DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

45 CFR Part 400

Refugee Resettlement Program: Requirements for Employability Services, Job Search, and Employment; Refugee Medical Assistance; Refugee Social Services; Targeted Assistance Services; and Federal Funding for Administrative Costs

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

ACTION: Final rule.

SUMMARY: This rule amends or clarifies current requirements governing employability services, job search, employment, refugee medical assistance, social services, and Federal funding for State administrative costs and would establish requirements for the targeted assistance program.

A proposed rule was published in the **Federal Register** on August 12, 1994 (59 FR 41417). Some changes have been made and clarifications provided in this final regulation after consideration of the written comments received.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade S.W., 6th Floor, Washington, D.C. 20447.

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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 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); and cash and medical assistance, requirements for employability services, job search, and employment, and refugee social services published February 3, 1989 (54 FR 5463).

Discussion of Changes

The changes made in this final regulation, as compared with the proposed rule published on August 12, 1994, are as follows:

1. The proposal to limit the definition of case management to the referral and tracking of refugee participation in employment-related services only has been withdrawn.

2. Section 400.104 has been revised to allow a refugee medical assistance (RMA) recipient who becomes employed to continue to receive RMA for the full time-eligibility period, regardless of whether the recipient obtains private medical coverage, as long as the RMA payment is reduced by the amount of the third party payment.

3. Section 400.145 has been revised to more clearly state that refugee women must have the same opportunities as men to participate in all services funded under the refugee program, including job placement services.

4. The eligibility period for social services has been changed from the proposed 36 months to 60 months, consistent with the eligibility period for targeted assistance. In addition, referral and interpreter services are exempted from the time-limitation in both social services and targeted assistance.

5. The proposed revision to § 400.155(f) has been withdrawn; translation and interpreter services will continue to be allowable regardless of whether such services are available from another source.

6. Section 400.156(d) has been revised to require the provision of refugee-specific services designed to meet refugee needs in lieu of requiring a separate refugee-specific service system in which refugees are the only client group served.

7. We have added a provision under § 400.156 which requires the development of a family self-sufficiency plan for any refugee who participates in refugee program-funded employment-related services.

8. We have added language to § 400.301 which establishes that a replacement designee must adhere to the same regulations that apply to a State-administered program, with the exception of certain specified provisions.

Description of the Regulation

This rule clarifies some current policies, amends others, and sets forth regulatory requirements for the targeted assistance program (TAP).

In recent years, annual refugee admissions have been high, resulting in an expanding pool of refugees in need of services. As of September 30, 1993, 1.6 million refugees had been resettled in the U.S. since 1975. All of these refugees, with the exception of those who have become U.S. citizens, are eligible to receive refugee program services. At the same time, the level of funds appropriated for services has remained essentially unchanged, making it difficult to serve all refugees in need of services with available resources. It is not uncommon, for example, for English language training classes, funded by the refugee program, to have waiting lists so that refugees who arrive in the country are not able to access English language training without a delay. Nine major States have indicated that there are currently waiting lists for refugee services, especially for English language training, in their States.

We believe the increased demand for services makes it necessary to sharpen the program's priorities. Resources in the refugee program are no longer sufficient to provide the level of services needed to assist refugees for an open-ended period of time to become self-sufficient. We have learned from experience in the refugee program that the greatest impact that services can have on a refugee's social adjustment and economic well-being occurs during a refugee's initial years in the United States. These initial services often define a refugee's future experience.

Findings from several studies indicate that comprehensive services, provided soon after a refugee's arrival in the U.S., increase the likelihood of early employment. Under commission from ORR in 1992, Dr. Robert L. Bach, in an examination of data from the Oregon Refugee Early Employment Project (REEP), found that refugees who received job services or pre-employment training in the first 90 days reduced the time to their initial job by almost two months. Dr. Bach's analysis indicated that each job service provided in the first 90 days increased the probability of employment by three percent. A study of the Oregon REEP, conducted by the Refugee Policy Group (RPG) and published in 1989, found that REEP set up client/caseworker ratios that permitted a staff-intensive approach early in the resettlement experience, an element which in large part, according

to RPG, was crucial to REEP's achievement of earlier employment. Similarly, performance reported for the first year of the United States Catholic Conference (USCC) Wilson/Fish project in San Diego indicated that the project was able to reduce the average length of time on cash assistance by over two months through the provision of early comprehensive services aimed at employment.

After the initial years, we believe the effect of services on the achievement of economic self-support diminishes significantly. A report, entitled ''Progress Toward Economic Self-Sufficiency Among Southeast Asian Refugees'', prepared for ORR in July 1989 by Dr. Robert L. Bach and Rita Argiros, presented findings, based on an analysis of data from the ORR Annual Survey of Southeast Asian Refugees, which underlined the importance of service interventions in the first few years. Bach and Argiros found that the longer a refugee remains out of the labor force, the less likely he or she is to begin to search for a job or find a job in a subsequent year. The most significant move into the labor force occurs in the first and second years, followed by a steady decline in the probability of entering the labor force for those who delayed their initial job search.

We believe it is important, therefore, to target refugee program resources on the provision of comprehensive refugee-specific services to refugees during their first few years of resettlement in order to provide new refugees with the best foundation for economic independence in the future. We believe that after this initial period of special assistance, refugees should be treated like other U.S. residents and have access to the same assistance and service programs that are available to other eligible populations. Thus we have decided to limit service eligibility for refugee social services to refugees who have been in the U.S. 60 months (5 years) or less, effective October 1, 1995.

Similarly, service eligibility for the targeted assistance program will be limited to refugees who have been in the U.S. 60 months or less, effective on the same date. The 5-year limitation on service eligibility is consistent with the 5-year U.S. residency requirement for U.S. citizenship. Once refugees become U.S. citizens, they are no longer eligible for services under the refugee program.

In regard to the provision of refugee social services and targeted assistance, we believe that States and local entities should be given greater flexibility to design appropriate services to fit local refugee needs. The program's emphasis on the provision of employment services to achieve economic self-support, however, will remain. However, we are eliminating the job search requirements currently contained in § 400.80 and the requirement contained in § 400.146 that requires a State to use at least 85 percent of its social service grants to provide employability services if the State's welfare dependency rate is 55 percent or more.

To ensure that refugees receive maximum benefit and maximum results from services provided during the time-limited service eligibility period, it is essential that services be provided in the most efficacious and appropriate manner possible. To accomplish this, program experience dictates that certain principles require greater emphasis in the provision of services to refugees: (1) Services should be provided in a manner that is linguistically and culturally compatible with a refugee's background; (2) refugee-specific services, designed for refugees, should be provided during the initial years of resettlement; (3) English language instruction should be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services; and (4) as required by the Refugee Act, refugee women should have the same opportunities as men to participate in training and instruction.

Under current policy, if a refugee who is receiving refugee medical assistance becomes ineligible solely because of increased earnings from employment, the refugee's medical assistance is extended for a period of 4 months or until the refugee reaches the end of the RMA time-eligibility period (currently the first 8 months after a refugee's arrival in the U.S.), whichever occurs first. The distinction between RMA and extended RMA has caused confusion in some States, with the effect of extended RMA being inappropriately denied to some eligible refugees. In addition, current policy generates administrative costs because eligibility workers need to make separate determinations of refugee eligibility for extended RMA once a refugee becomes ineligible due to increased earnings from employment.

In order to alleviate this confusion, we are removing the distinction between RMA and extended RMA by eliminating the extended RMA provision and by making RMA available to eligible refugees for the full period of time-eligibility determined by the Director in accordance with § 400.204 beginning with the first month the refugee entered the U.S., regardless of whether a refugee receives increased earnings from employment.

Thus, under the 8-month eligibility period currently in effect, once a refugee is determined to be eligible for RMA at time of application, the refugee will be able to continue to receive RMA for a refugee's first 8 months in the U.S. regardless of whether a refugee receives increased earnings from employment during that period of time. This provision replaces the current 4-month extended RMA coverage for employed refugees. We believe this change will make the administration of RMA less confusing to States and, therefore, less subject to error than the current extended RMA provision. At the same time, this change will better ensure continued medical coverage to refugees for a clearly specified period of time.

To summarize, the policy changes are intended to: (1) Ensure that comprehensive refugee-specific services are provided to both refugee men and women within the first few years after arrival in the United States for the purpose of accelerating family economic independence and acculturation; (2) establish a time-eligibility limitation for the receipt of refugee social services and targeted assistance services so that funds will be concentrated on recently arrived refugees to help ensure that employable refugees are placed in jobs as soon as possible after their arrival in the U.S.; (3) increase State and local flexibility in the provision of services; and (4) replace the current 4-month extended RMA provision for employed refugees with a provision that would make RMA available for the full period (currently 8 months) of time-eligibility to RMA recipients, regardless of whether a refugee becomes employed.

In addition, the regulation limits the administrative costs a State may claim to those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families. This rule also establishes procedures to be used when a State withdraws from the refugee program. Finally, this rule sets forth basic requirements for the administration of the targeted assistance program which has been in operation since FY 1983.

Consistent with the preceding actions, 45 CFR 400.1, 400.4, 400.5, 400.9, 400.11, 400.13, 400.62, 400.70, 400.71, 400.75, 400.76, 400.79, 400.80, 400.82, 400.83, 400.94, 400.100, 400.104, 400.106, 400.107, 400.140, 400.141, 400.145, 400.146, 400.147, 400.152, 400.153, 400.154, 400.155, 400.156, 400.203, 400.204, 400.206, 400.207, 400.210, and subpart K are amended or removed and a new 400.212 and subpart L are added.

Subpart A—Introduction

Section 400.1(a) is amended to provide that 45 CFR Part 400 prescribes requirements concerning grants to States and other public and private non-profit agencies, wherever applicable, under title IV of the Immigration and Nationality Act.

Subpart B—Grants to States for Refugee Resettlement

Section 400.4(b) is amended to require that a State must certify no later than 30 days after the beginning of each fiscal year that the approved State plan is current and continues in effect. If a State wishes to change its plan, a State is required to submit a proposed amendment to the plan for ORR review and approval in accordance with § 400.8.

Section 400.5(h) is revised to expand the types of agencies that a State must meet with on a quarterly basis to plan and coordinate the placement of refugees in advance of their arrival. This revision requires the inclusion of local community service agencies and other agencies that serve refugees in these quarterly meetings. Section 400.5(h), as revised, also advises States that currently have an approved exemption to this requirement that existing exemptions will expire 90 days after the effective date of this rule. Any State wishing an exemption may apply to ORR. An approved exemption will remain in effect for three years, at which time a State may reapply. A number of States were granted exemptions to this requirement in the early years of the program on the basis of the absence of problems associated with the planning and coordination of refugee placement or the small number of refugees in those States. We believe it is time to review these exemptions, given the passage of time, changing refugee flows, and changing circumstances in the States. A State wishing to request an exemption to the provisions regarding the holding or frequency of meetings under § 400.5(h) must set forth the reasons why the State considers these meetings unnecessary because of the absence of problems associated with the planning and coordination of refugee placement. These requests should be submitted in writing to the Director of ORR.

Section 400.11(b) is amended to clarify that States would be required to submit yearly estimates for reimbursable costs for cash and medical assistance, costs for unaccompanied minors, and related administrative costs for the fiscal year in accordance with guidelines prescribed by the Director of ORR.

Section 400.11(b)(2) is amended by requiring that the annual social services plan that a State must submit to ORR must be developed on the basis of a local consultative process. Section 400.11(b)(2) is also amended by changing the submission date for the plan from a date that is no later than 45 days prior to the beginning of the State's planning cycle for social services to a date that is to be prescribed by the Director of ORR.

Section 400.11(b)(3) is amended by removing the word ''quarterly'' before the word ''estimates''.

Section 400.11(c) is amended by requiring that final financial reports must be submitted in accordance with the requirements specified under § 400.210. The language regarding the submission of quarterly financial reports remains unchanged; quarterly reports will continue to be due 30 days after the end of each quarter. Thus States must submit fourth-quarter reports by October 30 of each year, instead of the current deadline of December 30 of each year. ORR needs to receive end-of-year financial data from States soon after the end of the fiscal year to enable more timely forecasting for the next fiscal year. Adjustments may continue to be made, under § 400.210, until one year after the end of the fiscal year in the case of grants for cash assistance, medical assistance, and related administrative costs, and 2 years in the case of grants for social services and targeted assistance.

Section 400.13(d) is revised to prohibit the charging of case management costs against the cash assistance, medical assistance, and administrative costs (CMA) grant. This revision conforms to priorities established by ORR in FY 1991.

Subpart E—Refugee Cash Assistance

Section 400.62 is amended to require that refugee cash assistance (RCA) begin on the same date, in relation to the date of application, as assistance under the program of aid to families with dependent children (AFDC) would begin under the State's plan for AFDC. For example, if a State has opted under its AFDC plan to provide assistance no later than the date of authorization or 30 days after the receipt of an application, whichever is earlier, then that same rule will apply regarding RCA. This provision prohibits a State from adopting this rule for AFDC but paying assistance retroactive to the date of application for RCA. This provision thus assures that RCA and AFDC applications and assistance in a given State are treated equitably.

Subpart F—Requirements for Employability Services, Job Search, and Employment

Section 400.70 is revised by removing references to refugees who are applicants or recipients of AFDC or GA.

Section 400.71 is amended by adding a definition of the term ''Family self-sufficiency plan''.

Section 400.75(a)(1) is amended by requiring, as a condition for receipt of refugee cash assistance, that a refugee who is not exempt under § 400.76 must participate in employment services within 30 days of receipt of aid.

Section 400.76(a)(7) is amended by exempting from participation in employment services and acceptance of appropriate employment, a parent or other caretaker relative of a child under age 3, rather than age 6, who provides full-time care of the child.

Section 400.76(a)(9) is amended by exempting a pregnant woman from registration and participation in employment services if the child is expected to be born within the next 6 months, instead of the next 3 months.

The proposed changes in §§ 400.76(a)(7) and (a)(9) would make ORR policy consistent with the requirements of the Job Opportunities and Basic Skills Training (JOBS) program contained in the Family Support Act of 1988, Pub. L. No. 100–485 (42 U.S.C. § 602(a)(19)).

Section 400.79(a) is amended to emphasize that an employability plan must be developed as part of a family self-sufficiency plan where applicable for each non-exempted recipient of refugee cash assistance in a filing unit.

Section 400.80 is revised by replacing the existing job search requirement with the provision that a State must require job search for employable refugees where appropriate. Other references in the regulation to job search at §§ 400.75(a)(2), 400.76(b), 400.79(c)(3), 400.82, and 400.156(a) are removed.

Section 400.82(b)(3) is amended by removing the paragraph on conciliation.

Section 400.83 is amended by adding the paragraph on conciliation from § 400.82 and changing the heading to ''Conciliation and fair hearings''.

Subpart G—Refugee Medical Assistance

Section 400.94(a) is amended by clarifying that a State must determine Medicaid eligibility under its Medicaid State plan for each individual member of a family unit that applies for medical assistance. This is to clarify that if any individual in a family unit is eligible for medical assistance under a State's title XIX plan, then the State must provide that assistance under Medicaid and not

RMA. For example, under sections 1902(a)(10) and 1902(l) of the Social Security Act, certain children under age 19 who were born after September 30, 1983, may be eligible for Medicaid even though their parents are eligible for refugee medical assistance. Assistance may not be provided to such children under RMA if they are eligible under Medicaid.

Section 400.100(d) is amended to clarify that only those recipients of refugee cash assistance who are not eligible for Medicaid are eligible for refugee medical assistance.

Section 400.104 is revised by removing the existing provision for extended RMA for recipients who receive increased earnings from employment and replacing it with a provision that would enable RMA recipients who receive earnings from employment to continue to receive RMA until they reach the end of their time-eligibility period, in accordance with § 400.100(b). The provision also requires that in cases where a refugee obtains private medical coverage, any payment of RMA for that individual must be reduced by the amount of the third party payment. Section 400.106 is amended to clarify that a State may provide additional medical services to refugees who are determined eligible under § 400.94 only to the extent that sufficient appropriated funds are available to enable ORR to reimburse costs for refugee Medicaid recipients. Beginning in FY 1991, ORR had to cease reimbursements to States for the costs of assistance to refugee recipients of AFDC, SSI, and Medicaid due to insufficient appropriated funds. We want to make clear that additional services under § 400.106 may not be provided to refugee Medicaid recipients with refugee funding as long as appropriated funds continue to be insufficient to enable ORR reimbursements to States for these costs.

Section 400.107 is amended by replacing the words ''health assessments'' with the words ''medical screening'', the term used in the INA.

Subpart I—Refugee Social Services

Section 400.140 is amended to clarify that the requirements in subpart I apply only to formula allocation grants to States.

Section 400.141 is amended by removing references to title XX social services. We have removed references to title XX services in this section and in §§ 400.152, 400.153, and 400.155 in order to limit the scope of services allowable under refugee social services to those services that are most in keeping with the goals and priorities of the refugee program.

Section 400.145 is amended by adding the requirement that a State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.

Section 400.146 is revised by removing the current requirement that a State must use at least 85 percent of its social service grants to provide employability services if a State's dependency rate is 55 percent or more and by replacing it with a general requirement that a State must use its social service grants primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. The proposed revision is intended to provide States greater flexibility in determining how to best allocate refugee resources in keeping with refugee service needs. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

Section 400.147 is revised by establishing client priorities for services in the following order of priority, except in the most extreme circumstances: (1) All newly arriving refugees during their first year in the U.S., who apply for services; (2) refugees who are receiving cash assistance; (3) unemployed refugees who are not receiving cash assistance; and (4) employed refugees in need of services to retain employment or to attain economic independence. Assignment of first priority to newly arriving refugees is intended to ensure that these refugees receive timely services and are not placed on waiting lists for core refugee services.

Section 400.152 is amended by removing references to title XX services and by revising paragraph (b) to limit the provision of social services, with the exception of referral and interpreter services, to refugees who have been in the U.S. for 60 months or less, except that refugees who are receiving employability services, as defined in § 400.154(a), as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S. As of the effective date of this requirement, the time-limitation on services will apply regardless of which fiscal year of funding is used to provide the services.

Section 400.153 regarding the provision of title XX social services is removed and reserved.

Section 400.154 is amended by adding the development of a family self-sufficiency plan as an allowable service under § 400.154(a). Section 400.154 is also amended to clarify under § 400.154(g) that day care as an allowable service means day care for children. Section 400.154 is further amended by revising paragraph (h) to allow transportation as a job-related expense and by removing the note after paragraph (j) which allows case management costs to be charged against the CMA grant. Because of funding limitations, case management costs may not currently be charged against the CMA grant.

Section 400.155(b) is amended to clarify that outreach services may include activities designed to explain the purpose of available services and to facilitate access to these services.

Section 400.155(c)(1) is amended to clarify that assessment and short-term counseling may be provided to families as well as individual persons.

Section 400.155(d) is amended to clarify that day care as an allowable service means day care for children.

Section 400.155(h) is revised by removing title XX social services from the list of allowable services under refugee social services and by adding, as an allowable service subject to the approval of the Director of ORR, any additional service aimed at strengthening the ability of refugee individuals, families, and refugee communities to achieve and maintain economic self-sufficiency, family stability, and community integration. An example of an allowable service under this provision would be the provision of technical assistance and organizational development training to strengthen the capability of refugee mutual assistance associations (MAAs) to provide employment-related and other services to refugees.

Section 400.156 is amended by revising the heading to read ''Service requirements'' and by amending § 400.156(b) to clarify that, in planning services, States must take into account the reception and placement (R & P) services provided by resettlement agencies in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative. Section 400.156 is also amended by adding new requirements that States must implement: (1) English

language instruction must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services; (2) refugee-specific services must be provided, except in the case of vocational or job skills training, on-the-job training (OJT), or English language training, which are specifically designed to meet refugee needs and are in keeping with the rules and objectives of the refugee program; (3) services must be provided to the maximum extent feasible in a manner that is culturally and linguistically compatible with a refugee's language and cultural background; (4) services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women; and (5) a family self-sufficiency plan must be developed for anyone who receives employment-related services funded under this part. Providing services in a manner that is culturally and linguistically compatible means that an agency providing services funded under this part must employ or contract with staff who (1) speak the native language of and (2) are either from the same ethnic background as, or are culturally knowledgeable of, the refugee populations the agency serves.

Subpart J—Federal Funding

Sections 400.203 and 400.204 are amended by clarifying that Federal funding is available for the cash and medical assistance programs described in these sections only to the extent that sufficient funds are appropriated. We have added this clarification in light of the steady decline in Federal refugee funding for the State share of aid to families with dependent children (AFDC), supplemental security income (SSI), Medicaid, and general assistance (GA) which began in FY 1986 and has resulted since FY 1991 in no ORR reimbursement to States for the State share of these programs due to insufficient appropriated funds.

Section 400.206 is amended by changing the heading to ''Federal funding for social services and targeted assistance services'' and by adding a paragraph on Federal funding for targeted assistance services.

Section 400.207 is revised to clarify that Federal funding is available for reasonable and identifiable administrative costs of providing only those assistance and service programs for which Federal funding is currently made available under the refugee program. Thus Federal funding under 45 CFR Part 400 is not available at this time for administrative costs related to the provision of AFDC, Medicaid, GA, or SSI to refugees. This section is further revised to limit the administrative costs that a State may claim to those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families.

Section 400.10 is revised to clarify time limits for obligating and expending funds as well as for submitting final financial reports on expenditures of CMA grants and social service and targeted assistance grants.

Subpart J is amended to prohibit the use of funds under this part for travel outside the United States, without the written approval of the Director.

Subpart K—Waivers

Subpart K is amended by revising the heading to read ''Waivers and Withdrawals'' and by revising § 400.300 to allow for a more flexible waiver policy in keeping with Executive Order No. 12875, issued on October 26, 1993, which calls for increased flexibility for State and local waivers. In addition, a new § 400.301 is added which requires that if a State decides to cease participation in the refugee program, the State must provide 120 days advance notice to the Director before withdrawing from the program. Section 400.301 clarifies that in order to participate in the refugee program, a State is expected to operate all components of the refugee program. In the event that a State wishes to retain responsibility for only part of the refugee program, it must obtain prior approval from the Director of ORR. Such approval will be granted only under extraordinary circumstances and if it is in the best interest of the Government. Section 400.301 also provides that when a State withdraws from all or part of the refugee program, the Director may authorize a replacement designee or designees to administer the provision of assistance and/or services, as appropriate, to refugees in that State. Pursuant to the statutory authority in 412(c)(1)(A) and 412(e)(1) of the INA to provide grants to, and contracts with, public or private non-profit agencies for services, cash assistance, and medical assistance to refugees, the Director may authorize a designee to administer the refugee program in place of a State when the State chooses not to participate in the refugee program. This authority is different from the statutory authority in 412(e)(7) of the INA which permits the Director to authorize the development and implementation of alternative projects under the Fish/Wilson program. Section 301 further establishes that a replacement designee must adhere to the same regulations under this part that apply to a State-administered program, with the exception of the following provisions: 45 CFR 400.5(d), 400.7, 400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i), 400.94(a), 400.94(b), 400.94(c), and subpart L.

Subpart L—Targeted Assistance

Section 400.310 establishes that the basis and scope of this subpart is to set forth requirements concerning formula allocation grants to States under 412(c)(2) of the INA for targeted assistance.

Section 400.311 establishes a definition for ''targeted assistance grants''.

Section 400.312 requires that a State must provide any individual wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.

Section 400.313 requires that a State must use its targeted assistance grant primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

Section 400.314 establishes client priorities for targeted assistance services in the following order of priority, except in the most extreme circumstances: (1) Cash assistance recipients, particularly long-term recipients; (2) unemployed refugees who are not receiving cash assistance; and (3) employed refugees in need of services to retain employment or to attain economic independence.

Section 400.315 establishes that the same standards and criteria that are applied in the determination of eligibility for refugee social services under §§ 400.150 and 400.152(a) shall be applied in the determination of eligibility for targeted assistance services. Section 400.315 limits the provision of targeted assistance services, except referral and interpreter services, to refugees who have been in the U.S. for 60 months or less, except that refugees who are receiving employability services, as defined in § 400.316, as of September 30, 1995, as

part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S. As of the effective date of this requirement, the time-limitation on services will apply regardless of which fiscal year of funding is used to provide the services.

Section 400.316 establishes that a State may provide the same scope of services under targeted assistance as may be provided under refugee social services under §§ 400.154 and 400.155, with the exception of § 400.155(h). Since the purpose of the targeted assistance program is to direct resources to localities that have large refugee populations and high use of public assistance by refugees, our intent is to focus the use of targeted assistance funds on employability services aimed at economic self-sufficiency, while providing States and counties some flexibility to use the funds for non-employment-related services. Thus, we have included the non-employment-related services that are allowable under § 400.155, but have not included the new category of services that has been added under § 400.155(h), which includes services to strengthen family and community.

Section 400.317 establishes that a State must adhere to the same limitations and restrictions in the provision of targeted assistance services as are applied to the provision of refugee social services under § 400.156.

Section 400.318 establishes that eligible grantees under the targeted assistance program are those agencies of State governments which are responsible for the refugee program under § 400.5 in States containing counties which qualify for targeted assistance awards. Section 400.318 also establishes that the use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

Section 400.319 establishes that a State with more than one qualifying targeted assistance county may allocate its targeted assistance funds differently from the formula allocations for counties presented in the ORR targeted assistance notice in a fiscal year, only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. Section 400.319 also establishes that a State must assure that not less than 95 percent of the total award to the State is made available to the qualified county or counties, except in those cases where the qualified county or counties have agreed to let the State administer the targeted assistance program in the county's stead.

Discussion of Comments Received

Fifty-two letters of comments were received in response to the notice of proposed rulemaking published in the **Federal Register** on August 12, 1994. The commenters included State and local governments, national and local voluntary agencies, refugee mutual assistance associations, and refugee service providers. These comments were taken into consideration in the development of this final rule.

The comments are summarized below and are followed in each case by the Department's response.

Effective Date

Comment: Six commenters expressed concern over the effective date for the regulation of October 1, 1994, which appeared in the NPRM. Two of the commenters suggested that the rule should be effective no sooner than 90 days after the issuance of the final regulation. Another commenter suggested an effective date that would allow sufficient time for careful consideration of the comments.

Response: The inclusion in the NPRM of an October 1, 1994, effective date for a final rule was an error. We want to assure the commenters that ORR had no intention of imposing an October 1, 1994, effective date. The effective date for this final rule will be October 1, 1995.

Comments on Subpart A

§ 400.2: *Comment:* Eight commenters expressed opposition to limiting the definition of case management to the referral and tracking of refugee participation in employability services. One commenter supported the proposed elimination of case management for non-employment-related purposes. Commenters expressed concern that the narrowed definition would remove the ability to case manage a wide range of services needed to fully assist refugee families to overcome barriers to self-sufficiency. Several commenters were concerned that the proposed change in definition would preclude coordinating services for the entire family, regardless of employability status. One commenter pointed out that the proposed change runs counter to ORR's emphasis on strengthening families.

Response: After considering these comments, we have decided to drop the change in definition and allow case management to continue to be used to refer and track refugee participation in non-employment-related services, as well as employment-related services. However, we feel strongly that case management should be provided in combination with a package of services leading to employment and self-sufficiency.

Comments on Subpart B

§ 400.4(b): *Comment:* One commenter objected to the requirement that a State must certify no later than 30 days after the beginning of each fiscal year that the approved State plan is current and continues in effect. The commenter recommended that States be given 90 days to provide certification.

Response: If a State requires more time to prepare the certification, since the due date will remain the same each year and thus will be known, a State can allow itself the time it needs by simply starting the preparation as early as needed before the due date.

§ 400.5(h): *Comment:* We received 5 comments on this provision. One commenter objected to the inclusion of local community service agencies in quarterly meetings as impractical and unwieldy. Another commenter, while agreeing with this provision, recommended giving States the flexibility to request meeting less frequently or using telephone conference calls to better use State resources to meet the needs of local communities in the most appropriate manner. A third commenter also called for flexibility, suggesting that meetings should be scheduled in a manner that accommodates State and local resources and activities. One commenter expressed concern that administrative costs would be greatly increased in carrying out these meetings when the numbers of refugees being placed in the State are expected to diminish. Another commenter felt that ORR should clarify the State's role and responsibilities in this effort. The commenter pointed out that the State can facilitate planning efforts and can act in an oversight capacity regarding resettlement within the State, but it cannot enforce coordination efforts.

Response: We believe the benefit of including local community service agencies in quarterly meetings to enable all agencies that serve refugees to be informed and prepared for anticipated arrivals more than offsets any logistical difficulties a State may experience in

organizing such meetings. Regarding flexibility with respect to the frequency and holding of meetings, we are certainly willing to work with States to consider alternative approaches, as necessary. If a State believes it has good reason for holding fewer meetings, using conference calls in lieu of meetings, or using other alternatives to quarterly meetings, a State may request an exemption to this requirement, as described in this provision.

Regarding the State's role under this provision, we agree with the commenter that the State's role is to facilitate coordination, not to enforce it.

§ 400.11(b): *Comment:* One commenter recommended an effective date of October 1, 1995, for submission of a yearly CMA estimate. The commenter also requested input into the development of the form.

Response: We agree with the commenter; the effective date for this provision is October 1, 1995. As § 400.11(b) indicates, States will have to submit yearly CMA estimates in accordance with guidelines prescribed by the Director of ORR, in lieu of a form. As ORR develops these guidelines, States will have an opportunity to provide input and review before the guidelines are made final.

§ 400.11(b)(2): *Comment:* Seven commenters commented on this provision. One commenter objected to the change in due date for the annual services plan since no replacement date was indicated in the NPRM. Two commenters felt a specific date needs to be given. Another commenter agreed with changing the due date. One commenter wondered if the due date for submission will change periodically for all States or whether the due date could vary for each State. While one commenter supported the emphasis on a local consultative process in the planning of services, another commenter recommended the inclusion of a waiver option regarding local consultation. The commenter recommended that States be given the option of determining an appropriate process for local input in the planning process. One commenter suggested that ORR strongly encourage the inclusion of State and local health departments in the ongoing planning of refugee resettlement services. Another commenter, requesting clarification, pointed out that ORR State Letter 94–13 indicates that the Annual Services Plan is to be submitted on the revised Quarterly Performance Plan (QPR), thus eliminating the Annual Services Plan. Another commenter wanted clarification on whether ORR wants the services plan to reflect prospective services planned, based on a needs assessment, or actual services funded. The commenter recommended reporting actual services funded.

Response: The Annual Services Plan has not been eliminated. ORR State Letter 94–13 simply instructs States to submit the Annual Services Plan in Schedule A, as part of the fourth quarter QPR submission. Therefore, the new due date for the Annual Services Plan is November 15 of each year, as stated in ORR State Letter 94–13. Regarding whether the services plan should reflect services planned, based on a needs assessment, or actual services funded, the instructions for Schedule A of the QPR ask for a reporting of actual services funded.

We do not agree with the commenter's suggestion that States should be allowed the option of waiving local consultation in the development of a services plan. Regarding States having the option of determining an appropriate process for local input in the planning process, it is up to each State to determine what process it wants to use; the method for obtaining local consultation is not prescribed. We agree that State and local health departments should be included in the local consultation process in the planning of services and we strongly encourage States to do so.

§ 400.11(b)(3): *Comment:* One commenter indicated that it is unclear what the phrase ''quarterly estimates required in paragraph (b)(1)'' refers to when § 400.11(b)(1) requires a yearly, not quarterly, estimate.

Response: We thank the commenter for pointing out this discrepancy. We have revised this provision by deleting the word ''quarterly''.

§ 400.11(c): *Comment:* Six commenters addressed this provision. One commenter objected to the 30-day due date for the 4th quarter financial report and recommended a 90-day due date. Another commenter concurred. One commenter suggested a 45-day or 60-day due date. One commenter pointed out that RMA expenditure claims are difficult to obtain within the 30-day time frame and that States need 12 months after the end of the fiscal year to liquidate all obligations incurred through the end of the fiscal year. Another commenter indicated that the due date would require the State to estimate CMA expenditures with two months less of actual expenditure data, resulting in less accurate reporting. Another commenter expressed concern that this rule change could have an impact on Federal funding for the State. This commenter was concerned that contract obligations might be outstanding and recommended that the close-out date should continue to be December 30 of each year.

Response: Since States will continue to have until one year after the end of the fiscal year in which the Department awarded the grant to liquidate obligations and to submit a final financial report for CMA, and two years after the end of the fiscal year in which the Department awarded the grant to liquidate obligations and to submit a final financial report for social services and targeted assistance formula funds, we do not see a compelling reason to change the 30-day due date for the 4th quarter financial report. We understand that States may have to base their 4th quarter report on a shorter period of actual expenditure data than was the case under the current due date. The 30-day due date for the 4th quarter report will have no impact on Federal funding to the State and should have no impact on the time frame for liquidating obligations and closing out contracts since the one-year and two-year time frames described above and as stated in § 400.210 remain in effect.

§ 400.13(d): *Comment:* Three commenters expressed concern about this provision. Two commenters felt that States should be allowed to charge case management costs to CMA. One of the commenters felt that the program would be well-served by using CMA funds for this purpose especially in light of the early employment emphasis of the regulations. Another commenter recommended that States be allowed to use CMA funds to purchase equipment, software, and consultation services to establish and maintain a case management system. One commenter expressed concern that the prohibition against using CMA funds for case management could cause a State to spend State funds for some case workers and other administrative costs in the CMA program. In one State, State law has prohibited the expenditure of State funds for the refugee program. The CMA restriction could cause the State to be liable for possible Federal exceptions.

Response: In FY 1991, ORR established priorities for reimbursement under CMA since insufficient appropriated funds were available to reimburse costs in all CMA categories. The priority areas to be reimbursed included costs for (1) unaccompanied minors, including any allowable administrative costs of the unaccompanied minors program, (2) RCA and RMA costs and associated administrative costs, and (3) allowable administrative costs incurred for the overall management of the State refugee program. Lower priority categories included (4) the State share of allowable

costs for AFDC, Medicaid, SSI, and foster care payments under title IV–E of the Social Security Act and lastly (5) case management costs during an RCA recipient's first 12 months in the U.S. or an AFDC recipient's first 4 months in the U.S. Since FY 1991, ORR has not had sufficient appropriated funds available to reimburse States for the costs of either category (4) or (5). Thus the prohibition against using CMA funds for case management has been in effect since FY 1991. We do not anticipate any increase in the level of appropriated funds for CMA in the foreseeable future to enable any change in policy regarding reimbursable CMA categories.

Regarding the commenter's concern about liability for possible Federal exceptions, the commenter is right to be concerned. If the State has been inappropriately charging case management costs to CMA, the State is indeed at risk of possible audit disallowances.

Comments on Subpart C

§ 400.25: *Comment:* One commenter observed that § 400.25 which states that a State may not impose requirements as to duration of residence as a condition of participation in the State's program of assistance or services may be in conflict with the 36- and 60-month time-limitation proposed for social services and targeted assistance.

Response: This provision is not in conflict with the time-limitation requirement for services in §§ 400.152 and 400.315. The prohibition against duration of residence requirements in § 400.25 means that a State may not impose a requirement that a refugee must have resided in the State for a required period of time before qualifying for assistance or services.

Comments on Subpart E

§ 400.62: *Comment:* Two commenters expressed support for making the RCA start date in relation to the date of application congruent with AFDC policy, while another commenter objected to this requirement, expressing concern that this requirement would be in conflict with State law in his State because the Home Relief program, which corresponds to the refugee program, has a different requirement than the AFDC program. The commenter recommended deleting this requirement or allowing for a waiver. One of the commenters suggested that ORR and the States should provide clear direction and training to ensure that clients are not penalized by faulty enrollment or eligibility determination procedures that result in delays in receipt of assistance.

Response: Regardless of whether there might be a conflict with State law, a State would be expected to comply with this Federal requirement. The commenter's point regarding the need for clear direction and training to avoid delays in receipt of assistance is well-taken. We agree that States should take measures to ensure that eligibility determination procedures result in timely receipt of assistance.

Comments on Subpart F

§§ 400.71 and 400.79: *Comment:* Two commenters requested clarification on the definition of what constitutes a family. Another commenter recommended that States be allowed to define family broadly to include everyone in a household. One commenter felt that the concept of family self-sufficiency plans needs to be defined more fully to ensure some consistency in the implementation of this provision. One commenter said that family self-sufficiency plans are welcome as long as all employable family members are included in the plan. Another commenter asked whether family self-sufficiency plans would only be required for RCA clients or be required for refugee AFDC clients as well. One commenter requested clarification on whether individual employability plans must also be developed for recipients of AFDC and GA. One commenter felt that it is unclear what should be included in a family self-sufficiency plan and how States should monitor the development and implementation of such a plan. Another commenter suggested putting out guidelines to providers to give them concrete strategies regarding the development of family self-sufficiency plans.

Response: In order to be consistent with how ORR counts families who move off aid, we define a family as those individuals included in a cash assistance filing unit whose needs are taken into account when determining the payment level for the filing unit. Using this definition, a family could constitute a one-person unit as in many RCA cases. States have the flexibility, however, to define family more broadly to include everyone in a household if it so chooses.

We define a family self-sufficiency plan as a plan that includes (1) a determination of the total amount of income a particular family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family, as a part of (2). Providers should focus on the family, not the individual refugee, as the unit of intervention. Individual employability plans for members of the same family, therefore, should be kept together as part of the family self-sufficiency plan under one case file. We believe family self-sufficiency plans should be developed with the involvement of every employable family member, not just the primary wage earner, to the extent possible.

We appreciate the commenter raising the question of whether family self-sufficiency plans are to be required only for RCA recipients or for refugee AFDC recipients as well. We intend family self-sufficiency plans to be required for anyone who receives employment-related services funded by the refugee program, including recipients of RCA, AFDC, SSI, and GA, as well as refugees who are not receiving cash assistance but who apply for employment-related services. Thus, while references to family self-sufficiency plans in §§ 400.71 and 400.79 apply only to RCA recipients, we have added a provision under § 400.156(g) which requires the development of a family self-sufficiency plan for anyone who participates in refugee program-funded employment-related services. We would expect agencies to coordinate the development of family self-sufficiency plans to avoid duplication of effort if a family self-sufficiency plan for a refugee client already exists.

States should monitor the development and implementation of family self-sufficiency plans in the same manner as they would monitor the development and implementation of employability plans: by conducting a case file review as part of a State's on-site monitoring.

ORR does not plan to issue national guidelines on family self-sufficiency planning. However, some States have developed guidance on family self-sufficiency planning for use within their States.

§ 400.75: *Comment:* One commenter wondered if the requirement for participation in employment services within 30 days of receipt of aid could be required of refugees on AFDC as well. Another commenter asked if non-compliance would result in a client sanction or a negative program review. One commenter expressed concern that the level of funding might be inadequate, resulting in employment

services only to RCA refugees to the exclusion of AFDC recipients. The commenter recommended requiring participation in employment services within 30 days of receipt of aid only if funding is available. Another commenter was concerned that the level of funding might be insufficient to provide services to all RCA refugees and recommended that the rule be revised to require States to include an assurance in their State plan that newly arrived refugees will be enrolled promptly in employment services.

Response: The provisions under subpart F, including the requirement for participation in employment services within 30 days of receipt of aid, apply only to RCA recipients; these regulations do not apply to recipients of AFDC. The AFDC program, administered by the Office of Family Assistance, is governed by separate regulations under 45 CFR Chapter II. However, we refer the commenter to 45 CFR 233.100(a)(6), which requires that within 30 days after the receipt of aid under the AFDC-UP program, unemployed principal earners will participate or apply for participation in a JOBS program.

Non-compliance with § 400.75 would result in a client sanction or a negative program review. Regarding funding availability, we believe it would be a rare situation where service funds would not be sufficient to provide services to all RCA recipients in accordance with § 400.75.

§ 400.76: *Comment:* Two commenters strongly supported ORR's proposal to make exemption requirements consistent with JOBS requirements, while two commenters opposed exempting a parent or caretaker who has a child under 3 years of age and opposed exempting pregnant women from registration and participation in employment services if the child is expected to be born within 6 months. One of the commenters felt that welfare parents should be required to use child care, as non-welfare parents do, in order to work. The commenter also expressed the view that since many non-welfare women continue to work until their 8th month of pregnancy, welfare recipients should not be exempted from participation because of pregnancy. Two commenters expressed concern about the availability of affordable day care. One commenter was concerned that a single parent would not be able to afford day care costs. Another commenter felt that ORR should take into consideration the possible hardship that families may experience finding suitable child care for non-school age refugee children.

Response: We believe the criteria for exemptions from participation in the refugee program should be as consistent as possible with the criteria for exemptions in the JOBS program in order to maintain equity among welfare clients. While we recognize the potential problems that some refugee families may experience finding suitable and affordable child care, we believe there are a number of options available to refugee families for securing subsidized child care through ORR-funded day care or through the JOBS program.

§ 400.80: *Comment:* Six commenters wrote in support of elimination of the job search requirement. We received no comments opposing elimination of this requirement.

Response: We continue to believe that job search is an appropriate activity for certain types of refugees and should be required as part of a refugee's employability plan in such cases. Therefore, we have decided to modify § 400.80 accordingly instead of totally eliminating this requirement. A refugee who refuses to carry out job search would be subject to sanction, in accordance with § 400.77, if job search is a required service in the refugee's employability plan.

§ 400.83: *Comment:* One commenter recommended that since one State has already obtained ORR approval to modify its timeframe for the conciliation period, this provision should be revised to accommodate the State's method of handling the conciliation period.

Response: A revision is not necessary. The State in question was granted a waiver to this provision a few years ago. This waiver is not affected by this regulation.

§ 400.94(a): *Comment:* One commenter was opposed to requiring refugees to be screened for Medicaid eligibility first. Another commenter expressed concern that the requirement to determine the Medicaid eligibility of every individual in an RMA family instead of making a single determination for the family as a unit could have the potential for increased administrative costs as a result of implementing this new method of determination.

Response: The revision in § 400.94(a) does not represent a change in policy; it is simply a clarification of a regulation that has been in effect since its publication as a final rule in the **Federal Register** (54 FR 5480) on February 3, 1989. Therefore, States that are not making Medicaid eligibility determinations for refugees who apply for medical assistance, or are not making Medicaid determinations for each member in a family unit, should take immediate steps to comply with the requirements under § 400.94(a).

§ 400.100(d): *Comment:* One commenter objected to the provision that only those recipients of RCA who are not eligible for Medicaid are eligible for RMA. The commenter expressed concern that RMA may be eliminated in one State because all RCA recipients in the State are eligible for Medical Assistance (MA). The commenter also questioned whether this provision refers to all MA benefits or only Federally mandated or reimbursed MA benefits. Another commenter pointed out that it is essential to ensure that refugees on RMA who are eligible for partial Medicaid benefits are not denied RMA coverage for medical treatment that is not covered by the partial Medicaid coverage.

Response: This provision is simply a restatement or clarification of current policy and refers only to Federally reimbursed benefits under title XIX of the Social Security Act. Regarding RMA coverage for refugees who are eligible for partial Medicaid benefits, since § 400.100(d) does not represent a change in policy, States should continue handling these cases as they do under current policy.

§ 400.104: *Comment:* Twenty-four commenters indicated support for this provision. Two commenters questioned whether a refugee would be required to accept private insurance, if the employer offered the insurance at a cost. One commenter asked if States would be required to impose penalties for refusal to accept private medical coverage. In cases where private insurance only covers the employee, one commenter wondered whether remaining family members would be able to continue on RMA. Three commenters recommended that instead of terminating RMA once private insurance is obtained, RMA could be billed only after any and all private insurance payments were accessed, as is the arrangement in the Medicaid program. One commenter noted that the proposed rule suggests that RMA recipients would be eligible for RMA through the 8th month, regardless of the reason for their ineligibility. The commenter questioned whether RMA recipients would be eligible for continued RMA if they began receiving unearned income or acquired excess resources that would make them ineligible for RMA.

Response: An RMA recipient who becomes employed would not be required to accept health insurance offered by his/her employer; if an RMA recipient chooses not to accept private

insurance, his/her eligibility for continued RMA would not be affected. If an employed RMA recipient obtains private health insurance which covers self only, the remaining family members, if they were RMA recipients, could continue to receive RMA for the full time-eligibility period. Unearned income or excess resources would only be a factor in determining initial eligibility for RMA; once a refugee becomes an RMA recipient, however, he/she would be eligible for continued RMA regardless of whether he/she began receiving unearned income or acquired excess resources.

After considering the commenters' recommendation, we have revised the rule to allow an RMA recipient who becomes employed to continue to receive RMA for the full time-eligibility period, regardless of whether the recipient obtains private medical coverage. However, we have revised this provision to require in cases where a refugee obtains private medical coverage, that RMA payment must take into consideration any third party payments. This policy is similar to Medicaid policy set forth in Medicaid regulations at 42 CFR 433.139.

§ 400.106: *Comment:* One commenter asked for clarification as follows: The preamble states that ''* * * additional services under § 400.106 *may not* (emphasis added) be provided to refugee Medicaid recipients with refugee funding as long as appropriated funds continue to be insufficient to enable ORR reimbursements to States for these costs,'' while the actual proposed regulation states that ''the State *may* (emphasis added) provide to refugees who are determined eligible under §§ 400.94, only to the extent that sufficient funds are appropriated, or 400.100 of this part the same services through public facilities.''

Response: The meaning is the same; the main point is that appropriated funds have not been sufficient to enable ORR reimbursement for refugees eligible under § 400.94 (Medicaid) since FY 1991, thus additional medical services to refugee Medicaid recipients under § 400.106 may not be provided with ORR funding.

§ 400.107: *Comment:* Four commenters recommended the continued use of the term ''health assessment'' instead of the term ''medical screening'', while one commenter supported the change of wording. One commenter felt it was unclear whether the change in terms implied a change in definition. Two commenters stated that the use of the term ''medical screening'' implies that health assessments can only be done by physicians when in practice non-physician health care providers are the primary resource used for conducting health assessments. One commenter expressed concern that the term ''medical screening'' may blur the distinction between initial assessment and actual provision of medical care. The commenter felt that the term implied a more comprehensive service than will be provided and that it is important to distinguish that a public health setting is not a comprehensive care delivery setting. Two other commenters felt that the word ''screening'' is inaccurate to describe the set of health services needed in domestic resettlement. A screening should be understood as one component of a more comprehensive set of services. One commenter requested that ORR provide a definition of medical screening which would allow current practices to continue.

Finally, one commenter indicated that a review of the Immigration and Nationality Act did not reveal the use of the term ''medical screening'' in relation to domestic health assessments.

Response: We have chosen to use the term ''medical screening'' in place of the term ''health assessment'' simply to be consistent with the language of the INA. Section 412(b)(5) of the INA authorizes the Director ''to make grants to, and enter into contracts with, State and local health agencies for payments to meet their costs of providing medical screening and initial medical treatment to refugees.'' The use of the term ''medical screening'' is in no way intended to suggest that ORR believes that health assessments/medical screenings must be performed by physicians instead of non-physician health care personnel.

We have been working with State refugee health coordinators and the Centers for Disease Control and Prevention during the past year to develop a medical screening protocol, as required under § 400.107(a)(1), that clearly defines what are allowable services under medical screening. We intend to issue this protocol later this fiscal year.

Comments on Subpart I

§§ 400.141, 400.152, and 400.153: *Comment:* One commenter felt that the elimination of title XX services as allowable for refugee program funding would be damaging to the community. One commenter recommended that references to title XX be retained in ORR regulations to enable refugees to access services which they might not otherwise to able to access because of the absence of bilingual staff and limited resources. Another commenter supported the elimination of title XX services. One commenter assumed that the elimination of title XX services from the list of allowable services was intended to increase State and local flexibility in the provision of services. The commenter questioned whether flexibility would, in fact, be increased or whether the elimination would serve as an impediment to flexibility. Another commenter questioned what title XX services ORR considers inappropriate.

Response: As we indicated in the NPRM, the purpose of eliminating title XX services from the list of allowable services that may be provided with ORR funding is to limit the scope of refugee program services to those services that are most in keeping with the goals and priorities of the refugee program. Our intention is to sharpen the focus of refugee funding, not necessarily to increase State flexibility. We do not believe that the full range of allowable services under the title XX program is consonant with the major priorities of the refugee program. We have included in our list of allowable refugee social services those title XX services which we believe fit with the goals and purpose of the refugee program. However, there are other title XX services that we believe go beyond ORR priorities. For example, ORR does not believe that title XX services such as preparation and delivery of meals and day care services for adults fall within the main priorities of employment and economic self-sufficiency in the refugee program. While we believe there are refugees who may need these services, we believe these services should be accessed through the State's title XX program instead of through the refugee program. At the same time we agree with the commenter that refugees often have difficulty accessing mainstream services because of the lack of culturally and linguistically appropriate services. ORR intends to work with other Federal programs over the next few years to increase refugee access to these services. We strongly encourage States to do the same at the State level.

§ 400.145: *Comment:* Six commenters wrote in support of requiring States to insure that women have the same opportunities as men to participate in training and instruction, as required in the Immigration and Nationality Act. One commenter, however, wondered why equal opportunity for employment placement was not included. The commenter also expressed concern that unless child care and transportation are provided for women, equal opportunity for services would be moot. Another commenter, while supporting the

provision, cautioned that ORR, in monitoring this requirement, should not assume that equal opportunity necessarily results in equal participation. The commenter felt that ORR tends to equate unequal participation with unequal access. Another commenter suggested that in light of the proposed time-limitation for service eligibility, the regulation should clearly state that pregnant women who wish to participate in employment services should have access to them, even though they may be exempt from participation under § 400.76(a)(9). One commenter suggested that services to women should be provided within the context of a family self-sufficiency plan.

Response: We agree that refugee women should have equal opportunity to participate in all services, including employment placements. In the proposed rule, we used the phrase ''to participate in training and instruction'' to be consistent with the language in the INA. However, to more clearly convey our intent to provide women equal opportunity for all services, we have revised § 400.145 in the final rule to read: ''A State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.''

We concur that services to women should be provided within the context of a family self-sufficiency plan, as should services to refugee men and other employable members of a family. As part of that self-sufficiency plan, we would expect States to make sure that service providers make every effort to arrange transportation and child care for those women who are not able to participate in services without such assistance. We agree with the commenter that without these supportive services equal access to services would be unattainable for many women.

We also agree with the comment that equal access does not necessarily result in equal participation. The emphasis, in our mind, is on providing to refugee women the same opportunity to participate in services as refugee men have. We understand that providing access to services does not guarantee that refugee women will necessarily choose to participate in services or employment placement due to certain cultural constraints. On the other hand, since ORR regulations require that all employable refugee women, with the exception of those who meet the exemption requirements of § 400.76, must participate in employment services, we would not expect to see a great disparity in participation between refugee men and women.

Given the time-limitations for service eligibility that will go into effect with this final regulation, we agree with the comment that pregnant women who wish to participate in employment services may access these services, even though they may be exempt. Section 400.75(b) already requires that a State must permit anyone in any of the exempted categories under § 400.76 to register for employment services if he/she so chooses.

§ 400.146: *Comment:* Eight commenters concurred with the elimination of the 85/15 rule that required any State with a refugee welfare dependency rate of 55% or more to use 85% of its social service funds for employability services and no more than 15% of its social service funds for non-employment-related services.

Three commenters wrote in support of the requirement that employment services must be designed to enable refugees to obtain jobs with less than one year's participation in services. Another commenter disagreed with the prohibition against vocational training that lasts for more than a year or education programs that are not intended to lead to employment within a year, stating that many refugees receiving AFDC will not be able to become self-sufficient in one year due to limited English language ability and job skills. The commenter requested a later effective date if this provision were made final. One commenter requested clarification on whether ESL is considered an educational program and if the one year starts at the beginning of the educational program or at the end of the educational program. Another commenter recommended that a percentage of funds be allowed for the purchase of selected long-term training for qualified refugees as long as the training leads to employment soon after training is completed.

Response: This rule does not require refugees to become self-sufficient with less than one year's participation in services. Section 400.146 requires that services be designed to help a refugee to become employed, not necessarily self-sufficient, with less than one year's participation in services. We recognize that a refugee's first job may not provide sufficient wages to enable self-support; nonetheless, we believe that that first job is an essential step towards self-sufficiency and should occur as soon as possible. Section 400.146 permits the continued provision of services to a refugee for more than one year, as needed, to move a refugee and his or her family to full self-support. We believe the prohibition against training programs that last for more than a year or educational programs that are not intended to lead to employment within a year is reasonable, given limited resources, and is in keeping with the refugee program's statutory requirement that refugees be placed in employment as soon as possible after arrival in the U.S.

We consider ESL to be an educational program that may be provided for more than a year as long as other services designed to lead to employment within one year are being provided concurrently to a refugee as part of an overall self-sufficiency plan. Under the requirements of § 400.146, it would be unacceptable to provide only ESL to a refugee, without the provision of other employment-related services that are intended to lead to employment within one year, since ESL alone is unlikely to enable a refugee to obtain employment with less than one year's participation in ESL. The one year starts at the beginning of the educational program, not at the end.

§ 400.147: *Comment:* Four commenters supported the proposed client priorities. Two commenters agreed that new arrivals should be given first priority. One commenter recommended limiting first priority to all newly arriving refugees on cash assistance during their first year in the U.S. The commenter noted that while § 400.147 places refugees on cash assistance on a lower priority than newly arrived refugees, § 400.75 requires that RCA recipients who are not exempt must participate in employment services within 30 days of receipt of aid. The commenter expressed concern that some counties might not have sufficient funds to serve the top two priority groups. Another commenter asked why RCA clients couldn't be given the same priority status as the first priority group since RCA recipients are within their first year of residence in the U.S. Another commenter recommended that second priority be given to serving employed refugees in need of services to maintain employment so that these refugees would not be tempted to lose their jobs in order to become a higher priority for services. Another commenter noted that according to the proposed client priorities, a newly arrived refugee in priority group #1 who is employed and making $25,000 a year and who wants to upgrade his job, would receive services before a client in priority group #3 who is time-expired, unemployed, and living on the streets but anxious to work. Another commenter wrote that he interprets the priority order to mean that (1) refugees

within their first year of residence in the U.S. and receiving cash assistance will have priority over refugees within their first year of residence who are not receiving cash assistance; and (2) refugees within their first year of residence who are not receiving cash assistance will have priority, regardless of their employment status, over refugees receiving cash assistance, but residing in the U.S. longer than one year. The commenter recommends that maximum flexibility be given to States and local service providers in applying these priorities.

Response: To clarify, the first priority group includes both refugees receiving cash assistance, including RCA and AFDC recipients, during their first year in the U.S. and refugees who are not receiving cash assistance during their first year in the U.S. who apply for services. For refugees in their first year in the U.S., we are not making a distinction in terms of priority between refugees on cash assistance and refugees not on cash assistance. We believe that most States and counties would have sufficient refugee funds to serve all first-year refugees, regardless of cash assistance status. However, if for some reason sufficient funds are not available to serve both first year cash assistance and non-cash assistance clients, common sense would suggest that priority be given to RCA recipients for service in order to meet the requirements of § 400.75.

The commenter is correct that refugees in their first year in the U.S. who are not receiving cash assistance are a higher priority, regardless of their employment status, than refugees receiving cash assistance but residing in the U.S. longer than one year. While this rule will require States to follow these priorities, we recognize there may be some instances where States and providers will need to exercise their best judgement in determining who is in greater need of services on a case-by-case basis. We, therefore, have added the phrase ''except in certain individual extreme circumstances'' at § 400.147 regarding client priorities for the social services program and at § 400.314 regarding client priorities for the targeted assistance program. For example, it may be the best judgement of a provider that a refugee recipient of cash assistance in need of a job who has been in the U.S. for more than a year needs to be served before a refugee in priority group #1 who is earning enough to support his/her family and is not in danger of being laid off, but wants a job upgrade.

Regarding the case of the first-year refugee earning $25,000 a year having priority over the time-expired refugee in priority group #3 who is unemployed, if the refugee is time-expired in terms of being in the U.S. longer than the time frames specified in §§ 400.152 and 400.315, that refugee would not be eligible to receive services funded by the refugee program except those services specified under §§ 400.152(b) and 400.315(b). If, however, the refugee in priority group #3 is not time-expired, and if $25,000 a year is sufficient to enable the first-year refugee to support his/her family, common sense would suggest that you serve the refugee in priority #3.

We do not agree with the commenter who believes that second priority should be given to employed refugees who have been in the U.S. more than one year (priority #4) to avoid the possibility of refugees needing to lose their jobs in order to become a higher priority for services. We do not believe that this scenario is likely to become a problem.

§ 400.152(b) and 400.315: *Comment:* Nineteen commenters opposed the proposed time-limitation for refugee social services and targeted assistance services, while 11 commenters wrote in support of the proposed limitation. One commenter felt that the time-limitation should be advisory, not mandatory. One commenter agreed with the longer time-limitation for targeted assistance, while another commenter supported the staggered implementation of the time-limitation. One commenter felt that limitations on service eligibility impose a needed discipline on providers and recipients alike.

A variety of concerns was expressed regarding the proposed time-limitation: the time-limitation might preclude refugee women, who delay participating in services due to cultural reasons, from accessing services at a later date; the time-limitation will result in the most needy populations being abandoned without a safety net; it will leave a significant number of refugees and entrants without the means to achieve true economic self-sufficiency; the long-term refugee welfare population will no longer receive the services they need; many community-based organizations will fold due to lack of funding; refugee adjustment services, such as mental health and family counseling are required beyond 3 years and will not be provided due to limited State and local resources; many refugees will continue to need bilingual services which are only provided through the refugee program; the time-limitation will pass fiscal responsibility to State and local governments that do not have the resources to serve this population; the time-limitation has the potential of provoking adverse public reaction to the presence of refugees if certain services are not provided to post-36-month refugees with refugee program funding; the limitation will result in bilingual workers having to meet the needs of the time-expired refugees during their lunch break, after regular work hours, or on weekends; and the time-limitation on services will severely limit MAA eligibility for refugee social service funding.

Two commenters questioned limiting services in all States based on the existence of waiting lists in just a few States. One commenter also questioned making a regulatory change for refugees in the 1990s based on study findings primarily of Southeast Asians in the 1980s. One commenter questioned ORR's authority to limit eligibility for services for entrants, citing title V, § 501(d) of the Refugee Education Assistance Act of 1980, which states: ''* * * the authorities provided in this section are applicable to assistance and services provided with respect to Cuban and Haitian entrants at any time after their arrival in the United States * * *.'' Another commenter felt that if ORR ensures that discretionary social service and TAP funds respond to the needs of refugees over 36 months, appropriate attention will have been given to this population.

Several commenters cited problems with having different eligibility periods for social services and targeted assistance. One commenter felt that this difference would create an inequitable situation in service availability between States that have TAP grants and those that do not, and would also create inequity in service availability among communities within a State. Another commenter pointed out that having two different time periods for the provision of social services and TAP, which are often provided by the same agency to the same client, would likely generate considerable confusion for both the refugees and the agencies. One commenter felt it is inconsistent to permit impacted communities to provide employment services for 5 years but not allow other communities to do so. Another commenter indicated that the 36-month time limit for social services would place great stress on TAP funds, since staffing for the post-36 month population would have to be funded solely with TAP funding. One commenter felt that the time limit would force voluntary agencies to place new arrivals only in urban areas where targeted assistance is available. Another commenter felt the two eligibility periods would make data collection

more complex and cumbersome at the agency and State level. One commenter raised the question of when, if a client is served by a dually funded program (social services and TAP), would the refugee cease to be eligible for services—at 36 months or at 60 months. Another commenter asked whether clients who are in the U.S. less than 60 months at the start of the fiscal year, who pass the 60-month mark during the fiscal year, would be allowed to complete the service plan.

Four commenters expressed concern about the lack of refugee access to mainstream services. One commenter was concerned that adding refugee clients to mainstream service systems would have a negative impact on the existing service system, in light of decreasing funds in mainstream programs. Two commenters emphasized that if refugees are to be treated like other U.S. residents and have access to the same assistance and service programs available to other populations after the first 3 years in the U.S., it is incumbent upon ORR to foster interagency cooperation at the Federal level to ensure that refugees have equal access to mainstream programs. One commenter made the point that if we achieved the two goals of obtaining equal access for refugees to mainstream services and achieving citizenship, we wouldn't need to impose a time-limitation on refugee services.

One commenter requested clarification on whether discretionary grants provided by ORR would be subject to the 36-month and 60-month limitation on eligibility. Another commenter requested clarification on whether the time-limitation applies to all services or only to those services listed under § 400.154.

Several commenters offered alternative recommendations to the proposed time-limitations: One commenter recommended allowing the States the flexibility to provide services as they are needed within the priorities described in § 400.147; another commenter recommended adding post-36-month refugees as the last priority under § 400.147; several commenters recommended that a State be allowed the flexibility to serve deserving clients beyond 36 months if a State is able to meet the needs of new arrivals as indicated by an effective and efficient job placement rate; another commenter recommended that the time-limitation should not apply to outreach and crisis services; one commenter recommended excluding community strengthening activities from the time-limitation, while another commenter recommended that services such as mental health services should be excluded from the time-limitation.

One commenter recommended that the time-limitations should be waived for each county that is impacted with Lao-Hmong, Cambodian, or Soviet Pentecostal refugees, while another commenter recommended a waiver to States that have a substantial time-expired welfare population and can demonstrate that they are able to enroll newly arrived refugees in employment services within 30 days of receipt of aid.

Five commenters recommended that, if a time-limited eligibility period must be established, the same time limit of 5 years should apply to both refugee social services and targeted assistance, in congruence with the 5-year residency requirement for citizenship. One of the commenters alternatively suggested that TAP funding be restricted to clients who are not served through refugee social service funding. One commenter proposed that the time-limitation be extended to 60 months for elderly refugees who apply for non-employment-related services such as social adjustment, health, and mental health services. Another commenter recommended that if a time limit must be imposed it should be no less than 10 years after arrival in the U.S. Two commenters recommended allowing a State to spend no more than a fixed percentage of a State's refugee funding on services for post-36-month refugees. One of the commenters suggested allowing a certain percentage of funding for post-36-month refugees only in non-targeted assistance areas.

Response: We continue to believe in the necessity and efficacy of limiting eligibility for services funded by the refugee program to a specified time period after a refugee arrives in the U.S. However, after considering the comments, we have made two revisions to the time-limitation provision: (1) We have extended the eligibility period for social services from 36 months to 60 months, in congruence with the proposed time-limitation for the targeted assistance program and with the 5-year residency requirement for U.S. citizenship; and (2) we are exempting referral and interpreter services from the time-limitation in both programs to enable referral of post-60-month refugees to mainstream services and emergency interpreter services regardless of time in the country. By extending the social services time-limitation to 60 months, refugees will have a longer time to access the services needed to attain self-sufficiency and States and providers will be spared the difficulty of administering different eligibility periods for social services and targeted assistance. We believe these changes will go a long way towards alleviating many of the areas of concern to commenters, while maintaining the time-limitation principle.

On the question of whether title V, section 501(d) of the Refugee Education Assistance Act of 1980 would prohibit ORR from limiting eligibility for services to a certain time period for Cuban and Haitian entrants, the intent of section 501(d) needs to be examined within the context of section 501(a)(1). Section 501(a)(1) states that ''[t]he President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act.'' Regarding this provision, the legislative history states that ''it is the intent of the Congress that services provided pursuant to this section shall be provided to Cuban and Haitian entrants by the same agencies, under the same conditions, and to the same extent, that assistance is provided to persons determined to be refugees in accordance with the terms of the Refugee Act of 1980.'' 126 Cong. Rec. 28470 (September 30, 1980). This indicates that Congress clearly intended that Cuban and Haitian entrants should receive the same benefits that refugees receive pursuant to the INA. We believe the only way to interpret section 501(d) in a way that makes sense in conjunction with section 501(a)(1) is that benefits provided to entrants should not be any more constrained by time barriers than benefits provided to refugees. If interpreted the way the commenter suggests, Cuban and Haitian entrants would receive more extensive services than refugees because services would only be time-limited for refugees. Congress clearly did not intend such unequal treatment.

To clarify, the time limitation applies to all services, not just to those services listed under § 400.154. The time limitation, however, does not apply to services funded with ORR discretionary grants, including both social service discretionary and targeted assistance 10% discretionary grants.

The concerns about the lack of refugee access to mainstream services are well taken. We agree with the commenters' suggestion that more has to be done at the Federal level with other programs to ensure better access by refugees to mainstream programs. We are making it an ORR priority to work with other Federal agencies and mainstream programs over the next two years to increase access and quality of services for refugees.

§ 400.154: *Comment:* Two commenters who supported elimination of job search as a mandatory requirement recommended that job search be included as an allowable employment service. One commenter also recommended including the development of family self-sufficiency plans as an allowable service. Another commenter recommended adding job-related expenses as an allowable employability service. One commenter asked whether match grant clients are excluded from all employment-related services listed under § 400.154. One commenter wrote in support of the day care definition in § 400.154.

Response: Job search is already included as an allowable employability service under § 400.154(a). We have revised § 400.154 to include the development of family self-sufficiency plans as an allowable service under § 400.154(a). Regarding job-related expenses, we believe the most important job-related expenses to include as allowable services are child care and transportation expenses. Child care as a job-related expense is already allowable under § 400.154 and we have amended § 400.154(h) to allow transportation as a job-related expense.

Match grant clients are not excluded from participating in the employment-related services listed under this provision.

§ 400.155: *Comment:* Two commenters expressed concern about the proposed change to § 400.155(f). One of the commenters was concerned that the change in language implies that translation and interpreter services may not be provided as a distinct service in its own right; thus translation/interpretation for a refugee in traffic court or juvenile court might not be allowable under this provision. The commenter recommended that translation and interpreter services be allowed to remain as distinct adjustment services. The other commenter objected to the proposed change to § 400.155(f), arguing that the provision as amended would reduce a State's ability to fund refugee mutual assistance associations for services such as interpreter services. The commenter also felt that by restricting interpreter services to instances in which these services are not available from any other source, ORR would be hampering the desirable goal of assisting refugees to take advantage of mainstream services.

One commenter requested clarification on proposed § 400.155(g) regarding the process for submission, the criteria that will be used to approve additional services, and whether requests will be reviewed uniformly or on a case-by-case basis. Another commenter asked whether volunteer coordination and training for ESL tutors, for example, would require special approval under proposed § 400.155(g). One commenter suggested that technical assistance to strengthen MAA capability is not a direct service and thus would more appropriately be supported through ORR's discretionary program.

One commenter suggested that fraud prevention education should be addressed through refugee orientation and acculturation services.

Response: We have decided to drop the proposed revision to § 400.155(f). Translation and interpreter services will continue to be allowable under § 400.155(f) regardless of whether such services are available from another source.

If a State wishes to provide additional services under proposed § 400.155(g), which now will be § 400.155(h), the State should submit as part of its annual services plan a request which describes the proposed services, documents the absence of waiting lists in the State for core refugee services (employment services, ESL, job training, and case management), demonstrates that the proposed services fit the purpose of strengthening the ability of refugee individuals, families, and refugee communities to achieve and maintain economic self-sufficiency, family stability, and community integration, documents the need for such services, and describes the results the State expects to achieve with the provision of these services.

Volunteer coordination and training for ESL tutors would not require special approval under § 400.155(h). We do not agree with the comment regarding technical assistance to strengthen the capability of MAAs; we believe this is an appropriate activity under § 400.155(h).

Fraud prevention education is allowable as a consumer education service under § 400.155(c)(3).

§ 400.156: *Comment:* One commenter requested clarification of the meaning of the phrase ''to the maximum extent feasible''. The commenter recommended adding the words ''as determined by the State'' after the words ''to the maximum extent feasible''. Another commenter felt that the phrase ''to the maximum extent feasible'' regarding the hiring of bilingual women on staff would provide a convenient out for agencies.

Two commenters requested flexibility regarding the applicability and feasibility of §§ 400.156 (c), (d), (e), and (f). One of the commenters suggested changing the phrase ''must be provided'' to ''should be provided'' to allow some flexibility.

Response: We have revised section 400.156 by removing the phrase ''to the maximum extent feasible'' in paragraphs (c) and (d) because we believe that in the refugee program, ESL should always be provided concurrently with other employment-related services or employment and that services should always be refugee-specific services designed for refugees and in keeping with the rules and objectives of the refugee program, with the exception of those services stated in § 400.156(d). The phrase ''to the maximum extent feasible'' is retained in paragraphs (e) and (f) and means that these requirements must be carried out to the fullest extent possible, while recognizing that there may be some circumstances where it may not be feasible or possible to require full compliance with this requirement. For example, it may not be feasible for a service agency to provide linguistically and culturally compatible services for a new ethnic group that includes only 2 individuals. Thus, while we believe these requirements must be met in most cases, we recognize there may be some exceptions where it may be unreasonable, and perhaps not in the best interests of the program, to require full compliance. The use of the phrase ''to the maximum extent feasible'' should not provide a convenient out regarding the hiring of bilingual women. The phrase acknowledges that there may some exceptions when it may not be feasible; but it does not open the door to non-compliance.

We believe the phrase ''to the maximum extent feasible'' provides sufficient flexibility regarding feasibility. We do not agree with the suggestion to replace the word ''must'' with the word ''should''.

§ 400.156(b): *Comment:* One commenter asked for a definition of seamless services and examples to show that they work. Another commenter, while commenting that the provision of seamless services between reception and placement (R & P) services and State-administered social services is a laudable goal, noted that voluntary agencies provide R & P services under contract with their national offices through a Department of State (DOS) contract. The commenter suggested that a similar requirement should be included in the DOS agreement. Another commenter recommended that coordination as called for under § 400.156(b) should be expressed in a State plan and should reflect policies that ensure service continuity from R & P through self-sufficiency. The

commenter recommended that the case management authority of the voluntary agencies should be respected as refugees move through the service system.

Response: Seamless services means that there is a relationship and a continuum between R & P services and State-funded services and an absence of service gaps or service duplication. This works because avoidance of service duplication results in a more efficient use of resources, and an absence of service gaps results in better service to refugees.

We will forward to the Department of State the commenter's recommendation to add a requirement on seamless services in the R & P agreement.

We do not believe it is necessary to require States to address the coordination required in this provision in State plans. Section 400.11(b)(2), as revised, requires States to develop annual social services plans on the basis of a local consultative process. This would be the logical vehicle for carrying out the coordination required under § 400.156(b).

We believe the case management authority of voluntary agencies should be respected in those cases where the voluntary agency continues to be a refugee family's principal provider as it moves through the service system. In cases where a refugee family's principal provider is another agency, such as an MAA or other organization, the case management authority of that agency should be respected regarding that particular family.

Section 400.156(c): *Comment:* Seven commenters indicated support for the provision of ESL concurrent with employment-related services. Another commenter emphasized that ESL concurrent with employment-related services is not appropriate for all populations. Another commenter wondered in the case of an ESL program where job readiness activities are part of the curriculum and/or the ESL student is also looking for job training, whether these activities constitute employment services. Another commenter wondered whether a student enrolled in an ESL program, who is employed, may attend another ESL program after he/she completes the current ESL program. One commenter recommended that this provision should be expanded to allow for worksite ESL and literacy as desirable services.

Response: We do not believe there is any refugee population that would not benefit, in most cases, from participation in ESL concurrent with participation in other employment-related services. We believe this is an appropriate arrangement for all employable refugees, regardless of ethnic background. The purpose of requiring that ESL be provided concurrently, instead of sequentially, with other employment-related services is to ensure that refugees receive a comprehensive set of services needed to maximize a refugee's chance of becoming employed and self-sufficient in a timely manner. Therefore, the example of enrollment in an ESL class only, even though job readiness activities are a part of the curriculum, as well as the example of an ESL student who happens also to be looking for job training, would not, in our view, constitute ESL concurrent with other services and would not meet the requirement under § 400.156(c).

It is perfectly allowable for an ESL student, who is employed, to enroll in another ESL program after he/she completes the current ESL program. Worksite ESL and literacy are currently allowable under § 400.154.

§ 400.156(d): *Comment:* Ten commenters indicated support for providing services through refugee-specific service systems, while 6 commenters opposed making this a requirement. One commenter recommended making this provision an option instead of a requirement. One commenter noted that the proposed rule would preclude funding to a refugee service unit in a JTPA agency, a refugee mutual assistance association (MAA) that serves refugees along with immigrants and citizens, or a school that provides ESL. Several commenters felt that their current service system effectively provides services tailored to refugees while ensuring refugee access to suitable mainstream programs. They felt that such combined programs have resulted in the leveraging of mainstream program dollars and services in a beneficial way for refugees. One commenter argued that States that can demonstrate effective use of mainstream resources to provide culturally compatible services focused on early employment should be allowed to continue to use these systems. Another commenter felt that as Federal resources diminish, it is particularly incumbent upon States to utilize other resources and to mainstream refugees where possible and where appropriate for the client. One commenter stressed the importance of making clear that this provision is not intended to relieve mainstream providers of their obligation to serve refugees seeking other than employment services or those refugees who have been in the U.S. beyond the 36-month time period.

Response: We concur with the commenters concerns and have revised § 400.156(d) to require the provision of refugee-specific services and have eliminated the requirement that services must be provided through a separate refugee-specific service system in which refugees are the only client group served. We believe this change will address all of the commenters' concerns. The revised provision will allow funding to a refugee service unit in a mainstream agency such as a JTPA agency; it will allow funding to an MAA that serves refugees along with immigrants and citizens, or to a school that provides ESL; and it will not preclude the leveraging of mainstream funds for refugees or the use of mainstream systems that have demonstrated the ability to provide refugee-specific services.

Specifically, § 400.156(d), as revised, requires the provision of refugee-specific services which must be designed to meet the needs of refugees and must be in keeping with the rules and objectives of the refugee program. There are, however, some exceptions to which this requirement does not apply; the following services are exempt from this rule: Vocational or job skills training and on-the-job training (OJT) which involves the purchase of slots for refugees in mainstream programs; and English language training. We do not believe it would be cost-efficient or necessary to require refugee-specific vocational training or OJT. Nor do we feel it is as essential for ESL to be designed specifically for refugees as long as the ESL is effectively designed for non-English speaking populations in general and is provided concurrently with other employment services to refugees.

§ 400.156(e): *Comment*: Five commenters wrote in support of the proposed rule to require culturally and linguistically compatible services. Two commenters cautioned that while culturally and linguistically compatible services can be provided for large groups, it is not possible to do for all groups; it would be too expensive and impractical to provide for just a few refugees of a particular background. One commenter recommended adding language to this provision that would permit the use of ''qualified'' volunteers. Another commenter asked how providers can be expected to lay off staff with 15 years' experience just because the ethnic groups they represent no longer need services. One commenter felt that the expertise of existing ethnic staff should not be discarded as new refugee populations arrive. The commenter felt that volunteers can often support the cultural and linguistic needs of new populations in concert

with experienced staff who may not represent the ethnicity of the new groups.

One commenter suggested that a requirement should be included in the Department of State R & P agreement with voluntary agencies which would require these agencies to work together to facilitate the cluster resettlement of refugees of the same language background so that States and localities can develop culturally and linguistically compatible services.

Response: We learned early in the refugee program that it was important to use bilingual staff who were culturally compatible with the refugee groups being served in order to provide effective resettlement services to these groups. We believe the new incoming groups deserve the same consideration as the earlier groups. It is important to balance the expertise of current staff, regardless of ethnicity, with the linguistic and cultural needs of the new populations. We expect States and providers to be as responsive as possible in carrying out this provision by incorporating the new ethnic groups on staff as much as is needed, either through new hires, contract employment, or when appropriate, through the use of qualified volunteers, while maintaining the expertise of existing staff as much as possible. If volunteers are to be used, we feel strongly that these volunteers need to be properly trained by the agency to ensure that refugees are receiving appropriate and useful bilingual services.

We will forward the commenter's recommendation regarding the cluster resettlement of refugees to the Department of State.

§ 400.156(f): *Comment*: One commenter felt that the principle of equal access for refugee women, which is critical, should not be translated into the rigid staffing pattern suggested by the language in § 400.156(f).

Response: We believe that access to services and communication between client and provider improve significantly for refugee women when there are bilingual women on staff to provide services to these clients. For this reason it is important to ensure that women are adequately represented on service agency staff.

Comments on Subpart J

§§ 400.203 and 400.204: *Comment*: One commenter expressed concern that the policy of reimbursing States for only those cash and medical assistance costs for which ORR has sufficient appropriated funds has the potential of transferring costs for non-reimbursed expenditures to States.

Response: ORR has not had sufficient appropriated funds to cover the costs of all the cash and medical assistance programs listed in §§ 400.203 and 400.204 since FY 1991 and has, since FY 1991, only reimbursed States for the costs of RCA, RMA, State administration, and the unaccompanied minors program. The commenter is correct that the costs for non-reimbursed expenditures have been born by the States.

§ 400.207: *Comment*: One commenter felt it is unclear what change is proposed in this provision. Another commenter questioned who will determine ''reasonableness'' and felt there should be an appeals process if ACF and the States do not agree on what is allowed. Another commenter recommended that ACF should publish its definition of reasonable and allowable costs and provide States and other interested parties a chance to comment. One commenter felt that ORR should be consistent with the requirements in a variety of OMB Circulars regarding allowable administrative expenses. The commenter further recommended that if ORR decides to further limit allowable administrative costs, it should specify these limitations in rule form.

Two commenters expressed concern that the language in this provision would prohibit States from claiming costs for overall State coordination activities and recommended that ORR clarify in the final rule that overall State coordination and management of the refugee program are allowable costs under § 400.207. One commenter felt that reimbursable costs for State coordination should not be restricted to the 3-year time-limited population since a State Coordinator's work involves coordination beyond the funded services to the time-limited population. Two commenters were concerned that the proposed language in this provision implies that ORR intends to impose percentage limitations on State administrative costs. The commenters pointed out that percentage limitations would make it very difficult for States with small funding allocations to operate. One commenter supported limiting administrative costs a State may charge to refugee social services and to targeted assistance. Two commenters opposed the limitation of Federal reimbursement for only those programs for which funding is currently available under the refugee program, which eliminates reimbursement for administrative costs related to categorical programs such as AFDC and Medicaid. The commenters felt this limitation is unfair since States are required to determine eligibility for AFDC and Medicaid prior to determining RCA/RMA eligibility, which requires extra staff time, resulting in increased State costs.

Response: States may continue to claim administrative costs for the overall management and coordination of the refugee program as they always have. No change was intended to prohibit the claiming of costs for coordination and oversight activities; administrative costs for these activities are allowable under § 400.13(c). Reimbursement of costs for a State Coordinator's oversight activities is not limited to the 3 or 5-year time-eligible population. We also have no intentions of imposing an administrative cap or percentage limitation on State administrative costs. We do intend to review the issue of what constitutes reasonable and allowable administrative costs in the refugee program and, if needed, to develop guidelines defining reasonable and allowable costs in consultation with States. The guidelines, if developed, will be consistent with the requirements in relevant OMB Circulars regarding allowable administrative costs and will be distributed to States for review and comment.

Comments on Subpart K

§ 400.301: *Comment*: One commenter recommended that the advance notice that a State must provide ORR before withdrawing from the refugee program should be 90 days instead of the proposed 120 days. The commenter felt that ORR should not require a longer period of advance notice than the 90-day notice that ORR provides for changes in the RCA/RMA eligibility period. Another commenter recommended that the final rule should clarify that the Director's designation of an alternate agency does not preclude a Wilson/Fish demonstration and operates only as an interim arrangement to ensure service continuity to refugees. Another commenter recommended that if a State withdraws, ORR must make sure that the replacement designee adheres to the same standards as a State-run program, is monitored according to the same standards as a State-run program, and that all assistance and services provided are equitable with State-provided assistance and services. The commenter requested clarification on whether suspension of assistance payments by a State due to a lack of Federal funding would be considered withdrawing from the program or withdrawing from part of the program, without proper notice.

Response: We believe 120 days notice is a reasonable period of time to require when a State is planning to drop out of the program. The purpose of requiring the advance notice is to allow enough time to enable ORR to make alternative arrangements to ensure that refugees in that State continue to receive assistance and services without a break in service. The commenter is correct that the designation of a replacement agency does not preclude the possibility of a Wilson/Fish demonstration project at a later date. Regarding whether a replacement designee would operate as an interim arrangement, the replacement designee would administer the provision of assistance and services to refugees in the State for a period of time allowable in accordance with Federal grant-making rules, followed by the selection of an agency through a competitive grant process.

The replacement designee will be required to adhere to the same ORR regulations that apply to a State-administered program, with the exception of certain provisions described under § 400.301 of this regulation. Certain provisions are excepted because they apply only to States and become moot when a State withdraws and is replaced by another entity. States would continue to be responsible for administering the other excepted provisions because these provisions refer to the administration of other State-run public assistance programs.

ORR would not consider the suspension of RCA/RMA assistance payments by a State due to a lack of Federal funding to be a withdrawal from the program, unless the State indicated that it intended to withdraw from the refugee program.

Comments on Subpart L

Comment: Two commenters wrote in support of establishing regulations for the targeted assistance program (TAP). Another commenter asked for clarification on whether TAP regulations would apply to FY 1994 dollars used for the FY 1995 program.

Response: These regulations would apply to whatever dollars are being used to provide services on October 1, 1995, the effective date of this final rule.

§ 400.312: *Comment:* One commenter felt that the requirement to provide any client with targeted assistance-funded services places an undue burden on a limited funding stream. Another commenter asked what a State's responsibility is if a client is eligible for TAP services but there is insufficient funding to provide services to lower priority applicants. One commenter felt that the language regarding the opportunity to apply for TAP services is vague regarding eligible persons and should be revised to be more specific by stipulating that a State must provide any individual wishing to apply for services who has been in the U.S. 60 months or less the opportunity to do so. Another commenter recommended adding the words ''or agencies'' after the word ''individuals'' to read: ''* * * a State must provide any individual or agencies wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.''

Response: This provision parallels the language regarding social services in the current regulation under § 400.145 which has been in effect since 1989. The provision simply allows any refugee to have the opportunity to apply for services and to have his/her eligibility for services determined, nothing more. Eligibility would be determined based on the eligibility requirements in this regulation, including the time-eligibility requirement. This provision does not require a State to provide services to all individuals who apply for services. If a State does not have sufficient funds to serve lower-priority applicants, it is not required to do so. We do not agree with the suggestion to add the words ''or agencies'' to this provision. To do so would be inappropriate since agencies do not apply for services under the refugee program; only clients do.

§ 400.313: *Comment:* One commenter recommended that ESL and adult basic education should be allowed to be provided as long as these activities are provided concurrently with other employment services and are within an employment plan designed to lead to employment within one year.

Response: These services are allowed under the targeted assistance program if they are provided concurrently with other employment services designed to lead to employment within one year.

§ 400.314: *Comment:* One commenter felt that the client priorities for the targeted assistance program do not address the 60-month time limit. The commenter recommended adding language to this provision that specifies ''refugees who have been in the U.S. less than 61 months''. One commenter indicated that the proposed client priorities are not fully consistent with client priorities that were approved for one State's TAP program. Another commenter indicated that the priority #1 emphasis on long-term recipients seemed to be contradictory to the proposed time-limitation of 60 months for the targeted assistance program. Another commenter expressed concern that the TAP formula allocations may not be adequate to cover the additional service costs of the persistently unemployable welfare population in certain States, which raises the specter of cost shifts from the Federal government to the States.

Response: The 60-month eligibility time limit for targeted assistance is included under § 400.315, ''General eligibility requirements''; these requirements apply to the client priorities under § 400.314, as well as to all sections under subpart L. The reference to long-term recipients in priority #1 refers to recipients who have been on welfare for a number of years within the 60-month time limit. We would consider an individual who has been a welfare recipient for 3–5 years a long-term recipient. The commenter's concern that the TAP formula allocation in certain States may not be adequate to cover the service costs for the persistently unemployable welfare population, the population in priority #1, is somewhat puzzling, since long-term welfare recipients have always been a priority group for TAP services. It would seem that States would have a better chance of covering the service costs for a 60-month time-limited welfare population with TAP funds than for a welfare population that has been in the U.S. for an open-ended period of time. The State whose approved client priorities may be different from those listed in this provision will be required to adhere to the new client priorities when this rule becomes effective.

§ 400.316: *Comment:* One commenter questioned why services to strengthen families and communities were not included as an allowable service under TAP when one of the client priorities is long-term cash assistance recipients. Another commenter recommended that assistance to emerging refugee community leadership to develop their own resources should be an allowable service under TAP, particularly in light of the proposed time-limitations. One commenter stressed that services designed to employ women must include child care. The commenter felt that there is a need to renew limited funding for child care under the targeted assistance program.

Response: As we explained in the August 12, 1994, NPRM, services to strengthen families and communities, including assistance to refugee community leadership, were not included in the list of allowable services under the targeted assistance program because we wished to focus the use of TAP funds on employability services aimed at helping refugees become self-supporting. We feel this focus is

particularly important since the targeted assistance program is the last opportunity to use refugee program dollars to help long-term welfare recipients and other unemployed refugees into employment before they become time-ineligible for our program. Services to strengthen families and communities and to develop refugee leadership may be provided through refugee social service funds and ORR discretionary programs.

We agree that services that are designed to employ women must include child care services. We expect States to emphasize to their providers the need to arrange for child care as part of a family's self-sufficiency plan. Targeted assistance funding has always been available for child care. We have given special emphasis each year to the need for child care services in the notice of targeted assistance allocations to States.

§ 400.319: *Comment:* Four commenters objected to the proposed requirement that States with more than one qualifying TAP county that wish to allocate differently from the formula allocations presented in the ORR TAP notice, must allocate TAP funds based on the most recent 5-year refugee population. One commenter supported this requirement and recommended that States should not be allowed to allocate TAP funds based solely on the numbers of refugees receiving welfare. Two commenters suggested that States should be authorized to allocate social services and targeted assistance funds using welfare data.

Response: We believe it makes sense to require a State that wishes to re-allocate TAP funds to do so based on a population formula that is consistent with the population the TAP program is allowed to serve. Since this rule will limit eligibility for TAP services to refugees who have been in the U.S. 5 years or less, it is reasonable to require that funds be allocated based on the most recent 5-year refugee population. States may use welfare data as an additional factor, but not as the sole factor, in the allocation of targeted assistance funds if they so choose, without additional authorization; however, we do not require them to do so. A State that chooses to use welfare data in its allocation formula may not assign a greater weight to welfare data than it has assigned to population data.

General Comments

Comment: One commenter noted that the proposed rule does not allow for an MAA set-aside. The commenter recommended that there should be at least a 10–20% set-aside for MAAs and that specific language be included which ensures that States and counties give funding priority to MAAs for service provision. The commenter also recommended that the regulation should include language that ensures that MAAs are treated as full partners in all refugee programs. Another commenter urged ORR to consider allocating resources for capacity building in communities that have an over-36-month refugee population. The commenter felt it would be particularly helpful to strengthen MAAs in order to better serve their communities.

Response: We do not believe that regulatory language is the appropriate way to ensure full and equal participation by MAAs in the refugee program. We plan to review our policy on MAAs and to develop a more comprehensive strategy regarding refugee community development over the next few years in order to help refugee communities develop their capacity to be viable, self-sustaining communities. As part of this effort, we will be reviewing the social service and targeted assistance allocations notices to determine if changes are needed to better ensure service funding to qualified MAAs.

Comment: One commenter recommended that ORR and JOBS staff consult to amend any JOBS regulations that may impede refugee AFDC recipients from enrollment in JOBS services. The commenter recommended allowing States with large refugee populations the option to make refugee AFDC recipients a JOBS target group.

Response: We intend to consult with JOBS staff on these issues.

Comment: One commenter expressed concern about the impact that the implementation of the proposed rule will have on the changes to the quarterly performance report (QPR) that ORR is proposing. The commenter recommended that ORR wait to make changes in the QPR reporting form until final decisions are reached on the proposed rule.

Response: Implementation of this rule will not have an adverse impact on the revised QPR. The final QPR form will be consistent, rather than at odds, with the new regulatory requirements.

Regulatory Procedures

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

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 in 45 CFR Part 400

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

Dated: January 9, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: May 17, 1995.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 400 is 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)).

§ 400.1 [Amended]

2. Section 400.1(a) is amended by adding the words ''and other public and private non-profit agencies, wherever applicable'' after the word ''States''.

3. Section 400.4(b) is revised to read as follows:

§ 400.4 Purpose of the plan.

* * * * *

(b) A State must certify no later than 30 days after the beginning of each Federal fiscal year that the approved State plan is current and continues in effect. If a State wishes to change its plan, a State must submit a proposed amendment to the plan. The proposed amendment will be reviewed and approved or disapproved in accordance with § 400.8.

4. Section 400.5(h) is revised to read as follows:

§ 400.5 Content of the plan.

* * * * *

(h) Provide that the State will, unless exempted from this requirement by the Director, assure that meetings are convened, not less often than quarterly, whereby representatives of local affiliates of voluntary resettlement agencies, local community service agencies, and other agencies that serve refugees meet with representatives of State and local governments to plan and coordinate the appropriate placement of refugees in advance of the refugees' arrival. All existing exemptions to this requirement will expire 90 days after the effective date of this rule. Any State that wishes to be exempted from the provisions regarding the holding and frequency of meetings may apply by submitting a written request to the Director. The request must set forth the reasons why the State considers these meetings unnecessary because of the absence of problems associated with the planning and coordination of refugee placement. An approved exemption will remain in effect for three years, at which time a State may reapply.

§ 400.9 [Amended]

5. Section 400.9(g) is amended to correct the spelling of the word ''initiable'' to ''initial''.

§ 400.11 [Amended]

6. Section 400.11(b)(1) is amended by removing the words ''on a form'' after the word ''year'' at the end of the paragraph and adding in their place the words ''in accordance with guidelines''.

7. Section 400.11(b)(2) is amended by adding the words ''developed on the basis of a local consultative process'' after the word ''plan'' and by removing the words ''no later than 45 days prior to the beginning of the State's annual planning cycle for social services'' and adding the words ''and at a time'' after the word ''form''.

8. Section 400.11(b)(3) is amended by removing the word ''quarterly'' before the word ''estimates''.

9. Section 400.11(c) is amended by adding a period ''.'' after the word ''quarter'', removing the remainder of the sentence, beginning with the word ''except'' and ending with the word ''year'', and replacing it with a new sentence that reads as follows:

* * * * *

(c) * * * Final financial reports must be submitted in accordance with the requirements described in § 400.210.

* * * * *

§ 400.13 [Amended]

10. Section 400.13(a) is amended by adding the words ''Refugee Resettlement Program'' before the word ''RRP'' and placing the word ''RRP'' in parentheses.

11. Section 400.13(d) is revised to read as follows:

§ 400.13 Cost allocation.

* * * * *

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant.

12. Section 400.62 is amended by adding a new paragraph (c) to read as follows:

§ 400.62 Need standards and payment levels.

* * * * *

(c) The date refugee cash assistance begins must be the same date, in relation to the date of application, as assistance would begin under a State's plan for AFDC under § 206.10(a)(6) of this title.

Subpart F—Requirements for Employability Services and Employment

13. The heading of subpart F is revised to read as set forth above.

14. Section 400.70 is revised to read as follows:

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services or targeted assistance, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee cash assistance must comply with the requirements in this subpart.

§ 400.71 [Amended]

15. Section 400.71 is amended by alphabetically adding the definition for the term ''family self-sufficiency plan'' to read as follows:

* * * * *

Family self-sufficiency plan means a plan that addresses the employment-related service needs of the employable members in a family for the purpose of enabling the family to become self-supporting through the employment of one or more family members.

* * * * *

§ 400.75 [Amended]

16. Section 400.75(a)(1) is amended by adding the words '', within 30 days of receipt of aid,'' after the word ''and''. Section 400.75(a)(2) is removed and paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) are redesignated as paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively.

17. Section 400.76 is amended by revising paragraph (a)(7) 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.

(a) * * *

(7) A parent or other caretaker relative of a child under age 3 who personally provides full-time care of the child with only very brief and infrequent absences from the child. Only one parent or other relative in a case may be exempt under this paragraph.

* * * * *

18. Section 400.76(a)(9) is amended by removing the number ''3'' and adding in its place the number ''6''.

19. Section 400.76(b) is amended by removing the words ''carrying out job search,'' after the word ''programs,''.

§ 400.79 [Amended]

20. Section 400.79(a) is amended by adding the words ''as part of a family self-sufficiency plan where applicable'' after the words ''must be developed'' and by adding the words ''in a filing unit'' after the words ''refugee cash assistance''.

21. Section 400.79(c)(3) is removed.

22. Section 400.80 is revised to read as follows:

§ 400.80 Job search requirements.

A State must require job search for employable refugees where appropriate.

§ 400.82 [Amended]

23. The heading in section 400.82 and the undesignated centerhead immediately preceding it are amended by removing the words ''to carry out job search or'' after the word ''refusal'' in the title.

24. Section 400.82(a) is amended by removing the words ''to carry out job search,'' after the word ''services,''.

25. Section 400.82 is amended by removing paragraph (b)(3)(iii).

26. The heading of § 400.83 is revised to read as set forth below.

27. Section 400.83 is amended by redesignating the current text as paragraph (b) and by adding a new paragraph (a) to read as follows:

§ 400.83 Conciliation and fair hearings.

(a) A conciliation period prior to the imposition of sanctions must be provided for in accordance with the following time-limitations: The conciliation effort 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 the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.

* * * * *

§ 400.94 [Amended]

28. Section 400.94(a) is amended by removing the words ''refugees who apply'' and adding in their place the words ''each individual member of a family unit that applies'' before the words ''for medical assistance''.

§ 400.100 [Amended]

29. Section 400.100(d) is amended by adding the words ''who are not eligible for Medicaid'' after the words ''cash assistance''.

30. Section 400.104 is revised to read as follows:

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

If a refugee who is receiving refugee medical assistance receives increased earnings from employment, the increased earnings shall not affect the refugee's continued medical assistance eligibility. The 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). In cases where a refugee obtains private medical coverage, any payment of RMA for that individual must be reduced by the amount of the third party payment.

§ 400.106 [Amended]

31. Section 400.106 is amended by adding the words '', only to the extent that sufficient funds are appropriated,'' after the words ''§§ 400.94''.

§ 400.107 [Amended]

32. The heading of § 400.107 is amended by removing the words ''Health assessments'' and adding in their place the words ''Medical screening''.

33. Section 400.107(a) is amended by removing the words ''a health assessment'' and adding in their place the words ''medical screening'' and by replacing the word ''assessment'' with the word ''screening'' each time the word ''assessment'' is used.

§ 400.140 [Amended]

34. Section 400.140 is amended by adding the words ''formula allocation'' before the word ''grants''.

§ 400.141 [Amended]

35. Section 400.141 is amended by removing the words ''any title XX social service as defined below or'' from the first paragraph and by removing the second paragraph.

36. Section 400.145 is amended by adding a new paragraph (c) that reads as follows:

§ 400.145 Opportunity to apply for services.

* * * * *

(c) A State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.

37. Section 400.146 is revised to read as follows:

§ 400.146 Use of funds.

The State must use its social service grants primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

38. Section 400.147 is revised to read as follows:

§ 400.147 Priority in provision of services.

A State must plan its social service program and allocate its social service funds in such a manner that services are provided to refugees in the following order of priority, except in certain individual extreme circumstances:

(a) All newly arriving refugees during their first year in the U.S., who apply for services;

(b) Refugees who are receiving cash assistance;

(c) Unemployed refugees who are not receiving cash assistance; and

(d) Employed refugees in need of services to retain employment or to attain economic independence.

39. The heading of § 400.152 is revised to read as set forth below.

40. Section 400.152(b) is revised to read as follows:

§ 400.152 Limitations on eligibility for services.

* * * * *

(b) A State may not provide services under this subpart, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months, except that refugees who are receiving employability services, as defined in § 400.154, as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S.

§ 400.153 [Removed]

41. Section 400.153 is removed.

§ 400.154 [Amended]

42. Section 400.154(a) is amended by adding the words ''a family self-sufficiency plan and'' after the words ''development of''.

43. Section 400.154(g) is amended by adding the words *''for children''* after the words ''Day care''.

44. Section 400.154(h) is amended by adding the words ''or for the acceptance or retention of employment'' after the words ''employability service''.

45. Section 400.154 is amended by removing the note after paragraph (j).

46. Section 400.155(b) is amended by adding the words '', to explain the purpose of these services, and facilitate access to these services'' after the words ''available services'' at the end of the paragraph.

47. Section 400.155(c)(1) is amended by adding the words ''or families'' after the word ''persons'' and before the word ''in''.

48. Section 400.155(d) is amended by adding the words *''for children''* after the words ''Day care''.

49. Section 400.155(h) is revised to read as follows:

§ 400.155 Other services.

* * * * *

(h) *Any additional service*, upon submission to and approval by the Director of ORR, aimed at strengthening and supporting the ability of a refugee individual, family, or refugee community to achieve and maintain economic self-sufficiency, family stability, or community integration which has been demonstrated as

effective and is not available from any other funding source.

§ 400.156 [Amended]

50. Section 400.156 is amended by revising the heading to read as set forth below:

51. Section 400.156(a) is amended by removing the words ''job search and'' after the word ''refugee''.

52. Section 400.156(b) is amended by removing the words ''and not duplicate the provision of such services to such refugee'' after the word ''sponsors'' and adding in their place the words ''in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative''.

53. Section 400.156 is amended by adding new paragraphs (c), (d), (e), (f) and (g) that read as follows:

§ 400.156 Service requirements.

* * * * *

(c) English language instruction funded under this part must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services.

(d) Services funded under this part must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program, except that vocational or job skills training, on-the-job training, or English language training need not be refugee-specific.

(e) Services funded under this part must be provided to the maximum extent feasible in a manner that is culturally and linguistically compatible with a refugee's language and cultural background.

(f) Services funded under this part must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women.

(g) A family self-sufficiency plan must be developed for anyone who receives employment-related services funded under this part.

§ 400.203 [Amended]

54. Section 400.203 is amended by adding the words ''To the extent that sufficient funds are appropriated,'' before the words ''Federal funding'' at the beginning of paragraphs (a) and (c).

§ 400.204 [Amended]

55. Section 400.204 is amended by adding the words ''To the extent that sufficient funds are appropriated,'' before the words ''Federal funding'' at the beginning of paragraphs (a) and (c).

56. Sections 400.206 is amended by revising the section heading as set forth below, by designating the existing paragraph as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 400.206 Federal funding for social services and targeted assistance services.

* * * * *

(b) Federal funding is available for targeted assistance services as set forth in subpart L of this part, including reasonable and necessary identifiable State administrative costs of providing such services, not to exceed 5 percent of the total targeted assistance award to the State.

57. Section 400.207 is revised to read as follows:

§ 400.207 Federal funding for administrative costs.

Federal funding is available for reasonable and necessary identifiable administrative costs of providing assistance and services under this part only for those assistance and service programs set forth in §§ 400.203 through 400.205 for which Federal funding is currently made available under the refugee program. A State may claim only those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families. Such costs may be included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part.

58. Section 400.210 is revised to read as follows:

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

Federal funding is available for a State's expenditures for assistance and services to eligible refugees for which the following time limits are met:

(a) *CMA grants,* as described at § 400.11(a)(1) of this part:

(1) Except for services for unaccompanied minors, a State must use its CMA grants for costs attributable to the Federal fiscal year (FFY) in which the Department awards the grants. With respect to CMA funds used for services for unaccompanied minors, the State may use its CMA funds for services provided during the Federal fiscal year following the FFY in which the Department awards the funds.

(2) A State's final financial report on expenditures of CMA grants, including CMA expenditures for services for unaccompanied minors, must be received no later than one year after the end of the FFY in which the Department awarded the grant. At that time, the Department will deobligate any unexpended funds, including any unliquidated obligations.

(b) *Social service grants and targeted assistance grants,* as described, respectively, at §§ 400.11(a)(2) and 400.311 of this part:

(1) A State must obligate its social service and targeted assistance grants no later than one year after the end of the FFY in which the Department awards the grant.

(2) A State's final financial report on expenditures of social service and targeted assistance grants must be received no later than two years after the end of the FFY in which the Department awarded the grant. At that time, the Department will deobligate any unexpended funds, including any unliquidated obligations.

59. Subpart J is amended by adding a new § 400.212 that reads as follows:

§ 400.212 Restrictions in the use of funds.

Federal funding under this part is not available for travel outside the United States without the written approval of the Director.

Subpart K—Waivers and Withdrawals

60. The heading of subpart K is revised to read as set forth above:

61. Subpart K is amended by revising § 400.300 and adding a new § 400.301, that read as follows:

§ 400.300 Waivers.

If a State wishes to apply for a waiver of a requirement of this part, the Director may waive such requirement with respect to such State, unless required by statute, if the Director determines that such waiver will advance the purposes of this part and is appropriate and consistent with Federal refugee policy objectives. To the fullest extent practicable, the Director will approve or disapprove an application for a waiver within 130 days of receipt of such application. The Director shall provide timely written notice of the reasons for denial to States whose applications are disapproved.

§ 400.301 Withdrawal from the refugee program.

(a) In the event that a State decides to cease participation in the refugee program, the State must provide 120 days advance notice to the Director before withdrawing from the program.

(b) To participate in the refugee program, a State is expected to operate all components of the refugee program, including refugee cash and medical assistance, social services, preventive health, and an unaccompanied minors program if appropriate. A State is also expected to play a coordinating role in

the provision of assistance and services in accordance with § 400.5(b). In the event that a State wishes to retain responsibility for only part of the refugee program, it must obtain prior approval from the Director of ORR. Such approval will be granted only under extraordinary circumstances and if it is in the best interest of the Government.

(c) When a State withdraws from all or part of the refugee program, the Director may authorize a replacement designee or designees to administer the provision of assistance and services, as appropriate, to refugees in that State. A replacement designee must adhere to the same regulations under this part that apply to a State-administered program, with the exception of the following provisions: 45 CFR 400.5(d), 400.7, 400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i), 400.94(a), 400.94(b), 400.94(c), and subpart L. Certain provisions are excepted because they apply only to States and become moot when a State withdraws from participation in the refugee program and is replaced by another entity. States would continue to be responsible for administering the other excepted provisions because these provisions refer to the administration of other State-run public assistance programs.

62. Part 400 is amended by adding a new subpart L, that reads as follows:

Subpart L—Targeted Assistance

Sec.

Subpart L—Targeted Assistance

§ 400.310 Basis and scope.

This subpart sets forth requirements concerning formula allocation grants to States under section 412(c)(2) of the Act for targeted assistance.

§ 400.311 Definitions.

For purposes of this subpart—

''Targeted assistance grants'' means formula allocation funding to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.

§ 400.312 Opportunity to apply for services.

A State must provide any individual wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.

Funding and Service Priorities

§ 400.313 Use of funds.

A State must use its targeted assistance funds primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

§ 400.314 Priority in provision of services.

A State must plan its targeted assistance program and allocate its targeted assistance funds in such a manner that services are provided to refugees in the following order of priority, except in certain individual extreme circumstances:

(a) Cash assistance recipients, particularly long-term recipients;

(b) Unemployed refugees who are not receiving cash assistance; and

(c) Employed refugees in need of services to retain employment or to attain economic independence.

§ 400.315 General eligibility requirements.

(a) For purposes of determining eligibility of refugees for services under this subpart, the same standards and criteria shall be applied as are applied in the determination of eligibility for refugee social services under §§ 400.150 and 400.152(a).

(b) A State may not provide services under this subpart, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months, except that refugees who are receiving employability services, as defined in § 400.316, as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S.

§ 400.316 Scope of targeted assistance services.

A State may provide the same scope of services under this subpart as may be provided to refugees under §§ 400.154 and 400.155, with the exception of § 400.155(h).

§ 400.317 Service requirements.

In providing targeted assistance services to refugees, a State must adhere to the same requirements as are applied to the provision of refugee social services under § 400.156.

§ 400.318 Eligible grantees.

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

§ 400.319 Allocation of funds.

(a) A State with more than one qualifying targeted assistance county may allocate its targeted assistance funds differently from the formula allocations for counties presented in the ORR targeted assistance notice in a fiscal year only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula.

(b) A State must assure that not less than 95 percent of the total award to the State is made available to the qualified county or counties, except in those cases where the qualified county or counties have agreed to let the State administer the targeted assistance program in the county's stead.

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