.** We are not looking for specific wording unless the state law requires it. Instead, we are looking for:

- 1) A description – including citations – of any requirements AND a discussion of whether they have/will be met and if not, why, OR
- 2) An explanation that the state does not have any pre-adoption requirements.

We will generally rely on information provided by the home study preparer regarding pre-adoption requirements but have discretion to further investigate and/or issue a Request for Evidence (RFE) as needed.

**Q3. If the only requirements for a state pertain to the number of post-placement visits/reports required in order to legally finalize an adoption, is that the type of requirements that you are referring to?**

**A3.** Many states have pre-adoption requirements that must be complied with when a child is coming to be adopted in the United States. The post-placement visits/reporting requirements you mention are an example of the kind of requirements we are referring to in the memo. If a state's pre-adoption requirements include a residence period and post-placement reporting requirements, then both should be summarized/listed in the home study along with the relevant citations and if they have been/will be met and if not, why.

As a reminder, state pre-adoption requirements only need to be addressed if the child will be "coming to the United States for adoption."

**PM Topic – Specific Recommendation for Adoption**

These questions relate to the home study preparer’s specific recommendation of the PAPs for adoption, the terminology used in that recommendation, and the reasons for the recommendation that is discussed on pages 3-5 of the memo.

**Q1. With the change in terminology from “approved” to “recommending,” what are agencies to do in states that require the language of “approved”? May agencies write “recommending and approved”?**

**A1.** While a home study preparer recommends PAPs for adoption of children meeting certain criteria, it is USCIS that actually approves the PAPs as suitable and eligible to adopt a child for purposes of U.S. immigration law.

This clarification in terminology is intended to establish more uniform language. However, if a state requires that the home study specifically use the term “approval,” then it will still be sufficient for the home study to state that the PAPs are “recommended and approved to adopt.”

**Q2. Will the phrase “approved to adopt” still be acceptable in a home study (assuming the preparer also means recommend)?**

**A2.** Yes. This is a change in terminology used by USCIS to better reflect the distinct roles of the home study preparer and USCIS.

We would not issue an RFE solely because a home study stated “approved to adopt” instead of “recommended to adopt.” We would, however, issue an RFE if the home study made no reference to the preparer’s approval or recommendation of a family to adopt.

**Q3. The PM highlights the distinction between the home study preparer’s recommendation and USCIS approval. Does this relieve agencies of the liabilities associated with approval of a family? Is it being assumed by the Federal government on all home studies they approve or deny?**

**A3.** USCIS reviews home studies as part of every suitability determination. We rely on the expertise of the home study preparer to conduct and make a recommendation for adoption in the home study. USCIS assumes no responsibility for the home study nor is this memo intended to relieve agencies of any liabilities associated with conducting home studies.

This memo is intended solely for the guidance of USCIS personnel in the performance of their official duties and to provide transparency to the public. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

**Q4. Page 5 of the PM states that the home study “must state if there are any specific restrictions to the adoption, such as age, gender or other characteristics of the child.” Is**

**this a change from the previous recommendation section, such that agencies are no longer required to list out each and every special need that a family may be approved for, but rather allowed to offer restrictions for characteristics that they are NOT allowed to adopt?**

**A4.** This is not a change. The memo tracks with the regulatory language in 8 CFR 204.311(r).

If you want to recommend a family to adopt a child with special needs, for example, then you can continue to list what special needs you are recommending them for, or, you could say what special needs they are not recommended to adopt. How you choose to articulate this is up to you; however, your recommendation should be clear as to any inclusions or limitations.

**Q5. On page 5 of the memo, the second paragraph states: “While USCIS carefully considers the home study preparer’s recommendations, USCIS has the sole authority to make suitability determinations, and may issue and approval notice that varies from the home study recommendations.” Can you please advise what issue this statement is intending to address? What clinical or other training does the USCIS officer have that would enable them to make a determination that is different from a Hague-approved agency and licensed social worker?**

**A5.** The inclusion of this language in the memo is simply a reminder of USCIS’ sole authority to make suitability determinations. The regulations outline USCIS’ role in evaluating the home study as part of the suitability determination, including that the USCIS officer will give considerable weight to the home study but is not bound by it. USCIS would generally issue an RFE before deviating from the home study preparer’s recommendation.

#### **PM Topic – Updated Home Study Requirements**

These questions relate to updated home studies and the requirements associated with updated home studies that are discussed in the memo starting on page 6.

USCIS regulations use the term “home study update” and “home study amendment” but do not provide clear definitions to distinguish between the two terms. USCIS has taken advantage of recent policy updates, such as this memo, to remove the use of the term “amendment” and instead refer to all subsequent home studies as “updates” for simplicity. As the memo clarifies, a home study update is required when there is an event that necessitates USCIS to determine whether a family remains suitable or eligible to adopt.

**Q1. Page 6 of the memo states that USCIS requires the home study preparer to include the results, date, and location/mode of updated screenings for all home study updates. Does this mean live scan v. ink? Does this mean where the person was printed/scanned? Do you mean fingerprinting v. name check?**

**A1.** CFR 204.311(u)(5) requires that the home study preparer update the screening discussed in 8 CFR 204.311(i)-(l) such as child abuse registry checks and re-asking specific questions related to abuse and criminal history.

We are asking for context on how you updated this required screening. For example, did you call the individual? Did meet them in-person? We need to know the when, where, and how.

**Q2. For a home study update, we understand that pregnancy, in and of itself, is not reportable. However, the birth of the baby (or addition of a child through custody order) is. So, is that true for the original home study as well? Is pregnancy not a relevant medical condition any longer?**

**A2.** The memo specifically addresses pregnancy as a significant change for purposes of an updated home study. If you conclude that the pregnancy is significantly impacting a household member's physical, mental, emotional, or behavioral health, or because it significantly decreases the PAP's financial resources, then it would be relevant to an overall assessment of the family's suitability and would necessitate a home study update.

Once the child is born, an updated home study will be required. If known, pregnancy should still be addressed in the initial home study and the guidance is not intended to relieve the home study preparer of that requirement.

However, becoming pregnant after the home study has been reviewed by USCIS would not necessarily require an updated home study. But again, an updated home study will be required if a child is added to the home through birth, foster care, or adoption.

### **PM Topic – Home Studies for PAPs Residing Abroad**

These questions relate to the "Home studies for PAPs residing abroad" section of the memo on page 8.

**Q1. For families residing abroad who finalize the adoption in the U.S., the new memo says that state regulations may apply if the adoption is to be finalized in the U.S. Previously, we had been told that we must do a home study update in the U.S. state of residence prior to the family arriving in the U.S. for finalization of the adoption. Which is it?**

**A1.** If PAP(s) are currently residing abroad and have no intended or proposed state of residence in the United States, then generally there would be no applicable state law standards to apply. Note, since the home study preparer must be licensed or authorized to complete home studies in the jurisdiction where the home study is completed, the license/authorization in the foreign jurisdiction may require the home study preparer to also apply the local jurisdiction's home study standards.

However, if the PAP(s) residing abroad intend to finalize the adoption of the child in the United States, they will generally need to identify a state of actual or proposed residence that would have jurisdiction to finalize the adoption. The home study conducted abroad would therefore need to comply with the applicable standards for that state under 8 CFR 204.311(e). PAP(s) should consult with their home study preparer to verify any necessary requirements for finalization of an adoption in the United States.

**Q2. Can you provide guidance on how to proceed with a home study for U.S. citizens residing abroad, if there are no laws regulating home studies in the foreign country?**

**A2.** Home study preparers may conduct home studies abroad for U.S. citizens residing abroad if they are authorized to conduct home studies both: 1) under the accreditation regulations, and 2) under the law of the jurisdiction in which the home study is conducted.

If the other country does not have any laws on the subject, then the home study preparer just needs to comply with the U.S. requirements.

**Q3. What do we do about families living overseas who are currently deeply into the home study process?**

**A3.** As explained, the memo primarily describes policies and procedures that reflect current USCIS practice. However, the four specific issues identified at the beginning of the call will become effective for home studies **completed** on or after February 7, 2019, whether the family is living abroad or in the United States.

As a reminder, to determine a home study's "completion" date, USCIS will look to the date of the home study preparer's signature.

**PM Topic – Duty of Disclosure and Timeframe for Notification**

These questions relate to the "Duty of disclosure and timeframe for notification" section of the memo starting on page 9.

**Q1. On page 10 of the memo, there is an "exception" paragraph in bold italics and there is reference made to "petition approval." Does this refer to the approval of the family to adopt or the approval of the child as eligible to come to the U.S.?**

**A1.** For additional context, this question relates to the discussion on the duty of disclosure and timeframe for notification of 30 days from the event. The exception referenced in the question provides that: *\*The only exception to this is if any event occurs after petition approval, but before the child immigrates to the United States, the PAPs must notify USCIS and the home study preparer immediately. To prevent significant delays, the PAPs should also notify the DOS visa-issuing post as soon as the event occurs.*

"Petition approval" as referenced means the final approval of the Form I-600 or Form I-800 petition.

**Q2. Will the phrase "Duty of Candor" still be acceptable language if used in a home study to advise individuals of their of duty of disclosure?**

**A2.** Yes. The regulations use the terms "duty of candor" and "duty of disclosure" interchangeably. For clarity, the PM notes that USCIS will use the term "duty of disclosure" going forward. We would not issue an RFE solely because a home study preparer used the term "duty of candor" instead of the USCIS-preferred term "duty of disclosure." We would however, issue an RFE, if the home study did not indicate that PAPs and AMHs were advised of this duty.

**PM Topic – Communication between USCIS and DOS on Updated Home Study Events**

This question relates to the communication between USCIS and the U.S. Department of State (DOS) section of the memo on page 11.

**Q1. Regarding the direct contact between DOS and USCIS, what is the purpose of this? Which department supersedes the other? Is this communication monitored in any way?**

**A1.** USCIS and DOS each have distinct authority and roles within the intercountry adoption process. USCIS has sole authority over suitability-related issues. Similarly, DOS has sole authority to issue visas. Though separate, both our agencies rely on each other to fulfill our respective roles. Therefore, ongoing communication is necessary for the process to work. The discussion about these respective roles and how we communicate as part of the intercountry adoption process is meant to provide additional transparency and clarity.

As the memo explains, generally, both USCIS and DOS are involved in various stages of an intercountry adoption case. The existing USCIS and DOS case management systems do not have the capability to communicate or sync with each other. Therefore, if either USCIS or DOS becomes aware of a suitability-related concern (for example, an unreported change in criminal history), it should be expected that we will coordinate immediately and regularly communicate until we resolve the concern. USCIS and DOS staff typically communicate through phone, email, or in accordance with local policy.

Any derogatory information that will impact the adjudicative determination will be addressed consistent with regulatory requirements, and the PAPs will be afforded notice and the opportunity to respond.

**PM Topic – Forms of Child Abuse**

These questions relate to the “Forms of child abuse” section of the memo starting on page 11.

**Q1. What is USCIS’ regulatory authority to require information about unregulated custody transfers (UCT)? What authority does USCIS have to determine that UCT is child abuse/neglect?**

**A1.** By statute, USCIS has the sole authority to make suitability determinations in intercountry adoption cases. By regulation, USCIS also has the responsibility to make an independent decision about suitability factors in Hague and non-Hague cases. This responsibility includes considering any relevant information that may impact suitability.

As part of the suitability determination, USCIS may consider UCT as relevant and exercise its discretion to consider a UCT as a negative suitability factor, specifically, as a form of child abuse/neglect that requires discussion and proof of rehabilitation. This view of UCT as a form of child abuse or neglect is also consistent with how some states view UCT.

**Q2. With regard to the UCT, does a state or local court fall under the definition of**



**state/local authorities? Does an attorney fall under that definition? We are trying to determine if a person voluntary places or accepts a child for permanent custody and an attorney facilitates it through the court, does this meet the requirement for state or local authority involvement?**

**A2.** While the specific requirements vary by state, generally, The Interstate Compact on the Placement of Children (ICPC) governs the placement of children from one state to another. While the ICPC only applies to interstate transfers and exempts certain categories of relative transfers, for purposes of determining PAP suitability, USCIS views UCT as any intent to make a permanent transfer of a child without involving the child welfare or other state/local authorities or without following the applicable state/local requirements for permanent transfer of a child, whether intrastate or interstate, to anyone.

These determinations will be fact and circumstance specific and contingent upon state/local requirements.

### **PM Topic – Child Abuse Registry Checks**

These questions relate to the “Child abuse registry checks” section of the memo starting on page 12. USCIS regulations require that the home study preparer check any available child abuse registries for any state or foreign country in which PAPs or adult members of the household have lived since his or her 18<sup>th</sup> birthday.

**Q1. In general, if families are doing home study updates and their child abuse registry checks for the state that they are currently living in are less than 15 months old, would we still need to re-run them?**

**A1.** No, only child abuse registry checks over 15 months old at the time of the home study preparer’s signature must be re-run in this situation.

Unlike fingerprints, which must be current for USCIS to issue a final decision on a case, if the child abuse registry checks are not older than 15 months at the time of the home study preparer’s signature on any initial home study or subsequent update, you do not need to re-run them.

**Q2. Regarding an inability to obtain a foreign country child abuse registry check, if an ASP cannot get a response, should they wait a full six months and then file if not obtainable or may they file prior and keep waiting during the period of the RFE?**

**A2.** It is up to the family and their ASP to decide when there is sufficient supporting documentation to file an application or petition with USCIS. If we receive a home study without evidence of a child abuse registry check for an identified country of residence, USCIS will issue an RFE for the missing evidence and may deny if we do not receive evidence of a check or a statement that it is unobtainable by the RFE response date.

**Q3. How does USCIS expect us to keep on top of changing country borders?**

**A3.** The home study preparer is responsible for ensuring that the home study complies with

requirements. If for example, when looking up a PAP's address, you discover that the PAP told you they resided in country X, but you discover that they now live in country Y due to a recent country border change, then you need to check both country X's and Y's child abuse registries.

**PM Topic – Child(ren) in the Home**

These questions relate to the “Child(ren) in the home” section of the memo on page 14.

**Q1. The state of Texas will not do a criminal history check on a child under the age of 14 years. So, is it sufficient to say they don't have a criminal record? How would an agency determine whether or not a child has a criminal record, especially since most minors' criminal records would be sealed anyway?**

**A1.** If the state will not conduct the check for whatever reason, the home study preparer should explain that in the home study.

USCIS does not require criminal history checks on a child in the household. Rather, the memo requires that home study preparers ask the PAPs (and the child, if appropriate) if the child has any criminal history and conduct any background checks on the child that are appropriate in light of the information you receive, and to factor that information into your assessment of the suitability of the home.

**Q2. How are we to report a criminal history on a child in the home when that child's criminal record is sealed? How are we not violating the privacy of a minor when we record a minor's criminal history? (The existing regulations state that we ask about criminal history of the applicants and additional adult members of the home and does not stipulate that we ask minors.)**

**A2.** In determining the suitability to adopt, USCIS will give considerable weight to the home study. The home study should include the home study preparer's assessment of any potential problem areas. The criminal history of a minor in the home may be relevant to the home study preparer's recommendation and ultimately to USCIS' determination of suitability.

USCIS does not require criminal checks on a child in the household, however, consistent with the evaluation of the home study and suitability determination, USCIS is requiring that the home study address whether any child in the household has a criminal history. Information related to any criminal history of the child should be included in your assessment of the home.

**PM Topic – Suitability-Related Information and the Responsibility to Make an Independent Decision**

This question relates to the responsibility to make an independent decision section of the memo on page 15.

**Q1. Page 15 of the memo states: 8 CFR 204.312(b) and 8 CFR 204.3(h)(2) give USCIS the responsibility to make an independent decision about suitability factors in Hague and non-Hague cases, respectively, and the authority to consult with other governmental**

**entities and licensed professionals as appropriate. This responsibility includes considering any relevant information that may impact suitability.” Does this mean that USCIS may determine that some factor within the home study can be deemed unsuitable based on the adjudicator’s opinion? For example, if the home study approves the family for a special needs child, or approves the family for a child out of birth order, can the adjudicator make an independent decision that the family is unsuitable for this type of child? If so, what is the clinical training and authorization of the adjudicators to determine this? What problem or issue is this statement intending to address?**

**A1.** As mentioned previously, the regulations outline USCIS’ role in evaluating the home study as part of the suitability determination. The USCIS officer will give considerable weight to the home study, but is not bound by it.

There may be unique facts and circumstances in a specific case where we exercise our discretion and, for example, consult with the appropriate licensed professionals or a local child welfare agency. Despite a favorable home study, if there is an articulable basis from the evidence in the record to find a PAP is not suitable, in some instances due to information not known to the home study preparer, USCIS will generally issue an RFE or Notice of Intent to Deny (NOID) as appropriate and provide the PAP an opportunity to respond.

**PM Topic – Additional Issues – Form I-600 Concurrent Filing**

These questions relate to the “Form I-600 Concurrent (“Combination”) Filing” section of the memo starting on page 17.

**Q1. Previously, with a kinship adoption in the non-Hague process, we were allowed to submit both the Form I-600A and the Form I-600 at the same time for processing when we had all of the documents. In the past two years, however, we were not allowed to submit the Form I-600 until the Form I-600A had received approval. Submitting the documents any earlier would result in the Form I-600 being automatically denied. It seems with the latest memo, it is again OK to submit the Form I-600A with the Form I-600, if all of the documents are available. I would like to clarify that we can submit the Form I-600 with the Form I-600A or prior to the Form I-600A being approved.**

**A1.** As clarified in the PM and also stated on the USCIS website, PAPs may file Form I-600 and also request a suitability determination as part of the Form I-600 adjudication instead of having to file Form I-600A first. This is called “concurrent” or “combo/combination” filing.

When making a concurrent filing, PAPs do not file a separate Form I-600A. Instead, they only file the Form I-600 along with the supporting documentation required for both the Form I-600A and Form I-600. Additionally when making a concurrent filing, PAPs may only file with USCIS. Department of State is not authorized to adjudicate concurrent filings because only USCIS may make suitability determinations.

The memo has not changed this practice. Instead, the memo clarifies that when possible, before making a determination on the child’s eligibility (beyond the age requirements), USCIS will make

a suitability determination.

**Q2. Can you make a combination filing for a Pre-Adoption Immigration Review (PAIR) country like Taiwan?**

**A2.** Yes, you can make a concurrent/combination filing in a PAIR country.

Please contact the [USCIS National Benefits Center Adoptions Unit](#) for additional questions about concurrent filings on behalf of children from countries with PAIR programs in place.

**General Questions**

These questions do not fit into one set section of the memo or category.

**Q1. The AFM provisions included on page 31 (5<sup>th</sup> paragraph) of the memo states: “Specify if the home study preparer made any referral as described in 8 CFR 204.311(g)(4) and include a copy of the report resulting from each referral, [and] the home study preparer’s assessment of the impact of the report on the suitability of the applicant to adopt.” In the past, the agency did NOT include copies of the reports from the outside referrals. Why has this changed? Under what authority is this now required? These medical/psychological reports are confidential, and are usually clinical in nature. What medical or clinical training does the adjudicating officer have to evaluate these reports?**

**A1.** This is not a change. The language referenced was already included in the USCIS AFM and did not change with the new PM. The regulations at 8 CFR 204.311(m) provide that the home study must address the current physical, mental, and emotional health of the applicant and any adult member of the household. As deemed necessary or helpful to the completion of the home study, 8 CFR 204.311(g)(4) provides for referral to the appropriate physician, psychiatrist, clinical psychologist, substance abuse counselor, etc., or if such a referral would be required for a domestic adoption in that state, you must indicate this in the home study.

These reports may be relevant to USCIS in conjunction with the home study recommendation to evaluate suitability to adopt. In such cases, USCIS may issue an RFE for a copy of the report. While these reports are required by many countries, we generally do not require them unless they are needed to establish rehabilitation.

**Q2. Will USCIS be tracking RFEs and reporting on ASP’s RFEs to DOS and/or IAAME?**

**A2.** No. The PM is not intended to change any reporting requirements.

**Q3. Under what authority are these changes being made when 8 CFR 204.311 is in the Federal Register and some of parts of the Memo contradict 8 CFR 204.311 and other points in the memo aren’t even in 8 CR 204.311 such as asking about the criminal history of a minor, UCT, dropping the six-month minimum time frame for a response re: a foreign child abuse registry?**

**A3.** As previously stated, by statute, USCIS has the sole authority to make suitability determinations in intercountry adoption cases. By regulation, USCIS also has the responsibility to

make an independent decision about suitability factors in Hague and non-Hague cases.

This responsibility includes considering any relevant information that may impact suitability. The policy memo clarifies and elaborates on the regulatory requirements. 8 CFR 204.311(g)(3) requires that the home study preparer provide information on and assess the suitability of the PAPs as an adoptive parent based on the PAPs' background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the child(ren) for whom they would be qualified to care.

USCIS has the discretion to consider the criminal history of a child residing in the PAPs' home, UCT, and other factors detailed in the policy memo as relevant to an assessment of the PAPs' suitability and eligibility for intercountry adoption.

Additionally, to clarify one of the examples cited in the question, the memo does not "drop" the six-month timeframe for receiving a response from a State or foreign authority on child abuse registry information. Consistent with existing practice, USCIS may issue an RFE if the home study does not include all child abuse registry checks for a country where one is available.

While 8 CFR 204.311(i)(4) allows for a six-month period within which a state or foreign country will release information related to a request for child abuse registry checks, that period is longer than the maximum RFE response period in the regulations.

For this reason, the memo recommends that PAPs wait to file until the home study preparer has obtained this information. If USCIS has issued an RFE for missing child abuse registry checks from a state/country with a known/available child abuse registry and the state/country has not responded before the RFE response deadline, the PAP must formally respond to the RFE before the deadline with evidence of the home study preparer's unsuccessful attempts to obtain the information. If USCIS does not receive a response to the RFE or if the response does not sufficiently address the deficiency in the filing, we may deny the petition.

## **Follow-Up Questions<sup>2</sup>**

These are the answers to the follow-up questions we received after the January 22 teleconference.

**Q1. Are the pre-adoption requirements those requirements up to the home study approval/pre-placement or are the requirements up to the adoption finalization? For example, if the child is brought back to our state for adoption, than there is a six-month post placement supervisory**

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<sup>2</sup> These questions and answers are intended to provide generalized guidance regarding the implementation of the [Guidance on Determining Suitability of Prospective Adoptive Parents for Intercountry Adoption](#) Policy Memorandum. It should not be considered legal advice and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

**period. Are the requirements you are looking for prior to this or include this? We want to be sure we are giving our agencies the right requirements to follow.**

**A1.** If a child will be coming to the U.S. for adoption, the home study needs to address any state pre-adoption requirements. Pre-adoption requirements must be complied with in advance of the child's adoption. If the state requires a six-month post-placement period before the adoption, you would need to address this in the home study in addition to any other state pre-adoption requirements to finalize an adoption. The home study should include a description – including citations – of the requirements and a discussion of whether they have been met or will be met prior to the adoption and if not, why.

**Q2. Can you provide more insight into what, specifically, USCIS needs for permission to conduct a home study abroad? Is authorization to process adoptions from a specific country sufficient, or must there be a specific statement concerning or permitting authorization to conduct the home study? What options are available for countries that have no specific standards or licensing, or if a country's public foreign authority only conducts home studies for its country's citizens and has no process by which a foreign agency can request this authority? Will this require a foreign agency to register as a legal entity with a physical office abroad, and is there anyone available to assist families and agencies in determining the legal authority guidelines?**

**A2.** Home study preparers may conduct home studies abroad for U.S. citizens residing abroad if they are authorized to conduct home studies both: 1) under the U.S. Department of State accreditation regulations, and 2) under the law of the jurisdiction in which the home study is conducted.

*(Please note that public domestic and public foreign authorities are exempt from the licensure and authorization requirements of 22 CFR Part 96. A public foreign authority cannot conduct a home study in the United States and is only permitted to conduct a home study in the foreign country.)*

If the other country does not have any laws on the subject, then the home study preparer just needs to comply with the U.S. requirements.

A home study preparer must always include a certifying statement regarding his/her authority to conduct home studies for intercountry adoption cases in the home study. The statement must specify:

- The state and/or country of the home study preparer's license or authorization.
- The specific law or regulation authorizing the preparer to conduct home studies.
- The license number and expiration date (if any) of the authorization or license.
- The basis (accredited agency, approved person, supervised provider, exempted provider, public domestic authority, or public foreign authority) for the home study preparer's authorization to conduct intercountry adoption home studies.

Additionally, when the home study is conducted abroad:

- The home study preparer must certify s/he is licensed or otherwise authorized to conduct home studies under the U.S. Department of State accreditation regulations AND authorized to conduct home studies under the law of the foreign jurisdiction in which it is conducted.
- The statement must cite the state and country under whose authority the home study preparer is licensed or authorized, the specific law or regulation authorizing the preparer, and the authorization expiration date (if any).
  - If the foreign country does not have any laws on the subject, the home study preparer should indicate this.
- A Hague Convention country may also require additional authorization to conduct home studies in that country.
- *Note:* Home study preparers are not authorized to conduct a home study abroad as an exempted provider.

To determine what laws might apply in a particular jurisdiction, a good first step may be contacting the Central Authority or competent authority in the particular country. For additional information on the Central Authority or competent authority, see the country information sheets on the Department of State website [here](#), or the Hague Conference on Private International Law website [here](#) for Central Authority contact information in each Hague Convention partner country.

**Q3. Regarding children in the home (page 14 of the memo) and criminal background checks, what was meant by your statement that if the state won't run a criminal history check on the child because the child is too young, we should state in the home study that their state won't run a criminal history check? Does that mean we should try to run a criminal history check on all children under 18 who are household members? What do we do for children who are not household members but are children of one or both of the PAPs? For example, in a possible case where a child of the parents is not a household member, but rather is living with other relatives or an ex-spouse?**

**A3.** USCIS does not require criminal history checks on all children in the household. Rather, the memo requires that home study preparers ask the PAPs (and the child, if appropriate) if the child has any criminal history and conduct any background checks on the child that are appropriate in light of the information you receive, and to factor that information into your assessment of the suitability of the home.

If a background check on a child is appropriate given the information you receive, but the state will not conduct the check for whatever reason, the home study preparer should explain this in the home study.

In determining the suitability to adopt, USCIS will give considerable weight to the home study. The home study should include the home study preparer's assessment of any potential problem areas. The criminal history of a minor in the home may be relevant to the home study recommendation and ultimately the determination of suitability.

If a PAP's child does not actually reside in the PAP's household, then that child would not need to be addressed as a child in the home unless the home study preparer or USCIS deems that any contact

with that child is relevant to the suitability of the PAP's household. Any children who are not living in the home, however, should be included as part of the PAP's background. The fact that they are not living with the PAP should be taken into consideration in the overall recommendation.