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## II. Regulatory Assessment Requirements

### A. Certain Acts and Executive Orders

This action proposes exemptions from the tolerance requirement under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this proposed action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

### B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

### C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 29, 1998.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Refugee Resettlement

### 45 CFR Parts 400 and 401

### RIN 0970-AB83

### Refugee Resettlement Program: Requirements for the Public/Private Partnership Program for Refugee Cash Assistance; and Refugee Medical Assistance

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend current requirements governing refugee cash assistance and refugee medical assistance and would establish the refugee cash assistance program as a public/private partnership between States and local resettlement agencies.

**DATES:** Comments must be received by March 9, 1999.

**ADDRESSES:** Comments should be addressed to Toyo A. Biddle, Director, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

Agencies and organizations are requested to submit comments in duplicate. While we are soliciting comments on all aspects of the proposed rule, we would particularly appreciate your feedback on the time periods allowed for implementation.

Comments will be available for public inspection, beginning approximately one month after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4 p.m., except Federal holidays. Although we will not be able to acknowledge or respond to comments individually, in preparing the final rule, we will respond to comments in the preamble to the final rule.

**FOR FURTHER INFORMATION CONTACT:** Toyo Biddle, (202) 401-9250, or Barbara Chesnik, (202) 401-4558.

**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); cash and medical assistance, requirements for employability services, job search, and employment, and refugee social services published February 3, 1989 (54 FR 5463); and requirements for employability services, job search, employment, refugee medical assistance, refugee social services, targeted assistance services, and Federal funding for administrative costs, published June 28, 1995 (60 FR 33584).

## Description of the Regulation

This proposed regulation establishes a new system for providing refugee cash assistance (RCA) to those refugees not eligible for Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), changes the procedure for determining the financial eligibility of refugees for receipt of refugee medical assistance, and amends other policies.

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

It is important to note that resettlement in the U.S. is the last stage of a much larger, world-wide humanitarian effort to aid victims of oppression and war. The U.S. participates and exercises its leadership in this effort by contributing to international relief and protection efforts, and also by offering resettlement

to some refugees who have no other durable solution and who qualify for admission to the U.S. These refugees arrive from diverse backgrounds and parts of the world. However, what they all have in common, in addition to having had to seek refuge, is that they arrive with virtually no worldly possessions.

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

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

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

In the intervening years, due to declining appropriations, ORR reduced the period of availability of RCA and RMA to refugees. At the present time, ORR reimburses States for 100 percent of their RCA and RMA costs during a refugee's first eight months. Refugees eligible for the TANF and Medicaid programs receive assistance under those programs; the costs of refugee TANF

and Medicaid recipients are not included in the refugee appropriation.

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

With these two considerations in mind, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to see the regulations changed. The consultations were useful in helping us to identify certain issues and to gauge whether there was a general willingness and a suitable climate across the country in which to change the program.

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

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

The proposed regulation would establish the refugee cash assistance program as a public/private partnership between States and local resettlement agencies responsible for the initial

resettlement of refugees. Under the proposed program, States would enter into a public/private partnership by contracting with local resettlement agencies to administer both the provision of cash assistance and the services needed to help RCA recipients become employed and self-sufficient within the RCA eligibility period. The RMA program would continue to be administered by the States and would not be included in the public/private partnership program. In addition, assistance and services to refugees eligible for TANF would not be affected by the new public/private RCA program.

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

We believe the new program will more firmly unite the two key players—States and resettlement agencies—into a partnership that will best utilize their respective strengths. States would maintain the important role of administering the program and providing financial management and policy oversight, while the resettlement agencies would have an enhanced role in the longer-term resettlement of refugees they place in the State.

Under the public/private RCA program, States and voluntary agencies will have the flexibility to design programs to deliver refugee cash assistance in a manner that more fully integrates and supports resettlement. In order to accommodate resettlement in communities across the U.S. with different cost-of-living conditions, ORR is establishing payment ceilings which may be provided to refugees. Within these ceilings, a State and the resettlement agencies in that State will have the opportunity to develop a resettlement plan which incorporates the features, such as sliding scale payments or incentives, that they believe are best suited to achieving early self-sufficiency and to enriching the quality of life for refugees placed in

their State. In addition, States and resettlement agencies will have the flexibility to establish the income-eligibility standard for RCA that they believe would best enable most newly arriving refugees to qualify for RCA.

States and resettlement agencies administering the public/private RCA program will be responsible for moving refugees to economic self-sufficiency within the RCA eligibility period by placing them in full-time employment. They will also be responsible for assisting refugees in their social self-sufficiency by giving refugees adequate preparation to be able to carry out basic activities, such as handling a bank account or using public transportation, that are essential to living in American society. With full responsibility for refugees during this period, States and resettlement agencies will be held accountable for both employment and resettlement results by the end of this 8-month period.

The proposed regulation would allow States under § 400.207 to claim reasonable and necessary administrative costs incurred by resettlement agencies in the administration of the public/private RCA program. Because of the potential for increased administrative costs due to the public/private administration of the RCA program, ORR is soliciting comments on mechanisms to ensure that changes in administrative costs do not result in a reduction of benefits to refugees.

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

in the new RCA program within their regular social services budget.

States would be required to engage in a planning and consultation process with the resettlement agencies and with other agencies, such as mutual assistance associations (MAAs), that serve refugees in the State to design the public/private RCA program. From that process, States and resettlement agencies would develop a public/private RCA plan for submission to ORR no later than 6 months after publication of the final rule.

While a public/private RCA program is ORR's preferred approach, we fully recognize that this approach may not be the best choice in all States. Therefore, under the proposed regulation, States would have the flexibility to request an exception to the public/private program if an agreement cannot be reached with the local resettlement agencies or if the State has reason to believe that a public/private RCA program would not serve the best interests of refugees in that State. Certain criteria would have to be met for ORR to approve a State's request to operate an excepted RCA program. These criteria are discussed later in the preamble under a description of Exceptions to the Public/Private RCA Program, § 400.66. States that address these criteria would be able to operate a State-run excepted RCA program mirrored after their TANF program in regard to determination of eligibility, treatment of income and resources, benefit levels, and budgeting methods. States that believe that neither the public/private RCA program nor the RCA excepted program are the best programs to serve refugees in their State would have the flexibility to pursue a third option—an alternative program funded under the standing Wilson/Fish announcement. The Wilson/Fish program provides States and public and private non-profit agencies the opportunity to develop innovative approaches to providing cash assistance, social services, and case management as an alternative to the regular State-administered refugee program.

The proposed regulation contains a number of provisions to ensure that refugee rights and protections are safeguarded in the transfer of eligibility and cash assistance payment responsibilities from a State-administered to a public/private partnership program. While we have no interest in having resettlement agencies become mini-welfare bureaucracies, it is essential to have adequate client protections in place to ensure due process and equitable treatment.

We have added three changes to the refugee medical assistance program to

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

Consistent with the preceding actions, 45 CFR 400.2, 400.5, 400.11, 400.13, 400.23, 400.27, 400.43, 400.44, Subpart E, 400.70, 400.71, 400.72, 400.75, 400.76, 400.77, 400.78, 400.79, 400.80, 400.81, 400.82, 400.83, 400.100, 400.101, 400.102, 400.104, 400.154, 400.155, 400.203, 400.207, 400.208, 400.209, 400.210, 400.211, 400.301, and 401.12 are being amended or removed. Some of these changes are technical in nature and are not discussed in the preamble.

#### **Subpart A—Introduction**

Section 400.2 is amended by replacing all references to the AFDC program with references to the TANF program and by adding a definition of an RCA Plan.

#### **Subpart B—Grants to States for Refugee Resettlement**

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

Section 400.13(d) is amended by allowing the costs of case management to be charged to the CMA grant only in cases where the case management activities are targeted to time-eligible RCA recipients for the purpose of assisting such recipients to obtain employment and to become economically and socially self-sufficient.

Section 400.13 is amended by adding a new paragraph (e) which would allow States to charge administrative costs

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

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

#### **Subpart C—General Administration**

Section 400.23 (Hearings) is amended by removing a reference to AFDC regulations and establishing that the hearing procedures to be followed in the public/private RCA program will be the procedures described in the public/private RCA plan and the hearing procedures to be followed in an RCA-exempted program and the RMA program will be those used in the State TANF program.

Section 400.27 (Safeguarding and sharing of information) is amended by removing paragraph (c) which references an AFDC regulation. It should be noted that § 400.58 requires that a State's public/private RCA plan contain a description of the procedures to be used to safeguard the disclosure of information on refugee clients.

#### **Subpart D—Immigration Status and Identification of Refugees**

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

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

#### **Subpart E—Refugee Cash Assistance**

Subpart E is revised by replacing the current RCA program with a new public/private partnership program in which States would contract with local resettlement agencies to provide transitional cash assistance and services to RCA-eligible refugees as described below.

##### **General**

The following general sections apply to both the public/private RCA program and State exceptions to the public/private RCA program.

Section 400.50 (Basis and scope) is retained without changes.

Section 400.51 (Definitions) is removed.

Section 400.52 (Recovery of overpayments and correction of underpayments) is removed.

Section 400.55 (Opportunity to apply for cash assistance) is redesignated as § 400.51 and amended by removing (b)(1), which references AFDC requirements, and by removing (b)(3), (b)(4), and (c), which require States to contact sponsoring resettlement agencies regarding financial assistance and offers of employment to refugees.

Section 400.56 (Determination of eligibility under other programs) is redesignated as § 400.52 and is amended by removing paragraphs (a)(1) and (a)(2) and redesignating paragraph (a)(3) as (a).

Section 400.57 (Emergency cash assistance to refugees) is redesignated as § 400.53.

Section 400.54 (General eligibility requirements) replaces § 400.60 and establishes the following eligibility requirements for the RCA program. To be eligible for the RCA program, a refugee must: (1) Be a new arrival who has resided in the U.S. less than the RCA eligibility period determined by the ORR Director in accordance with § 400.211; (2) be ineligible for TANF and SSI; (3) have the proper immigration status and documentation for eligibility for benefits under the refugee program; (4) not be a full-time student in an institution of higher education; and (5) meet the income eligibility standard jointly established by the State and local resettlement agencies in the State.

Section 400.55 (Eligibility redeterminations in States with residency requirements) establishes that in States in which refugee families normally eligible for the TANF program are temporarily placed in the RCA program due to a TANF residency requirement, States are required to conduct an immediate redetermination of eligibility for TANF, once the

residency period is completed. This requirement applies regardless of whether the State is operating a local resettlement agency RCA program or, under an exception, a State agency-administered RCA program. Our intent is to ensure that RCA recipients eligible for TANF are transferred to that program in a timely manner, upon fulfilling the residency period, in order to limit the costs claimed against the RCA program for refugees eligible for TANF.

#### **Public/Private Partnership RCA Program**

Section 400.56 (Structure) establishes the structure for the provision of cash assistance through the proposed public/private RCA program. This section requires that States enter into a public/private partnership by administering the RCA program through contracts with the local resettlement agencies that resettle refugees in the State, unless the State meets the excepted criteria specified in section 400.66. We define local resettlement agencies as those agencies which provide initial reception and placement services to refugees under a cooperative agreement with the Department of State.

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

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

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

may hinder resettlement agency delivery of benefits.

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

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

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

Regarding the provision of services in the public/private RCA program, a State that lacks the staff capacity to manage numerous local agency contracts may wish to consider contracting with a lead resettlement agency, with subcontracts to the other local resettlement agencies for the provision of services. Our interest in having each resettlement agency retain responsibility for services through subcontracts is to maintain the link between initial resettlement of refugees in a State and accountability for outcomes for these refugees through the provision of services. States would be responsible for overseeing and managing these contracts in the same manner as their regular social services contracts.

States and resettlement agencies will have one year from the date of publication of the final rule to implement the new public/private RCA program.

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

This section requires that the public be given the opportunity to submit written comments on the plan before it is transmitted to ORR.

This section also requires local resettlement agencies to keep their respective national voluntary resettlement agencies fully informed of the details of the public/private RCA program as the program is developed. Local resettlement agencies will be responsible for obtaining a letter of agreement from their national agencies stating that they will continue to place

refugees in the State under the new public/private program.

Section 400.58 (Development of a public/private RCA plan) establishes the requirements for the development of a public/private partnership plan which describes how the State and local resettlement agencies will administer and deliver RCA to eligible refugees. The plan must describe the agreed-upon public/private RCA system including: (1) The proposed income standards for RCA eligibility; (2) proposed payment levels to be used to provide cash assistance to eligible refugees; (3) assurance that the payment levels established are not lower than the State TANF amount; (4) a detailed description of how benefit payments will be structured, including the employment incentives and/or income disregards to be used, if any; (5) a description of how all refugees residing in the State will have easy access to cash assistance and services; (6) a description of the procedures to be used to ensure appropriate protections and due process for refugees, such as the correction of underpayments, notice of adverse action and the right to mediation, a pre-termination hearing, and an appeal to an independent entity; (7) a description of proposed exemptions from participation in employability services; (8) a description of the employment and self-sufficiency services that the local resettlement agencies will be contracted to provide to RCA recipients; (9) procedures for providing RCA to eligible secondary migrants who move to the State, including secondary migrants who were sponsored by a resettlement agency that does not have a presence in the receiving State; (10) if applicable, provisions for providing assistance to refugees resettling in the State who are sponsored by a resettlement agency in a bordering State which does not have an office in the State of resettlement; (11) a description of the procedures to be used to safeguard the disclosure of information on refugee clients; (12) letters of agreement from the national voluntary resettlement agencies that refugee placements in the State will continue under the public/private RCA program; and (13) a breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including per capita caps on administrative costs.

The plan must be signed by the Governor or his or her designee and must be submitted to the ORR Director for review and approval no later than 6 months after the date of publication of the final rule.

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

Section 400.59 (Eligibility for the public/private RCA program) establishes that to be eligible for the public/private RCA program, a refugee must meet the income eligibility standard jointly established by the State and local resettlement agencies in the State.

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

Section 400.60 (Cash payment levels) establishes allowable cash payment levels under the proposed public/private RCA program. This section requires monthly cash assistance payments to be made to eligible refugees using a payment level that does not exceed the following payment ceilings:

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

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

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

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

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

Payments to refugees may not be lower than the State TANF payment for the same sized family unit. States, therefore, that have TANF payment levels that are higher than the ceilings

indicated above, must provide payment levels under the new public/private RCA program that are comparable to the State TANF payment levels.

We encourage States and local resettlement agencies to use the flexibility provided in the payment ceilings to include income disregards or other incentives such as employment bonuses, that will encourage early employment and self-sufficiency. States and resettlement agencies may design whatever combination of assistance payments and incentives they believe would be effective, as long as the total in any given month does not exceed the monthly ceiling amounts. This flexibility would allow States and local resettlement agencies to provide continued cash support while moving refugees into early employment.

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

One approach might be to permit the total of earned income and cash assistance of refugees who become employed full-time to exceed the cash assistance only payments made to refugees who are not employed. Another approach, currently being used in one State, provides an incentive to employed refugees through monthly reimbursements for work-related expenses such as tools, uniforms, work-related transportation expenses, medical insurance co-payments, or the cost of additional work-related training. The State has found this to be an effective incentive for early employment.

Section 400.61 (Services in the public/private RCA program) establishes that services provided to recipients of refugee cash assistance in the public/private program must be provided under contracts with the State by the local resettlement agencies that administer the public/private RCA program or their subcontractors. We believe it makes for good resettlement to have continuity between the placement of refugees in a State and accountability for the achievement of resettlement and self-sufficiency outcomes for these refugees by providing local resettlement agencies with the responsibility for these refugees during their first 8 months in the U.S. We will be looking to the

resettlement agencies to not only place refugees in employment at wages that will enable self-support, but to ensure that refugees receive the skills, such as English language acquisition and basic living skills, needed to live successfully in this country. We plan to work with States and local resettlement agencies to develop appropriate social self-sufficiency and English acquisition outcome measures to add to the employment and economic self-sufficiency client outcome measures that ORR currently uses in measuring results.

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

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

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

Section 400.63 (Availability of agency policies) requires States to ensure that each participating local resettlement agency makes available to refugees the written policies of the public/private RCA program, including agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. States must ensure that agency policy materials are made available to

refugee clients in English and in their own language.

Section 400.64 (Preparation of local resettlement agencies) requires national voluntary agencies to be responsible, in concert with the States, in preparing local resettlement agencies for their new responsibilities under the public/private RCA program during a period of transition. In light of the ongoing relationship of the national voluntary agencies with their local affiliates under the Department of State cooperative agreements for initial Reception and Placement (R & P) services, we believe the national agencies should share in the responsibility with the States for ensuring that their affiliate agencies have the capacity and structure to effectively handle the cash assistance and service needs of refugees over an 8-month period.

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

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

Section 400.65 (Monitoring) requires that ORR, States, and national voluntary agencies conduct joint monitoring of the new RCA program, beginning one year after the new program has been implemented, to ensure that the program is being carried out in a manner that produces positive self-sufficiency and resettlement outcomes.

Subject to the availability of appropriated funds, ORR intends to use ORR non-formula social services dollars to support a portion of the monitoring costs of the national voluntary agencies, in conjunction with the Department of State, in the monitoring of the public/private RCA program and the DOS-funded Reception & Placement grants.

This section also requires States to conduct compliance monitoring to ensure that local resettlement agencies are complying with the approved RCA plan and with ORR requirements regarding the RCA program. It will be particularly important to make sure that refugees are receiving timely monthly cash payments at the levels prescribed and are provided proper due process protections.

#### **Exceptions to the Public/Private RCA Program**

Section 400.66 (Exceptions to the public/private RCA program) establishes that States that have good reason to believe that a public/private refugee cash assistance program is not workable in the State and would not be in the best interests of refugees resettled in the State, may request an exception to the public/private RCA program. While we consider the public/private RCA program to be the preferred approach to providing transitional assistance and services to refugees, we recognize that the public/private approach may not be the best approach for all States or for all areas in a State for a variety of reasons. For example, the local resettlement agency(ies) in a given State may not wish to assume responsibility for the refugee cash assistance program, or may not have the capacity to provide adequate geographic access to refugee cash assistance and services to refugees eligible for the program. Or, the Governor may conclude, after State consultations with the State's resettlement partners, that the best interests of newly-arriving RCA refugees will be more effectively served through the existing system. Further, the Governor could conclude that the existing system would better serve newly-arriving RCA refugees if the State determines that there would not be sufficient administrative funding to enter into a public/private partnership and administer the remaining components of the program.

When differences surface among the resettlement partners during the planning process, every effort must be made to address these differences and reach a compromise, using the best interests of refugees as the guiding principle in all discussions and negotiations.

If the differences are irreconcilable, the State may determine, after having negotiated in good faith with all resettlement partners, that the best interests of refugees will be served by retaining the provision of refugee cash assistance as a component of the State-administered program through the State's TANF agency.

To qualify for an RCA exception, a State: (1) Must demonstrate that it made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and (2) must meet one of the following criteria: (a) resettlement agencies operating in the State declined to accept responsibility for the provision of cash assistance; (b) the contemplated provision of cash assistance by resettlement agencies would not provide adequate access to cash assistance for newly-arrived RCA refugees; (c) the Governor concluded that a public/private RCA program would not be in the best interests of refugees; or (d) the Governor determined that administrative funding would not be sufficient to enter into a public/private partnership and administer the remaining components of the program.

If a State wishes to request an exception to the public/private RCA program, a State must submit a written request signed by the Governor or his or her designee which: (1) Provides documentation that the State made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and (2) addresses one of the criteria for an exception described in (a)-(d) above.

A request for an exception must be submitted to the ORR Director for review and approval no later than 6 months after the date of publication of the final rule.

If the Director determines that a State's request for an exception meets the required criteria outlined above, the Director will approve the request. If a request for an exception is based on a Governor's decision that a public/private RCA program would not be in the best interests of refugees in the State, ORR does not intend to review or question the substance of the Governor's decision. An approved RCA exception must be implemented no later than one year after publication of the final rule.

Section 400.67 (Eligibility and payment levels in an excepted RCA program) establishes that in administering an ORR-approved excepted RCA program, the State agency must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to: (1) The determination of initial and on-

going eligibility (treatment of income and resources, budgeting methods, need standard); (2) the determination of benefit amounts (payment levels based on size of the assistance unit, income disregards); (3) proration of shelter, utilities, and similar needs; (4) the date that refugee cash assistance (RCA) begins, in relation to the date of application; and (5) any other State TANF rules relating to eligibility and payments.

Section 400.68 (Non-applicable TANF requirements) establishes that States that are granted an RCA exception *may not* apply certain TANF requirements to refugee cash assistance applicants or recipients as follows: (1) A State's durational residency requirement imposed on applicants for TANF may not apply to applicants for RCA; and (2) instead of TANF work requirements (hours of participation and allowable work activities), States must apply the requirements in § 400.75 which requires RCA recipients, as a condition of receipt of assistance, to participate in employment services within 30 days of receipt of aid, and Subpart I of 45 CFR Part 400 with respect to the provision of services for RCA recipients. The requirements and expectations for employment and participation in employment services in the refugee program are no less serious than the requirements in the TANF program. The requirements in the refugee program are simply different from TANF requirements in that the types of activities allowed in the refugee program are designed for the needs of newly-arrived refugees who typically arrive with little or no English language skills. Thus, in the refugee program, refugees participate extensively in English language training, assisted job search, and other employment-related activities that are designed to help limited-English speaking refugees to become self-sufficient within 8 months.

Section 400.69 (Notification of resettlement agencies) requires States to notify the local agency that was responsible for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under an RCA excepted program.

#### **Subpart F—Requirements for Employability Services and Employment**

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

Section 400.71 is amended to remove an incorrect reference to § 400.72(a) in the definition of the term, Designee.

Section 400.72 (Arrangements for employability services) is amended to clarify that the requirements in paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program through contracts with local resettlement agencies and to States that have been approved by ORR to operate an RCA excepted program, while paragraph (c) applies only to an RCA excepted program.

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

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

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

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

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

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

specify that under an RCA-excepted program, States must follow the procedures for notice of intended termination that are used in the State's TANF program.

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

#### **Subpart G—Refugee Medical Assistance**

Section 400.101(a) (Financial eligibility standards) is amended by giving States that operate a medically needy program the option of increasing the medically needy financial eligibility standard for RMA eligibility determination to up to 200% of the national poverty level by family size. Our intent in allowing States this new option is to ensure that States have the flexibility to broaden financial eligibility for refugee medical assistance, while receiving 100% Federal reimbursement of costs, in order to extend coverage to certain groups of new arrivals who are currently not covered under RMA. Refugees currently without medical coverage who would be affected by this provision include: (1) Refugees on TANF who obtain a job and terminate assistance before they have been on TANF for 3 months, who are then ineligible for transitional Medicaid; and (2) refugee spouses who arrive in the U.S. a number of months after their spouse who preceded them, and are not eligible for RMA because their employed spouse's income renders them ineligible for RMA.

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

Section 400.102 is revised to clarify that determination of eligibility for refugee medical assistance (RMA) must be based on the applicant's income and resources on the date of application,

rather than on a refugee's income averaged prospectively over the RMA application processing period.

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

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

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

#### **Subpart I—Refugee Social Services**

Section 400.155 is amended by adding citizenship and naturalization services as allowable services under the social services and targeted assistance formula programs. Citizenship and naturalization services may include such services as English language training and civics instruction to prepare refugees for citizenship, application assistance, and the provision of interpreter services for the citizenship interview, as needed.

#### **Subpart J—Federal Funding**

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

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

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

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

#### **Subpart K—Waivers and Withdrawals**

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

Section 400.301(c) is amended by clarifying that a replacement designee

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

### Regulatory Impact Analyses

#### A. Executive Order 12866

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

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to see the regulations changed. These meetings were attended by close to 500 participants representing the broad resettlement network. We also consulted with representatives of States, Washington-based interest groups, refugee mutual assistance associations, and national voluntary agencies in follow-up sessions in Washington, D.C. to discuss what we learned from the initial round of consultations and to obtain feedback on our possible regulatory changes. We received additional feedback after group representatives consulted more broadly within their networks following the last round of meetings. The input we received is reflected in these proposed regulations to a considerable degree.

These proposed rules represent a renewed, more flexible stage in the refugee program State/Federal partnership. Rather than requiring that one national program fit all local situations, ORR has allowed the States the option to request implementation of an excepted RCA program if they determine that the public/private RCA model we have proposed is not feasible in their State, if the Governor determines that the new program is not in the best interests of refugees, or if the Governor determines that administrative funding is not sufficient to enter into a public/private partnership and administer the remaining components of the program. Likewise, the State may

determine that the public/private RCA partnership would work well in only one community, and propose to implement a geographically split model.

Within the proposed public/private RCA program, we have also given States and local resettlement agencies broad flexibility to design a program which they believe will best serve refugees in their community. Rather than prescribing certain elements, we have given States and resettlement agencies the flexibility to determine: The income standard for receipt of RCA in their State; the benefit level within a broad range of benefit levels; whether employment incentives should be provided, and if so, how those incentives should be provided; the services to be provided; and the procedures States and local resettlement agencies will put in place to ensure due process and protections for refugees. States are also given the option, but not required, to set a higher need standard for refugee medical assistance. And within the proposed public/private RCA plan structure, there are several administrative models which may be considered by States and resettlement agencies.

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

We are concerned that the proposed revisions could increase the cost of the program, particularly during implementation. We expect the administrative costs to decrease substantially after the first year of implementation.

#### B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small

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

#### C. Paperwork Reduction Act of 1995

The following sections contain information collection, third party reporting, or recordkeeping requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)): §§ 400.43, 400.5, 400.51(c), 400.57(c), 400.58, 400.63, 400.66, and 400.82(b). The Administration for Children and Families has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 400.43 requires applicants to provide proof of alien status for eligibility to the refugee program. Section 400.5 requires that States submit a State plan in order to receive refugee program funding. Section 400.51(c) requires that States or their designees provide notice to applicants or recipients to indicate that assistance has been authorized, denied, or terminated and the program under which that determination was made. Section 400.57(c) requires that each local voluntary agency resettling in a State inform its national resettlement agency of the proposed public/private RCA program and obtain a letter of agreement from the national agency. Section 400.58 requires that States submit a public/private RCA plan for ORR review and approval before the State implements the plan. Section 400.63 requires that States ensure that

each participating local resettlement agency makes available to refugees the written policies of the public/private RCA program. Section 400.66 requires States that wish to request an exception to the public/private RCA program to submit a written request that addresses certain criteria before a State implements an excepted program. Section 400.82(b) requires that States provide a notice of intended termination to clients who have failed to meet certain work related requirements.

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

The effect of these information collection, reporting, or third-party notification requirements will be limited to the 46 States and the District of Columbia that participate in the refugee program, and 2–3 non-profit agencies that administer the program in States that no longer participate in the refugee program. We do not anticipate that all States will elect to operate a public/private RCA program; those States that choose not to operate such a program will not have to submit a public/private RCA plan. Those States that choose to implement a public/private RCA program will have to submit a public/private RCA plan only once. Additional submissions will only be necessary if the plan is modified in the future. The average burden per response for the preparation of an RCA plan is estimated to be 24 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 1,176 hours if all States elect to implement a public/private RCA program. States that request an exception to the public/private RCA program will have to submit a written request once. The average burden per response for the preparation of a written request for an excepted RCA program is estimated to be 3 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 147 hours if all States elect to request an exception to a public/private RCA program. Other requirements, such as the State plan (§ 400.5), are not changed. States receiving refugee program funds have a plan on file at ORR. We estimate the number of hours required to amend the plan to be a maximum of 1 hour annually. The total maximum annual reporting and recordkeeping burden that will result

from this collection of information is estimated to be no more than 47 hours if all States amend their plan in a given year. We estimate the average burden for other sections as follows: § 400.43 will be 500 hours annually; § 400.51(c) will be 850 hours annually; § 400.57(c) will be 200 hours annually; § 400.63 will be 9 hours annually; and § 400.82(b) will be 850 hours annually.

The Office of Refugee Resettlement will consider comments by the public on these proposed collections of information in: (1) Evaluating whether the proposed collections are necessary for the proper performance of the functions of ORR, including whether the information will have practical utility; (2) evaluating the accuracy of ORR's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhancing the quality, usefulness, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

#### D. Unfunded Mandates Reform Act of 1995

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

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the

statutory requirements. In addition, section 205 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

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

#### E. Congressional Review of Rulemaking

This rule is not a “major” rule as defined in Chapter 8 of 5 U.S.C.

#### Statutory Authority

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

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

#### List of Subjects

##### 45 CFR Part 400

Grant programs—social programs, Health care, Public assistance programs, Refugees, Reporting and Record keeping requirements.

##### 45 CFR Part 401

Cuba, Grant programs—social programs, Haiti, Public assistance programs, Refugees.

Dated: July 23, 1998.

**Olivia A. Golden,**

Assistant Secretary for Children and Families.

Approved: August 22, 1998.

**Donna E. Shalala,**

Secretary, Department of Health and Human Services.

For reasons set forth in the preamble, 45 CFR Parts 400 and 401 are proposed to be 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)).

##### § 400.2 [Amended]

2. Section 400.2 is amended by removing the definition of AFDC and adding a definition of TANF to read as

set forth below and by removing the word "AFDC" wherever it appears in this section and adding in its place the word "TANF".

**§ 400.2 Definitions.**

\* \* \* \* \*

TANF means temporary assistance for needy families.

\* \* \* \* \*

3. Section 400.2 is further amended by removing the word "to" after the word "refer" in the definition of *Case management services*.

4. Section 400.2 is further amended by adding a definition of *RCA Plan* to read as follows:

\* \* \* \* \*

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

**§ 400.5 [Amended]**

5. Section 400.5 is amended by adding paragraph (i) to read as follows:

**§ 400.5 Content of the plan.**

\* \* \* \* \*

(i) Provide that the State will:

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

(2) Meet the requirements in this part;

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

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

**§ 400.11 [Amended]**

6. Section 400.11(b) is amended by revising the word "then" to read "than".

**§ 400.13 [Amended]**

7. 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 except where the case management activities are targeted to time-eligible RCA recipients for the purpose of assisting such recipients to obtain employment and to become economically and socially self-sufficient.

8. Section 400.13 is further amended by adding a new paragraph (e) that reads as follows:

**§ 400.13 Cost allocation.**

\* \* \* \* \*

(e) Administrative costs incurred by local resettlement agencies in the administration of the public/private

RCA program (i.e., administrative costs of providing cash assistance) may be charged to the CMA grant.

Administrative costs of managing the services component of the RCA program must be charged to the social services grant.

**§ 400.23 [Amended]**

9. Section 400.23(a) is amended by removing the words "in § 205.10(a) of this title for public assistance programs" and adding in their place the words "in the RCA plan in the case of the public/private RCA program and by the State's TANF program in the case of an RCA-exempted program and for the RMA program."

10. Section 400.23(b) is amended by adding the words "or its designee" after the word "State".

**§ 400.27 [Amended]**

11. Section 400.27 is amended by removing paragraph (c).

**§ 400.43 [Amended]**

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

**§ 400.43 Requirements for documentation of refugee status.**

(a) \* \* \*

(4) Cuban and Haitian entrants, as described in 45 CFR part 401;

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

\* \* \* \* \*

**§ 400.44 [Amended]**

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

**Subpart E—[Revised]**

15. Subpart E is revised to read as follows:

**Subpart E—Refugee Cash Assistance**

**General**

**§ 400.50 Basis and scope.**

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

**§ 400.51 Opportunity to apply for cash assistance.**

(a) A State or its designee agency(s) must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State or its designee agency(s) must refer elderly or disabled refugees and refugees with dependent children to other cash assistance programs to apply for assistance in accordance with § 400.52.

(c) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State or its designee agency(s) must specify the program(s) to which the notice applies. For example, in the case of the public/private RCA program, if a refugee is determined ineligible for RCA, the local resettlement agency must provide notice of this determination to the refugee. In the case of an exempted RCA program, if a refugee applies for assistance and is determined ineligible for TANF but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to TANF and to refugee cash assistance. Similarly, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, and the State or its designee reviews the case file to determine possible eligibility for TANF or GA due to changed circumstances, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

**§ 400.52 Determination of eligibility under other programs.**

(a) *TANF*. For refugees determined ineligible for cash assistance under the TANF program, the State or its designee must determine eligibility for refugee cash assistance in accordance with §§ 400.54 and 400.59 in the case of the public/private RCA program or §§ 400.54 and 400.67 in the case of an RCA exempted program.

(b) *Cash assistance to the aged, blind, and disabled*—(1) *SSI*. (i) The State agency or its designee must refer refugees who are 65 years of age or older, or who are blind or disabled,

promptly to the Social Security Administration to apply for cash assistance under the SSI program.

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

(2) *OAA, AB, APTD, or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years or older, or who are blind or disabled; and

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

#### **§ 400.53 Emergency cash assistance to refugees.**

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

#### **§ 400.54 General eligibility requirements.**

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

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

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

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

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

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

#### **§ 400.55 Eligibility redeterminations in States with TANF residency requirements.**

In cases where refugee families with dependent children, normally eligible for TANF, are placed in the RCA program due to a State TANF residency requirement, a State must conduct a redetermination of eligibility for TANF within one month of the refugee family completing the TANF residency period. If eligible, the refugee family must be transferred from the RCA program to the TANF program at that time.

#### **Public/Private RCA Program**

##### **§ 400.56 Structure.**

(a) States must enter into a partnership agreement with local resettlement agencies for the operation of a public/private RCA program, unless they meet the excepted criteria specified in § 400.66.

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

(c) The public/private RCA program must be Statewide, unless the State and local resettlement agencies agree that it is not in the best interests of refugees to provide a public/private RCA program in a particular area of the State.

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

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

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

#### **§ 400.57 Planning and consultation process.**

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

(a) Primary participants in the planning process must include representatives of the State and each local agency that resettles refugees in the State. During the planning process, the State must fully consult with representatives of refugee mutual assistance associations (MAAs), local

community services agencies, and other agencies that serve refugees.

(b) The public must be given the opportunity to comment on the plan in writing before it is transmitted to the Director of ORR.

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

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

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

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

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

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

(4) A detailed description of how benefit payments will be structured, including a description of employment incentives and/or income disregards to be used, if any;

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

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

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

(8) A description of the employment and self-sufficiency services that the local resettlement agencies will be contracted to provide to RCA recipients;

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

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

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

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

(13) A breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including per capita caps on administrative costs.

(b) In cases where the State, after consultation with the local resettlement agencies in the State, determines that a public/private RCA program is not feasible statewide and proposes to implement a public/private RCA program in only a portion of the State and to operate an excepted RCA program in the balance of the State, the State's RCA plan must include the information required in § 400.66.

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

(d) The Director of ORR will follow the procedures in § 400.8 for the approval of public/private RCA plans.

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

#### **§ 400.59 Eligibility for the public/private RCA program.**

Eligibility for refugee cash assistance under the public/private program is limited to those who meet the income eligibility standard jointly established by the State and local resettlement agencies in the State.

#### **§ 400.60 Payment levels.**

(a)(1) Under the public/private RCA program, States and the local resettlement agencies contracted to administer the RCA program must make monthly cash assistance payments to eligible refugees that do not exceed the following payment ceilings, according to the number of persons in the assistance unit, except as noted in paragraph (b):

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

(2) For family units greater than 4 persons, the payment ceiling may be

increased by \$70 for each additional person.

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

(c) States and local resettlement agencies may design an assistance program that combines RCA payments with income disregards or other incentives such as employment bonuses, or graduated payments in order to encourage early employment and self-sufficiency, as long as the total combined payment in any given month does not exceed the monthly ceilings established in this section.

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

#### **§ 400.61 Services to public/private RCA recipients.**

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

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

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

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

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

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

The State and local resettlement agencies must establish procedures to ensure that eligible secondary migrant refugees, asylees, and Cuban/Haitian

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

#### **§ 400.63 Availability of agency policies.**

The State must ensure that each participating local resettlement agency makes available to refugees the written policies of the public/private RCA program, including agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. States must ensure that agency policy materials are made available to refugee clients in English and in their own language.

#### **§ 400.64 Preparation of local resettlement agencies.**

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

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

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

#### **§ 400.65 Monitoring.**

(a) Joint monitoring. (1) The Director of ORR, or his or her designee, and the State must conduct joint monitoring of the public/private RCA program, beginning no later than one year after the new program has been implemented to ensure that the program is being carried out in a manner that produces positive self-sufficiency and resettlement outcomes.

(2) Subject to the availability of appropriated funds, the national voluntary agencies must also participate in this joint monitoring in locations where their local affiliates participate in a public/private RCA program.

(b) The State must conduct compliance monitoring to ensure that local resettlement agencies are complying with the terms of the

approved public/private RCA plan and with ORR regulations in regard to the RCA program.

### **Exceptions to the Public/Private Program**

#### **§ 400.66 Criteria and procedure for granting an exception.**

(a) A State that has good reason to believe that a public/private refugee cash assistance program is not workable in the State or would not be in the best interests of refugees resettled in the State may request an exception to the public/private RCA program.

(1) To qualify for an RCA exception, a State:

(i) Must demonstrate that it made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and

(ii) Must meet one of the following criteria:

(A) Local resettlement agencies operating in the State declined to accept responsibility for the provision of cash assistance;

(B) The contemplated provision of cash assistance by local resettlement agencies would not provide adequate access to cash assistance for newly-arrived RCA refugees;

(C) The Governor concluded that a public/private RCA program would not be in the best interests of refugees; or

(D) The Governor determined that administrative funding is not sufficient to enter into a public/private partnership and administer the remaining components of the program.

(2) To request an exception to the public/private RCA program, a State must submit a written request signed by the Governor or his or her designee which:

(i) Provides documentation that the State made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and

(ii) Addresses one of the four criteria for an exception described in paragraph (a)(1)(ii) of this section.

(3) If a State's request for an exception meets the required criteria outlined in paragraph (a)(1), the Director will approve the request.

(b) States that determine that a public/private RCA program or an RCA excepted program are not the best approach for their State may choose instead to establish an alternative approach under the Wilson/Fish program.

#### **§ 400.67 Eligibility and payment levels in an excepted RCA program.**

In administering an approved excepted RCA program, the State agency

must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to:

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

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

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

(d) The date that refugee cash assistance (RCA) begins, in relation to the date of application; and

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

#### **§ 400.68 Non-applicable TANF requirements.**

States that are granted an RCA exception may not apply certain TANF requirements to refugee cash assistance applicants or recipients as follows:

(a) A State's durational residency requirement imposed on applicants for TANF may not apply to applicants for RCA; and

(b) TANF work requirements (hours of participation and allowable work activities) may not apply to RCA applicants or recipients. States must meet the requirements in subpart I of 45 CFR part 400 with respect to the provision of services for RCA recipients.

#### **§ 400.69 Notification to local resettlement agency.**

The State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under an RCA excepted program.

#### **§ 400.70 [Amended]**

16. Section 400.70 is amended by adding the words "under both the public/private RCA program and State-administered RCA exceptions" after the word "assistance" and before the word "concerning".

#### **§ 400.71 [Amended]**

17. Section 400.71 is amended by removing the words "§ 400.72(a) of" from the definition of the term *Designee*.

#### **§ 400.72 [Amended]**

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

§ 400.72 Arrangements for employability services. Paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program and to States that operate an ORR-approved RCA excepted program. Paragraph (c) applies only to RCA excepted programs.

(a) \* \* \*  
\* \* \* \* \*

#### **§ 400.75 [Amended]**

19. Section 400.75(b) is amended by adding the words "or its designee" after the words "State agency".

#### **§ 400.76 [Revised]**

20. Section 400.76 is revised to read as follows:

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

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

#### **§ 400.77 [Amended]**

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

#### **§ 400.78 [Removed]**

22. Section 400.78 is removed.

#### **§ 400.79 [Amended]**

23. Section 400.79(a) is amended by removing the word "filing" and adding in its place the word "family" before the word "unit".

24. Section 400.79 is further amended by adding the word "and" at the end of the paragraph (c)(1) and by removing the semicolon and the word "and" at the end of paragraph (c)(2) and adding in their place a period.

#### **§ 400.80 [Removed]**

25. Section 400.80 and the undesignated centerhead immediately preceding it are removed.

#### **§ 400.81 [Amended]**

26. Section 400.81 is amended by removing the word "AFDC" and adding in its place the word "TANF" in paragraphs (a) introductory text and (a)(4).

27. Section 400.81(b) is further amended by adding a sentence at the end of paragraph (b) that reads: "This training may only be made available to individuals who are employed."

#### **§ 400.82 [Amended]**

28. Section 400.82 is amended by redesignating paragraph (b)(3) as (c) and by redesignating paragraphs (b)(3)(i) and (ii) as (1) and (2) respectively.

29. Section 400.82 is further amended by revising paragraphs (a) and (b) to read as follows:

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

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

(b) *Notice of intended termination—* (1) *Public/private RCA program.* (i) In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the local resettlement agency responsible for the provision of RCA, must give timely and adequate notice, in accordance with adverse action procedures the State has established under the public/private RCA program to ensure due process.

(ii) Local resettlement agencies must provide written procedures in English and in the refugee's own language, for good cause determination and sanctioning of refugees who do not comply with the requirements of the program and for refugees to file appeals.

(iii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

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

(2) *RCA-excepted program.* In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the State agency must give timely and adequate notice following the same procedures as those used in its TANF program.

\* \* \* \* \*

30. Section 400.83 is revised to read as follows:

**§ 400.83 Mediation and fair hearings.**

(a) *Mediation—* (1) *Public/private RCA program.* The State must ensure that a mediation period prior to imposition of sanctions is provided to refugees by local resettlement agencies under the public/private RCA program. The State and local resettlement agencies must determine the length of the mediation period and must include a description of the mediation period in the public/private RCA plan required in § 400.58.

(2) *RCA-excepted program.* Under an RCA-excepted program, the State must use the same procedures for mediation/conciliation as those used in its TANF program.

(b) *Hearings—* (1) *Public/private RCA program.* (i) The State must ensure that

local resettlement agencies provide an applicant for or recipient of refugee cash assistance an opportunity for an oral pre-termination hearing to contest adverse determinations, including a determination concerning employability or failure or refusal to participate in employment services or to accept an appropriate offer of employment, resulting in denial or termination of assistance.

(A) Hearings must be conducted by an impartial official or designee of the local resettlement agency who has not been involved directly in the initial determination of the action in question.

(B) A hearing need not be granted when Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(ii) The State must ensure that local resettlement agencies provide timely and adequate notice in the refugee's language of any determination.

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

(2) *RCA-excepted program.* The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards used in the State's TANF program to contest a determination of employability, or failure or refusal to participate in employment services or accept an appropriate offer of employment, resulting in denial or termination of assistance.

**§ 400.100 [Amended]**

31. Section 400.100(a)(2) is amended by removing the word "filing" and adding in its place the word "family" before the word "unit".

**§ 400.101 [Amended]**

32. Section 400.101(a) is revised to read as follows:

**§ 400.101 Financial eligibility standards.**

\* \* \* \* \*

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

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

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

\* \* \* \* \*

33. Section 400.101(b) is amended by removing the words "established under § 233.20(a)(2) of this title" and adding in their place the words "in effect as of July 16, 1996, including any modifications elected by the State under section 1931(b)(2) of the Social Security Act."

**§ 400.102 [Revised]**

34. Section 400.102 is revised to read as follows:

**§ 400.102 Consideration of income and resources.**

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

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

(2) In States without medically needy programs, use the standards governing consideration of income and resources of AFDC applicants in effect as of July 16, 1996.

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

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

35. Section 400.104 is revised to read as follows:

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

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

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

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

medical assistance, in accordance with § 400.100(b).

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

#### **§ 400.154 [Amended]**

36. Section 400.154(j) is amended by removing the word "AFDC" and adding in its place the word "TANF".

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

#### **§ 400.155 Other services.**

\* \* \* \* \*

(i) Citizenship and naturalization preparation services including English language training and civics instruction to prepare refugees for citizenship, application assistance, and the provision of interpreter services for the citizenship interview.

#### **§ 400.203 [Amended]**

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

#### **§ 400.207 [Amended]**

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

#### **§ 400.208 [Amended]**

40. Section 400.208 is amended by removing the word "filing" whenever it appears and adding in its place the word "family".

#### **§ 400.209 [Amended]**

41. Section 400.209 is amended by removing the word "filing" whenever it appears and adding in its place the word "family" and by removing the word "AFDC" in paragraph (a) and adding in its place the word "TANF".

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

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

\* \* \* \* \*

(b) \* \* \*

(2) A State must expend its social service and targeted assistance grants no later than two years after the end of the FFY in which the Department awards the grant. A State's final financial report

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

#### **§ 400.211 [Amended]**

43. Section 400.211(a) is amended by removing the word "necessary" and adding in its place the words "a reduction in the eligibility period is indicated" after the word "if".

44. Section 400.211(a)(2) is amended by removing the word "member" and adding in its place the word "number" after the word "annual".

45. Section 400.211(b) is amended by removing the word "impleting" and adding in its place the word "implementing".

#### **§ 400.301 [Amended]**

46. Section 400.301(b) is amended by removing the words "only under extraordinary circumstances and" after the word "granted".

47. Section 400.301(c) is amended by adding the following sentence after the words "subpart L": "Replacement designees must also adhere to the subpart L regulations regarding formula allocation grants for targeted assistance, if the State authorized the replacement designee appointed by the Director to act as its agent in applying for and receiving targeted assistance funds".

48. Section 400.301(c) is further amended by removing the words "400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i)" and adding in their place the words "400.52(b)(2)(i), 400.55, 400.58(c)".

### **PART 401—CUBAN/HAITIAN ENTRANT PROGRAM**

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

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

#### **§ 401.12 [Amended]**

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

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### **DEPARTMENT OF TRANSPORTATION**

#### **Maritime Administration**

##### **46 CFR Part 249**

**[MARAD–98–4395]**

**RIN No. 2133AB 36**

#### **Approval of Underwriters for Marine Hull Insurance**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Advance notice of proposed rulemaking; termination.

**SUMMARY:** On September 23, 1998, the Maritime Administration (MARAD) published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comments from interested persons concerning the need to amend the existing regulations governing the placement of marine hull insurance on subsidized and Title XI program vessels because of the merger of the Institute of London Underwriters (ILU) and the London International Insurance and Reinsurance Market Association (LIRMA). Under the existing regulations ILU members are approved to write marine hull insurance provided they meet certain trust agreement requirements. Based on the response, MARAD is terminating the proposed rulemaking.

#### **FOR FURTHER INFORMATION CONTACT:**

Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, (202) 366–2400.

**SUPPLEMENTARY INFORMATION:** The new organization formed by the merger will be called the International Underwriters Association (IUA) of London. Because this new organization does not have the same eligibility criteria as the ILU or any internal oversight activities, MARAD was seeking input on the best method to review and approve member companies in the future.

MARAD received comments on behalf of the ILU, Lykes Lines Limited, LLC, Keystone Shipping Co., and a group of students at Florida International University. All commenters felt that post merger ILU companies should be subject to the existing "Other Foreign Underwriters" requirements set out in MARAD's insurance regulation at 46 CFR Part 249.5(c). The commenters felt that these requirements were sufficiently stringent to protect MARAD's interests.

Based on MARAD's own internal review and the limited response to the ANPRM, MARAD has decided not to proceed with a formal rulemaking on this matter. Instead, MARAD has