DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

45 CFR Part 400 and Part 401

RIN 0970–AB83

Refugee Resettlement Program; Requirements for Refugee Cash Assistance; and Refugee Medical Assistance

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This rule amends current requirements governing refugee cash assistance and refugee medical assistance and provides States the option to establish the refugee cash assistance program as a public/private partnership between States and local resettlement agencies or to continue the refugee cash assistance program as a publicly-administered program.

A proposed rule was published in the **Federal Register** on January 8, 1999 (64 FR 1159). Some changes have been made and clarifications provided in this final regulation after consideration of the written comments received.

EFFECTIVE DATE: Effective April 21, 2000, except the amendments to 45 CFR 400.100 through 400.104 which are effective June 20, 2000.

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SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act (INA) to create a domestic refugee resettlement program to provide assistance and services to refugees resettling in the United States. With the enactment of this legislation, the Office of Refugee Resettlement (ORR) issued a series of regulations, at 45 CFR part 400, to establish comprehensive requirements for a State-administered Refugee Resettlement Program (RRP), beginning with the publication on September 9, 1980 (45 FR 59318) of a regulation governing State plan and reporting requirements. Subsequent regulations covered cash and medical assistance (CMA) and Federal funding, published March 12, 1982 (47 FR 10841); grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures, published January 30, 1986 (51 FR 3904); cash and medical assistance, requirements for employability services, job search, and employment, and refugee social services published February 3, 1989 (54 FR 5463); and requirements for employability services, job search, employment, refugee medical assistance (RMA), refugee social services, targeted assistance services, and Federal funding for administrative costs, published June 28, 1995 (60 FR 33584).

Discussion of Major Changes

The changes made in this final regulation, as compared with the proposed rule published on January 8, 1999, are as follows:

1. The proposal to require States to enter into a public/private partnership with local resettlement agencies has been revised. States will have the flexibility to establish a public/private refugee cash assistance (RCA) program with local resettlement agencies, operate a publicly-administered RCA program modeled after a State's Temporary Assistance for Needy Families (TANF) program, or establish an alternative approach under the existing Wilson/Fish program, which is authorized by section 412(e)(7) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(e)(7)).

2. Under § 400.57, States that elect to establish a public/private RCA program are only required to include counties and national voluntary agencies that resettle refugees in that State in the planning and consultation process. The requirement for public comments has been withdrawn.

3. Under § 400.60, States and local resettlement agencies that operate a public/private RCA program may combine RCA payments with employment incentives that exceed the monthly payment ceiling as long as the total combined payments to a refugee do not exceed the Federal monthly ceiling multiplied by the allowable number of months of RCA eligibility.

4. Under § 400.61, States will be able to contract with or award grants to any service provider for the provision of services to participants in the public/private RCA program. States will not be required to only contract with or award grants to local resettlement agencies to provide these services.

5. States must notify ORR within 6 months of the date of publication of the final rule as to whether they intend to establish a public/private RCA program. The due date for submission of a public/private RCA plan, however, has been extended to no later than 12 months after the date of publication of the final rule. States are to include in the RCA plan a proposed date for implementation of the public/private RCA program, not to exceed 24 months after the date of publication of the final rule.

6. The section on monitoring has been withdrawn.

7. The requirements in the current regulation that prohibit States from considering any resources remaining in the applicant's country of origin or from considering a sponsor's income and resources when determining eligibility for RCA have been restored. In addition, we have added a requirement that prohibits States from considering any cash grant provided to a refugee under the Department of State or Department of Justice Reception and Placement (R & P) programs when determining eligibility for RCA. These requirements will apply to both the public/private RCA program as well as publicly-administered RCA programs.

8. The proposed requirement for requesting an exception to the public/private RCA program has been withdrawn. A State that chooses to operate a publicly-administered RCA program modeled after its TANF program must submit an amendment to its State Plan to the Office of Refugee Resettlement for approval no later than 6 months after the date of publication of the final rule, describing the elements of its TANF program that will be used in its RCA program.

9. Under § 400.100(a), whether a refugee has been denied, or terminated from, refugee cash assistance may no longer be used as a criterion for determining that an applicant is ineligible for RMA.

10. Section 400.101 has been amended to extend to all States the option to establish an RMA financial eligibility standard at up to 200% of the national poverty level.

11. Section 400.102 has been amended by requiring that any cash assistance payments that a refugee receives may not be considered in determining eligibility for RMA.

12. Section 400.104 has been amended by making the transfer from Medicaid to RMA mandatory for refugees who lose Medicaid eligibility due to early employment.

13. Under § 400.152(b), citizenship and naturalization services are exempt from the 60-month limitation on services.

14. Section 400.55 has been amended to clarify that translations of written policies, notices, and determinations in refugee languages must be provided to recipients in both public/private RCA programs and publicly-administered RCA programs. We have amended this requirement in accordance with the Department of Justice's regulations

regarding compliance with title VI of the Civil Rights Act of 1964. This section now requires that agency policies, notices of eligibility and of adverse action, and determinations must be provided to refugees in English and in appropriate languages where a significant number or proportion of the recipient population needs information in a particular language. For refugee language groups that constitute a small number or proportion of the refugee recipient population, these provisions require States, or local resettlement agencies in the case of a public/private RCA program, to use an alternative method such as a verbal translation in a refugee's native language, to ensure that the content of the written policy or notice is effectively communicated.

15. The proposed amendment to 400.13(d) which would have allowed certain case management costs to be charged to CMA has been withdrawn.

Description of the Regulation

This rule provides States with options in designing a refugee cash assistance (RCA) program for those refugees not eligible for Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), changes the procedure for determining the financial eligibility of refugees for receipt of refugee medical assistance (RMA), and amends other policies.

During the period following World War II until the passage of the Refugee Act of 1980, a variety of programs were funded by Congress and/or the private sector to assist newly arriving refugee groups. In authorizing and funding these programs for refugees, Congress continually demonstrated its recognition that special programs were needed to help refugees restart their lives in the U.S.

It is important to note that resettlement in the U.S. is the last stage of a much larger, world-wide humanitarian effort to aid victims of oppression and war. The U.S. participates and exercises its leadership in this effort by contributing to international relief and protection efforts, and also by offering resettlement to some refugees who have no other durable solution and who qualify for admission to the U.S. These refugees arrive from diverse backgrounds and parts of the world. However, what they all have in common, in addition to having had to seek refuge, is that they arrive with virtually no worldly possessions.

With the passage of the Refugee Act, Congress further underscored its belief that refugees need special assistance by authorizing an on-going program for providing assistance and services to all refugees after their arrival in the U.S. However, unlike U.S. welfare programs which assist the needy, the Refugee Act does not require that an income standard be met in order to receive this special refugee cash assistance, only that refugees register for and participate in programs to help them find employment. Congress provided the Office of Refugee Resettlement (ORR) the latitude to structure the refugee program in accordance with the refugee situation at that time.

After passage of the Refugee Act of 1980, ORR chose to establish direct ties to the State-administered Aid to Families with Dependent Children (AFDC) program in order to ensure that cash assistance was available to newly-arrived refugees not categorically eligible for that program. ORR established the refugee cash assistance program and required States to use the AFDC need and payment standards for the provision of RCA. The AFDC welfare system provided a nationally accessible structure which ensured that cash assistance was available to all refugees in a timely and equitable manner. ORR also established the refugee medical assistance program modeled on the Medicaid program.

At that time, ORR received sufficient appropriations to allow States to provide needy refugees with refugee cash assistance and refugee medical assistance during a refugee's first 36 months in the U.S. In addition, some portion of the refugee population received assistance under the mainstream AFDC and Medicaid programs. ORR also reimbursed the State share of AFDC and Medicaid costs during a refugee's first 36 months.

In the intervening years, due to declining appropriations, ORR reduced the period of availability of RCA and RMA to refugees. At the present time, ORR reimburses States for 100 percent of their RCA and RMA costs during a refugee's first eight months. Refugees eligible for the TANF and Medicaid programs receive assistance under those programs; the costs of providing TANF and Medicaid to refugee recipients are not included in the refugee appropriation.

With the passage of welfare reform legislation in 1996, two things have occurred which caused ORR to review the current system for providing RCA: (1) More refugee families have qualified for assistance through the TANF program than had previously qualified under the AFDC program, resulting in a smaller RCA program; and (2) States have expressed concerns about the administrative difficulties of maintaining a separate system based upon former AFDC rules to provide cash assistance for only 8 months to a small population of refugees.

With these two considerations in mind, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to see the regulations changed. These consultations were attended by 35 State Refugee Coordinators, ten national voluntary agencies, more than one hundred local voluntary agency affiliates, representatives from State and local TANF agencies, local service providers, refugee mutual assistance agencies, unions, and national advocacy groups. The consultations were useful in helping us to identify certain issues and to gauge whether there was a general willingness and a suitable climate across the country in which to change the program.

We have concluded, based upon the consultations, that it is an opportune time to provide States the flexibility to separate the link between the RCA program and the welfare/TANF system for the following reasons: (1) The current period of time for provision of cash assistance is shorter, requiring a simple, more integrated and direct approach to resettlement; and (2) the RCA population, comprised almost entirely of singles and couples without children or with adult children, is a smaller, more distinct population to serve.

The Refugee Act acknowledged the roles of both States and private voluntary agencies in resettlement and authorized the Director of ORR ''to provide assistance, reimbursement to States, and grants to, and contracts with, public or private nonprofit agencies for 100 per centum of the cash assistance and medical assistance provided to any refugee * * *.'' This language provided ORR with statutory flexibility to deliver assistance through public or private means. We believe that the public/private program described in this regulation more closely follows what Congress intended in passing the Refugee Act. The addition of a public/private program also provides States increased flexibility by offering another option for administering the RCA program.

In addition to the public/private program, this rule also provides States the option to establish the refugee cash assistance program as a publicly-administered RCA program modeled after their TANF program in regard to determination of eligibility, treatment of

income and resources, benefit levels, and budgeting methods.

This rule provides States that elect to establish the refugee cash assistance program as a public/private partnership the option to enter into contracts with or award grants to local resettlement agencies to administer the provision of cash assistance or to administer both the provision of cash assistance and services needed to help RCA recipients become employed and self-sufficient within the RCA eligibility period. The RMA program will continue to be administered by the States and will not be included in the public/private partnership program. In addition, assistance and services to refugees eligible for TANF will not be affected by the public/private RCA program.

We believe that giving States an option of operating a combined assistance and services program, administered outside the welfare system, makes programmatic sense for the RCA population. Placing responsibility for cash assistance and services with the resettlement agencies will result in a continuity of assistance to RCA-eligible refugees from initial resettlement to self-sufficiency. Currently, resettlement agencies are responsible, under contract with the Department of State (DOS), for providing refugees with initial housing, food, clothes, and shelter for the first 30 days after arrival in the U.S. However, in order to receive cash assistance, refugees must apply to the local welfare office where they become engaged in a service delivery system which, in many States, may not include their local resettlement agency.

We believe a public/private RCA program will more firmly unite the two key players—States and resettlement agencies—into a partnership that will best utilize their respective strengths. States will maintain the important role of administering the program and providing financial management and policy oversight, while the resettlement agencies will have an enhanced role in the longer-term resettlement of refugees they place in the State. Under the public/private RCA program, States and voluntary agencies will have the flexibility to design programs to deliver refugee cash assistance in a manner that more fully integrates and supports resettlement. In order to accommodate resettlement in communities across the U.S. with different cost-of-living conditions, ORR is establishing payment ceilings which may be provided to refugees. Within these ceilings, a State and the resettlement agencies in that State will have the opportunity to develop a resettlement plan which incorporates the features, such as sliding scale payments or incentives, that they believe are best suited to achieving early self-sufficiency and to enriching the quality of life for refugees placed in their State. In addition, States and resettlement agencies will have the flexibility to establish the income-eligibility standard for RCA that they believe would best enable most newly arriving refugees to qualify for RCA and which would encourage early employment.

States and the agencies responsible for providing services to recipients in the public/private RCA program will be responsible for moving refugees to economic and social self-sufficiency within the RCA eligibility period by placing them in full-time employment.

This rule will allow States under § 400.207 to claim reasonable and necessary administrative costs incurred by resettlement agencies in the administration of the public/private RCA program.

We expect States that opt to establish a public/private RCA program, when developing their annual social services plan, to cover the costs of services in the new RCA program within their regular social services budget. We also expect States to link the new RCA program with the existing State refugee social services system in order to enhance the coordination of services. We recognize that there may be additional service costs to fully implement the service component of the new RCA program while maintaining the State's regular refugee social services program for non-RCA refugees who have been in the U.S. for less than 5 years. For this reason, subject to the availability of funds, ORR plans to make available to States a portion of the non-formula funds that are reserved for the Director's discretionary use each year. These non-formula funds would be used during the initial start-up years to enable States to establish a viable public/private RCA program without compromising their existing social services program.

States that elect to establish a public/private RCA program will be required to engage in a planning and consultation process with the national voluntary and local resettlement agencies and with other agencies, such as mutual assistance associations (MAAs), that serve refugees in the State to design the public/private RCA program. From that process, States and resettlement agencies will develop a public/private RCA plan for submission to ORR no later than 12 months after publication of the final rule.

While a public/private RCA program is ORR's preferred approach, we fully recognize that this approach may not be the best choice in all States. Therefore, under the final rule, States will have the option to establish a publicly-administered RCA program modeled after their TANF program. States that conclude that neither a public/private RCA program nor a publicly-administered RCA program would be the best way to serve refugees in their State may pursue a third option—an alternative program funded under the standing Wilson/Fish announcement. The Wilson/Fish program provides States and public and private non-profit agencies the opportunity to develop innovative approaches to providing cash assistance, social services, and case management as an alternative to the regular State-administered refugee program.

The final rule contains a number of provisions to ensure that refugee rights and protections are safeguarded in the RCA program. While we have no interest in having resettlement agencies adopt the full range of rules and regulations of a government bureaucracy, it is essential to have adequate client protections in place to ensure due process and equitable treatment.

We have added three changes to the refugee medical assistance program to enable certain groups of refugees currently without medical coverage, such as newly arrived refugees who become employed within the first few weeks of arrival, to be eligible for RMA. First, States will be required to determine RMA eligibility on the basis of a refugee applicant's income and resources on the date of application, rather than averaging income over the application processing period. Second, States will be given the option of using a higher financial eligibility standard of up to 200% of the national poverty level for determination of RMA eligibility. Third, refugees residing in the U.S. less than 8 months, who lose their eligibility for Medicaid because of earnings from employment, will be transferred to RMA without an eligibility determination. We believe these changes in RMA eligibility are important to ensure that most newly arriving refugees, many of whom arrive with medical problems resulting from war-related trauma, have medical coverage during their first 8 months in the U.S.

Consistent with the preceding actions, 45 CFR 400.2, 400.5, 400.11, 400.13, 400.23, 400.27, 400.43, 400.44, Subpart E, 400.70, 400.71, 400.72, 400.75, 400.76, 400.77, 400.78, 400.79, 400.80, 400.81, 400.82, 400.83, 400.93, 400.94, 400.100, 400.101, 400.102, 400.103, 400.104, 400.107, 400.152, 400.154,

400.155, 400.203, 400.207, 400.208, 400.209, 400.210, 400.211, 400.301, and 401.12 are being amended or removed. Some of these changes are technical in nature and are not discussed in the preamble.

Subpart A—Introduction

Section 400.2 is amended by replacing all references to the AFDC program with references to the TANF program, by adding a definition of an RCA Plan, designee, economic self-sufficiency, and a family unit, and by adding separate definitions of a national voluntary agency and a local resettlement agency.

Subpart B—Grants to States for Refugee Resettlement

Section 400.5 is amended by reinserting paragraph (i) which was inadvertently removed when 45 CFR Part 400 was last codified in 1995.

Section 400.13 is amended by adding a new paragraph (e) which would allow States to charge administrative costs incurred by local resettlement agencies in the administration of the public/private RCA program (*i.e.,* administrative costs of providing cash assistance) to the CMA grant. Administrative costs of managing the services component of the RCA program must continue to be charged to the social services grant.

Administrative costs of providing cash assistance may include: (1) The salary costs of staff responsible for eligibility determinations and other administrative functions associated with the provision of cash payments; and (2) the portion of the local resettlement agency Director's time spent on managing the cash assistance component.

Subpart C—General Administration

Section 400.23 (Hearings) is amended by clarifying that the public assistance hearing regulation at 45 CFR 205.10(a) applies to assistance and services provided to refugees unless otherwise specified in ORR regulations.

Section 400.27 (Safeguarding and sharing of information) is amended by adding language to paragraph (b) to enable States that have established a public/private RCA program to obtain client information from local resettlement agencies without a signed consent from clients, and by removing paragraph (c) which references an AFDC regulation. It should be noted that § 400.58 requires that a State's public/private RCA plan contain a description of the procedures to be used to safeguard the disclosure of information regarding refugee clients.

Subpart D—Immigration Status and Identification of Refugees

Section 400.43 is amended by removing the following obsolete alien statuses for purposes of the refugee program: ''Admitted as a conditional entrant under section 203(a)(7) of the Act'' and ''Admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the Director'' and by adding Cuban and Haitian entrants in accordance with requirements in Part 401; and Amerasian immigrants to this section.

Section 400.44 is amended by clarifying that applicants for asylum are not eligible for assistance under the refugee program unless otherwise provided by Federal law, as is the case with Cuban and Haitian asylum applicants under section 501 of the Refugee Education Assistance Act of 1980.

Subpart E—Refugee Cash Assistance

The sections of Subpart E that pertain specifically to AFDC requirements have been retained and modified under a new § 400.45. For example, we have dropped the prohibition against applying a $30 and ⅓ earned income disregard; any reception and placement cash received by a refugee may not be considered in determining income eligibility; and the State agency may use the date of application as the date RCA begins. These requirements must be followed by States until they have implemented a new public/private RCA program or a publicly-administered RCA program modeled after TANF. These requirements also apply to those States that obtain an approved waiver from ORR to continue an AFDC-type RCA program.

Subpart E is revised by providing States the flexibility to establish a new public/private partnership program in which States would contract with or award grants to local resettlement agencies to provide transitional cash assistance and services to RCA-eligible refugees as described below, or to operate a publicly-administered RCA program modeled after the TANF program.

General

The following general sections apply to both the public/private RCA program and publicly-administered RCA programs, including RCA programs currently modeled after AFDC unless otherwise noted in § 400.45.

Section 400.50 (Basis and scope) is retained without changes and redesignated as § 400.48.

Section 400.51 (Definitions) is removed.

Section 400.52 (Recovery of overpayments and correction of underpayments) is redesignated as § 400.49 and amended by removing references to AFDC requirements.

Section 400.55 (Opportunity to apply for cash assistance) is redesignated as § 400.50 and amended by removing (b)(1), which references AFDC requirements, by amending (b)(2), and by removing (b)(3), (b)(4), and (c), which require States to contact sponsoring resettlement agencies regarding financial assistance and offers of employment to refugees. Paragraph (b)(4) and (c) have been moved to § 400.68. Paragraph (d) has been removed and moved to § 400.54.

This section is amended by adding a requirement that an eligibility determination must be made as promptly as possible within no more than 30 days from the date of application and that applicants must be informed of their rights and responsibilities.

Section 400.56 (Determination of eligibility under other programs) is redesignated as § 400.51 and is amended by removing paragraphs (a)(1) and (a)(2) and redesignating paragraph (a)(3) as (a).

Section 400.57 (Emergency cash assistance to refugees) is redesignated as § 400.52.

Section 400.53 (General eligibility requirements) replaces § 400.60 and establishes the following eligibility requirements for the RCA program. To be eligible for the RCA program, a refugee must: (1) Be a new arrival who has resided in the U.S. less than the RCA eligibility period determined by the ORR Director in accordance with § 400.211; (2) be ineligible for TANF and SSI; (3) have the proper immigration status and documentation for eligibility for benefits under the refugee program; (4) not be a full-time student in an institution of higher education; and (5) meet the income eligibility standard established by the State.

Section 400.54 (Eligibility redeterminations in States with residency requirements) has been removed and a new § 400.54 (Notice and hearings) has been added. This section describes timely and adequate notice and certain hearing requirements necessary in the administration of public/private and publicly-administered RCA programs (*See* the comment and response sections to §§ 400.82 and 400.83 for further discussion).

Section 400.55 (Availability of agency policies) requires a State or the

agency(s) responsible for the provision of RCA to make available to refugees the written policies of the public/private RCA program, including all notices and all agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. The State or the agency(s) responsible for the provision of RCA must ensure that agency policy materials and notices, including notices required in §§ 400.54, 400.82, and 400.83 are made available to refugee clients in English and in appropriate languages where a significant number or proportion of the recipient population needs information in a particular language.

Public/Private Partnership RCA Program

Section 400.56 (Structure) provides States the option of entering into a partnership with local resettlement agencies for the provision of cash assistance through a public/private RCA program. This section provides States the flexibility to enter into a public/private partnership by administering the RCA program through contracts or grants with the local resettlement agencies that resettle refugees in the State. We define local resettlement agencies in § 400.2 as local affiliate agencies which provide initial reception and placement services to refugees under a cooperative agreement with the Department of State.

We believe that giving the local resettlement agencies that are responsible for the initial placement of refugees the additional responsibility of providing cash assistance to those refugees will result in more effective and better quality resettlement. At the same time, we fully recognize the policy and administrative oversight capacity that States are able to contribute to the resettlement process. This public/private structure is a way to more firmly unite the two sectors into a partnership to help refugees.

We expect States to implement a public/private RCA program statewide. It is intended that all resettlement agencies placing refugees in a State will participate in the public/private RCA program to the extent possible.

However, if it is not feasible to operate a statewide public/private RCA program, States may propose a geographically split program for the delivery of RCA. We recognize that in some places the statewide public/private model may not be a reasonable approach. For example, in a State with a major urban area that receives 75% of the State's newly arriving refugees, the State and resettlement agencies may wish to operate a public/private RCA program in the urban area only, while choosing to operate a publicly-administered RCA program through the State welfare agency in the balance of the State where the geographic dispersion of refugees may hinder resettlement agency delivery of benefits.

ORR will not consider a plan where the State proposes having both a public/private RCA program and a publicly-administered RCA program in the same location. Such an arrangement would not be programmatically wise because it would cause confusion for refugees and would create unnecessary duplication.

We recognize that some local resettlement agencies sponsor refugees in States other than where they have an office, e.g., in States bordering and in close proximity to their local office such as occurs in Kansas/Missouri and in the District of Columbia/Maryland/Virginia metropolitan area. ORR intends, where possible, that these resettlement agencies also be involved in the planning of the public/private RCA plan of the bordering State. However, if that is not feasible (some States, for example, may not be able to enter into contracts or grants outside of the State), ORR expects States, in conjunction with the local resettlement agencies, to make appropriate provisions for eligible refugees resettled by agencies not located within State boundaries. Examples of appropriate provisions may include the establishment of an office by the sponsoring resettlement agency in the State where they are placing refugees or co-locating staff with a resettlement agency that already has a presence in the State.

We recognize that some States may not have the staff or administrative support to contract with and manage numerous local agency contracts or grants. We also recognize that some local resettlement agencies may not have the administrative and fiscal capacity to manage a cash assistance program. Therefore, under the public/private RCA plan, States and local resettlement agencies may consider different types of arrangements such as: (1) An agency-contained model where the local resettlement agency performs all fiscal and eligibility functions including the determination of eligibility, authorization of the RCA payment amount, the cutting of the checks, and the provision of payments to refugees; (2) a lead agency approach in which one resettlement agency assumes responsibility for managing the cash assistance component of the program for all the resettlement agencies; or (3) a model where the State acts as the fiscal agent, cutting benefit checks and managing cash flow, while the local resettlement agency determines eligibility, calculates the payment amount, and provides payments to refugees.

States and resettlement agencies that choose to implement the public/private RCA program will have 24 months from the date of publication of the final rule to implement the new program.

Section 400.57 (Planning and consultation) requires a State that wishes to establish a public/private RCA program to engage in a planning and consultation process with local resettlement agencies to develop a public/private RCA plan, the content of which is described in § 400.58. Primary participants in the planning process must include representatives of the State and each local agency that resettles refugees in the State. In addition, representatives of refugee mutual assistance associations (MAAs), counties, local community services agencies, national voluntary agencies, representatives of each refugee ethnic group, and other agencies that serve refugees must be given the opportunity to participate in the discussion during the development period. We believe that full participation by MAAs and other community agencies throughout the planning process is essential to the development of a workable public/private RCA program. To facilitate this participation, it is permissible for States to charge to their CMA grant reasonable travel and per diem costs for MAAs and other agencies, as needed, to enable these agencies to more easily participate in the consultation process.

This section requires local resettlement agencies to keep their respective national voluntary resettlement agencies fully informed of the details of the public/private RCA program as the program is developed. Local resettlement agencies will be responsible for obtaining a letter of agreement from their national agency stating that the national agency supports the public/private RCA plan and will continue to place refugees in the State under the new public/private program.

Section 400.58 (Development of a public/private RCA plan) establishes the requirements for the development of a public/private RCA plan which describes how the State and local resettlement agencies will administer and deliver RCA to eligible refugees. The plan must describe the agreed-upon public/private RCA system including:

(1) The proposed income standards for RCA eligibility; (2) proposed payment levels to be used to provide cash assistance to eligible refugees; (3) assurance that the payment levels established are not lower than the State TANF amount; (4) a detailed description of how benefit payments will be structured, including the employment incentives and/or income disregards to be used, if any, as well as methods of payment; (5) a description of how all refugees residing in the State will have reasonable access to cash assistance and services; (6) a description of the procedures to be used to ensure appropriate protections and due process for refugees, such as notice of adverse action and the right to mediation, a pre-termination hearing, and an appeal to an independent entity; (7) a description of proposed exemptions from participation in employability services; (8) a description of the employment and self-sufficiency services that will be provided to RCA recipients; (9) procedures for providing RCA to eligible secondary migrants who move to the State, including secondary migrants who were sponsored by a resettlement agency that does not have a presence in the receiving State; (10) if applicable, provisions for providing assistance to refugees resettling in the State who are sponsored by a resettlement agency in a bordering State which does not have an office in the State of resettlement; (11) a description of the procedures to be used to safeguard the disclosure of information on refugee clients; (12) letters of agreement from the national voluntary resettlement agencies indicating support for the public/private RCA program and that refugee placements in the State will continue under the public/private RCA program; (13) a breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including per capita caps on administrative costs only if a State proposes to use such caps; and (14) a proposed implementation date for the public/private RCA program.

The plan must be signed by the Governor or his or her designee and must be submitted to the ORR Director for review and approval no later than 12 months after the date of publication of the final rule. A State must, however, notify the ORR Director of its intent to establish a public/private RCA program no later than 6 months after the date of publication of the final rule.

RCA plan amendments must be developed in consultation with the local resettlement agencies to reflect any changes in policy and submitted to ORR in accordance with § 400.8.

Section 400.59 (Eligibility for the public/private RCA program) establishes that to be eligible for the public/private RCA program, a refugee must meet the income eligibility standard jointly established by the State and local resettlement agencies in the State. This section also states that any resources remaining in the applicant's country of origin or a sponsor's income and resources may not be considered in determining income eligibility. Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement programs also may not be considered in determining income eligibility since such a grant is intended to cover the initial costs of resettlement, not ongoing living expenses.

In establishing an income eligibility standard for the public/private RCA program, States and resettlement agencies may wish to set a standard, for example, at 150% of the poverty level, that will allow refugees who are employed part-time in a low wage job to also be eligible for some level of cash assistance. States may wish to consider such a need standard in order to provide a more solid economic foundation for refugees during their first 8 months in the U.S. to better ensure continued self-sufficiency.

Section 400.60 (Cash payment levels) establishes allowable cash payment levels under the public/private RCA program. This section requires monthly cash assistance payments to be made to eligible refugees using a payment level that does not exceed the following payment ceilings, except in cases where the State TANF payment level is higher or a State wishes to provide early employment incentives as described below.

Size of family unit	Monthly payment ceiling
1 person	$335
2 persons	450
3 persons	570
4 persons	685

These ceiling payment levels are based on 50% of the 1998 HHS Poverty Guidelines for each family size, divided by 12 months, except as noted below.

For family units greater than 4 persons, the payment ceiling may be increased by $70 for each additional person.

If the ORR Director determines that the payment ceilings need to be adjusted for inflation, ORR will issue revised payment ceilings through a notice in the **Federal Register**.

We expect that most refugees eligible for RCA will be one-person or two-person family units, singles and childless couples. We expect that most refugee families with dependent children will be eligible for TANF and, therefore, will not need to access the RCA program.

Payments to refugees may not be lower than the State TANF payment for the same sized family unit. States, therefore, that have TANF payment levels that are higher than the ceilings indicated above, must provide payment levels under the new public/private RCA program that are comparable to the State TANF payment levels. ORR will reimburse States at the higher TANF payment levels in such instances.

We encourage States and local resettlement agencies to use the flexibility provided in the payment ceilings to include income disregards or other incentives such as employment bonuses, that will encourage early employment and self-sufficiency. This flexibility would allow States and local resettlement agencies to provide continued cash support while moving refugees into early employment. States and local resettlement agencies may design whatever combination of assistance payments and incentives they believe would be effective, as long as the total combined payments to a refugee do not exceed the monthly ceiling multiplied by the allowable number of months of RCA eligibility. States and local resettlement agencies that plan to exceed the monthly payment ceilings in order to provide employment incentives must budget their resources carefully to ensure that sufficient RCA funds are available to cover a refugee's cash assistance needs in the latter months of a refugee's eligibility period, if needed.

We encourage States and local resettlement agencies to look at different approaches and to be creative in designing a program that will help refugees to establish a good economic foundation during the 8-month RCA period. We encourage States and local resettlement agencies to design an RCA program that takes into account that refugees arrive in the U.S. with little or no financial resources and that 8 months of cash assistance provides a limited period of time to gain a degree of financial stability.

One approach might be to permit the total of earned income and cash assistance of refugees who become employed full-time to exceed the cash assistance only payments made to refugees who are not employed. Another

approach, currently being used in one State, provides an incentive to employed refugees through monthly reimbursements for work-related expenses such as tools, uniforms, work-related transportation expenses, medical insurance co-payments, or the cost of additional work-related training. The State has found this to be an effective incentive for early employment.

Section 400.61 (Services in the public/private RCA program) establishes that services provided to recipients of refugee cash assistance in the public/private program may be provided by the local resettlement agencies that administer the public/private RCA program or by other refugee service agencies. It will be important not only to place refugees in employment at wages that will enable self-support, but to ensure that refugees receive the skills, such as English language acquisition and basic living skills, needed to live successfully in this country. We plan to work with States and resettlement agencies to develop appropriate social self-sufficiency and English acquisition outcome measures.

This section also establishes that in public/private RCA programs where local resettlement agencies are responsible for administering both cash assistance and services, States and local resettlement agencies must maintain ongoing coordination with refugee mutual assistance associations and other ethnic representatives that represent or serve the ethnic populations that are being resettled in the U.S. to ensure that the services provided under the public/private RCA program: (1) Are appropriate to the linguistic and cultural needs of the incoming populations; and (2) are coordinated with the longer-term resettlement services frequently provided by ethnic community organizations after the 8-month RCA period.

In public/private RCA programs where the agencies responsible for providing services to RCA recipients are not the same agencies that administer the cash assistance program, States must: (1) Establish procedures to ensure close coordination between the local resettlement agencies that provide cash assistance and the agencies that provide services to RCA recipients; and (2) set up a system of accountability that identifies the responsibilities of each participating agency and holds these agencies accountable for the results of the program components for which they are responsible.

Allowable services under the public/private program are limited to those services described under §§ 400.154 and 400.155.

Section 400.62 (Coverage of secondary migrants, asylees, and Cuban/Haitian entrants) provides that the State and local resettlement agencies must ensure that there is a system in place which is accessible to eligible secondary migrant refugees, asylees, and Cuban/Haitian entrants who want to apply for assistance. In developing these procedures, consideration must be given to how to ensure coverage of eligible secondary migrants and other eligible applicants who were sponsored by a resettlement agency which does not have a presence in the State or who were not sponsored by any agency.

Section 400.63 (Preparation of local resettlement agencies) requires national voluntary agencies to be responsible, in concert with the States, in preparing local resettlement agencies for their new responsibilities under the public/private RCA program during a period of transition. In light of the ongoing relationship of the national voluntary agencies with their local affiliates under the Department of State cooperative agreements for initial Reception and Placement services, we believe the national agencies should share in the responsibility with the States for ensuring that their affiliate agencies have the capacity and structure to effectively handle the cash assistance and service needs of refugees over an 8-month period.

The States and national voluntary agencies will develop a plan for: (1) Determining the training needed to enable local resettlement agencies to achieve a smooth transition into their expanded role; and (2) providing the training in a uniform way to ensure that all local resettlement agencies in the State will implement the new program in a consistent manner. Part of this training should involve helping the local resettlement agencies to change how they view their role—from a short-term initial resettlement role to a longer-term commitment to the economic self-sufficiency and social integration of the refugees they resettle. The national voluntary agencies should also be instrumental in helping the local resettlement agencies to establish a smooth linkage between Reception and Placement services and services under the RCA program and in facilitating the development of consortia among affiliates. States may also wish to call upon the national voluntary agencies to assist in providing remedial assistance and training to poorly performing affiliate agencies before contract or grant sanctions are applied.

ORR intends to use a portion of its non-formula social services funding, subject to the availability of appropriated funds, to support the national voluntary agencies in these training activities during a transition period ending two years after publication of the final rule.

Publicly-Administered RCA Programs

Section 400.65 (Continuation of a publicly-administered RCA program) provides a State that does not elect to establish a public/private RCA program the option of operating its RCA program consistent with its TANF program. A State that chooses to operate a TANF-type RCA program must submit an amendment to its State Plan no later than 6 months after publication of the final rule, describing the elements of its TANF program that will be used in its RCA program.

Section 400.66 (Eligibility and payment levels in a publicly-administered RCA program) establishes that in administering an RCA program modeled after TANF, the State agency must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to: (1) The determination of initial and on-going eligibility (treatment of income and resources, budgeting methods, need standard); (2) the determination of benefit amounts (payment levels based on size of the assistance unit, income disregards); (3) proration of shelter, utilities, and similar needs; and (4) any other State TANF rules relating to financial eligibility and payments.

This section retains the requirements that a State agency may not consider any resources remaining in the applicant's country of origin or a sponsor's income and resources in determining income eligibility. This section contains an additional requirement that a State agency may not consider any cash grant provided to the applicant under the Department of State or Department of Justice Reception and Placement programs in determining income eligibility. This section also permits States to use the date of application as the date refugee cash assistance begins, instead of the date used in the States' TANF program.

Section 400.67 (Non-applicable TANF requirements) establishes that a State that chooses to model its RCA program after its TANF program *may not* apply certain TANF requirements to refugee cash assistance applicants or recipients as follows: Instead of TANF work requirements, States must apply the requirements in § 400.75 which requires RCA recipients, as a condition of receipt of assistance, to participate in employment services within 30 days of receipt of aid, and Subpart I of 45 CFR Part 400 with respect to the provision of

services for RCA recipients. The requirements and expectations for employment and participation in employment services in the refugee program are no less serious than the requirements in the TANF program. The requirements in the refugee program are simply different from TANF requirements in that the types of activities allowed in the refugee program are designed for the needs of newly-arrived refugees who typically arrive with little or no English language skills. Thus, in the refugee program, refugees participate extensively in English language training, assisted job search, and other employment-related activities that are designed to help limited-English speaking refugees to become self-sufficient within 8 months.

Section 400.68 (Notification of resettlement agencies) requires States: (a) To notify the local agency that was responsible for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under a publicly-administered RCA program; and (b) to contact the applicant's sponsor or resettlement agency to inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with § 400.77.

Section 400.69 (Alternative RCA programs) provides States, that determine that neither a public/private RCA program nor a publicly-administered program modeled after its TANF program is the best approach for their State, the option to establish an alternative approach under the Wilson/Fish program, authorized by section 412(e)(7) of the INA. Applications for the Wilson/Fish program may be submitted under the standing Wilson/Fish grant announcement published in the **Federal Register** on April 22, 1999 (64 FR 19793).

Subpart F—Requirements for Employability Services and Employment

Section 400.70 (Basis and scope) is amended to clarify that Subpart F applies to applicants and recipients of both a public/private RCA program and a publicly-administered RCA program.

Section 400.72 (Arrangements for employability services) is amended to clarify that the requirements in paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program through contracts or grants with local resettlement agencies and to States that operate a publicly-administered RCA program, while paragraph (c) applies only to a publicly-administered RCA program.

Section 400.76 (Exemptions) is revised by removing the list of individuals who may be exempt from participation in employment services. States agencies may determine what specific exemptions, if any, are appropriate for recipients of a time-limited RCA program in their State. Given the short duration of the RCA program, however, and the need for refugees to become self-sufficient within this limited time frame, we would expect States to require most RCA recipients to participate in employment services, with few exceptions.

Section 400.78 (Service requirements for employed recipients of refugee cash assistance), which requires an RCA recipient who is employed less than 30 hours a week to participate in part-time employment services, as a condition of continued receipt of refugee cash assistance, is removed and reserved. We leave it to States and local resettlement agencies to determine how best to design a program that moves refugees to full-time employment in a reasonable period of time.

Section 400.80 (Job search requirements), which requires job search where appropriate, is removed and reserved. Again, we leave it to the judgement of States and local resettlement agencies to decide the types of employment services that are the most effective in placing refugees in jobs.

Section 400.81(a) (Criteria for appropriate employability services and employment) is amended by replacing the reference to AFDC with a reference to TANF.

Section 400.81(b) is amended by limiting professional refresher training and other recertification services only to individuals who are working.

Section 400.82 (Failure or refusal to accept employability services or employment) is revised to specify requirements for timely and adequate notice of intended termination under both a public/private RCA program and a publicly-administered RCA program.

Section 400.83 (Conciliation and fair hearings) is revised by establishing requirements for mediation and fair hearings in the public/private RCA program and requiring that States specify the public agency mediation/conciliation and fair hearings procedures to be used in cases where a State operates a publicly-administered RCA program. Under this requirement, hearings must meet the due process standards set forth in the U.S. Supreme Court decision in *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

Subpart G—Refugee Medical Assistance

This subpart is amended in several places to clarify that refugee medical assistance is only available to refugees who are ineligible for Medicaid or SCHIP, regardless of how the State has administratively implemented its SCHIP program. Without these clarifying amendments, the regulations as currently drafted would only require States to determine SCHIP eligibility prior to RMA eligibility if the State has administratively implemented SCHIP as an expansion of benefits under the State's Medicaid Plan under title XIX of the Social Security Act. As currently written, the RMA regulations do not require States to make SCHIP eligibility determinations prior to RMA eligibility determinations for refugee children, if the State has chosen to implement its SCHIP program as a separate State SCHIP Program pursuant to title XXI of the SSA.

Section 400.93 (Opportunity to apply for medical assistance) is amended to clarify that the notice indicating that assistance has been authorized, denied or terminated must clearly distinguish between RMA, Medicaid and SCHIP.

Section 400.94 (Determination of eligibility for Medicaid) is amended to clarify that refugee medical assistance is only available to refugees who are ineligible for Medicaid or SCHIP.

Section 400.100(a) (General eligibility requirements) is amended by removing the prohibition against the provision of RMA to refugees who have been denied, or terminated from, refugee cash assistance.

Sections 400.100(a)(1) and (d) (General eligibility requirements) are amended by clarifying that refugee medical assistance is only available to refugees who are ineligible for Medicaid or SCHIP.

Section 400.101 (Financial eligibility standards) is amended by giving all States the option of increasing the financial eligibility standard for RMA eligibility determination to up to 200% of the national poverty level by family size. Our intent in allowing States this new option is to ensure that States have the flexibility to broaden financial eligibility for refugee medical assistance, while receiving 100% Federal reimbursement of costs, in order to extend coverage to certain groups of new arrivals who are currently not covered under RMA. Refugees currently without medical coverage who would be affected by this provision include: (1) Refugees who are ineligible for transitional Medicaid because they were not considered eligible to receive AFDC assistance in at least 3 of the last 6

months due to hours of or income from employment; and (2) refugee spouses who arrive in the U.S. a number of months after their spouse who preceded them, and are not eligible for RMA because their employed spouse's income renders them ineligible for RMA.

Section 400.101(b) is amended with respect to States without a medically needy program by clarifying that references to AFDC refer to the AFDC payment standards and methodologies in effect as of July 16, 1996, including any modifications elected by the State under Section 1931(b)(2) of the Social Security Act (SSA). This is in keeping with the amendments made by section 114 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to Section 1931 of the SSA.

Section 400.102 (Consideration of income and resources) is revised to clarify that determination of eligibility for refugee medical assistance (RMA) must be based on the applicant's income and resources on the date of application, rather than on a refugee's income averaged prospectively over the RMA application processing period.

The purpose of this revision is to ensure that refugees who enter employment within the first few weeks after arrival in the U.S. are not penalized for accepting early employment by denial of refugee medical assistance. Refugees arrive in the U.S. with no income, and generally apply for refugee medical assistance very soon after arrival. With this revision, a newly arrived refugee who applies for refugee medical assistance soon after arrival and becomes employed within the first 30 days in the U.S. subsequent to filing the RMA application, would not lose RMA eligibility.

Section 400.102 is also amended to prohibit the consideration of any cash assistance payments received by a refugee in determining a refugee's eligibility for RMA.

Section 400.102 is amended to remove references to the AFDC program which no longer apply due to changes in Medicaid eligibility determinations contained in PRWORA as described above.

Section 400.103 (Coverage of refugees who spend down to State financial eligibility standards) is amended to clarify that all States must allow applicants of RMA who do not meet the financial eligibility standards elected in § 400.101 to spend down to the elected standard.

Section 400.104 (Continued coverage of recipients who receive increased earnings from employment) is amended to require refugees residing in the U.S. less than 8 months, who lose their eligibility for Medicaid because of earnings from employment, to be transferred to refugee medical assistance without an RMA eligibility determination. This amendment will allow refugees who lose Medicaid eligibility because they obtain early employment to maintain medical coverage under RMA during the remainder of their first 8 months in the U.S. The purpose of this amendment is to encourage early economic self-sufficiency by ensuring that refugees receive continued medical assistance while employed and by ensuring that refugees are not discouraged from early employment by the potential loss of medical coverage.

Subpart I—Refugee Social Services

Section 400.152(b) (Limitations on eligibility for services) is amended by adding citizenship and naturalization services to the services that are exempt from the 60-month limitation.

Sections 400.154 (Employability services) is amended by adding assistance in obtaining employment authorization documents (EADs) as an allowable employability service under the social services and targeted assistance formula programs. This provision will allow States to use service funds to cover the cost of refugee provider staff time to help asylees or refugees obtain EADs. Social services and targeted assistance funds, however, may not be used to pay for the cost of EADs.

Section 400.155 (Other services) is amended by adding citizenship and naturalization services as allowable services under the social services and targeted assistance formula programs. Citizenship and naturalization services may include such services as English language training and civics instruction to prepare refugees for citizenship, application assistance for adjustment to legal permanent resident status and citizenship status, assistance to disabled refugees in obtaining disability waivers from English and civics requirements for naturalization, and the provision of interpreter services for the citizenship interview, as needed.

Subpart J—Federal Funding

Section 400.207 (Federal funding for administrative costs) is amended by clarifying that a State may claim reasonable and necessary administrative costs incurred by local resettlement agencies in the administration of a public/private RCA program.

Section 400.210 (Time limits for obligating and expending funds and for filing State claims) is amended by revising § 400.210(b)(2) to extend the due date for a State's final financial report of expenditures of social services and targeted assistance formula grants to no later than 90 days after the end of the two-year expenditure period. This section clarifies that States must expend their social services and targeted assistance funds no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. Thus, under this revision, States must have expended social services and targeted assistance funds awarded to them in FY 1999, for example, by no later than September 30, 2001, and a State's final financial report must be *received* no later than December 31, 2001. If, at that time, a State's final financial report has not been received, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last submitted financial report.

This revision is in response to requests from several States needing a full 2-year period to expend social services and targeted assistance funds from the end of the Federal fiscal year in which the funds are awarded.

Section 211(a) (Methodology to be used to determine time-eligibility of refugees) is amended to clarify that after making a determination of the RCA/RMA eligibility period as soon as possible after funds are appropriated for the refugee program, the Director will make redeterminations at subsequent points during the year only if a reduction in the eligibility period appears indicated.

Subpart K—Waivers and Withdrawals

Section 400.301 (Withdrawal from the refugee program) is amended by removing the words ''only under extraordinary circumstances and'' in § 400.301(b). This would allow the ORR Director greater discretion to approve cases in which a State wishes to retain responsibility for only part of the refugee program if it is in the best interest of the Government, without requiring extraordinary circumstances. For example, when a State with a small refugee population wishes to drop out of the refugee program, but is willing to retain responsibility for administering just the RMA program, it would be in the best interest of the Government to approve such an arrangement without other constraints.

Section 400.301(c) is amended by clarifying that a replacement designee must adhere to the regulations regarding the targeted assistance formula program

under Subpart L if the State wishing to drop out of the refugee program authorizes the replacement designee appointed by the ORR Director to act as the State's agent in applying for and receiving targeted assistance funds.

Discussion of Comments Received

We received one hundred and thirty-six letters of comments in response to the notice of proposed rulemaking published in the **Federal Register** on January 8, 1999. The commenters included State and local governments, national and local voluntary agencies, refugee mutual assistance organizations, refugee service providers, advocacy organizations, national unions, national government organizations, and national public policy organizations. We took these comments into consideration in the development of the final rule. We have summarized and responded to the comments below. Some of the comments addressed existing provisions of the regulations that were not included in the NPRM for change. While we have reviewed these comments as well, we have included a discussion of comments only on those provisions outside of the NPRM that we have decided to change as a result of the comments.

Comments on Subpart A—Introduction

Section 400.2

Comment: Three commenters recommended defining TANF assistance as TANF cash assistance since there are other types of assistance which States may provide with TANF funds. One commenter recommended that the definition of TANF should include a reference to title IV–A of the Social Security Act.

One commenter recommended that the final rule define the term ''family unit'' to ensure consistency of interpretation for cash assistance payment cases. The issue of whether adult children are considered part of their parents' ''family unit'' or as separate family units or whether two unmarried adults living together are considered to be one or two family units needs clarification.

One commenter suggested adding a definition of economic self-sufficiency to § 400.2. The commenter recommended defining economic self-sufficiency on the basis of total household income in relation to a percentage of the Federal poverty standard. The commenter felt that the measure of hours of work per week should be eliminated as a measure of self-sufficiency and that agency performance should not be evaluated on the basis of whether each refugee meets the hours of work per week standard.

Response: The final rule includes the technical changes to the definition of TANF that were recommended by the commenters. We have included a definition of family unit as requested. We define a family unit as an individual adult, married individuals without children, or parents, or custodial relatives, with minor children who are not eligible for TANF. With respect to the question of whether two unmarried adults living together are considered to be one or two family units, we regard such a living arrangement to constitute two family units. We have also included a definition of economic self-sufficiency which we have defined as earning a total family income at a level that enables a family unit to support itself without receipt of a cash assistance grant. Regarding the elimination of hours worked per week as a measure of self-sufficiency, we view hours worked per week as a useful measure of employment, not self-sufficiency, which should not be eliminated. We require States and other major grantees to report client outcomes that include self-sufficiency (sufficient earnings to terminate cash assistance), which is the ultimate measure, and full-time and part-time employment, which are interim measures leading to self-sufficiency. These measures are important in tracking refugee progress towards economic self-sufficiency.

Comments on Subpart B—Grants to States for Refugee Resettlement

Section 400.8

Comment: One commenter asked for clarification on the relationship between the State Plan and amendments to the public/private RCA plan.

Response: The public/private RCA plan, once it is reviewed and approved by ORR, becomes part of the larger State Plan that is required in § 400.4 and replaces the existing RCA section of the State Plan. An amendment to the public/private RCA plan should be treated as an amendment to the State Plan.

Section 400.11

Comment: One commenter felt this section should be amended to include a new subsection that provides for cash advances to resettlement agencies, through either the States or directly from ORR.

Response: A State's contracting and grant-making rules govern whether cash advances may be provided to State contractors and grantees. This is an issue that local resettlement agencies should discuss with their State during the public/private RCA consultation. Federal rules would not apply since local resettlement agencies participating in the public/private RCA program would not be our direct grantees.

Section 400.13

Comment: One commenter felt that the new rule will impose new limitations on RCA which will not allow States to claim most case management costs. The commenter expressed concern that the proposed limitations may be a precursor to future funding restrictions particularly regarding the administrative portion of the RCA allocation. The same commenter felt that the proposed case management rule would increase the burden on service providers to track each client by public assistance category.

Two commenters requested clarification on what types of case management services are chargeable to CMA. One of the commenters asked whether administrative costs related to employment-related case management are chargeable to CMA. Another commenter requested confirmation that case management services related to ESL, VESL, skills training, and on-the-job training may be charged to CMA. Two commenters stated that activities such as job referral, job readiness instruction, assisted job search, job development and placement, and post-placement services appear to be case management functions under the proposed rule. One commenter asked whether 100% of staff time is billable to the CMA grant in cases where staff have multiple functions.

Another commenter wondered what services funds are to be used for and whether administrative funds for service activities are to be added to services costs. One commenter suggested eliminating the requirement that administrative costs related to the provision of social services must be charged to the social services grant. The commenter felt that this requirement forces States to allocate social services funds to resettlement agencies that otherwise might not have received funding through a competitive social service grant process.

One commenter requested the extension of case management as a chargeable expense to CMA to allow for 90 days of post-placement follow-up to ensure real self-sufficiency. Another commenter felt that there is a disparity between ORR's requirement to provide employment services to refugee TANF recipients and the lack of funding for case management of these services since

only case management costs targeted to RCA recipients may be chargeable as CMA administrative costs. The commenter complained that this places a State in a position where it may only provide case management as an employability service to TANF recipients as an unfunded option.

One commenter requested that ORR provide parameters for the allocation of administrative costs and recommended that private agencies should have the same percentage of administrative overhead allowed in their contracts as States.

Response: We have decided to withdraw the provision which would have allowed certain case management costs for RCA eligible recipients to be charged to CMA. The comments suggest to us that there exists a broad range of understanding regarding case management which could result in costs charged inappropriately to CMA and/or an inappropriate increase in administrative costs charged for tracking and allocating of those costs. Based on the comments, we were uncertain whether this provision would have resulted in sufficient benefit to refugees to justify the change. Therefore, we believe that further review and discussion is needed before case management costs can be charged to CMA. Thus, the provision at 45 CFR 400.13(d), which prohibits the charging of case management service costs to the CMA grant, remains unchanged.

Regarding the commenter's concern about the administrative cost provision at § 400.13(e), it is our view that whether private agencies should have the same percentage of administrative overhead allowed in their contracts as States is an issue that is up to the States to negotiate with their contractors in the refugee program.

Comments on Subpart C—General Administration

Section 400.23

Comment: Two commenters felt that the RMA hearing process used should be the same as the process used in the State's Medicaid program. One of the commenters recommended that § 400.23 should conform with § 400.93(b) in existing regulations which requires that RMA hearings be the same as those required for Medicaid. One commenter recommended that each State should be allowed to specify in its State plan what hearing process it intends to use in an excepted RCA program. A State may prefer to use the Food Stamp/Medical Assistance fair hearing procedures in order to simplify procedures since an RCA recipient is likely to be a Food Stamp/Medical Assistance recipient but will not be a TANF recipient. One commenter questioned whether it was feasible for local resettlement agencies to use the same hearing procedures as are used in the TANF program. Another commenter felt that replicating the local district fair hearing process for one or more local contractors would not be cost-effective and would not make administrative sense. The commenter felt that the State would have to insist that RCA hearing procedures be consistent with TANF and general assistance hearing procedures and that small contractors would not have the resources to implement such a hearing process. The commenter felt that the proposed rule may already contain the flexibility to allow for private agencies to use the public process.

Response: In keeping with commenters' suggestions, we have revised this section by removing reference to the RMA program since § 400.93(b) requires the RMA hearing process to conform with the State's Medicaid program, and we have revised § 400.54(b) to require a State to specify in its State plan what hearing process it intends to use in a publicly-administered RCA program. In regard to whether it is feasible for local resettlement agencies operating a public/private RCA program to refer hearing requests to the State hearing process used in the TANF program or some other public agency hearing process, yes it is feasible as long as the State agrees to such an arrangement. There is no restriction in this rule that prohibits States from designing public/private RCA programs that utilize public agency hearing procedures such as the TANF hearing procedure.

We have revised this section to make clear that the public assistance hearing procedures at 45 CFR 205.10(a) continue to apply to all assistance and services provided under the refugee program, unless otherwise specified by regulations in this part. For example, in the determination of eligibility for RMA in accordance with § 400.93(b), the State must use the Medicaid fair hearing procedures. In providing RCA, the final rule at § 400.54(b) specifies that States must describe the public agency hearing procedures they intend to use in the RCA program. All RCA hearings must comport with the constitutional requirements of *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). *See* the Comment and Response section at § 400.83 for further discussion of the hearing requirements for adverse RCA determinations.

Section 400.27

Comment: One commenter recommended adding the words ''or by a voluntary resettlement agency to a State'' in § 400.27(b) to enable a State that has established a public/private RCA program to monitor the provision of cash assistance provided by a local resettlement agency without individual client signed consent.

Response: We have amended this section to incorporate the commenter's suggestion.

Comments on Subpart D—Immigration Status and Identification of Refugees

Section 400.43

Comment: One commenter complained that the NPRM does not remedy the inequitable treatment of asylees. Current policy provides 8 months of RCA/RMA eligibility to asylees from their date of arrival in the U.S., the same as refugees. However, since it may take up to 6 months or more for an asylum applicant to be granted asylum, the actual period of RCA/RMA eligibility that is available for asylees is usually 2 months or less. The commenter recommended amending the regulations to allow asylees RCA/RMA eligibility for 8 months from the date that asylum is granted as opposed to 8 months from the date of arrival. Another commenter pointed out that the current regulation and the proposed rule do not describe how and when asylees may access Federal benefits and recommended that the final rule address this serious omission.

Response: ORR's policy on asylee eligibility for refugee program assistance, issued in a policy notice in 1982, defines the time-eligibility of an asylee as beginning with the first month in which an asylee has entered the United States, in accordance with sections 412(d)(2)(A) and 412(e)(1) of the Immigration and Nationality Act. Thus asylees, like refugees, are eligible for RCA and RMA during their first 8 months in the U.S. and are eligible for social services during their first 5 years in the U.S. We recognize that as a result of the time it takes for an asylum applicant to be granted asylum, an asylee often has few months of eligibility remaining for RCA and RMA. We will examine this issue further to determine from a policy and operational perspective whether the existing policy may be modified.

Comments on Subpart E—Refugee Cash and Medical Assistance

Section 400.50 (§ 400.51 in the NPRM)

Comment: One commenter recommended that the definitions of

filing unit and household in § 400.51 of existing regulations be retained and that States be required to define the members of the filing unit in their State.

Another commenter pointed out that by removing references to AFDC requirements in this section, the proposed rule omits key client protections which should not be omitted, such as requirements that applications must be processed promptly, that applicants must be informed of their rights and responsibilities, and that once an individual has been found eligible, he or she remains eligible until determined ineligible. The commenter also recommended that the regulations should retain the requirement that benefits be provided to all eligible persons. The commenter stated that this section should specify that notice to an RCA applicant that cash assistance has been authorized or denied must include an explanation of the reasons for the decisions and of the right to request a hearing to appeal the decision. The commenter felt that this is an essential element of due process and must be addressed.

Another commenter recommended that if an RCA recipient is notified of termination because of time-ineligibility, the local resettlement agency must be required to ensure that the recipient is assisted in applying to the appropriate State agency for other cash assistance programs and that the State must be required to determine eligibility for TANF and general assistance.

Response: Since we have included a definition of ''family unit'' in § 400.2, we do not see the need to retain the terms ''filing unit'' or ''household''.

We have amended this section to include the requirement that eligibility must be determined as promptly as possible within no more than 30 days from the date of application and that applicants must be informed of their rights and responsibilities. In regard to the comment that a notice to an RCA applicant indicating authorization or denial of cash assistance must include an explanation of the reasons for the decisions and of the right to request a hearing to appeal the decision, we have added a new § 400.54(a) which includes this information. It should be noted that these notices must be translated into appropriate languages as required by § 400.55. Section 400.54(a) includes a requirement that a State or its designee, such as local resettlement agencies, must review the case of an RCA recipient who is terminated because of time-ineligibility to determine possible eligibility for TANF or GA. We believe that the regulation implicitly requires that all eligible persons will receive RCA until they are no longer eligible. *See, e.g.,* § 400.60(a).

Section 400.51 (§ 400.52 in the NPRM)

Comment: Four commenters recommended adding a provision to this section that would allow refugee families to receive RCA until eligibility for TANF is determined. One of the commenters also recommended requiring States to reimburse local resettlement agencies for the amount of RCA provided during the period of TANF eligibility determination. The same commenter recommended that local resettlement agencies should be required to ensure that potentially eligible refugees are assisted in applying in a timely manner for TANF and SSI. Another commenter asked for clarification on the process to be used to determine TANF eligibility through the State public assistance offices prior to accessing RCA. Another commenter requested clarification on whether refugees may be determined ineligible for TANF without necessarily being processed through the States' public assistance offices.

Four commenters expressed concern that refugees under the public/private RCA program will be less likely to access other support and benefit programs. Three commenters recommended adding a provision that would require local resettlement agencies to refer refugees to Medicaid, RMA, or Food Stamps so that RCA applicants would be informed of their rights to other government benefits and services. Two commenters suggested that ORR address the benefits of co-location of State and private eligibility staff. One commenter felt that one of the outcome measures that must be used for the public/private RCA program is the percentage of refugees that are referred to and receive RMA and Medicaid.

Response: While we allow refugees to receive RCA until eligibility for SSI is determined because the time frame between application and receipt of the first SSI payment is frequently long, we do not see a compelling reason to allow the same coverage for refugee families who are waiting for TANF eligibility to be determined. We have not received reports of refugee TANF applicants having to wait a significantly longer period of time for eligibility determination than RCA applicants.

Regarding eligibility determination for other cash assistance programs, § 400.50 (§ 400.51 in the NPRM) includes a requirement that States and their designee agencies must refer refugees or other cash assistance programs for eligibility determinations. We have amended this provision to indicate that such referrals must be made promptly. In designing a public/private RCA program, it is the responsibility of States to develop a procedure that ensures that refugees are properly referred to other benefit programs, in accordance with § 400.50(c) (§ 400.51(b) in the NPRM). We believe that States, in consultation with local agencies, will adequately address how to ensure that refugees are able to access other public benefit programs for which they may be eligible. The ORR Matching Grant Program has been operated for many years by voluntary agencies and referral to other programs has not been an issue for refugees.

We support the co-location of State and private eligibility staff and encourage States to consider this arrangement in their public/private RCA program. Some of our programs, particularly the Wilson/Fish alternative programs, have very effectively co-located public eligibility workers at refugee provider agencies to ensure that refugee eligibility for other cash assistance programs and other benefits is determined in a timely manner.

In regard to tracking the percentage of refugees that are referred to and receive RMA and Medicaid as an outcome measure, we already have a system for tracking the number of refugees who access RMA. States are required to report the number of RMA recipients to ORR on a quarterly basis. Since Medicaid is not under the jurisdiction of the refugee program and we no longer reimburse States for refugee Medicaid costs, we do not require States to report on refugee Medicaid use. ORR's annual national refugee telephone survey, however, provides data on the percentage of refugees in the household survey who report receiving Medicaid. The annual survey includes telephone interviews with a large sample of refugee households that have been in the U.S. 5 years or less.

Section 400.52 (§ 400.53 in the NPRM)

Comment: One commenter expressed concern that, in the absence of any other prompt processing requirement, this provision seems to suggest that a State or agency only is required to process applications as quickly as possible if there is a determination of urgent need. The commenter felt that a general requirement for processing all applications promptly should be added.

Response: We have added language regarding prompt eligibility determinations to § 400.50 (§ 400.51 in the NPRM).

Section 400.53 (§ 400.54 in the NPRM)

Comment: Three commenters noted that the proposed rule would eliminate the existing eligibility exception for full-time students in the current regulations which allows RCA eligibility for full-time students in higher education if such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee. The commenters stated that RCA recipients with professional skills can benefit from full-time enrollment in higher education to obtain certification to practice their profession in the U.S. The commenters recommended restoration of this eligibility exception.

Another commenter expressed concern that by restricting eligibility for RCA to refugees who are ineligible for TANF, SSI, OAA, AB, and APTD, all newly arrived refugees will not be able to benefit from the refugee-specific transitional assistance to be provided through the new public/private RCA program. The commenter recommended deleting this subsection.

Response: Section 412(e)(2)(B) of the INA prohibits refugees who are full-time students in institutions of higher education from receiving cash assistance. The refugee program emphasizes early employment by requiring refugees to become employed and self-sufficient within 8 months. We do think it's consistent with ORR's program goal for an RCA recipient to become employed and then enroll in a professional refresher training or recertification program at refugee program expense as allowed under § 400.81.

It is not possible to include TANF-eligible and SSI-eligible newly arrived refugees in the public/private RCA program because the costs would far exceed ORR's level of appropriated funding.

Section 400.55 in the NPRM

Comment: Two commenters noted that the proposed rule concerning eligibility redeterminations in States with TANF residency requirements inaccurately assumes that these residency requirements may legitimately be applied to refugees. One commenter pointed out that Congress, in enacting the welfare reform law, did not intend for the durational residency requirements to apply to newly arrived refugees from overseas, only to interstate migrants. The purpose was to prevent secondary migration across States and was not intended to preclude newly arrived refugees from accessing TANF benefits. One commenter recommended amending this section to state that the statutory authority for States to impose residency requirements does not preclude TANF eligibility for arriving refugees.

Response: While it may not have been Congress' intent to apply residency requirements to newly arrived refugees from overseas, there were a few States that, under State law, were applying the State's TANF residency requirement to newly arrived refugees, thereby denying TANF eligibility to these refugees and placing them on RCA for the 8-month RCA eligibility period. With the recent Supreme Court ruling in *Saenz* v. *Roe,* 119 S. Ct. 1518 (May 17, 1999), which makes the application of residency requirements to any TANF applicant who moves into a State unconstitutional, States must change their laws and practices. Given this ruling, we are removing this requirement.

Section 400.55 (§ 400.63 in the NPRM)

Comments: Three commenters objected that the proposed requirement to provide agency policy materials to refugees in both English and their native language would be a significant burden that would be cost prohibitive. One commenter suggested that States be given an option to provide a notice in English and provide a verbal translation of the notice to refugees. Another commenter recommended amending this provision to indicate that local contracts should demonstrate reasonable and practical methods to assist clients to understand agency policies in their own languages. In contrast, one commenter recommended that the required list of written policies in this section should be more comprehensive to include good cause criteria, procedures for an appeal of an adverse determination, including appeal procedures outside of the resettlement agency. The commenter went on to recommend that the resettlement agencies should provide written notice in the refugee's native language of the availability of the more detailed written policies. Two commenters recommended that the final rule clarify that the local resettlement agencies are the entities that should provide written translated policies and procedures to individual refugees, not the State. Two commenters indicated that local resettlement agencies would need to be given administrative funds to pay for a lot of translators to translate agency policies and procedures into refugee languages.

Response: By law, entities receiving federal financial assistance have an obligation to ensure that limited-English speaking people have meaningful access to their services. Section 601 of title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* states that ''[n]o person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Language barriers experienced by persons with limited English proficiency can result in exclusions, delays or denials that may constitute discrimination on the basis of national origin, in violation of title VI. Department of Justice (DOJ) regulations at 28 CFR 42.405(d)(1) address the circumstances in which agencies that administer Federal financial assistance must make available language assistance, in written form, to persons with limited English proficiency. Based on this DOJ provision, we are requiring States or the agency(s) responsible for the provision of RCA, to ensure that reasonable steps are taken to provide written information in appropriate languages where a significant number or proportion of the population eligible to be served needs information in a particular language. Although this principle has never been expressly stated in ORR regulations, it is a restatement of current obligations under title VI and would apply in the RCA program, regardless of whether the RCA program is a public/private program or a program that mirrors the TANF program. Therefore we are moving this provision from the public/private RCA section of the regulations to the general RCA section and redesignating the section as § 400.55.

It is essential that States and/or local resettlement agencies ensure that every RCA recipient understands any and all policies that will have an effect on a recipient's cash assistance payment. This requirement includes all notices to refugees regarding eligibility, payment adjustments, or terminations. Regarding refugee language groups that constitute a small number or proportion of the RCA recipient population served, the State or the agency(s) responsible for the provision of RCA is not required to provide written information in the native language of the refugee ethnic group. However, States and/or local resettlement agencies must use an alternative method to effectively communicate agency policies to a limited English-speaking recipient such as the use of a verbal translation in the refugee's native language, to ensure that the content of the agency's policies is effectively communicated to each refugee. We do not have a particular

position on whether local resettlement agencies or the State should produce the written translated policies for recipients in the public/private RCA program. This issue should be worked out in the development of the public/private RCA plan. The preparation of written RCA policies in refugee languages and the use of interpreter/translators to explain agency RCA policy may be charged as an administrative cost to a State's CMA grant.

Section 400.56(a)

Comment: Twenty-nine commenters wrote in support of the public/private RCA program, 10 commenters stated they could not fully endorse the new program as proposed, and 70 commenters opposed the new program. Of the commenters who supported the program, 8 commenters supported the separation of RCA from the TANF program, while 17 commenters endorsed the flexibility that the new program would allow. Four commenters expressed support for strengthening a public/private partnership, while two commenters felt that the new program would firmly unite States and resettlement agencies into a partnership that will best utilize their respective strengths. Of those commenters who indicated they could not fully endorse the new program, two commenters stated that unless important components regarding resettlement agency capacity, flexibility, and legal protections from liability are put into place, they had serious doubts about the new program's likelihood of success. Of the commenters who opposed the establishment of the public/private RCA program, 49 commenters felt that the existing program has already demonstrated a high rate of success in achieving self-sufficiency and questioned the need to change the existing program. Seven commenters felt that the new program would not be in the best interests of refugees and would not benefit refugees.

Five commenters felt that the administration of RCA by private agencies should be an option, not a mandate. One commenter recommended letting States develop their own program design instead of mandating a certain approach.

Three commenters expressed concern that the addition of cash assistance administration to the responsibilities of local resettlement agencies would not necessarily result in greater self-sufficiency outcomes for clients who only have 8 months of assistance. One commenter expressed concern that the distribution of cash assistance would place an increased burden on the agency's administrative and accounting staff and would detract from the agency's primary focus of preparing clients for early employment. Two commenters were concerned that the establishment of the new program would result in trading a known system for an unknown and untried system. Two commenters had concerns about the additional burden on local resettlement agencies that developing a new program for a small portion of clients will create, while another commenter expressed concern about the additional burden the new program will place on States.

One commenter expressed the opinion that the public/private program as outlined in the NPRM is not practical if a State has a minimal number of refugees receiving RCA and/or those refugees are geographically dispersed across the State making implementation of a public/private partnership inefficient and costly.

Nineteen commenters made the point that the proposed RCA program would only benefit a small portion of the refugee arrival population and recommended that the public/private program should be offered to all newly arriving refugees, particularly TANF-eligible refugee families, if possible. Five commenters expressed concern about the inequity of refugees under the new RCA program being treated better than refugee families with minor children under TANF. Three commenters recommended that ORR pursue alternatives to TANF for families with minor children. One of the commenters proposed shifting funds from TANF funding to create a unified refugee resettlement program that includes TANF-type refugee families. Since the proposed rule specified that a family that becomes ineligible for Medicaid may be transferred to RMA, one commenter asked why the ORR regulations could not also specify that families with minor children, who terminate TANF because they are unable to meet the conditions of eligibility, may be transferred to RCA.

Eight commenters objected to restricting participation in the public/private RCA program only to local resettlement agencies. One commenter suggested that it would be more judicious, before mandating a specific type of agency, if ORR tested the capabilities of local resettlement agencies in handling the public/private program through a pilot. A second commenter felt that it was inconceivable to propose that States contract out several hundreds of million dollars annually in Federal funds without a required procedure to consider whether local resettlement agencies have the capacity to administer and deliver cash assistance and services before the program is initiated. Another commenter expressed concern that by limiting who the State may contract with, ORR's proposed rule represents a step back from the flexibility provided to States through welfare reform. The commenter felt that ORR regulations should allow flexibility that is equal to, or greater than, the flexibility allowed in TANF regulations. One commenter expressed concern that the new RCA program will require States to contract with agencies limited in experience in providing income maintenance.

Six commenters recommended that opportunity be given to refugee mutual assistance associations and other community-based organizations, in addition to local resettlement agencies, to administer the RCA program. Two of these commenters felt that the NPRM reflected unfairness to MAAs. Two commenters recommended amending this section to allow the greatest flexibility in program design by allowing public/private RCA partnerships with ''local resettlement agencies or other private non-profit partners providing refugee-specific services.''

Thirty-two commenters expressed concern that the new RCA program will increase administrative costs and questioned the cost-effectiveness of the proposed program. Of these, 12 commenters were particularly concerned about the level of administrative costs needed to implement the new program, in light of the relatively small number of refugees to be served. Five commenters felt that contracting with local resettlement agencies to administer RCA would cost considerably more than the existing State system. Three commenters predicted that there would be no savings in State agency costs that could be used to offset resettlement agency costs because there would be no reduction in State agency staffing or State responsibilities such as RMA administration, confirmation of TANF ineligibility, and notification of ineligibility to refugee clients and resettlement agencies. One commenter expressed concern about the risks in managing the funding level for the new RCA program if local resettlement agencies overspend RCA or have other difficulties in meeting a budget.

Four commenters expressed the opinion that increased levels of administrative costs will not result in improved employment outcomes. Two commenters expressed concern that replicating existing systems for the

provision of cash assistance with each agency will duplicate bureaucracy and multiply costs beyond reason. One commenter complained that the private eligibility determination and case management functions would duplicate responsibilities remaining with the State agency and would substantially increase costs. Another commenter stated that ORR should not force a more costly program on States.

One commenter felt that although the new program will result in additional costs initially, the new program, over time, will not cost more than the current program.

Five commenters raised questions about funding for the administrative costs of the new RCA program. Of these, one commenter asked how a State is to know how much is available for administrative costs. Another commenter asked if discretionary grant funds will be made available to States to cover private agency administrative costs. Another commenter asked if additional funding would be added to social service formula allocations to States to fund RCA administration. One commenter asked ORR to clarify its intent to cover administrative costs in the out years of the program, after initial start-up. The commenter felt that the NPRM was unclear about a State's responsibility for administrative costs.

Twelve commenters expressed concern that an increase in administrative costs to operate the new RCA program could force a reduction in the RCA eligibility period.

Twelve commenters felt that the due date for implementation of the new public/private RCA program of one year after publication of the final rule is unrealistic. The commenters indicated that many States may need more than 6 months after an RCA plan has been submitted to implement the plan to allow adequate time to negotiate contracts with participating agencies and to develop written policy. One commenter stated that it would take a year to simply amend administrative rules to accommodate the new program. Two commenters recommended an 18-month deadline with at least 12 of those months devoted to implementation. One commenter suggested having the implementation date coincide with the beginning of a fiscal year even if this extends the deadline beyond one year. Three commenters recommended requiring States to include a proposed implementation date in their public/private RCA plans, rather than setting a national due date. Three commenters supported an implementation date of October 1, 2000, or one year after the publication of the final rule and felt that the date for implementation should not be extended. One commenter recommended that more than 6 months within that one-year time frame be devoted to planning and consultation and less time for implementation, if necessary.

Response: We have given these comments, as well as the comments that appear in response to other sections of the proposed rule, a great deal of thought and have concluded, given the wide variance of views on the public/private RCA program, that it would be in the best interests of refugees and the refugee program to offer the public/private RCA program as an option, not as a requirement, to States. We found particularly compelling the argument from many commenters that the program in its current form has been very successful in helping refugees to achieve self-sufficiency and should not be changed. Equally compelling were the concerns expressed by a number of local resettlement agencies about the increased administrative burden of managing a cash assistance program and adhering to client protection and due process requirements, as well as concerns about having legal protection from liability. Also persuasive were commenters' concerns that the increased costs of administering the new program might not improve results for refugees.

The totality of comments gave us the view that the public/private RCA program would be eagerly pursued in some States as the right approach for the circumstances in those States, while in other States, such an approach would not necessarily result in the best program for newly arriving refugees and, therefore, would not be welcomed in those States.

Although we have not changed our belief that this is an opportune time to remove the refugee program from the public welfare system and move it towards a greater public/private partnership, we have no interest in forcing a public/private approach upon reluctant participants. Instead our principal goal is to provide greater flexibility to the program and its participants. Therefore, as this final rule describes, instead of requiring States to establish a public/private RCA program, we have decided to offer States the option of choosing this approach if they believe such an approach will work in their State. States that choose to pursue this option in concert with local resettlement agencies in their State must follow the regulations that specifically apply to the public/private RCA program in §§ 400.56, 400.57, 400.58, 400.59, 400.60, 400.61, 400.62, and 400.63.

In regard to the comments on expanding the public/private RCA program to include TANF-eligible families, while it would be ideal to place all newly arriving refugees in a special resettlement program for an initial period, it is not financially feasible to do so within the refugee program's appropriation level. The program's appropriation level has not been sufficient to reimburse States for the costs of refugee AFDC recipient costs since FY 1991. Regarding the recommendation to shift TANF funds to create a unified refugee program that includes TANF-type refugees, given the block grant nature of TANF funding, any decision to use TANF funds in the refugee program in ways that are consistent with a TANF purpose would rest with States.

With respect to limiting participation in the public/private RCA program only to local resettlement agencies, we have designated the same agencies that are responsible for the initial resettlement of refugees under the R & P program to maintain a continuity of assistance for newly arriving refugees. Many of these agencies have an experienced record of providing cash assistance to refugees through the Matching Grant program and, to a lesser extent, through the Wilson/Fish alternative program. Those refugee community-based organizations, including mutual assistance associations, who have a subcontract with a national voluntary agency to provide R & P services and meet the definition of a local resettlement agency at § 400.2 may participate in the public private refugee cash assistance program. These agencies would have had similar experience in administering cash assistance and would offer the continuity of assistance we are seeking.

In regard to comments about funding, discretionary funds will not be made available to States to cover private agency administrative costs. As described in § 400.13(e), a State may charge local resettlement agencies' administrative costs related to providing cash assistance to a State's CMA (cash, medical, and administrative) grant. With regard to how a State knows how much is available for administrative costs, States are not given a set amount or ceiling for administrative costs. In accordance with § 400.207, States may submit claims for reasonable and necessary identifiable administrative costs to ORR, using ORR's cost allocation guidelines. Since the refugee program began, States have been reimbursed 100% for their administrative claims.

The administrative costs of managing the services component of the public/private RCA program, regardless of the type of agency, must be charged to a State's formula social services grant. In response to another comment, ORR intends to make discretionary funds available during the initial years of start-up to help States pay for services to refugees in the public/private RCA program, particularly if a State's program design plans for a different group of agencies to provide services to public/private RCA recipients than the State's regular social service providers. A State may use a portion of these additional social service funds for social service administrative costs, but not for RCA administrative costs.

Regarding the coverage of administrative costs for the public/private program after the initial start-up years, States may continue to charge the public/private program's RCA administrative costs to CMA, while the public/private program's social service administrative costs may be paid for with a State's formula social services funds, just as the social service administrative costs of a State's regular social service program are paid for with formula social services funds, in accordance with § 400.206. With regard to concerns about a reduction in the RCA eligibility period as a result of an increase in costs to operate the public/private RCA program, ORR's first priority is to maintain the current RCA eligibility period.

Regarding the deadline for implementation of a public/private RCA program, we agree with the suggestion to allow States to include a proposed implementation date in their public/private RCA plans, and have added such a provision to the public/private RCA plan at § 400.58(a)(14). A State's proposed implementation date, however, may not be any later than 24 months after the date of publication of the final rule.

Section 400.56(b)

Comment: Four commenters expressed the need to have the flexibility to arrange consortia of providers in order to provide cash assistance and services to refugee clients of agencies too small to enter into direct contracts. These commenters pointed out that without achieving economies of scale through collaboration, States will not be able to enter into contracts at a reasonable administrative cost. The commenters also felt that if a State and the resettlement agencies handling the majority of resettlement in an area are able to arrive at a consensus which provides services to all refugees in the area, they must be able to proceed even if a minor agency is not willing or able to join the consortium.

Four commenters were concerned that States may, in the interest of administrative expediency, strive for uniformity in local program design and unintentionally undermine private sector diversity by excluding the smaller church-based agencies. Six commenters expressed concern that States will choose a lead agency or limit the number of resettlement agencies to contract with in order to limit the administrative burden of administering multiple contracts. These commenters recommended the inclusion of safeguards to prevent any interested resettlement agency from being excluded from full participation in the public/private RCA program.

One commenter recommended adding language to the final rule that would exempt States from Federal competitive procurement requirements when a lead agency is agreed upon through the planning process. Another commenter suggested expanding the language to allow States to contract with or make grants to local resettlement agencies since the ability in some States to make a grant to a non-profit is easier than contracting with a non-profit.

Fourteen commenters expressed concern about cash flow problems that many local resettlement agencies would experience if they are under contract to administer the new RCA program without cash advances. Several of the commenters pointed out that States generally use cost reimbursement contracts and do not provide cash advances. The lack of cash up front would pose a serious operating problem for most resettlement agencies. Eight commenters requested that ORR include a provision in the final rule that would provide advance funding to local resettlement agencies either through the States or directly from ORR. One commenter pointed out that it will be essential for ORR to permit the obligation of CMA to pay for the issuance of cash assistance checks to refugees in the early months of each fiscal year until the first quarter CMA award is made to States.

One commenter asked whether the final rule will require local resettlement agencies to notify the State of refugees who have become recipients of RCA, in order to reduce the risk of State offices enrolling these refugees in some other cash assistance program such as General Assistance or SSI.

Response: We have no objections to States arranging consortia of providers to provide cash assistance and services to RCA recipients in order to achieve greater cost-effectiveness. While we strongly encourage States that are planning to establish a public/private RCA program to consider including all local resettlement agencies that are interested in participating in the new program, we also believe that States must take financial and administrative considerations into account, as well as the capability of each agency, when making contracting decisions. Regarding whether a State and the local resettlement agencies handling the majority of resettlement in an area may proceed with a public/private program when a smaller agency is not willing or able to participate, this is a decision which the State may make. While we require consultation with all local resettlement agencies as well as other refugee providers in the planning of the public/private RCA program, final decision-making is in the purview of the State. However, all eligible refugees must have RCA available to them. We expect that where a local resettlement agency cannot or does not wish to participate and the State and other local resettlement agencies decide to implement a public/private RCA program, that appropriate provisions for referral and access to RCA will be made for the refugees who are resettled by the non-participating agency. The Director of ORR may also elect to implement the placement authority provided by the Refugee Act, should it appear necessary.

We have amended the language in this section to allow States to make grants, as well as contracts, to local resettlement agencies as one commenter recommended. In regard to exemption from Federal competitive procurement requirements, the regulations at 45 CFR Part 74 that require open and free competition would not be applicable to the public/private RCA program since our regulations require States that choose to establish a public/private RCA program to enter into contracts or grants with local resettlement agencies or a lead resettlement agency.

With the exception of a portion of the first quarter of each fiscal year, ORR currently provides advance CMA funding to States through quarterly CMA allocations at the beginning of each quarter to cover anticipated costs in that quarter. We cannot provide advance funding directly to local resettlement agencies that participate in the public/private RCA program because they are not our direct grantees; they are the State's grantees or contractors. Therefore, whether cash advances may be provided to local resettlement agencies is a State contracting or grant matter to resolve. Regarding obligation of CMA funds in the early months of the

fiscal year, we now have a way to permit States to obligate CMA funds early in each fiscal year to cover the costs of cash assistance payments to refugees in the public/private RCA program. The President's FY 2000 budget request to Congress included multi-year spending authority for the refugee program to allow funds appropriated in FY 1998 and FY 1999 to be available through FY 2001. Congress granted ORR this spending authority in its FY 2000 appropriation which will allow funds to pay for RCA costs in the early months of the new fiscal year.

Regarding whether local resettlement agencies will be required to notify States of refugees who have become recipients of RCA, States will have to require local resettlement agencies to provide them with timely information on RCA recipients since States are required to report RCA recipient numbers to ORR on a quarterly basis. We assume that each State that enters into a public/private RCA program will require in their contracts that local resettlement agencies must provide them with information on who is receiving RCA. States will need this information to monitor time-eligibility and duplication of assistance as well as to carry out their responsibilities under § 400.49. We do not believe this issue needs to be addressed further in our regulations.

Section 400.56(c)

Comment: Five commenters expressed concern that local resettlement agencies will not have the capacity to provide adequate statewide coverage and protection to new arrivals. These commenters predicted that the geographic dispersion of refugees in their States would result in refugees who reside in remote pockets of a State having difficulty accessing assistance and services. Another commenter was concerned that if an area of the State chooses to opt out of the new RCA program, this situation could be inequitable for refugees since the flexibility and incentives provided to refugees in the parts of the State where the public/private RCA program is operating may not exist in the sections of the State where a publicly-administered RCA program is operating. One commenter felt that a State must have complete discretion to choose those areas of the State in which a public/private program may be implemented and should not be bound by a need to reach agreement on this issue with a small local resettlement agency.

Response: Concerns about reaching refugees who reside in remote pockets within a State can be addressed by either choosing to provide RCA through the State welfare system in remote parts of the State and through a public/private RCA program in the populated areas of the State or by deciding that a public/private RCA program may not be appropriate for the State if the refugee population is small and is dispersed throughout the State. If a State is concerned about inequities between incentives that a refugee receives through the State's public/private RCA program and what a refugee receives through a TANF-type RCA program elsewhere in the State, the State has the latitude to minimize inequities through its program design of the public/private program. States, after consultations, do have the discretion to choose the areas of their State where they wish to implement a public/private program and whether they still wish to establish a public/private program.

Section 400.56(d)

Comment: Six commenters expressed the view that the eligibility determination function is an essential function of government that must be performed by public sector employees in order to ensure fair, unbiased and impartial eligibility determinations. Two commenters argued that the determination of eligibility by public sector employees avoids conflicts of interest such as potential cost or contract savings that may affect decision-making by private agencies. Two commenters stated that the proposed rule inappropriately empowers private organizations with decision-making and policy-setting authority for Federal funding for which States are ultimately responsible. Another commenter recommended that ORR amend this provision from ''must be responsible for determining eligibility * * *'' to ''may be responsible for determining eligibility * * *'' to allow more flexibility for an alternative division of tasks between the resettlement agencies and the States. One commenter recommended that States and local resettlement agencies should have the flexibility to allow eligibility determination by either party.

Eleven commenters expressed concerns about liability. The commenters pointed out that local resettlement agencies administering cash assistance could be sued by a refugee who disagrees with a decision. Even if an agency is proven to be right, the cost of staff time and legal fees would be very high. These commenters requested that the final rule include a provision to indemnify local agencies in disputes. One commenter asked for clarity on what responsibility local resettlement agencies would have for repaying ORR for unallowable expenses or for payments made to a refugee in error.

Response: Section 412(e)(1) of the INA (8 U.S.C. 1522(e)(1)) expressly authorizes private non-profit agencies to provide cash and medical assistance to newly arrived refugees. Public sector employees therefore are not required by law to make RCA eligibility determinations. Furthermore, ORR has implemented 13 projects under the Wilson/Fish authority where the eligibility determination function has been successfully performed by private sector agencies. We have, however, changed the language by replacing the word ''must'' with the word ''may'' in the sentence: ''Local resettlement agencies may be responsible for determining eligibility, and authorizing and providing payments to eligible refugees.'' We have made this change to provide as much flexibility to States as possible in deciding which of the fiscal and eligibility functions of the RCA program the State wishes to assign to the local resettlement agencies and which of these functions the State wishes to retain.

Regarding the appropriateness of giving private organizations decision-making authority over Federally-funded programs for which States are responsible, we are aware of no legal barrier to the kind of public/private partnership that is described in this regulation. Although the regulations call for joint planning between States and local resettlement agencies to design and implement a public/private RCA program, clearly, final decision-making authority in regard to the public/private program's policies rests solely with the State as our direct grantee.

Regarding protections from liability, we cannot provide local resettlement agencies with protection from liability. No agency, public or private, is free of liability. Clients have a right to take legal action if they feel they have been treated unfairly or discriminated against. In regard to the question about repayment of unallowable expenses to ORR under the public/private RCA program, since States are ORR's grantees, States, as the recipients of the funds, would be responsible for repaying the Federal government for improper expenditures. Local resettlement agencies, as subrecipients, would be accountable to the State, not to ORR.

Section 400.56(e)

Comment: One commenter expressed the opinion that the prohibition against

operating both a public/private RCA program and a State-excepted program in the same geographic location presents a barrier to implementing a public/private program where there are multiple resettlement agencies. Since a State cannot compel local resettlement agencies to participate in a private RCA program, a State would have to maintain the current RCA program in areas where only some local resettlement agencies chose to participate in the new program.

Response: We see no justifiable rationale for operating both a public/private RCA program and a publicly-administered RCA program in the same geographic location. This would not be programmatically wise; it would be duplicative, expensive, and confusing. In cases where not all local resettlement agencies are interested in participating in the public/private program, the State has the latitude to decide to establish a public/private RCA program in which all RCA-eligible refugees are served only by those local resettlement agencies that are interested in participating in the program. There would be no need to operate a publicly-administered RCA program in the same locale just because some of the local resettlement agencies do not want to participate in the public/private program. The deciding factors, in our view, would be the number of resettlement agencies that are not interested in participating and the proportion of new arrivals to the area that these agencies have resettled. If these agencies represent the majority of new arrivals resettled in the area, this would argue against establishing a public/private program.

Section 400.57(a)

Comment: Nine commenters expressed the view that national voluntary agencies must be included in the planning, development, and oversight of the public/private partnership. One of the commenters further stated that the involvement of the national agencies should entail establishing national standards to guide program design, assisting affiliates in developing program models and performance measurements, and encouraging and facilitating consultations. Two commenters suggested that the planning and consultation process, in addition to the local resettlement agencies, should include only MAAs and community service agencies that represent current and anticipated refugee groups. Two commenters wrote in support of the importance of MAA participation in the planning and consultation process.

One commenter felt that it is important to ensure that recent arrivals who are represented through local churches, such as Bosnians and populations from the former Soviet Union, have equal representation in the same manner as an established non-church MAA. One commenter suggested that States should look at the last 3 years of refugee arrivals in their respective States to determine the appropriate proportion of representatives from each refugee group that should be included in the decision-making. Two commenters noted that counties are not included in the planning process and should be. The commenters expressed concern that the new RCA program will be administered without the leadership and experience of the California counties. Two commenters suggested that the final rule should contain language that reflects ORR's commitment to making the RCA plan a joint effort on the part of States and local resettlement agencies. The commenters felt that States should negotiate the new RCA program with local resettlement agencies first, as primary participants, before consulting with others.

Two commenters cautioned that setting eligibility policies for the public/private RCA program should not be a negotiation or joint decision-making process with private agencies. One commenter pointed out that a government agency can be required to consult with private agencies on the policies, but should not be required to have the resettlement agencies participate in the final decision-making. One commenter recommended that the final rule should make clear that the final decision on the policy elements of the public/private RCA plan is the sole responsibility of the State agency.

Response: We agree that national voluntary agencies should be involved in the planning and development of a public/private RCA program. We have amended § 400.57(a) accordingly to include national voluntary agencies in the planning and consultation process.

With regard to limiting participation in the planning and consultation process only to MAAs and other organizations that represent current and anticipated refugee groups, we do not agree with this limitation. We believe MAAs and other agencies that serve refugees, but are not representatives of these refugees in the sense of being of the same ethnic group, are important organizations to include in the planning and consultation process because of their experience as refugee service providers and because they are likely to be affected by the establishment of a public/private RCA program. We agree that States should make sure that each refugee population group is given the opportunity to participate in the planning and consultation process. We do not feel, however, that States need to be so precise as to follow a 3-year arrival population ethnic breakdown to determine the degree of representation of each ethnic group at the consultations.

In regard to participation by counties, we agree and have amended this section to include counties. The participation of counties is particularly crucial in States such as California where the refugee program is a county-administered program.

As we indicated in our response to comments relating to § 400.56(d), we agree that final decision-making on policies for the public/private RCA program is the ultimate responsibility of the State as our grantee. However, we see nothing in this section that is inappropriate.

Section 400.57(b)

Comment: Two commenters questioned the need for a public comment period, with one commenter suggesting that this provision appeared unnecessary, redundant, and of little usefulness. This commenter also suggested that a longer planning period would be necessary in part because of this requirement. Two other commenters recommended that a description of the public comment process be included in the State's public/private RCA plan, including a list of participants and a summary of comments received.

Response: We have reconsidered our proposed requirement for public comment on the public/private RCA plan and have decided that this requirement is not essential enough to justify the additional time and burden that implementation of this requirement would place on States. We have, therefore, removed this requirement. We believe the comments of agencies and individuals involved in refugee resettlement will provide the necessary input that States will need to develop a public/private RCA program. However, States still have the option of soliciting public comment.

Section 400.57(c) (§ 400.57(b) in the Final Rule)

Comment: Five commenters expressed concern about this provision that would require a local resettlement agency to inform its national voluntary agency of the proposed public/private RCA program and obtain a written agreement that the national voluntary agency would continue to place refugees in the State under the public/private

RCA program. Four commenters felt that the role of the national voluntary agencies in the public/private program should be clarified. Two commenters recommended that documentation be included that the national agencies endorse the plan. One commenter said that agreement by the national agencies to continue resettling refugees in the State is an important provision. However, this commenter wondered if it is allowable for a national voluntary agency and a State to agree that the local affiliate agency will not be participating in an RCA contract but will be resettling refugees. The same commenter asked if a national voluntary agency would be prohibited from continuing to resettle in an area if the national voluntary agency and State could not agree on an RCA contract. The commenter also questioned whether letters had to be received from every national voluntary agency, even if only a few place refugees in the State. One commenter suggested that the letters of agreement from national voluntary agencies should include an assurance that refugee placements in the State will continue when the planning process determines that a public/private RCA program is not feasible and an excepted RCA program or Wilson/Fish program is selected.

Response: We agree that national voluntary agencies should have the opportunity to register their support or endorsement of a State's proposed public/private RCA plan. We have, therefore, amended this provision to require that letters from national voluntary agencies should indicate that the national agency supports the plan and intends to continue resettling refugees in the area. Letters from only those national agencies resettling refugees in the area need to be solicited. It is permissible for a State and a national voluntary agency (and the local affiliate) to agree that the local affiliate agency will not be participating in a public/private RCA contract or grant but will continue to resettle refugees in the State. Similarly, a national voluntary agency would not be prohibited from continuing to resettle refugees in a State if the national voluntary agency (and local affiliate) and the State cannot agree on an RCA contract or grant, provided that arrangements are included in the State plan to ensure that refugees resettled by the non-participating agency will be referred to the participating agency or agencies for services and assistance.

We do not agree with the suggestion that letters of agreement from national voluntary agencies should include an assurance that refugee placements will continue to a State that does not decide to establish a public/private RCA program. We do not see the necessity of such a requirement; voluntary agencies have been resettling refugees in States with publicly-administered RCA programs for years. The structure of the RCA program is only one factor to be considered in placement decisions in conjunction with other factors such as family reunification, available employment opportunities, and suitable resettlement conditions.

Section 400.58

Comment: One commenter asked if States only have a one-time opportunity to participate in the public/private RCA program and if States that opt to do the new RCA program have the latitude to later choose to opt out of the public/private program.

Response: States are not limited to a one-time opportunity to participate in the public/private RCA program, nor are States prohibited from opting out of a public/private program at a later date. States are expected to make their initial decision within 6 months and to implement whatever RCA option they choose—a public/private RCA program, a publicly-administered TANF-type RCA program, or a Wilson/Fish alternative—no later than 24 months after the date of publication of the final rule. If, in the future, a State that implemented a publicly-administered RCA program decides it wishes to switch to a public/private RCA program, the State may do so by following the requirements in §§ 400.57 and 400.58 and submitting a public/private RCA plan as an amendment to the State Plan for ORR review and approval. Similarly, if a State that originally implemented a public/private RCA program decides it would be better to change to a publicly-administered RCA program, the State may do so by submitting a State Plan amendment to ORR for approval.

Section 400.58(a)

Comment: Ten commenters expressed concern regarding the degree of program and budget information required in the public/private RCA plan. Five commenters felt that the level of detail regarding budgets and other program details required is unrealistic and inappropriate to include in the RCA plan since it will likely change regularly. One of the commenters suggested it would be more appropriate to include detailed budget information in the annual budget estimate that States are required submit to ORR under an existing provision in § 400.11(b)(1).

One commenter felt that a general service description should be required rather than a detailed description. The commenter pointed out that a detailed plan would have to be changed annually since ethnic groups, community needs, and available resources vary annually. In contrast, another commenter felt that the proposed plan does not require sufficient detail of the program policies and procedures to be established in a State's public/private RCA program. Two commenters opposed requiring an RCA plan that is separate from the State Plan that States are required to submit to ORR under § 400.4. One commenter recommended amending § 400.58(a)(4) to read: ''including a description of employment incentives and/or income disregards to be used, if any, as well as methods of payment, i.e., direct cash, vendor payments, etc.''

Three commenters objected to the words ''easy access'' in § 400.58(a)(5) as too vague. Two of the commenters felt that ORR should set minimum access requirements that the public/private RCA program must meet. One commenter recommended at a minimum that the final rule require that refugees have access during normal business hours and not be required to travel more than two hours round trip to access any benefits or services. Another commenter was concerned that the use of a vague term such as ''easy access'' could produce a standard for access to benefits that will result in litigation. One commenter recommended revising this provision to require RCA benefits administered under the public/private RCA program to be provided in as timely manner as under the current system.

Four commenters felt that the plan requirements regarding client protections and due process should be strengthened. One of the commenters felt that the due process requirement in the plan is insufficient and that a detailed description of the procedures that the public/private RCA program will follow should be required. The commenter recommended that the final rule should require that all services and notice be provided in the refugee's native language and that the RCA plan describe how this requirement will be met. Three commenters felt that the RCA plan should include a listing of good cause criteria for non-compliance with work activities. Another commenter recommended that certain due process elements should be required in the RCA plan: that refugees cannot be subject to any eligibility criteria that are not set forth in the public/private plan; that applications be processed promptly; that an applicant be informed of rights and responsibilities, and that an individual

retain eligibility for the duration of the benefit period unless affirmatively determined ineligible. Two commenters recommended that the RCA plan include a description of the means by which an individual can bring a problem to the attention of the State and obtain intervention, whether through an ombudsman or State Refugee Coordinator. Two commenters expressed concern that the client protection and due process requirements of the RCA plan will require local agencies to fully replicate the welfare system, particularly in regard to sanctions and appeals, fraud control, case composition, employability standards, and medical exams relating to employability. Another commenter asked what requirements of the public system would not be required of the private system.

Five commenters specifically objected to the language in § 400.58(a)(13) which requires a breakdown of costs ''including per capita caps on administrative costs.'' The commenters recommended deleting the reference to per capita caps on administrative costs, stating that per capita or percentage caps on administrative costs would make it difficult to maintain small programs, would limit case management capacity, and would limit a local agency's capacity to participate in the public/private RCA program. One commenter asked ORR to cite the authority for requiring a cap on administrative costs.

Three commenters suggested adding new elements to the RCA plan. The commenters recommended adding a § 400.58(a)(14) that would require a description of the public comments process used, including a listing of the participants and a summary of comments received in the RCA plan. One commenter recommended adding a § 400.58(a)(15) that would require a description of the performance standards and measures upon which the new program will be monitored.

Two commenters expressed concern that the proposed public/private RCA plan requirements add substantially to existing reporting requirements. One of the commenters felt that the requirement for a detailed budget specific to the public/private program without eliminating any other plans and reports already required, adds to the administrative burden and to the cost.

Twenty-four commenters felt that a 6-month period to develop a public/private RCA plan is too short, while one commenter felt that 6 months was an adequate time frame. Two commenters recommended allowing 9 to 12 months for planning, another commenter recommended one year for planning and one year for implementation, while one commenter recommended a planning period of 12 to 18 months after publication of the final rule. One commenter recommended that ORR be flexible with due dates to allow planners sufficient time to handle unexpected contingencies and to make changes to the plan during its development.

Response: We believe it is essential for the public/private RCA plan to include the details this section requires. Each of the items in the plan is important to address and thoroughly consider in order to successfully implement the new program. Given that a shift to an RCA program administered by private agencies represents a major change in the refugee program, we need to see the details of the proposed program in order to make a responsible decision regarding approval. Regarding budget, we require a breakdown of proposed program and administrative costs in order to assess the cost effectiveness of various program designs. It is essential that States provide the required budget breakdown as part of the public/private RCA plan. However, in subsequent years, after the new program is implemented, it makes sense, per one commenter's suggestion, to include budget information on the public/private RCA program in a State's annual budget estimate to ORR.

In regard to the requirement that the budget breakdown include per capita caps on administrative costs, we want to clarify that we do not intend to impose caps or ceilings on administrative costs, nor are we authorized to do so in our statute. The intent of the language on administrative caps is simply to require, in a case where a State decides to set an administrative cap in its contracts or grants with local resettlement agencies in an effort to contain costs, that the State include this information in its budget breakdown. We have amended the language in this provision to clarify that information on administrative caps should be included only when a State proposes to use a cap on administrative costs.

In response to a commenter's suggestion, we have added language to § 400.58(a)(4) that requires information on methods of payment, in addition to employment incentives. We have decided, however, not to add any new elements to the RCA plan, other than the inclusion at § 400.58(a)(14) of a proposed implementation date.

In regard to comments that client protections and due process requirements should be strengthened in the RCA plan, we have added language to § 400.50 requiring States and local resettlement agencies to process applications as promptly as possible within no more than 30 days from the date of application and to inform applicants of their rights and responsibilities. Such requirements do not need to be addressed in the RCA plan; they need to be described in the public/private program's procedural and policy manuals. We believe the other recommendations regarding client protections are excessive or are unnecessary because they are adequately addressed in other sections of the regulations.

Regarding concerns that the client protection and due process requirements for the public/private RCA program will turn local resettlement agencies into mini-welfare systems, the reality is that private agencies that administer the RCA program are subject to the due process requirements contained in the U.S. Supreme Court decision in *Goldberg* v. *Kelly* the same as public agencies. In States that elect to establish a public/private RCA program, it will be important for local resettlement agencies that are concerned about taking on due process responsibilities to work with their State in delineating the due process responsibilities that the State may be willing to retain, such as the hearing process, and those responsibilities that the private agencies may have to exercise, such as notifying applicants or recipients in a timely fashion that benefits have been denied or terminated and explaining the reasons for the action and how the decision can be appealed.

Regarding the words ''easy access'', we have decided that a more appropriate term to use is ''reasonable access'' and have amended this provision accordingly. Rather than prescribing what reasonable access means, we prefer to allow States to define reasonable access in keeping with circumstances in their particular State. States may define reasonable access in terms of the length of time it takes a recipient to reach the local resettlement agency, such as the example provided by the commenter, or in terms of the distance between the location where a recipient resides and the location of the agency.

In response to comments about the due date for submission of the public/private RCA plan, we have changed the due date for the plan to no later than 12 months after the date of publication of the final rule. A State that chooses to establish a public/private RCA program, however, must notify the ORR Director

of its choice no later than 6 months after the final rule is published. As stated in response to the prior comment, States that initially decide to implement a public/private RCA program must do so within 24 months of the date of publication of the final rule.

Section 400.58(d)

Comment: Two commenters objected to ORR prior approval of the public/private RCA plan. One of the commenters recommended deleting the prior approval requirement and the 45 days for the plan to be approved.

Response: We believe that ORR review and approval of the public/private RCA plan is essential, as is our review and approval of all elements of the State Plan.

Section 400.58(e)

Comment: One commenter recommended deleting this provision that requires that any amendments to the public/private RCA plan be developed in consultation with local resettlement agencies and submitted to ORR. Another commenter felt the proposed amendment process was too cumbersome and recommended that only a major change in providers and eligibility and benefit amounts should require a plan amendment. One commenter recommended amending this provision to require that any amendments to the RCA plan must be developed in consultation with the national voluntary agencies, as well as local resettlement agencies. One commenter recommended that any amendment to the public/private RCA plan should include consultation beyond the local resettlement agencies, to include MAAs, refugee service organizations, and the public.

Response: We have not made any changes to this provision. We believe each of the items listed in § 400.58(a) is sufficiently major to require that amendments to these items be submitted to ORR for review and approval, since changes to these items will have an effect on RCA recipients. In regard to suggestions that consultations on plan amendments should include a broader range of agencies, including national voluntary agencies, MAAs, and the general public, we believe such a requirement would be excessive and unnecessary.

Section 400.59

Comment: Three commenters recommended adding language that would prohibit States and local resettlement agencies from considering any resources remaining in the applicant's country of origin or from considering a sponsor's income and resources when determining eligibility for RCA.

Response: We have amended this section, as well as § 400.66, in keeping with the commenters' suggestion.

Section 400.60(a)

Comment: Six commenters felt that the payment ceilings were inadequate. Another commenter concurred, but stated that the payment ceilings should be increased to the extent that the appropriation permits without reducing the eligibility period. Another commenter suggested that the final rule should include payment ceilings that are based on the most recent Federal poverty level depending on when the final rule is published. Another commenter wants an assurance in the final rule that refugees will not be tied to State standards for TANF, which the commenter describes as inadequate. Another commenter did not support the establishment of a national payment ceiling. Instead, this commenter suggested that States and local resettlement agencies make cash payments to refugees at a level they agree is best suited to achieving early self-sufficiency and to enriching the quality of life. One commenter felt that it would be better to use funds to extend the RMA eligibility period instead of increasing RCA benefit levels.

Seven commenters expressed concern that public/private RCA payment rates could be higher in a given State than the TANF payments, creating an inequity for participants in the two programs. Two of the commenters felt that consistency across programs, especially if the State operated a public/private program for RCA recipients in major resettlement areas and a State excepted program in the balance of the State, is important to maintain. The commenters recommended adding language to this section that would allow States to reserve the difference between the TANF payment level and the higher RCA payment level for non-direct cash purposes such as first and last month's rent, a Job Access loan to cover tools, etc.

One commenter stated that ORR is erroneously assuming that few families with minor children are relying on RCA because they are eligible for TANF in most States. The commenter believed that significant numbers of families will need to rely on RCA rather than TANF since in nearly half the States, two-parent families are not eligible for TANF unless they meet certain requirements regarding work history or current unemployment.

Two commenters suggested that ORR advise States to consider the possible impact of increased benefit levels on eligibility for RMA and consider the use of indirect payments or non-cash payments to avoid adverse effects.

Response: In order to ensure that ORR has adequate funding from appropriations to meet cash assistance costs, it is necessary to balance the desire for higher payment ceilings, or no payment ceilings, against the need to accurately forecast costs. A payment ceiling serves as a budget forecasting tool used by ORR to estimate cash assistance payments. ORR has set the payment ceilings at a level that represents what ORR estimates it can provide to meet each refugee's basic needs from appropriated funds without lowering the RCA eligibility period, based on the most recent data available regarding the number of RCA refugee arrivals. In fact, the ORR payment ceilings are higher than many State TANF payment levels. The payment ceilings are based on the 1998 HHS Poverty Guidelines. As stated in the NPRM, if the Director determines that the payment ceilings need to be adjusted for inflation, ORR will issue revised payment ceilings through a notice in the **Federal Register**.

In States where the public/private RCA payment ceilings are higher than a State's TANF payment level, if a State is concerned about maintaining uniformity in the payment levels of both programs for the sake of equity, States have the flexibility to set the public/private RCA payment equal with the TANF payment or to use the difference between the TANF payment level and the higher public/private RCA payment level for purposes such as one-time direct cash incentives for early employment and self-sufficiency, or non-direct cash purposes such as rent or a loan to cover the cost of tools as one commenter recommended. We see no need to amend this section to allow this type of flexibility; the flexibility already exists in the proposed rule.

With respect to the possible impact of increased benefit levels on RMA eligibility, we have removed the possibility of adverse effects on RMA eligibility by adding a requirement under § 400.102 that any cash assistance payments received by a refugee may not be considered in a determination of RMA eligibility, including RCA or any cash grants received by a refugee under the Matching Grant program and the Department of State or Department of Justice Reception and Placement programs.

Regarding one commenter's belief that significant numbers of refugee families

with dependent children will need to rely on RCA, ORR's RCA participation data do not support the commenter's assertion. To the contrary, we have experienced a steady and significant national decline in the RCA participation rate since the inception of State TANF programs, particularly in States where refugee families with dependent children were historically served in the RCA program because they did not meet the AFDC work history requirements for two-parent families. We have seen a major shift of refugee families with children from the RCA program to the TANF program.

Section 400.60(b)

Comment: Two commenters concluded that the NPRM seems to limit reimbursements to States to no more than the ORR payment ceiling so that States with a TANF rate higher than the RCA ceiling would have to absorb the difference between the two payment rates with no ORR reimbursement. Another commenter asked whether refugees will receive less than 8 months of payments in States where the TANF payment level is higher than the RCA ceiling.

Response: We do not intend to limit reimbursements to States to the public/private RCA payment ceiling in situations where RCA is paid at a higher TANF payment rate. In States where the TANF payment is higher than the RCA payment rate, we will reimburse States for RCA costs at the higher TANF payment rate. In States where the TANF payment level is higher than the RCA ceiling, a refugee's RCA eligibility period will not be affected by the higher payment rates.

Section 400.60(c)

Comment: Eight commenters recommended allowing States to offer bonuses or other incentives that exceed the monthly ceiling as long as the total combined payment to refugees does not exceed the monthly ceiling times the total number of months in the eligibility period. The commenters felt this type of flexibility would allow States and local resettlement agencies to design a program that rewards early employment. Two commenters wanted to use varying levels of cash assistance and other incentives throughout the 8-month period instead of providing equal monthly payments in the belief that this type of approach would most effectively encourage early employment. Another commenter expressed concern that the ceiling limits the flexibility to support work by providing stipends or incentives up front since the NPRM would not allow a work expense stipend and work incentive bonus before the earnings are received if this amount plus the cash payment exceeds the monthly ceiling. The same commenter also stated that the NPRM seems to preclude one-time payments for work-related expenses such as tools or uniforms in states where the RCA monthly payment is near the ceiling level.

One commenter asked whether cash payments may continue to be given after a refugee becomes employed. The commenter also wondered whether each local resettlement agency would be free to give different employment incentives/bonuses as is done in the Matching Grant program or whether all resettlement agencies would have to give identical assistance.

One commenter stated that the NPRM seems to make it beneficial to clients to access cash assistance before job placement which may delay the goal of self-sufficiency and increase dependence on cash assistance. This may pose a problem in States where the goal is to place refugees in jobs right away before accessing cash assistance. The commenter suggested providing incentives to those States and local resettlement agencies that obtain immediate job placements for refugees.

Response: We have revised this section to allow States and their public/private RCA agencies the flexibility to exceed the monthly payment ceiling in order to provide incentives to encourage early employment as long as the total payment to a refugee does not exceed the ORR monthly ceiling times the total number of months in the RCA eligibility period. We will allow this flexibility in the monthly payment ceiling with one stipulation: States and local resettlement agencies must ensure that RCA funds for any refugee are not used up before the end of the 8-month period in a way that would jeopardize a refugee who might need cash assistance in the latter part of the 8-month eligibility period. In other words, we do not want to see a total of 8 months of RCA funds given to a refugee early in the eligibility period such that there are no RCA funds left for that refugee should he/she need assistance in the latter months of the 8-month eligibility period.

Cash payments may continue to be provided after a refugee becomes employed as long as a State's public/private RCA program design permits cash payments after employment. Whether each local resettlement agency will be able to provide different employment incentives instead of a uniform incentive again will depend on a State's public/private RCA program design. These are not issues that ORR intends to regulate.

In regard to States where the focus is on placing refugees into early employment to limit the need to access cash assistance, such States, in order to maintain this focus, could choose to design their public/private RCA program as a cash assistance diversion program where newly arriving refugees would be given a one-time payment for not accessing RCA. It is important to emphasize that with this final rule, States will have a great deal of flexibility to design a public/private RCA program as they choose.

Section 400.61

Comment: Twelve commenters objected to limiting the contracting of services under the public/private RCA program to local resettlement agencies, thereby excluding many experienced MAAs and community-based organizations from providing services to public/private RCA recipients. These commenters expressed particular concern that refugee providers that have been the primary employment service providers in a number of States, and have a successful record of moving refugees to self-sufficiency, would now be excluded from receiving service contracts under the public/private program, resulting in a loss of expertise offered by these organizations. One commenter made the point that the proposed rule would duplicate or replace services that are already successfully operating. Five commenters were concerned that local resettlement agencies in many States may not have the experience or capability to offer effective employment services to refugees. One of the commenters worried that those resettlement agencies that are inexperienced in providing employment services will require a long period of time to achieve the level of expertise held by existing service providers, thereby creating a gap in services. Another commenter felt that the final rule should require local resettlement agencies to maintain subcontracts with existing qualified service providers. One commenter raised the point that some States now provide services directly, a role that ORR is proposing to give to local resettlement agencies.

Three commenters felt that the exclusion of MAAs violates the principle of equal opportunity by discriminating against MAAs. One commenter observed that the proposed exclusion of MAAs and community-based organizations appears to run counter to ORR's emphasis on empowering communities because it

disempowers the very community-based organizations that were founded by refugee communities.

Three commenters stated that the proposed program is in conflict with California law (AB 3245) which places responsibility for refugee employment service programs with the counties.

Nine commenters recommended that the services contracted to local resettlement agencies under the public/private program should be limited only to those employment services designated in the State Plan. Twelve commenters felt that services such as ESL, health screening, mental health services, and vocational training are more efficiently contracted by the State for the total refugee population and should not be fragmented through local resettlement agency administration for the public/private RCA recipient population.

One commenter observed that separate service programs for RCA clients are unworkable and if mandated, will greatly increase costs.

Five commenters felt that post-RCA services should not be restricted to ethnic community providers and that the current array of eligible providers should be maintained. Three commenters asked whether refugees who become self-sufficient and no longer receive cash assistance will continue to be eligible to receive social services. Two commenters asked whether service dollars would have to go through the lead agency and then be subcontracted out to other resettlement agencies in cases where a lead agency is used to administer the public/private program. One commenter asked whether a local resettlement agency could provide social services if the agency is not providing cash assistance. Another commenter wanted clarification on whether an RCA client returns to the local resettlement agency for services if the client becomes employed before 8 months of services are up and then becomes unemployed, thereby needing more services.

Ten commenters had comments about program outcomes in the new program. Four commenters felt that the final rule needs to provide more specific guidance on what the outcome measures and criteria will be for evaluating the success of the new program. One commenter cautioned that the public/private program may result in higher job placement costs because service providers that have had experience in providing job placements at low cost will, in some cases, be replaced by less experienced providers. Three commenters viewed the establishment of another set of outcome measures as redundant and unnecessary, given the existing Government Performance and Results Act (GPRA) measures that ORR already requires of States and Matching Grant agencies, as well as the Department of State's Reception and Placement standards and local TANF standards. If separate standards must be established for the new public/private program, the commenters argued for designing the measures at the local level, not the national level.

While one commenter indicated support for designing outcome measures that assess more than employment outcomes, the commenter cautioned that measures such as language outcomes require more sophisticated means of assessment. The commenter recommended that ORR needs to consider for the final rule the outcome expectations that are most appropriate within the limits of an 8-month program. One commenter took issue with the language that ORR is looking to the resettlement agencies ''to ensure that refugees receive the skills, such as English language acquisition * * *.'' The commenter noted that no one can ensure this and felt that it doesn't make sense to add this as an outcome because it doesn't involve any measurable result, other than a process outcome.

Three commenters felt that the difference in performance measures followed by the Department of State and ORR should be made into a uniform set of measures where both agencies are using the same measures and the same time frames for looking at outcomes.

Response: While philosophically we believe in the wisdom of having the same agencies that are responsible for the placement of refugees in a State to also be accountable for what happens to these refugees in regard to economic and social self-sufficiency, we are persuaded by the comments that in terms of the provision of services, it would not make sense to require States to contract or award grants for services only with local resettlement agencies under the public/private RCA program. In States where local resettlement agencies are the major providers of employment services, it would make eminent sense for a public/private RCA program to contract with the resettlement agencies for both the provision of cash assistance and services. But we recognize that in States where MAAs and other community-based organizations have been the primary providers of employment services, it would not be in refugees' best interests to divert RCA refugees away from the established refugee social service network to agencies that may be new to employment services. Therefore, while we would encourage States that choose to establish a public/private RCA program to contract or award grants for services, whenever programmatically wise, with the same agencies that administer the cash assistance program, we have decided not to mandate States to do so. We will leave it to the States to select the service agencies that can most effectively help refugees in the public/private RCA program become employed and self-sufficient.

In public/private RCA programs in which local resettlement agencies are responsible for both the provision of cash assistance and services, the locus of accountability will rest with these agencies for the achievement of resettlement and self-sufficiency outcomes, as well as for the provision of proper and timely cash payments to refugees. In the case of public/private RCA programs where States choose to contract or award grants for services with different agencies than the local resettlement agencies that are administering the cash assistance program, States will be required to: (1) Establish procedures to ensure close coordination between the local resettlement agencies providing cash assistance and the agencies providing services to RCA recipients; and (2) set up a system of accountability that identifies the responsibilities of the different participating agencies and holds these agencies accountable for the results of the program components they are responsible for.

In regard to commenters' recommendations that the services that public/private RCA agencies provide should be limited to employment services, our position is that the range of services that agencies, be they local resettlement agencies, MAAs, or other agencies, are contracted to provide under the public/private program is a State decision. The only stipulations are that the services must be among the allowable services listed in §§ 400.154 and 400.155 and the service agencies must be held accountable for employment and self-sufficiency outcomes. We agree that services such as ESL, health screening, mental health services, and vocational training do not have to be provided by the public/private RCA service agencies and may be more effectively provided by other agencies.

With respect to the provision of post-RCA services, we did not intend to imply that post-RCA services may only be provided by ethnic community providers. Services provided to refugees after their 8-month participation in the public/private RCA program may be provided by any provider that a State

decides to contract with. We stated in the NPRM that States and local resettlement agencies must maintain ongoing coordination with MAAs and other ethnic representatives to ensure that services provided under the public/private program are coordinated with longer-term resettlement services that are frequently provided by ethnic community organizations after the 8-month RCA period. This statement was not meant to suggest that MAAs and other ethnic organizations are the only providers of post-RCA services.

In cases where a lead agency is used to administer the public/private program, whether service funds must go through the lead agency to other resettlement agencies through subcontracts is up to States to decide as part of their program design. ORR is not requiring a particular approach when a lead agency is used. In response to another comment, a local resettlement agency could provide social services even if the agency is not providing cash assistance. A client in the public/private RCA program who loses a job before the end of the 8-month period and needs additional services should return to the same service agency that was providing the client with services before he or she got the job.

With respect to comments on program outcomes, we do not believe that detailed guidance on program outcomes for the public/private RCA program should be regulated. We intend to issue guidance on outcome measures for the public/private program at a later date through a State Letter just as we have done in regard to outcome measures for the social services and targeted assistance programs, under the Government Performance and Results Act. The commenters' concerns about the potential redundancy of establishing another set of outcome measures in addition to what States are already required to report under GPRA is a point well-taken. We will make every effort to dovetail outcome requirements to minimize redundancy and reporting burden as we consider, in collaboration with States, outcome measures for the new public/private RCA program. Regarding measures of English language acquisition and basic living skills, we do not intend to include process outcomes, such as classroom enrollment, in our consideration of appropriate measures for skill acquisition.

Regarding commenters' requests that the Department of State and ORR use a uniform set of measures and time frames, we are working with our DOS colleagues to reduce differences in the outcome measures that each agency uses and will continue to work with DOS on this issue.

Section 400.62

Comment: One commenter asked how local resettlement agencies will be given their fair share of secondary migrant cases that are resettled through national voluntary agencies that do not have affiliates in the local area. The commenter wondered if ORR intends each resettlement agency to be assigned all secondary migrants who were resettled through their national office. Another commenter wondered how the program will be equitably managed by the State if secondary migrants resettle in areas without representation by local resettlement agencies. One commenter suggested that in the case of secondary migrants who are not affiliated with a local resettlement agency, it might make sense to allow a refugee service provider that has contact with the secondary migrant to be responsible for eligibility determinations and the provision of cash assistance and services under the public/private RCA program. Another commenter requested ORR guidance on the impact of secondary migration on outcome measures, particularly secondary migrants who arrive late in the 8-month eligibility period.

Response: The arrangement used to serve secondary migrants will be determined by States. In States that plan to establish a public/private RCA program, commenters should take up their concerns about the assignment and handling of secondary migrants with their State during the planning and consultation process.

Section 400.63 (§ 400.64 in the NPRM)

Comment: Fourteen commenters provided comments on this provision. Seven commenters opposed the use of national voluntary agencies in training local resettlement agencies for the new RCA program either because they questioned how a national organization could meaningfully provide training to local affiliates on a plan jointly developed by States and local agencies or because they felt the use of discretionary social services funds for this purpose could not be justified, given the need to address long-term social adjustment issues with these funds.

Four commenters felt that national voluntary agencies could play a useful role in providing technical assistance and monitoring to local affiliates. One of the commenters, a State, suggested that the national agencies could be helpful in assisting local affiliates to develop the capacity to manage cash transfer systems and in advising States on their local affiliates' ability to manage cash transfer. Three commenters were concerned that the funding to support national voluntary agency participation was not clearly identified in the NPRM. One of these commenters stated that the funding mechanism to support the national voluntary agencies' role should be embodied in the regulations and not left to the availability of discretionary funds. Three commenters suggested that more clarity is needed on which training responsibilities rest with States and which with the national voluntary agencies. One commenter felt that this provision was too vague and suggested that national agencies should be required to provide certification that the training of all relevant staff has been conducted prior to the start of the project. One commenter, a local resettlement agency, felt that the role of the national voluntary agencies should be limited to training and technical assistance and only when it is requested at the local level. Two commenters suggested that the States were in a better position to train local agencies.

Response: Since national voluntary agencies have had a long-term oversight relationship with their affiliate agencies in regard to both the R & P program and the Matching Grant program, we believe it is appropriate and useful for national voluntary agencies to share in the responsibility of preparing local resettlement agencies for their new role in implementing the public/private RCA program. In States that choose the public/private RCA option, we would expect the State and the relevant national voluntary agencies to work out the details of the training together and delineate precisely which training responsibilities will be carried out by the State and which responsibilities will be carried out by the national agencies. We do not feel that the details of the training should be prescribed in regulation. States that elect to establish a public/private RCA program are likely to develop different program designs that will vary in terms of local resettlement agency responsibilities, requiring customized training, not a national, regulated delineation of training responsibilities between States and national voluntary agencies.

Regarding funding to support national voluntary agency participation in training, we do not believe that it is appropriate or necessary to regulate the funding mechanism to be used to pay for national voluntary agency participation in the public/private program. We believe the use of non-formula discretionary funds will be the best way to support national voluntary agency participation.

Section 400.65 in the NPRM

Comment: Three commenters thought that monitoring needs to begin immediately after implementation. One commenter thought that use of discretionary funds for monitoring is unacceptable and that funding to support this activity must be integral to the program and part of the final rule. One commenter felt that the monitoring by ORR, the State, and the national agencies as proposed in the NPRM is not reasonable and that monitoring by just one entity would be sufficient. Another commenter thought that local agencies and States can develop their own responses to training and monitoring needs. Two commenters suggested that the final rule should have specific performance measures by which the new program will be evaluated. One of the commenters felt that the regulations require compliance monitoring, but do not require States to take any action against agencies based upon findings. Another commenter said that the regulations should empower the state agencies to terminate a private agency's ability and right to participate in a public/private partnership at any time for mismanagement. Two commenters supported joint monitoring but thought that arrangements, particularly dates, times, and content need to be negotiable and planned cooperatively in advance.

Response: We have decided to remove this section. Now that the public/private RCA program will be optional, it does not make sense to regulate a particular monitoring approach for the public/private program. If a number of States choose the public/private option and are interested in a joint monitoring approach that involves the national voluntary agencies, we will explore ways to support that collaboration.

Regarding the suggestion that the final rule should contain language that empowers States to terminate a local resettlement agency's participation in the public/private program for mismanagement, States already have this authority through State grant and contract rules.

Section 400.65 (§ 400.66 in the NPRM)

Comment: Eight commenters stated that States should not have to go through a cumbersome waiver process to opt to continue a public sector RCA program. Two of these commenters felt that the public sector program should be the requirement, with the public/private RCA program being the exception. Three commenters objected in particular to having to go through an elaborate, time-consuming consultation process in order to choose the excepted program. One commenter indicated that requiring States to show that they have made a ''good faith effort to reach an agreement'' as a condition of receiving approval from ORR for an excepted RCA program is inappropriate. One commenter recommended that the requirements and criteria for an exception be deleted and this section be amended to allow a State to choose the proposed program structure that meets the needs of refugees in the State. The commenter also recommended adding language that gives the Governor of a State the latitude to elect to operate its public RCA program consistent with the State's TANF program, without ORR review. This flexibility would allow States to operate the RCA program in a manner that is least divisive for the States.

Thirteen commenters recommended making it harder for States to opt out of a public/private RCA program. Seven commenters recommended requiring Governors to obtain concurrence from resettlement agencies in States that decline to participate in the public/private program. Two commenters recommended that ORR require a full explanation and accompanying documentation before granting an exception. Two commenters recommended requiring public hearings as part of the exception process. One commenter recommended adding additional criteria for seeking an excepted program to make it harder for States to opt for the status quo. Two commenters questioned what guarantees are there that States will act in good faith in negotiating with voluntary agencies. Two commenters recommended that the Governor of a State must make a good faith effort through meetings with local resettlement agencies and other organizations, prior to making a decision to request an exception.

Two commenters suggested that States should have the option to continue operating the RCA program using old AFDC rules rather than the State's TANF rules. One of the commenters stated that his State did not see it as a burden to maintain a separate system based on former AFDC rules. One commenter recommended that in the case of a State that has an excepted program as well as a public/private program operating in the State, the State should be allowed the option to use the same payment levels, eligibility standard, etc. in the RCA excepted program as in the State's public/private program, instead of being required to mirror TANF. The commenter pointed out that without this flexibility, States would either have to make the public/private program identical to TANF, or have refugees in different parts of the State receiving different benefits.

Seven commenters recommended expanding the alternatives in States that determine that neither a public/private RCA program nor an excepted program are the best approach for their State. Four commenters recommended including a voluntary agency model as an option under this provision, while three commenters specifically recommended the Matching Grant program as a viable alternative that should be added under this provision. One commenter recommended adding a model of direct contracting between ORR and national voluntary agencies as an alternative. Two commenters recommended that currently funded comprehensive alternative projects would be acceptable alternatives under this subsection.

Response: In keeping with our decision to allow States the flexibility to choose among different options for the RCA program, we have removed the proposed section and replaced it with a provision that allows States the option of modeling their RCA program after their State TANF program. States will be required to submit an amendment to their State Plan describing the elements of their TANF program that will be used in their RCA program pursuant to the procedure described in § 400.8 no later than 6 months after the publication of the final rule. A publicly-administered TANF-type RCA program must be implemented no later than 24 months after the date of the publication of the final rules. Those States that wish to maintain their current AFDC-type RCA program, instead of changing to a TANF-type RCA program, may submit a request for a waiver to the ORR Director under § 400.300. The ORR regulations that govern an AFDC-type RCA program have been retained for this purpose under § 400.45.

In regard to the comments that argued for making it harder for States to opt out of a public/private RCA program, we do not believe that such a course of action would benefit the refugee program and would only serve to foster an adversarial climate between States and local resettlement agencies. In addition, it is unrealistic and inappropriate to require a Governor to obtain concurrence from resettlement agencies to opt out of a public/private RCA program. A Governor does not have to obtain concurrence from service agencies before making a decision on a program.

We have no objections to the recommendation that States that choose to operate both a public/private RCA

program and a TANF-type RCA program in their State should be allowed the option of using the same payment levels and eligibility standards in the TANF-type RCA program as in the public/private RCA program. If, for some reason, a State wishes to, and is able to, set up such an arrangement, we have no problems with such an approach.

Regarding comments on alternative RCA options, neither the Matching Grant program nor another direct contracting arrangement between ORR and national voluntary agencies would be an appropriate alternative for the State-administered RCA program because these models involve direct grants from ORR rather than contracts or grants administered by States. Any alternative that a State chooses would have to allow State management of the alternative. However, outside the context of this regulation, the Wilson/Fish authority at § 412(e)(7)of the INA allows non-profit agencies to be direct grantees of ORR.

Section 400.66 (§ 400.67 in the NPRM)

Comment: One commenter recommended that States operating an excepted RCA program should be allowed to make the beginning date for RCA cash assistance payments to be the date of application even if cash assistance payments are started later under the State's TANF program. The commenter felt that the short RCA eligibility period justifies avoiding any delays in payment. One commenter felt that the final rule should make clear that adherence to other TANF rules is only required with respect to financial eligibility and clearly state that the full range of non-financial eligibility policies and procedures under TANF do not apply to RCA.

Response: After considering the commenter's suggestion, we have amended this section to allow States that have elected to operate a publicly-administered RCA program to use the date of application as the beginning date for RCA payments, in lieu of the TANF beginning date for cash assistance payments, if they so choose. We agree that States should have the flexibility to choose the earlier start date for cash assistance payments in light of the short eligibility period for RCA recipients.

We have amended § 400.66(a)(4) (§ 400.67(e) in the NPRM) by adding the word ''financial'' before the word ''eligibility.''

Section 400.67 (§ 400.68 in the NPRM)

Comment: One commenter indicated that the language in the proposed regulation, that identifies TANF work requirements as hours of participation and allowable work activities, creates confusion by only referring to certain aspects of the TANF work requirements, thereby implying that other aspects of the TANF work requirements would apply to the State-excepted RCA program. The parenthetical reference to hours and allowable activities should either be deleted or comprehensively expanded.

Response: We agree with the commenter and have deleted the words ''hours of participation and allowable work activities.''

Comments on Subpart F—Requirements for Employability Services and Employment

Section 400.75(a)

Comment: One commenter recommended adding a new item (7) to this subsection that would require refugee RCA recipients who are also Food Stamp recipients, if they live in a geographic area where there are no refugee service providers, to participate in the Food Stamp Employment and Training (FSET) program as a condition of receipt of RCA.

Response: If an RCA recipient lives in an area where there are no refugee providers, the recipient may participate in the FSET program or any other employment and training program to satisfy the requirement at § 400.75(a)(1) that an RCA recipient must participate in employment services within 30 days of receipt of RCA.

Section 400.76

Comment: Two commenters indicated their support for removal of Federal requirements for exemptions from employability services, while one commenter felt that the regulations should retain certain exemptions such as persons over 65 who are incapacitated or are needed in the home to care for an incapacitated family member. The commenter also felt that the regulations should exempt victims of domestic violence from work activities under certain circumstances. Two commenters recommended that the final rule should permit States to add additional exemptions from the work requirements.

Response: We are leaving it up to the States to determine the exemptions they believe are necessary for the RCA program. States are as capable, if not more capable, of making decisions on exemptions as we are. We trust the States to make intelligent decisions on when and under what circumstances to exempt victims of domestic violence and elderly persons.

Section 400.81

Comment: One commenter pointed out that § 400.81(c)(2) in existing regulations should be removed since it conflicts with proposed revisions to § 400.81(b) which limits full-time professional recertification services to individuals who are working. Another commenter argued that the proposed rule to restrict full-time professional recertification training to refugees who are employed should be withdrawn. The commenter felt that it should be up to each State's RCA program to decide whether such training may be available to a refugee who is not employed.

Response: Our thanks to the commenter for pointing out the problem with § 400.81(c)(2). We have removed this subsection. We continue to hold to our view that full-time professional recertification training is an appropriate use of our funds for employed refugees, but not unemployed refugees. We do not believe that this type of full-time training, which generally is not short-term in duration, is appropriate for unemployed refugees in a program that emphasizes early employment and has a short period of cash assistance.

Section 400.82

Comment: Five commenters expressed concern that the proposed rule does not adequately ensure the constitutional due process rights of RCA applicants and recipients. One commenter cautioned that ORR cannot give resettlement agencies flexibility to decide what due process must be provided. The commenter further cautioned that providing inadequate guidance on due process issues would handicap local resettlement agencies from understanding what is expected of them under the law and would increase the likelihood of violating the constitutional rights of refugees.

One commenter felt that it is essential that the regulations govern all adverse actions and hearings for both the public/private RCA program and the excepted RCA program. The commenter noted that the language in this section regarding the public/private RCA program appears to apply to all adverse actions and hearings, while the language regarding the excepted RCA program seems to limit adequate notice and an opportunity for a hearing to work-related sanctions. In addition, there is no requirement that notice must be in the refugee's native language or that good cause criteria be provided in writing in the excepted RCA program. The commenter also noted that the proposed rule requires that local resettlement agencies provide timely

and adequate notice of any determination but does not define these terms. The commenter pointed out that the Supreme Court decision in *Goldberg* v. *Kelly* contains considerable detail on what constitutional due process requires with regard to timely and adequate notice. These details should be included in the final rule to prevent local resettlement agencies from inadvertently implementing inadequate standards, thereby risking litigation.

Another commenter felt that while safeguards are necessary to protect clients, it would be highly counterproductive if standards were limited to the complex standards of the public assistance system. The regulations should allow the development of standards more appropriate to private service providers. Two commenters were concerned that the requirement to provide written notice in a refugee's native language would be extremely costly and burdensome. One of the commenters suggested giving States the option of providing notice in English with a verbal translation of the notice.

One commenter asked whether a sanction implies loss of service as well as loss of cash assistance. One commenter suggested requiring States to specify in their State Plan what sanction process it will use. The commenter felt that States should be allowed to choose either the Food Stamp Employment and Training (FSET) or TANF sanction process because an RCA recipient is more likely to be an FSET recipient than a TANF recipient. Three commenters indicated that it would be essential to allow reversals of sanctions in the case of administrative error or changes in a client's circumstances that warrant a reversal of decision.

Response: This section of the NPRM described actions that private agencies administering the public/private RCA program must take to meet due process requirements and did not provide the same level of detail with respect to a publicly-administered program because we believe that State TANF programs must follow the due process requirements established by the Supreme Court in *Goldberg* v. *Kelly,* 397 U.S. 254 (1970). However, we have, nonetheless, added a new § 400.54 that governs all notices and hearings in both the public/private and publicly-administered RCA programs. Section 400.54 defines ''timely'' and ''adequate''. We have also made clear in § 400.55 of the final rule that written notice in refugee languages applies to publicly-administered RCA programs as well as the public/private RCA program. In regard to commenters' concerns about the cost and burden of providing written notice in a refugee's language, as we said earlier in response to similar comments on § 400.55 (§ 400.63 in the NPRM), agencies that administer Federal financial assistance are required under title VI of the Civil Rights Act of 1964 to provide written information in appropriate languages where a significant number or proportion of the eligible population requires the information in a particular language in order to fully understand the content of the information. In regard to refugee language groups that constitute a small proportion of the recipient population served, agencies must use an alternative method, such as verbal translation into the refugee's language, to effectively communicate the content of the notice of adverse action to the recipient.

It is important to clarify that the due process standards that agencies must follow are not standards derived from the public assistance program, as one commenter suggested; they are standards prescribed by constitutional law. Regarding whether a sanction implies loss of service as well as loss of cash assistance, ORR's definition is that sanction implies loss of cash assistance only. Reversals of sanctions in the case of administrative error, without question, are not only allowed, but are required.

Section 400.83

Comment: One commenter felt that the NPRM does not adequately ensure compliance with due process principles because the proposed rule includes only selected due process requirements instead of fully incorporating the due process provisions of the existing ORR regulations which cite 45 CFR 205.10(a) of the AFDC regulations.

Two commenters were concerned that the proposed rule does not specify any time frames for completion of the mediation and hearing process and recommended language specifying time periods and automatic referral of adverse determinations to an independent State entity. Both commenters felt this was particularly crucial because of the short duration of the RCA eligibility period. The timeliness of the process should be responsive to the refugee's need for a quick resolution.

One commenter asked whether an independent mediator on contract with a local resettlement agency would be an acceptable approach and if so, where would funding come from to pay for such a mediator. One commenter opposed contracting out the adjudication of appeals to any private entity. The commenter expressed the opinion that local resettlement agencies do not have the structure to administer an appeals process. The commenter felt that the entire appeals process should remain in the public agency where an adjudicatory structure and necessary safeguards exist to protect client rights. Two commenters recommended that hearings be conducted by an impartial official outside of the local resettlement agency. One of the commenters specified that the independent outside entity must be a State or local hearing authority. Three commenters felt that the final arbiter of disputes should be the State. One commenter recommended that States be given the option of choosing to have all hearings, including the initial hearing, conducted outside of the local resettlement agency. Two commenters felt that the final rule should explicitly indicate that the final hearing by an independent outside entity must be conducted prior to termination of benefits. The final rule should specify that aid must be paid pending this independent hearing.

One commenter recommended that States be required to specify the hearing process to be used in their State Plan. The commenter felt that States should have the option to elect the Food Stamp administrative hearing process rather than the TANF process since RCA recipients are also likely to be Food Stamp recipients and the same action would result in a sanction in both programs.

One commenter was concerned that a non-centralized fair hearing system may increase the possibility of non-uniform treatment of refugees in the appeals process. Six commenters expressed concern that local resettlement agencies will be required to fully replicate the welfare system functions to meet client protection requirements. Three commenters urged ORR to allow some flexibility in the design of due process protections and suggested that the Matching Grant program be looked at as a model.

Response: We have created a new § 400.54 that provides more detail about the appeals process resulting from any adverse action in the RCA program, including sanctions. While we recognize that local resettlement agencies may find it burdensome to put into place required due process procedures, the due process requirements set forth in the U.S. Supreme Court decision in *Goldberg* v. *Kelly* must, by law, be met. Publicly-administered RCA programs may use the TANF hearing procedures, Food Stamp hearing procedures, or any other public agency hearing procedures in accordance with § 400.54(b)(2) as long as they meet the due process

standards in *Goldberg* v. *Kelly* and as long as the sanction requirements under § 400.82(c)(2), which are required by statute, are followed. In keeping with the commenter's suggestion, States are required under § 400.54(b)(2) to indicate in their State Plan the hearing process to be used. In developing a public/private RCA program, States and local resettlement agencies may decide, as several commenters suggested, that the best arrangement would be for all hearing requests to be referred to a State-administered hearing process, such as the TANF hearing process or some other public agency hearing process. States and local resettlement agencies may decide, however, not to use a pre-existing State-administered process. We wish to note that the courts have never stated that due process and, in particular, fair hearings, must be provided by a governmental agency. In fact, the Supreme Court affirmed a prior Medicare Part B process which required final, non-reviewable decisions to be made by hearing officers appointed by private insurance companies. *See Schweiker* v *McClure,* 456 U.S. 188 (1982).

Although the AFDC rules did not permit aid to be paid to the claimant pending an administrative appeal of an adverse evidentiary decision, we agree with the recommendation that a refugee's RCA benefits should not be terminated until after a final administrative action has been taken. We have included this requirement in the final rule at § 400.54(b)(4). Of course, if the agency action is upheld, the assistance must be repaid.

In response to the comment on mediation, it would be an acceptable approach for a local resettlement agency to contract with an independent mediator, if the State agrees to this approach. This type of service is administrative in nature and could be claimed against the State's CMA grant.

The comments regarding the need for time frames is well-taken. We have added specific time frames for completion of the mediation and hearing process in the public/private RCA program as follows: In accordance with § 400.83(a)(1), mediation must begin no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. This is the same time frame we required for conciliation in prior ORR regulations. Regarding a time frame for completion of the hearing process, we have decided in § 400.54(b)(1)(iii) to require that final and definitive administrative action must be taken within 60 days from the date of a request for a hearing in the case of a public/private RCA program where a pre-existing State-administered hearing process is not used.

Comments on Subpart G—Refugee Medical Assistance

Section 400.100

Comment: Two commenters suggested that § 400.100(a)(4) be deleted or revisited because mandatory termination of medical benefits for clients sanctioned under either the public/private or public RCA program should not occur. One of the commenters noted that the refugee program statute does not authorize or mandate denial of eligibility for RMA if a refugee has lost RCA eligibility due to a sanction. Another commenter pointed out that States have the option to terminate medical benefits for clients receiving TANF who are sanctioned. One of the commenters recommended that, at a minimum, States should be given the option as to whether to have a policy that denies RMA to refugees in RCA sanction status and/or be allowed to align their RCA/RMA sanction policy with their TANF/Medicaid sanction policy.

One commenter felt the use of the term ''filing unit'' is technically more correct and consistent with Medicaid eligibility requirements and should be maintained.

Response: We agree with the commenters that § 400.100(a)(4) which limits eligibility for RMA to refugees who have not been denied or terminated from RCA should be removed. We have done so. We have been advised that the more correct term to use, in keeping with Medicaid terminology, is ''assistance unit''. We have changed the term accordingly.

Section 400.101

Comment: Four commenters strongly supported the provision for increased flexibility for RMA eligibility determinations. Several commenters expressed concern that the ability to set higher financial eligibility standards only seemed to apply to States with medically needy programs under Medicaid and does not apply to refugees in States without medically needy programs. The commenters recommended coverage as well in States without a medically needy program in order to allow more refugees to remain eligible if they have earnings and to allow more late arriving spouses to be eligible. One commenter said that there is no apparent legal or policy reason to restrict either the Section 1931 financial eligibility option or the 200% of the Federal poverty level option, therefore the regulations should be changed to provide all States with as much flexibility as possible to use a higher financial eligibility standard.

One commenter recommended that if the final rule continues the requirement that States without a medically needy program must use their section 1931 methodologies in their RMA program, the final rule should be revised to at least allow a State to use the methodologies that a State currently has in place in their Section 1931 category, rather than require States to use the July 16, 1996, methodologies.

One commenter recommended eliminating § 400.101(b) so that obsolete AFDC need standards do not have to be applied to RMA. The commenter felt that this subsection is repetitive with the following section.

Response: After considering the comments, we have revised this section to extend the 200% of the Federal poverty level eligibility standard option to RMA programs in all States. We have also amended § 400.101(b) to allow a State to use the section 1931 methodologies that a State currently has in place.

Section 400.102

Comment: Four commenters supported RMA eligibility being determined on the basis of income on the date of application. Two commenters recommended that the final rule indicate that cash assistance provided through the public/private partnership should not be determined as either income or asset for purposes of RMA eligibility. The commenters hoped that this revision would eliminate the need for spend-down which is a hardship on newly arrived refugees and is hard to administer. One commenter felt that ORR should use the term ''methodologies'' wherever the word ''standards'' is currently used in this section to be consistent with the terminology used in the Medicaid statute.

Response: In considering the comments, we have decided to add a requirement that cash assistance payments may not be considered in determining eligibility for RMA. This would apply to cash assistance payments made under the publicly-administered RCA program, the Department of State's Reception and Placement program, the Matching Grant program, a Wilson/Fish alternative project, and the public/private RCA program. This change will ensure that cash assistance payment levels such as those in the public/private RCA program will not jeopardize RMA eligibility.

We have added the word ''methodologies'' to this section.

Section 400.103

Comment: One commenter indicated that some States do not have spend down programs and, instead, use their own state-funded medical assistance programs. The commenter recommended deleting this section or amending it to allow States to use a substitute methodology appropriate for their State. Another commenter recommended changing this provision to allow refugees with medical expenses to spend down to the financial eligibility standards that are used in the State's RMA program.

Response: We have clarified this section so it is clear now that States with a medically needy program and States without a medically needy program must allow RMA applicants to spend down to the requisite financial eligibility standard used in their State. The provision has been amended to require States to allow applicants for RMA who do not meet the financial eligibility standards used by the State to spend down to such a standard using an appropriate method for deducting incurred medical expenses. The State can use the methods set forth in 42 CFR 435.831(d) or a reasonable substitute methodology.

Section 400.104

Comment: Six commenters wrote in support of the provision to allow refugees who lose eligibility for Medicaid due to early employment to be transferred to RMA. Two commenters recommended that this provision be revised to make the transfer from Medicaid to RMA without an eligibility determination mandatory. One commenter suggested that the provision be revised to ensure that a refugee who is receiving Medicaid and has been residing in the U.S. less than the time eligibility for RMA, is transferred to RMA without an eligibility redetermination ''for the duration of the 8-month eligibility period.''

Response: We have amended this provision by making the transfer from Medicaid to RMA without an eligibility determination mandatory.

Comments on Subpart I—Refugee Social Services

Section 400.152

Comment: Twenty commenters suggested that ORR add citizenship/naturalization services to the list of allowable services for refugees who have been in the U.S. more than 60 months. Two commenters said that the term ''referral and interpreter services'' should be defined, questioning whether translation services are included in interpreter services and whether information can be provided, or only referral. This commenter asked whether emergency services and community education of the elderly, youth gang intervention, resolving intergenerational conflict and similar services are to be provided only to refugees who have been in the U.S. less than 5 years. This commenter recommends that more expensive employability related services and ESL be provided for the under 5-year population while the occasional emergency and other community services be provided without regard to time in country.

Response: We agree with the commenters that citizenship/naturalization services should be available to refugees who have been in the U.S. more than 5 years as well as refugees who have in the country less than 5 years. We have amended § 400.152 accordingly. We define referral and interpreter services to include translation services as well as the provision of information about services to which a refugee will be referred. We also consider referral and interpreter services to include assistance to refugees to apply for the referred service or benefit and following up to ensure that refugees receive the service.

Services such as emergency services, community education of the elderly, youth gang intervention, conflict resolution, and other community services may not be provided to refugees in the U.S. over 5 years unless these services are funded by ORR non-formula social services or non-formula targeted assistance funds.

Section 400.155

Comment: Thirty-four commenters expressed support for the inclusion of citizenship services as an allowable service under the social services and targeted assistance formula programs. One commenter suggested that ORR consider allowing voluntary agencies to be reimbursed for the costs of assisting refugees to obtain employment authorization documents. This commenter also suggested that ORR allow the cost of assisting refugees to apply for adjustment of status to legal permanent resident. Another commenter suggested that ORR clarify that funds can be used to assist disabled refugees in obtaining N–648 disability waivers from English and civics requirements for naturalization.

Response: To clarify, we do consider citizenship services to include the cost of assisting refugees to apply for adjustment to legal permanent resident status and the cost of assisting disabled refugees to obtain N–648 disability waivers from English and civics requirements for naturalization. Agency assistance to help asylees to obtain employment authorization documents (EADs) is not a citizenship service. However, we see it as an employability service and have added assistance to obtain EADs as an allowable service under § 400.154. Assistance to obtain EADs, as an allowable service for which ORR funds may be used, must be limited to the agency staff time used to assist an asylee or refugee to obtain an EAD and does not include paying the fee for EADs.

Comments on Subpart J—Federal Funding

Section 400.207

Comment: One commenter said that the regulation does not address how administrative costs will be determined, especially for States with very low refugee numbers. One commenter asked whether a State could limit voluntary agency administrative costs. Two commenters asked for clarification as to what constitutes reasonable cost and who makes that determination. One commenter asked whether there is a guaranty that all CMA administrative costs will be reimbursed by ORR.

Response: It is up to a State to determine its administrative costs for the public/private RCA program; ORR does not determine a State's administrative cost needs. In answer to the second comment, a State may limit the administrative costs of participating resettlement agencies. Regarding reimbursement of CMA administrative costs, we will reimburse 100% of a State's reasonable and necessary identifiable administrative costs, including the administrative costs of the public/private RCA program, to the extent available appropriated funds allow. To date, since the inception of the refugee program in 1980, ORR has been able to reimburse States each year for 100% of their administrative costs with available appropriated funds.

In regard to what constitutes reasonable cost and who makes that determination, we refer commenters to ORR's cost allocation guidelines which were issued to States in 1985 and continue in effect. *See* Transmittal No. 85–137 (June 18, 1985). These guidelines describe the kinds of administrative costs that States may claim and the allocation of these different types of administrative costs to different ORR funding sources. These guidelines, however, do not prescribe a

dollar amount to each type of administrative cost. States are currently allowed to claim 100% of their actual administrative costs as long as these costs are for the kinds of administrative activities listed in the ORR cost allocation guidelines. Thus ORR, as the ACF office responsible for issuing refugee program cost allocation guidelines, and States, which are responsible for setting the cost of different administrative activities, are both responsible for making the determination as to what constitutes reasonable administrative costs in the refugee program.

Section 400.210

Comment: Nine commenters expressed support for the proposed change to extend the due date for a State's final financial report for social services and targeted assistance formula grants. Two of these commenters indicated that 90 days for closeout may not be long enough, with one commenter suggesting 120 days for closeout. One commenter stated that ORR's prohibition against obligating cash and medical assistance beyond the current fiscal year presents a procedural problem for the public/private partnership, which will have to operate on a contractual basis.

Response: The due date for a State's final financial report for social services and targeted assistance formula grants will remain at no later than 90 days after the end of the two-year expenditure period. We do not believe a longer close-out period is warranted.

Section 400.211

Comment: One commenter asked what ORR will do when there is excess money, given the proposed change to § 400.211. The commenter suggested that excess funds be passed on to States for their uncovered costs and unfunded mandates of resettling refugees.

Response: The purpose of the proposed change to this section is to avoid a situation where ORR would be required by its regulation to increase the RCA/RMA eligibility period mid-way through the fiscal year because a redetermination is made at that time that indicates sufficient funds are available to raise the RCA/RMA eligibility period for the remainder of the fiscal year. Raising the eligibility period to 9 months for the balance of the fiscal year and then reducing it back to the current 8-month eligibility period at the beginning of the next fiscal year, due to insufficient funds to sustain the higher eligibility period, would not be in the best interests of either refugee recipients or the States that have to administer RCA and RMA. Regarding our use of excess funds, in budgeting our funds, we reserve some unspent funds to cover late CMA claims that States have a year to submit after the end of the fiscal year in which the funds were awarded. Beyond that, we have used statutory carry-forward language contained in recent appropriation laws to provide surplus CMA funds to States for social services or to help cover the resettlement costs of emergency arrivals such as the Kurds in FY 1997, and more recently, the Kosovars.

Other Comments

Comment: Nineteen commenters expressed concern that it would not be in the best interests of refugees to reduce available funding levels for formula and discretionary refugee social services to pay for high administrative costs to run the new program. One commenter adamantly opposed the use of social service funds to cover administrative costs in the new program. Another commenter noted that even States that choose not to operate a public/private program would be hurt to the extent that the increased costs for start-up, training, and monitoring in the new RCA program in participating States would result in the availability of less non-formula social service funding for other States.

Four commenters expressed the opinion that refugees will be penalized after the initial years of start-up because the increased administrative costs needed to run the new program will have to be paid with social services funding or a reduction in the RCA eligibility period. Two commenters expressed concern that ultimately the cost of administration for the new program will be at the expense of essential refugee services. Two commenters stated that ORR non-formula funds should be used to assist long-term refugee TANF recipients to become self-sufficient, not to pay for start-up costs. Another commenter stated that the use of discretionary social services funds to supplement formula funds may result in curtailing some discretionary projects that are in place, which will compromise services now and doubly so at the end of the grace period. One commenter would welcome additional social services funds in lieu of the program changes. Another commenter stated that the costs of the new program would further erode refugee social services, which have steadily declined on a per capita basis over the past 12 years.

Response: The administrative costs of the new public/private RCA program will be covered by CMA funds, not social service funds. During the initial years of start-up, we intend to supplement States' formula social services allocations with non-formula social services funds to cover the services component of the new RCA program, not the administrative component of the new program. These funds will not be used to cover the program's administrative costs, except for the administrative costs of providing social services. After the initial years of start-up, the service component of the new program will be covered by a State's formula social services funds, while the program's administrative costs will continue to be claimed against CMA funds. Regarding the concern that the use of non-formula social service funds to supplement State formula social services could result in curtailing some discretionary projects now in place, ORR's non-formula social service funding has been sufficient over the years to cover continuation projects as well as new funding uses. We do not agree with the assertion that refugee social services funds have steadily declined on a per capita basis over the past 12 years. To the contrary, refugee formula social services funds have increased somewhat over the 12-year period, while non-formula social services have increased dramatically over recent years. Since FY 1995, refugee arrivals have declined, thereby increasing the per capita amount for services.

Comment: Sixteen commenters expressed concern about how the establishment of the new public/private RCA program would affect the continued operation of the Matching Grant program and wondered how the two programs would be synchronized. The commenters were concerned that the use of the Matching Grant program would be diminished.

Response: We do not intend to reduce the use of the Matching Grant program. The Matching Grant program is an important alternative program for moving refugees to early self-sufficiency and we remain committed to the program. As State plans for establishing a public/private RCA program emerge, we will work with the Matching Grant agencies to determine in what ways the Matching Grant program should be modified, if at all, to ensure that the public/private program in a State and a Matching Grant program in the same State are working in concert to avoid duplication.

Comment: Four commenters felt that the final rule should provide adequate transition rules between the old and new RCA programs. Two commenters stated that ORR should fund an overlap

period to ensure that refugees in the old program experience no interruption of benefits.

Response: We would anticipate that States which decide to establish a public/private RCA program would plan to have an overlap period where refugees currently on RCA would continue in the old RCA program until their eligibility expires, while refugees who arrive in the State after a certain date would enter the new public/private program. We intend to reimburse States for the RCA costs in both programs during the overlap period.

Comment: Two commenters made the point that employment services under the new RCA program should be coordinated with Food Stamp employment and training activities (E&T), noting that able-bodied refugee Food Stamp recipients must meet Food Stamp employment and training participation requirements in order to receive more than 3 months of Food Stamps. One of the commenters asked if the final rule would give the States the authority to pass on to private agencies any financial penalties that result from the agencies' RCA/Food Stamp recipients not participating in the required E&T services.

Response: We received guidance from the Food Stamp Program on November 11, 1997, which clarified that refugee employability services approved, funded, or operated by ORR are federally recognized training programs for the purposes of Food Stamp eligibility. Therefore, refugees participating at least half-time in programs approved or funded by ORR are exempt from Food Stamp work requirements and time limits. We transmitted this information to States, national voluntary agencies, ORR discretionary grantees, and other interested parties through ORR State Letter 97–28 on December 5, 1997. The exemption from Food Stamp employment and training participation would apply to RCA recipients participating in the public/private RCA program.

Comment: One commenter said that the final regulation should address the need for changes to voluntary agency placement policy and require both consultation with States as to their capacity and the resettlement of free cases in areas not already highly impacted.

Response: We are engaged in ongoing discussions with the Department of State (DOS) and the national voluntary agencies on placement policy, including the issues raised by the commenter.

Comment: Several commenters expressed concern about how the public/private RCA program would be coordinated with the Department of State Reception and Placement (R&P) program. Two commenters felt that States would need to recognize the requirements for employment under the R&P program so that local resettlement agencies would be able to maintain their ability to place free cases in the State. Another commenter asked whether the provision for free case employment will be maintained. One commenter said that RCA handled by the local resettlement agencies would enable more refugees to receive RCA, thereby providing a more viable bridge between reception and placement support and earned income. One commenter asked how existing agreements between the voluntary agencies and the State Department would be changed and asked about the role of the State Department in the public private partnership. One commenter asked whether services to refugees resettled by a voluntary agency in an adjoining state are to take the place of State Department reception and placement services. One commenter noted that § 400.51 appears to allow RCA during the first 30 days, which is contrary to DOS reception and placement provisions.

Response: We agree that the relationship between the State Department's R&sP program and the public/private RCA program is important. We will work in partnership with the State Department to ensure that the two programs work well together to achieve the goal of seamless and coordinated services for RCA recipients. We intend to address the issues raised by the commenters in discussions with the Department of State, States, and the voluntary agencies soon after publication of the final rule.

Regarding the comment about RCA eligibility during a refugee's first 30 days in the U.S., ORR regulations have never precluded a refugee from accessing RCA during his/her first 30 days in the U.S. If a refugee who is receiving assistance and services under the DOS Reception and Placement program wishes to apply for RCA, under § 400.50(a), a State agency must provide that refugee the opportunity to apply for RCA and determine the eligibility of that applicant, the same as any other applicant.

Comment: Three commenters stated that the new public/private RCA program appears to be in conflict with the national move to co-locate employment and training services in a coordinated one-stop system. One commenter felt that the proposed program would remove refugees and refugee services from the one-stop system potentially hindering refugee utilization of other programs.

Response: The refugee service system in most States is a separate network of resettlement and employment services that are not co-located in a one-stop shop system. The establishment of a new public/private RCA program would not alter this arrangement. Because of the unique nature of the refugee resettlement program, Congress did not intend for refugee program services to be merged into a one-stop shop system with employment and training services for the general population. To the extent that services are offered at a one-stop shop that are appropriate to the needs of refugees, we encourage refugee providers to help refugees to access those services.

Comment: One commenter recommended an immediate effective date for the RMA changes and the inclusion of citizenship services as an allowable service.

Response: The general effective date in this rule is 30 days from the date of publication of the final rule, as required by the Administrative Procedure Act, 5 U.S.C. § 553(d). However, we recognize that States vary in the amount of time required to revise RMA policy instructions and implement the changes in RMA and that some States may not be able to implement these changes within the 30-day time frame. Therefore, while we expect States to implement the RMA changes as quickly as possible, we will allow States that need extra time to implement the RMA provisions no later than 90 days after the date of publication of the final rule. The 90-day effective date for the RMA provisions is indicated in the Effective Date section of this rule.

Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. This final rule implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to

see the regulations changed. These meetings were attended by close to 500 participants representing the broad resettlement network. We also consulted with representatives of States, Washington-based interest groups, refugee mutual assistance associations, and national voluntary agencies in follow-up sessions in Washington, D.C. to discuss what we learned from the initial round of consultations and to obtain feedback on our possible regulatory changes. We received additional feedback after group representatives consulted more broadly within their networks following the last round of meetings. The input we received is reflected in these regulations to a considerable degree.

These rules represent a renewed, more flexible stage in the refugee program State/Federal partnership. Rather than requiring that one national program fit all local situations, ORR has provided States the option to establish a public/private RCA program with local resettlement agencies or continue a publicly-administered RCA program modeled after their TANF program. If a State chooses to establish a public/private RCA program, the State has the flexibility to determine that the public/private RCA partnership would work well in only one community, and propose to implement a geographically split model.

Under the public/private RCA program, we have also given States and local resettlement agencies broad flexibility to design a program which they believe will best serve refugees in their community. Rather than prescribing certain elements, we have given States and resettlement agencies the flexibility to determine: The income standard for receipt of RCA in their State; the benefit level within a broad range of benefit levels; whether employment incentives should be provided, and if so, how those incentives should be provided; the services to be provided; and the procedures States and local resettlement agencies will put in place to ensure due process and protections for refugees. States are also given the option to set a higher need standard for refugee medical assistance. And within the proposed public/private RCA plan structure, there are several administrative models which may be considered by States and local resettlement agencies.

One of our key goals in drafting the regulations was to recognize, encourage, and enhance the partnerships that Congress intended with the passage of the Refugee Act. Although we have drafted regulations for a federally-funded program, this rule is intended to reflect our recognition that resettlement takes place at the local level and works best when all parties work together. In the final rule, we have tried to support the different, but equally important, contributions that the public and private sectors are able to bring to the refugee resettlement process. We hope that the final rule will serve to foster better and stronger partnerships at all levels, including those among local resettlement agencies and service providers, which will result in good resettlement.

We estimate that the regulatory changes in the final rule could result in increased costs of approximately $8 million annually due to added administrative costs of local resettlement agencies in States that elect to establish a public/private program, $8 million annually for expanded refugee eligibility for refugee medical assistance, and $1 million for RCA payment ceilings. We believe that the number of States that will choose the public/private program option, however, may be limited.

This rule is considered significant and has been reviewed by OMB.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect 46 participating States and the District of Columbia, and local resettlement agencies that agree to assume responsibility for providing cash assistance and services to newly arrived refugees in States that elect to establish the new public/private RCA program. Local resettlement agencies are non-profit private organizations that are responsible for the initial resettlement of refugees in the U.S. under cooperative agreements with the Department of State. Participation of these local agencies in the public/private RCA program to be established by this regulation will be strictly voluntary. In addition, local resettlement agencies that choose to assume responsibility for the new RCA program will be fully funded with Federal refugee program funds. These rules will only have an impact on those small entities (local resettlement agencies) that voluntarily elect to participate in the public/private RCA program. Thus, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act of 1995

The following sections contain information collection, third party reporting, or recordkeeping requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)): §§ 400.50(b), 400.54, 400.55, 400.57(b), 400.58, 400.65, and 400.68(b). The Administration for Children and Families has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 400.54(a) requires that States or their designees provide notice to applicants or recipients to indicate that assistance has been authorized, denied, or terminated and the program under which that determination was made. Section 400.54(b) requires States to specify in their State Plans the hearing procedures to be followed in the RCA program and requires that the written notice of any hearing determination adequately explains the basis for the decision and any further appeal rights. Section 400.55 requires that States or their designee agency(s) make available to refugees the written policies and all notices in English and in appropriate languages where a significant number or proportion of the recipient population requires information in a particular language, in accordance with Department of Justice regulations at 28 CFR 42.405(d)(1) regarding compliance with title VI of the Civil Rights Act of 1964. Section 400.57(b) requires that each local voluntary agency resettling in a State inform its national resettlement agency of the proposed public/private RCA program and obtain a letter of agreement from the national agency. Section 400.58 requires that States submit a public/private RCA plan for ORR review and approval before the State implements the plan. Section 400.65 requires States that elect to operate a publicly-administered RCA program to submit an amendment to their State Plan describing the elements of their TANF program that will be used in their RCA program.

The information in these plans is needed to carry out ORR's oversight responsibilities under section 412 of the Immigration and Nationality Act. Additionally, certain information is typically necessary to respond to Congressional and other inquiries about the program.

The effect of these information collection, reporting, or third-party notification requirements will be

limited to the 46 States and the District of Columbia that participate in the refugee program, and 2–3 non-profit agencies that administer the program in States that no longer participate in the refugee program. We anticipate that a limited number of States will elect to operate a public/private RCA program; those States that choose not to operate such a program will not have to submit a public/private RCA plan. Those States that choose to implement a public/private RCA program will have to submit a public/private RCA plan only once. Additional submissions will only be necessary if the plan is modified in the future. The average burden per response for the preparation of an RCA plan is estimated to be 24 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 1,176 hours if all States elect to implement a public/private RCA program. States that wish to operate a publicly-administered RCA program will have to submit an amendment to their State Plan once. The average burden per response for the preparation of a State Plan amendment is estimated to be 3 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 147 hours if all States elect to operate a publicly-administered RCA program. Other requirements, such as the State plan (§ 400.5), are not changed. States receiving refugee program funds have a plan on file at ORR. We estimate the number of hours required to amend the plan to be a maximum of 1 hour annually. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is estimated to be no more than 47 hours if all States amend their plan in a given year. We estimate the average burden for other sections as follows: § 400.54 will be 1,200 hours annually; § 400.57(c) will be 200 hours the first year; § 400.55 will be 1,000 hours the first year and 300 hours annually thereafter.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this final rule will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

E. Family Well-Being Impact

As required by Section 654 of the Treasury and General Government Appropriations Act of 1999, we have assessed the impact of this final rule on family well-being. The final rule implements new provisions for RCA and RMA, programs which serve primarily single refugees, childless couples, or couples with adult children. We believe that the provisions contained in this rule promote better, more timely support for refugees. We expect this to strengthen families as they will receive a better economic start in the U.S. and move toward self-sufficiency in a more supportive environment.

F. Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have federalism implications as defined in the Executive Order. The impact of this rule is not substantial as defined in the Executive Order. Rather, this rule provides States increased options for administering refugee resettlement programs.

G. Congressional Review of Rulemaking

This rule is not a ''major'' rule as defined in chapter 8 of 5 U.S.C.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects

45 CFR Part 400

Grant programs-Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

45 CFR Part 401

Cuba, Grant programs-Social programs, Haiti, Health care, Public assistance programs, Refugees.

Dated: October 14, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: November 22, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For reasons set forth in the preamble, 45 CFR Parts 400 and 401 are amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

2. Section 400.2 is amended as follows:

a.–b. Removing the word ''AFDC'' wherever it appears in this section and adding in its place the word ''TANF'';

c. Removing the word ''to'' after the word ''refer'' in the definition of *case management services;*

d. Removing the definitions of *AFDC* and *Voluntary resettlement agency;* and

e. Adding in alphabetical order definitions of *Designee, Economic self-sufficiency, Family unit, Local resettlement agency, National voluntary agency, RCA Plan and TANF* to read as follows:

§ 400.2 Definitions

* * * * *

Designee, when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of this part.

* * * * *

Economic self-sufficiency means earning a total family income at a level that enables a family unit to support itself without receipt of a cash assistance grant.

* * * * *

Family unit means an individual adult, married individuals without children, or parents, or custodial relatives, with minor children who are not eligible for TANF, who live in the same household.

* * * * *

Local resettlement agency means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

* * * * *

National voluntary agency means one of the national resettlement agencies or a State or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

* * * * *

RCA Plan means a written description of the public/private RCA program administered by local resettlement agencies under contract or grant with a State.

* * * * *

TANF means temporary assistnace for needy families under title IV–A of the Social Security Act.

* * * * *

3.–10. Section 400.5 is amended in paragraph (h) by removing the words ''local affiliates of voluntary resettlement agencies'' and adding in their place the words ''local resettlement agencies'', and by adding paragraph (i) to read as follows:

§ 400.5 Content of the plan.

* * * * *

(i) Provide that the State will:

(1) Comply with the provisions of title IV, Chapter 2, of the Act and official issuances of the Director;

(2) Meet the requirements in this part;

(3) Comply with all other applicable Federal statutes and regulations in effect during the time that it is receiving grant funding; and

(4) Amend the plan as needed to comply with standards, goals, and priorities established by the Director.

§ 400.11 [Amended]

11.–12. Section 400.11 is amended in paragraph (a)(1) by removing the words ''aid to families with dependent children (AFDC)'' and adding in their place the words ''temporary assistance for needy families (TANF)'', and by revising in paragraph (b)(1) the word ''then'' to read ''than''.

13.–14. Section 400.13 is amended by adding a new paragraph (e) that reads as follows:

§ 400.13 Cost allocation.

* * * * *

(e) Administrative costs incurred by local resettlement agencies in the administration of the public/private RCA program (i.e., administrative costs of providing cash assistance) may be charged to the CMA grant. Administrative costs of managing the services component of the RCA program must be charged to the social services grant.

§ 400.23 [Amended]

15. Section 400.23 is amended in paragraph (a) by adding the words ''unless otherwise specified in this part'' after the word ''programs'', and in paragraph (b) by adding the words ''or its designee'' after the word ''State''.

§ 400.27 [Amended]

16.–17. Section 400.27 is amended in paragraph (b) by removing the words ''voluntary resettlement agency, as defined in § 400.2'' and adding in their place the words ''local resettlement agency or by a local resettlement agency to a State'', and by removing paragraph (c).

18.–19. Section 400.43 is amended by removing paragraphs (a) (2) and (5) and by redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3) respectively; and by adding new paragraphs (a)(4) and (5) that read as follows:

§ 400.43 Requirements for documentation of refugee status.

(a) * * *

(4) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401;

(5) Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100–202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100–461 as amended)); or

* * * * *

§ 400.44 [Amended]

20. Section 400.44 is amended by adding the words ''unless otherwise provided by Federal law'' after the word ''Act'' at the end of the sentence.

21. Subpart E is revised to read as follows:

Subpart E—Refugee Cash Assistance

Subpart E—Refugee Cash Assistance

§ 400.45 Requirements for the operation of an AFDC-type RCA program.

This section applies to a State's RCA program that follows the State's rules under the Aid to Families with Dependent Children (AFDC) program under title IV–A of the Social Security Act, prior to amendment by Public Law 104–33. A State must continue to apply these rules to its RCA program until it implements a new RCA program under § 400.56 or § 400.65. A State that receives an approved waiver under § 400.300 to continue an AFDC-type RCA program must follow the rules in this section.

(a) *Recovery of overpayments and correction of underpayments* —The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

(b) *Opportunity to apply for cash assistance.* (1) A State must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(2) In determining eligibility for cash assistance, the State must—

(i) Comply with the regulations at part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(ii) Determine eligibility for other cash assistance programs in accordance with § 400.51; and

(iii) Comply with regulations at § 400.54(a)(3) and 400.68.

(c) *Emergency cash assistance to refugees*—A State must comply with the regulations at § 400.52.

(d) *General eligibility requirements*—A State must comply with the regulations at § 400.53.

(e) *Consideration of income and resources.* In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must:

(1) Apply the regulations at § 233.20(a)(3) through (2) of this title for considering income and resources of AFDC applicants; and

(2) Apply the regulations at § 400.66(b) through (d).

(f) *Need standards and payment levels.* (1) In determining need for refugee cash assistance, a State agency must use the State's AFDC need standards established under § 233.20(a)(1) and (2) of this title.

(2) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (f)(1) of this section and applying the consideration of income and resources in paragraph (e) of this section and in § 400.66(b) through (d), a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

(3) The State agency may use the date of application as the date refugee cash assistance begins in order to provide payments quickly to newly arrived refugees.

(g) *Proration of shelter, utilities, and similar needs*—If a State prorated allowances for shelter, utilities, and similar needs in its AFDC program under § 233.20(a)(5) of this title, it must prorate such allowances in the same manner in its refugee assistance programs.

(h) *Other AFDC requirements applicable to refugee cash assistance*—In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

233.31 Budgeting methods for AFDC.

233.32 Payment and budget months (AFDC).

233.33 Determining eligibility prospectively for all payment months (AFDC).

233.34 Computing the assistance payment in the initial one or two months (AFDC).

233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).

233.36 Monthly reporting (AFDC)—which shall apply to recipients of refugee cash assistance who have been in the United States more than 6 months.

233.37 How monthly reports are treated and what notices are required (AFDC).

235.110 Fraud.

General

§ 400.48 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA). Sections 400.48 through 400.55 apply to both public/private RCA programs and publicly-administered RCA programs.

§ 400.49 Recovery of overpayments and correction of underpayments.

The State agency or its designee agency(s) must maintain a procedure to ensure recovery of overpayments and correction of underpayments in the RCA program.

§ 400.50 Opportunity to apply for cash assistance.

(a) A State or its designee agency(s) must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant as promptly as possible within no more than 30 days from the date of application.

(b) A State or its designee agency(s) must inform applicants about the eligibility requirements and the rights and responsibilities of applicants and recipients under the program.

(c) In determining eligibility for cash assistance, the State or its designee agency(s) must promptly refer elderly or disabled refugees and refugees with dependent children to other cash assistance programs to apply for assistance in accordance with § 400.51.

§ 400.51 Determination of eligibility under other programs.

(a) TANF. For refugees determined ineligible for cash assistance under the TANF program, the State or its designee must determine eligibility for refugee cash assistance in accordance with §§ 400.53 and 400.59 in the case of the public/private RCA program or §§ 400.53 and 400.66 in the case of a publicly-administered RCA program.

(b) Cash assistance to the aged, blind, and disabled. (1) SSI. (i) The State agency or its designee must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration to apply for cash assistance under the SSI program.

(ii) If the State agency or its designee determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) OAA, AB, APTD, or AABD. In Guam, Puerto Rico, and the Virgin Islands —

(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.52 Emergency cash assistance to refugees.

If the State agency or its designee determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

§ 400.53 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are new arrivals who have resided in the U.S. less than the RCA eligibility period determined by the ORR Director in accordance with § 400.211;

(2) Are ineligible for TANF, SSI, OAA, AB, APTD, and AABD programs;

(3) Meet immigration status and identification requirements in subpart D

of this part or are the dependent children of, and part of the same family unit as, individuals who meet the requirements in subpart D, subject to the limitation in § 400.208 with respect to nonrefugee children; and

(4) Are not full-time students in institutions of higher education, as defined by the Director.

(b) A refugee may be eligible for refugee cash assistance under this subpart during a period to be determined by the Director in accordance with § 400.211.

§ 400.54 Notice and hearings.

(a) *Timely and adequate notice.* (1) A written notice must be sent or provided to a recipient at least 10 days before the date upon which refugee cash assistance will be reduced, suspended, or terminated.

(2) In providing notice to an applicant or recipient to indicate that assistance has been authorized, denied, reduced, suspended, or terminated, the written notice must clearly state the action that will be taken, the reasons for the action, and the right to request a hearing.

(3) In providing notice to an applicant or recipient to indicate that assistance has been authorized, denied, reduced, suspended, or terminated, the State or its designee agency(s) must specify the program(s) to which the notice applies, clearly distinguishing between RCA and other assistance programs. For example, in the case of a publicly-administered program, if a refugee applies for assistance and is determined ineligible for TANF but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to TANF and to refugee cash assistance. When a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, the State or its designee must review the case file to determine possible eligibility for TANF or GA due to changed circumstances and the notice to the recipient must indicate the result of that determination as well as the termination of RCA.

(b) *Hearings.* All applicants for and recipients of refugee cash assistance must be provided an opportunity for a hearing to contest adverse determinations. States must ensure that hearings meet the due process standards in *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

(1) *Public/private RCA programs.* The State must specify in the public/private RCA plan the hearing procedures to be used in the RCA program. The plan may specify that the local resettlement agency(s) will refer all hearing requests to a State-administered hearing process. If the plan does not specify the use of a State-administered hearing process, then the procedures to be followed must include:

(i) The State or local resettlement agency(s) responsible for the provision of RCA must provide an applicant for or recipient of refugee cash assistance an opportunity for an oral hearing to contest adverse determinations. Hearings must be conducted by an impartial official or designee of the State or local resettlement agency who has not been involved directly in the initial determination of the action in question.

(ii) The State must ensure that procedures are established to provide refugees a right of final appeal for an in-person hearing provided by an impartial, independent entity outside of the local resettlement agency.

(iii) Final administrative action must be taken within 60 days from the date of a request for a hearing.

(2) *Publicly-administered RCA programs.* The State must specify in the State Plan referenced in § 400.4 the public agency hearing procedures it intends to use in the RCA program.

(3) In both a public/private RCA program and a publicly-administered RCA program, the written notice of any hearing determination must adequately explain the basis for the decision and the refugee's right to request any further administrative or judicial review.

(4) In both a public/private RCA program and a publicly-administered RCA program, a refugee's benefits may not be terminated prior to completion of final administrative action, but are subject to recovery by the agency if the action is sustained.

(5) In both a public/private RCA program and a publicly-administered RCA program, a hearing need not be granted when Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is an incorrect grant computation.

(6) In both a public/private RCA program and a publicly-administered RCA program, a hearing need not be granted when assistance is terminated because the eligibility time period imposed by law has been reached, unless there is a disputed issue of fact that is unresolved by the process in § 400.23.

§ 400.55 Availability of agency policies.

A State, or the agency(s) responsible for the provision of RCA, must make available to refugees the written policies of the RCA program, including agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. The State, or the agency(s) responsible for the provision of RCA, must ensure that agency policy materials and all notices required in §§ 400.54, 400.82, and 400.83, are made available in written form in English and in appropriate languages where a significant number or proportion of the recipient population needs information in a particular language. In regard to refugee language groups that constitute a small number or proportion of the recipient population, the State, or the agency(s) responsible for the provision of RCA, at a minimum, must use an alternative method, such as verbal translation in the refugee's native language, to ensure that the content of the agency's policies is effectively communicated to each refugee.

Public/Private RCA Program

§ 400.56 Structure.

(a) States may choose to enter into a partnership agreement with local resettlement agencies for the operation of a public/private RCA program. Sections 400.56 through 400.63 apply to the public/private RCA program.

(b) The public/private RCA program must be administered by the State through contracts or grants with local resettlement agencies or a lead resettlement agency that provides initial resettlement services under the terms of the Department of State Cooperative Agreement for Reception and Placement.

(c) The public/private RCA program must be statewide, unless the State determines that it is not in the best interests of refugees to provide a public/private RCA program in a particular area of the State.

(d) Local resettlement agencies may be responsible for determining eligibility, and authorizing and providing payments to eligible refugees.

(e) States and local resettlement agencies may not propose to operate a public/private RCA program and a publicly-administered RCA program in the same geographic location.

(f) States must ensure the provision of RCA assistance to eligible refugees in the State who are sponsored by local resettlement agencies in bordering states, where applicable.

§ 400.57 Planning and consultation process.

A State that wishes to establish a public/private RCA program must engage in a planning and consultation process with the local agencies that resettle refugees in the State to develop a public/private RCA plan in accordance with the requirements under § 400.58.

(a) Primary participants in the planning process must include representatives of the State and each local agency that resettles refugees in the State. During the planning process, the State must fully consult with representatives of counties, refugee mutual assistance associations (MAAs), local community services agencies, national voluntary agencies that resettle refugees in the State, representatives of each refugee ethnic group, and other agencies that serve refugees.

(b) Each local resettlement agency that resettles refugees in the State must inform its national resettlement agency of the proposed public/private RCA program and must obtain a letter of agreement from the national agency that indicates that the national agency supports the public/private RCA plan and will continue to place refugees in the State under the public/private RCA program.

§ 400.58 Content and submission of public/private RCA plan.

(a) States and local resettlement agencies must develop a public/private RCA plan which describes how the State and local resettlement agencies will administer and provide refugee cash assistance to eligible refugees. The plan must describe the agreed-upon public/private RCA program including:

(1) The proposed income standard to be used to determine RCA eligibility;

(2) The proposed payment levels to be used to provide cash assistance to eligible refugees;

(3) Assurance that the payment levels established are not lower than the comparable State TANF amounts;

(4) A detailed description of how benefit payments will be structured, including a description of employment incentives and/or income disregards to be used, if any, as well as methods of payment to be used, such as direct cash or vendor payments;

(5) A description of how all RCA eligible refugees residing in the State will have reasonable access to cash assistance and services;

(6) A description of the procedures to be used to ensure appropriate protections and due process for refugees, such as the correction of underpayments, notice of adverse action and the right to mediation, a pre-termination hearing, and an appeal to an independent entity;

(7) A description of proposed exemptions from participation in employability services;

(8) A description of the employment and self-sufficiency services to be provided to RCA recipients by—

(i) Local resettlement agencies under contract or grant, and/or

(ii) Other refugee services providers;

(9) Procedures for providing RCA to eligible secondary migrants who move to the State, including secondary migrants who were sponsored by a local resettlement agency that does not have a presence in the receiving State;

(10) If applicable, provisions for providing assistance to refugees resettling in the State who are sponsored by a local resettlement agency in a bordering State which does not have an office in the State of resettlement;

(11) A description of the procedures to be used to safeguard the disclosure of information regarding refugee clients;

(12) Letters of agreement from the national voluntary resettlement agencies that indicate support for the proposed public/private RCA program and indicate that refugee placements in the State will continue under the public/private RCA program;

(13) A breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including any per capita caps on administrative costs only if a State proposes to use such caps; and

(14) The proposed implementation date for the State's public/private RCA program;

(b) In cases where the State, after consultation with the local resettlement agencies in the State, determines that a public/private RCA program is not feasible statewide and proposes to implement a public/private RCA program in only a portion of the State and to operate a publicly-administered RCA program in the balance of the State, the State's RCA plan must include the information required in § 400.65(b).

(c) The plan must be signed by the Governor or his or her designee.

(d) The Director of ORR will follow the procedures in § 400.8 for the approval of public/private RCA plans. An approved public/private RCA plan will be incorporated into the refugee program State Plan.

(e) Any amendments to the public/private RCA plan must be developed in consultation with the local resettlement agencies and must be submitted to ORR in accordance with § 400.8. The Director of ORR will follow the procedures in § 400.8 for approval of amendments to public/private RCA plans.

§ 400.59 Eligibility for the public/private RCA program.

(a) Eligibility for refugee cash assistance under the public/private program is limited to those who meet the income eligibility standard established by the State after consultation with local resettlement agencies in the State.

(b) Any resources remaining in the applicant's country of origin may not be considered in determining income eligibility.

(c) A sponsor's income and resources may not be considered to be accessible to a refugee solely because the person is serving as a sponsor.

(d) Any cash grant received by a refugee under the Department of State or Department of Justice Reception and Placement programs may not be considered in determining income eligibility.

§ 400.60 Payment levels.

(a) Under the public/private RCA program, States and the local resettlement agencies contracted or awarded grants to administer the RCA program must make monthly cash assistance payments to eligible refugees that do not exceed the following payment ceilings, according to the number of persons in the family unit, except as noted in paragraphs (b) and (c) of this section. For family units greater than 4 persons, the payment ceiling may be increased by $70 for each additional person.

Size of family unit	Monthly payment ceiling
1 person	$335
2 persons	450
3 persons	570
4 persons	685

(b) States and local resettlement agencies may not make payments to refugees that are lower than the State's TANF payment for the same sized family unit. In States that have TANF payment levels that are higher than the ceilings established in this section, States and local resettlement agencies must provide payment levels under the public/private RCA program that are comparable to the State's TANF payment levels.

(c) Income disregards and other incentives. (1) States and local resettlement agencies may design an assistance program that combines RCA payments with income disregards or

other incentives such as employment bonuses, or graduated payments in order to encourage early employment and self-sufficiency, as long as the total combined payments to a refugee do not exceed the ORR monthly ceilings established in this section multiplied by the allowable number of months of RCA eligibility.

(2) States that elect to exceed monthly payment ceilings in order to provide employment incentives must budget their resources to ensure that sufficient RCA funds are available to cover a refugee's cash assistance needs in the latter months of a refugee's eligibility period, if needed.

(d) If the Director determines that the payment ceilings need to be adjusted for inflation, the Director will publish a document in the **Federal Register** announcing the new payment ceilings.

§ 400.61 Services to public/private RCA recipients.

(a) Services provided to recipients of refugee cash assistance in the public/private RCA program may be provided by the local resettlement agencies that administer the public/private RCA program or by other refugee service agencies.

(b) Allowable services under the public/private program are limited to those services described in §§ 400.154 and 400.155 and are to be funded in accordance with § 400.206.

(c) In public/private programs in which local resettlement agencies are responsible for administering both cash assistance and services, States and local resettlement agencies must coordinate on a regular basis with refugee mutual assistance associations and other ethnic representatives that represent or serve the ethnic populations that are being resettled in the U.S. to ensure that the services provided under the public/private RCA program:

(1) Are appropriate to the linguistic and cultural needs of the incoming populations; and

(2) Are coordinated with the longer-term resettlement services frequently provided by ethnic community organizations after the end of the time-limited RCA eligibility period.

(d) In public/private programs in which the agencies responsible for providing services to RCA recipients are not the same agencies that administer the cash assistance program, the State must:

(1) Establish procedures to ensure close coordination between the local resettlement agencies that provide cash assistance and the agencies that provide services to RCA recipients; and

(2) Set up a system of accountability that identifies the responsibilities of each participating agency and holds these agencies accountable for the results of the program components for which they are responsible.

§ 400.62 Treatment of eligible secondary migrants, asylees, and Cuban/Haitian entrants.

The State and local resettlement agencies must establish procedures to ensure that eligible secondary migrant refugees, asylees, and Cuban/Haitian entrants have access to public/private RCA assistance if they wish to apply. In developing these procedures, consideration must be given to ensuring coverage of eligible secondary migrants and other eligible applicants who were sponsored by a resettlement agency which does not have a presence in the State or who were not sponsored by any agency.

§ 400.63 Preparation of local resettlement agencies.

The State and the national voluntary agencies whose affiliate agencies will be responsible for implementing the public/private RCA program:

(a) Must determine the training needed to enable local resettlement agencies to achieve a smooth implementation of the RCA program; and

(b) Must provide the training in a uniform way to ensure that all local resettlement agencies in the State will implement the public/private RCA program in a consistent manner.

Publicly-Administered RCA Programs

§ 400.65 Continuation of a publicly-administered RCA program.

Sections 400.65 through 400.69 apply to publicly-administered RCA programs. If a State chooses to operate a publicly-administered RCA program:

(a) The State may operate its refugee cash assistance program consistent with its TANF program.

(b) The State must submit an amendment to its State Plan, describing the elements of its TANF program that will be used in its refugee cash assistance program.

§ 400.66 Eligibility and payment levels in a publicly-administered RCA program.

(a) In administering a publicly-administered refugee cash assistance program, the State agency must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to:

(1) The determination of initial and on-going eligibility (treatment of income and resources, budgeting methods, need standard);

(2) The determination of benefit amounts (payment levels based on size of the assistance unit, income disregards);

(3) Proration of shelter, utilities, and similar needs; and

(4) Any other State TANF rules relating to financial eligibility and payments.

(b) The State agency may not consider any resources remaining in the applicant's country of origin in determining income eligibility.

(c) The State agency may not consider a sponsor's income and resources to be accessible to a refugee solely because the person is serving as a sponsor.

(d) The State agency may not consider any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement programs.

(e) The State agency may use the date of application as the date refugee cash assistance begins in order to provide payments quickly to newly arrived refugees.

§ 400.67 Non-applicable TANF requirements.

States that choose to operate an RCA program modeled after TANF may not apply certain TANF requirements to refugee cash assistance applicants or recipients as follows: TANF work requirements may not apply to RCA applicants or recipients, and States must meet the requirements in subpart I of this part with respect to the provision of services for RCA recipients.

§ 400.68 Notification to local resettlement agency.

(a) The State must notify promptly the local resettlement agency which provided for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under a publicly-administered RCA program.

(b) The State must contact the applicant's sponsor or the local resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with § 400.77(a).

§ 400.69 Alternative RCA programs.

A State that determines that a public/private RCA program or a publicly-administered program modeled after its TANF program is not the best approach for the State may choose instead to establish an alternative approach under the Wilson/Fish program, authorized by section 412(e)(7) of the INA.

§ 400.70 [Amended]

22. Section 400.70 is amended by adding the words ''under both the public/private RCA program and the publicly-administered RCA program'' after the word ''assistance'' and before the word ''concerning''.

§ 400.71 [Amended]

23. Section 400.71 is amended by removing the definition of the term Designee.

24. Section 400.72 is amended by adding introductory text to read as follows:

§ 400.72 Arrangements for employability services.

Paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program and to States that operate a publicly-administered RCA program. Paragraph (c) applies only to publicly-administered RCA programs.

* * * * *

§ 400.75 [Amended]

25. Section 400.75 is amended by adding in paragraph (a)(6)(i) the word ''local'' before the words ''resettlement agency'', and by adding in paragraph (b) the words ''or its designee'' after the words ''State agency''.

26.–27. Section 400.76 is revised to read as follows:

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

States and local resettlement agencies operating a public/private RCA program, as well as States operating a publicly-administered RCA program, may determine what specific exemptions, if any, are appropriate for recipients of a time-limited RCA program in their State.

§ 400.77 [Amended]

28. Section 400.77(a) is amended by removing the words ''§ 400.82(b)(3)(ii)'' and adding in their place the words ''§ 400.82(c)(2).''

§ 400.78 [Removed]

29. Section 400.78 is removed.

§ 400.79 [Amended]

30. Section 400.79 is amended as follows:

a. By removing in paragraph (a) the word ''filing'' and adding in its place the word ''family'' before the word ''unit'';

b. By adding in paragraph (b) the word ''local'' before the words ''resettlement agency''; and

c. By adding the word ''and'' at the end of the paragraph (c)(1) and by removing the semicolon and the word ''and'' at the end of paragraph (c)(2) and adding in their place a period.

§ 400.80 [Removed]

31.–33. Section 400.80 and the undesignated centerhead immediately preceding it are removed.

34. Section 400.81 is amended as follows:

a. By removing the word ''AFDC'' and adding in its place the word ''TANF'' in paragraphs (a) introductory text and (a)(4);

b. By adding a sentence at the end of paragraph (b) that reads: ''This training may only be made available to individuals who are employed.''; and

c. By revising paragraph (c) to read as follows:

§ 400.81 Criteria for appropriate employability services and employment.

* * * * *

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless the refugee is currently participating in a program *in progress* of on-the-job training (as described in § 400.154(c)) or vocational training (as described in § 400.154(e)) which meets the requirements of this part and which is being carried out as part of an approved employability plan.

34.–38. Section 400.82 is amended by redesignating paragraph (b)(3) as (c) and by redesignating paragraphs (b)(3)(i) and (ii) as (c)(1) and (2) respectively, and by revising paragraphs (a) and (b) to read as follows:

§ 400.82 Failure or refusal to accept employability services or employment.

(a) *Termination of assistance.* When, without good cause, an employable non-exempt recipient of refugee cash assistance under the public/private RCA program or under a publicly-administered RCA program has failed or refused to meet the requirements of § 400.75(a) or has voluntarily quit a job, the State, or the agency(s) responsible for the provision of RCA, must terminate assistance in accordance with paragraphs (b) and (c) of this section.

(b) *Notice of intended termination*—(1) In cases of proposed action to reduce, suspend, or terminate assistance, the State or the agency(s) responsible for the provision of RCA, must give timely and adequate notice, in accordance with adverse action procedures required at § 400.54.

(2) The State, or the agency(s) responsible for the provision of RCA, must provide written procedures in English and in appropriate languages, in accordance with requirements in § 400.55, for the determination of good cause, the sanctioning of refugees who do not comply with the requirements of the program, and for the filing of appeals by refugees.

(3) In addition to the requirements in § 400.54, the written notice must include—

(i) An explanation of the reason for the action and the proposed adverse consequences; and

(ii) Notice of the recipient's right to mediation and a hearing under § 400.83.

(4) A written notice in English and a written translated notice, or a verbal translation of the notice, in accordance with the requirements in § 400.55, must be sent or provided to a refugee at least 10 days before the date upon which the action is to become effective.

* * * * *

40. Section 400.83 is revised to read as follows:

§ 400.83 Mediation and fair hearings.

(a) *Mediation.* (1) *Public/private RCA program.* The State must ensure that a mediation period prior to imposition of sanctions is provided to refugees by local resettlement agencies under the public/private RCA program. Mediation shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State (or local resettlement agency(s) responsible for the provision of RCA) or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by mediation.

(2) *Publicly-administered RCA programs.* Under a publicly-administered RCA program, the State must use the same procedures for mediation/conciliation as those used in its TANF program, if available.

(b) *Hearings.* The State or local resettlement agency(s) responsible for the provision of RCA must provide an applicant for, or recipient of, refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 400.54, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

§ 400.93 [Amended]

41. Section 400.93(d) is amended to add the words ''or the State Children's Health Insurance Program (SCHIP)'' after the word ''Medicaid'' each time it appears.

§ 400.94 [Amended]

42. Section 400.94 is amended:

a. By adding in paragraph (a) the words ''and SCHIP'' before the word ''eligibility'' and by removing the words ''State plan'' and adding in their place the words ''and SCHIP State plans'';

b. By adding in paragraph (c) the words ''and SCHIP'' after the word ''Medicaid''; by removing the word ''program'' and adding in its place the word ''programs''; and by removing the word ''plan'' and adding in its place the word ''plans''; and

c. By adding in paragraph (d) the words ''or SCHIP'' after the word ''Medicaid'' and by deleting the word ''plan'' and adding in its place the word ''plans''.

§ 400.100 [Amended]

43–45. Section 400.100 is amended:

a. By adding in paragraph (a)(i) the words ''or SCHIP'' after the word ''Medicaid'';

b. By removing in paragraph (a)(2) the word ''filing'' and adding in its place the word ''assistance'' before the word ''unit'';

c. By removing paragraph (a)(4) and redesignating paragraphs (a)(5) and (a)(6) as (a)(4) and (a)(5) respectively; and

d. By adding in paragraph (d) the words ''or SCHIP'' after the word ''Medicaid''.

46–49. Section 400.101 is amended by revising paragraphs (a) and (b) to read as follows:

§ 400.101 Financial eligibility standards.

* * * * *

(a) In States with medically needy programs under 42 CFR part 435, subpart D:

(1) The State's medically needy financial eligibility standards established under 42 CFR part 435, subpart I, and as reflected in the State's approved title XIX State Medicaid plan; or

(2) A financial eligibility standard established at up to 200% of the national poverty level; and

(b) In States without a medically needy program:

(1) The State's AFDC payment standards and methodologies in effect as of July 16, 1996, including any modifications elected by the State under section 1931(b)(2) of the Social Security Act; or

(2) A financial eligibility standard established at up to 200% of the national poverty level.

50. Section 400.102 is revised to read as follows:

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraphs (b), (c), and (d) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must—

(1) In States with medically needy programs, use the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan.

(2) In States without medically needy programs, use the standards and methodologies governing consideration of income and resources of AFDC applicants in effect as of July 16, 1996, including any modifications elected by the State under section 1931(b)(2) of the Social Security Act.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or local resettlement agency in determining eligibility for and receipt of refugee medical assistance.

(c) The State may not consider any cash assistance payments provided to an applicant in determining eligibility for and receipt of refugee medical assistance.

(d) The State must base eligibility for refugee medical assistance on the applicant's income and resources on the date of application. The State agency may not use the practice of averaging income prospectively over the application processing period in determining income eligibility for refugee medical assistance.

51. Section 400.103 is revised to read as follows:

§ 400.103 Coverage of refugees who spend down to State financial eligibility standards.

States must allow applicants for RMA who do not meet the financial eligibility standards elected in § 400.101 to spend down to such standard using an appropriate method for deducting incurred medical expenses.

52. Section 400.104 is revised to read as follows:

§ 400.104 Continued coverage of recipients who receive increased earnings from employment.

(a) If a refugee who is receiving refugee medical assistance receives earnings from employment, the earnings shall not affect the refugee's continued medical assistance eligibility.

(b) If a refugee, who is receiving Medicaid and has been residing in the U.S. less than the time-eligibility period for refugee medical assistance, becomes ineligible for Medicaid because of earnings from employment, the refugee must be transferred to refugee medical assistance without an RMA eligibility determination.

(c) Under paragraphs (a) and (b) of this section, a refugee shall continue to receive refugee medical assistance until he/she reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b).

(d) In cases where a refugee is covered by employer-provided health insurance, any payment of RMA for that individual must be reduced by the amount of the third party payment.

§ 400.107 [Amended]

53. Section 400.107(b) is amended by removing the word ''assessment'' and adding in its place the word ''screening''.

§ 400.152 [Amended]

54. Section 400.152(b) is amended by adding the words ''citizenship and naturalization preparation services and'' after the words ''except for'' and by placing a period after the words ''60 months'' and removing the rest of the sentence.

55. Section 400.154 is amended by removing in paragraph (j) the word ''AFDC'' and adding in its place the word ''TANF'' and by adding a new paragraph (k) to read as follows:

§ 400.154 Employability services.

* * * * *

(k) Assistance in obtaining Employment Authorization Documents (EADs).

§ 400.155 [Amended]

56–57. Section 400.155 is amended by adding a new paragraph (i) that reads as follows:

§ 400.155 Other services.

* * * * *

(i) Citizenship and naturalization preparation services, including English language training and civics instruction to prepare refugees for citizenship, application assistance for adjustment to legal permanent resident status and citizenship status, assistance to disabled refugees in obtaining disability waivers from English and civics requirements for naturalization, and the provision of interpreter services for the citizenship interview.

§ 400.203 [Amended]

58. Section 400.203(a)(1) is amended by removing the word ''AFDC'' and adding in its place the word ''TANF''.

§ 400.207 [Amended]

59. Section 400.207 is amended by adding a sentence after the word ''Families'' that reads: ''Such costs may include reasonable and necessary administrative costs incurred by local resettlement agencies in providing assistance and services under a public/private RCA program.'' and by removing the word ''Such'' in the last sentence and adding in its place the word ''Administrative''.

§ 400.208 [Amended]

60. Section 400.208 is amended by removing the word ''filing'' whenever it appears and adding in its place the word ''family'' before the word ''unit''.

§ 400.209 [Amended]

61. Section 400.209 is amended by removing the word ''filing'' wherever it appears and by adding in its place the word ''family'' before the word ''unit'' and by removing the word ''AFDC'' in paragraph (a) and adding in its place the word ''TANF''.

62. Section 400.210 is amended by revising paragraph (b)(2) to read as follows:

§ 400.210 Time limits for obligating and expending funds and for filing State claims.

* * * * *

(b) * * *

(2) A State must expend its social service and targeted assistance grants no later than two years after the end of the FFY in which the Department awards the grant. A State's final financial report on expenditures of social services and targeted assistance grants must be received no later than 90 days after the end of the two-year expenditure period. At that time, if a State's final financial expenditure report has not been received, the Department will deobligate any unexpended funds, including any unliquidated obligations, based on a State's last submitted financial report.

§ 400.211 [Amended]

63. Section 400.211(a) is amended:

a. By removing in paragraph (a) introductory text the word ''necessary'' and adding in its place the words ''a reduction in the eligibility period is indicated'' after the word ''if'';

b. By removing in paragraph (a)(2) the word ''member'' and adding in its place the word ''number'' after the word ''annual'';

c. By removing in paragraph (a)(3) the word ''AFDC'' wherever it appears; and

d. By removing in paragraph (b) the word ''impleting'' and adding in its place the word ''implementing''.

§ 400.301 [Amended]

64.–67. Section 400.301 is amended:

a. By removing in paragraph (b) the words ''only under extraordinary circumstances and'' after the word ''granted'';

b. By adding in paragraph (c) the following sentence after the words ''subpart L'': ''Replacement designees must also adhere to the Subpart L regulations regarding formula allocation grants for targeted assistance, if the State authorized the replacement designee appointed by the Director to act as its agent in applying for and receiving targeted assistance funds''; and

c. By removing in paragraph (c) the words ''400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i)'' and adding in their place the words ''400.51 (b)(2)(i) and 400.58(c)''.

PART 401—CUBAN/HAITIAN ENTRANT PROGRAM

1. The authority citation for Part 401 continues to read as follows:

Authority: Section 501(a), Pub. L. 96–422, 94 Stat. 1810 (8 U.S.C. 1522 note); Executive Order 12341 (January 21, 1982).

§ 401.12 [Amended]

2. Section 401.12(a) is amended by removing the word ''§ 400.62'' and adding in its place the words ''subparts E and G of part 400 of this title''.

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