agency in writing in a notice of suspension, with such suspension effective as of the date on which there is no longer substantial compliance.

(b) *Suspension of FFP.* If OCSE suspends approval of an APD in accordance with this part during the installation, operation, or enhancement of a Computerized Tribal IV–D System, FFP will not be available in any expenditure incurred under the APD after the date of the suspension until the date OCSE determines that the comprehensive Tribal IV–D agency has taken the actions specified in the notice of suspension described in paragraph (a) of this section. OCSE will notify the comprehensive Tribal IV–D agency in writing upon making such a determination.

§ 310.35 Under what circumstances would emergency FFP be available for Computerized Tribal IV–D Systems?

(a) *Conditions that must be met for emergency FFP.* OCSE will consider waiving the approval requirements for acquisitions in emergency situations, such as natural or man-made disasters, upon receipt of a written request from the comprehensive Tribal IV–D agency. In order for OCSE to consider waiving the approval requirements in § 310.25 of this part, the following conditions must be met:

(1) The comprehensive Tribal IV–D agency must submit a written request to OCSE prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which resulted in the comprehensive Tribal IV–D agency's need to proceed prior to obtaining approval from OCSE; and

(iii) A description of the harm that will be caused if the comprehensive Tribal IV–D agency does not acquire immediately the ADP equipment and services.

(2) Upon receipt of the information, OCSE will, within 14 working days of receipt, take one of the following actions:

(i) Inform the comprehensive Tribal IV–D agency in writing that the request has been disapproved and the reason for disapproval; or

(ii) Inform the comprehensive Tribal IV–D agency in writing that OCSE recognizes that an emergency exists and that within 90 calendar days from the date of the initial written request under paragraph (a)(1) of this section the comprehensive Tribal IV–D agency must submit a formal request for approval which includes the information specified at § 310.25 of this title in order for the ADP equipment or services acquisition to be considered for OCSE's approval.

(b) *Effective date of emergency FFP.* If OCSE approves the request submitted under paragraph (a)(2) of this section, FFP will be available from the date the comprehensive Tribal IV–D agency acquires the ADP equipment and services.

Subpart D—Accountability and Monitoring Procedures for Computerized Tribal IV–D Systems

§ 310.40 What requirements apply for accessing systems and records for monitoring Computerized Tribal IV–D Systems and Office Automation?

In accordance with Part 95 of this title, a comprehensive Tribal IV–D agency must allow OCSE access to the system in all of its aspects, including installation, operation, and cost records of contractors and subcontractors, and of Service Agreements at such intervals as are deemed necessary by OCSE to determine whether the conditions for FFP approval are being met and to determine the efficiency, effectiveness, reasonableness of the system and its cost.

PARTS 311–399 [RESERVED]

CHAPTER IV—OFFICE OF REFUGEE RESETTLEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

Subpart B—Grants to States for Refugee Resettlement

THE STATE PLAN

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Subpart D—Immigration Status and Identification of Refugees

DOCUMENTATION OF REFUGEE STATUS

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PUBLIC/PRIVATE RCA PROGRAM

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APPLICATIONS, DETERMINATIONS OF ELIGIBILITY, AND FURNISHING ASSISTANCE

CONDITIONS OF ELIGIBILITY FOR REFUGEE CASH ASSISTANCE

Subpart F—Requirements for Employability Services and Employment

GENERAL REQUIREMENTS

Subpart L—Targeted Assistance

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

SOURCE: 45 FR 59323, Sept. 9, 1980, unless otherwise noted.

Subpart A—Introduction

§ 400.1 Basis and purpose of the program.

(a) This part prescribes requirements concerning grants to States and other public and private non-profit agencies, wherever applicable under title IV of the Immigration and Nationality Act.

(b) It is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.

(c) Under the authority in section 412(a)(6)(B) of the Immigration and Nationality Act, the Director has established the provision of employment services and English language training as a priority in accomplishing the purpose of this program.

[51 FR 3912, Jan. 30, 1986, as amended at 60 FR 33601, June 28, 1995]

§ 400.2 Definitions.

The following definitions are applicable for purposes of this part:

AABD means aid to the aged, blind, and disabled under title XVI of the Social Security Act.

AB means aid to the blind under title X of the Social Security Act.

Act means the Immigration and Nationality Act.

APTD means aid to the permanently and totally disabled under title XIV of the Social Security Act.

Case management services means the determination of which service(s) to refer a refugee to, referral to such service(s), and tracking of the refugee's participation in such service(s).

Cash assistance means financial assistance to refugees, including TANF, SSI, refugee cash assistance, and general assistance, as defined herein, under title IV of the Act.

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

Director means the Director, Office of Refugee Resettlement.

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

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

Federal Funding or 'FF' means Federal funding for a State's expenditures under the refugee resettlement program.

General assistance program means a financial and/or medical assistance program existing in a State or local jurisdiction which: (a) Is funded entirely by State and/or local funds; (b) is generally available to needy persons residing in the State or locality who meet specified income and resource requirements; and (c) consists of one-time emergency, or ongoing assistance intended to meet basic needs of recipients, such as food, clothing, shelter, medical care, or other essentials of living.

HHS means the Department of Health and Human Services.

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

Medical assistance means medical services to refugees, including Medicaid, refugee medical assistance, and general assistance, as defined herein, under title IV of the Act.

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

OAA means old age assistance under title I of the Social Security Act.

ORR means the Office of Refugee Resettlement.

Plan means a written description of the State's refugee resettlement program and a commitment by the State to administer or supervise the administration of the program in accordance with Federal requirements in this part.

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

Refugee means an individual who meets the definitions of a refugee under section 101(a)(42) of the Act.

Refugee cash assistance (*RCA*) means cash assistance provided under section 412(e) of the Act to refugees who are ineligible for TANF, OAA, AB, APTD, AABD, or SSI.

Refugee medical assistance (*RMA*) means: (a) Medical assistance provided under section 412(e) of the Act to refugees who are ineligible for the Medicaid program; and (b) services provided in accordance with §§ 400.106 and 400.107 of this part.

Secretary means the Secretary of HHS.

Sponsor means an individual, church, civic organization, State or local government, or other group or organization which has agreed to help in the reception and initial placement of refugees in the United States and other public and private non-profit agencies, wherever.

SSI means supplemental security income under title XVI of the Social Security Act.

State means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territories of the Pacific.

State agency means the agency (or agencies) designated by the Governor or the appropriate legislative authority of the State to develop and administer, or supervise the administration of, the plan and includes any local agencies administering the plan under supervision of the State agency.

State Coordinator means the individual designated by the Governor or the appropriate legislative authority of the State to be responsible for, and who is authorized to, ensure coordination of public and private resources in refugee resettlement.

Support services means services provided or contracted for by a State, which are designed to meet resettlement needs of refugees, for which funding is available under title IV of the Act.

TANF means temporary assistance for needy families under Title IV-A of the Social Security Act.

Time-eligibility means the period for which FF (Federal funding) is provided under §§ 400.203 and 400.204 of this part, after applying the limitation ''[s]ubject to the availability of funds'' in accordance with § 400.202.

Title IV of the Act means title IV, Chapter 2, of the Immigration and Nationality Act.

[51 FR 3912, Jan. 30, 1986, as amended at 54 FR 5475, Feb. 3, 1989; 58 FR 46090, Sept. 1, 1993; 58 FR 64507, Dec. 8, 1993; 65 FR 15442, Mar. 22, 2000]

§ 400.3 [Reserved]

Subpart B—Grants to States for Refugee Resettlement

THE STATE PLAN

§ 400.4 Purpose of the plan.

(a) In order for a State to receive refugee resettlement assistance from funds appropriated under section 414 of the Act, it must submit to ORR a plan that meets the requirements of title IV of the Act and of this part and that is approved under § 400.8 of this part.

(b) A State must certify no later than 30 days after the beginning of each Federal fiscal year that the approved State plan is current and continues in effect. If a State wishes to change its plan, a State must submit a

proposed amendment to the plan. The proposed amendment will be reviewed and approved or disapproved in accordance with § 400.8.

[51 FR 3912, Jan. 30, 1986, as amended at 60 FR 33602, June 28, 1995]

§ 400.5 Content of the plan.

The plan must:

(a) Provide for the designation of, and describe the organization and functions of, a State agency (or agencies) responsible for developing the plan and administering, or supervising the administration of, the plan;

(b) Describe how the State will coordinate cash and medical assistance with support services to ensure their successful use to encourage effective refugee resettlement and to promote employment and economic self-sufficiency as quickly as possible.

(c) Describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance, and to other refugees, including State efforts to actively encourage refugee registration for employment services;

(d) Identify an individual designated by the Governor or the appropriate legislative authority of the State, with the title of State Coordinator, who is employed by the State and will have the responsibility and authority to ensure coordination of public and private resources in refugee resettlement in the State;

(e) Provide for, and describe the procedures established for, the care and supervision of, and legal responsibility (including legal custody and/or guardianship under State law, as appropriate) for, unaccompanied refugee children in the State;

(f) Provide for and describe (1) the procedures established to identify refugees who, at the time of resettlement in the State, are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation, and (2) the procedures established to monitor any necessary treatment or observation;

(g) Provide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex, or political opinion; and

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

(i) Provide that the State will:

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

(2) Meet the requirements in this part;

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

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

(Approved by the Office of Management and Budget under control number 0960–0418)

[51 FR 3912, Jan. 30, 1986, as amended at 60 FR 33602, June 28, 1995; 65 FR 15443, Mar. 22, 2000]

§ 400.6 [Reserved]

§ 400.7 Submittal of the State plan and plan amendments for Governor's review.

A plan or plan amendment under title IV of the Act must be submitted to the State Governor or his or her designee, for review, comment, and signature before the plan is submitted to ORR.

[51 FR 3913, Jan. 30, 1986]

§ 400.8 Approval of State plans and plan amendments.

(a) The State agency must submit the State plan and plan amendments which have been signed by the Governor, or his or her designee, together with one copy of such plan or amendment, to the Director of ORR, or his or her designee, for approval. States are encouraged to consult with the Director, or his or her designee, when a plan or amendment is in preparation.

(b) The Director, or his or her designee, may initiate any necessary discussions with the State agency to clarify aspects of the plan.

(c) No later than 45 days after the State plan or plan amendment is submitted, the Director, or his or her designee, will—(1) Determine whether a State plan or plan amendment meets or continues to meet requirements for approval based on relevant Federal statutes and regulations, and (2) approve or disapprove the plan or plan amendment.

(d) The Director, or designee, will notify the State agency promptly of all actions taken on State plans and amendments.

(e) The effective date of an approved State plan or plan amendment may not be earlier than the first day of the calendar quarter in which the State agency submits the plan or plan amendment, except as otherwise approved by the Director.

[51 FR 3913, Jan. 30, 1986]

§ 400.9 Administrative review of decisions on approval of State plans and plan amendments.

(a) Any State dissatisfied with a determination by the Director, or his or her designee, under § 400.8 with respect to any plan or plan amendment may, within 60 days after the date of notification of such determination, file a petition with the Director, or designee, for reconsideration of the determination.

(b) A State may request that a hearing be held, but it is not required to do so.

(c) If a State requests a hearing, the Director, or designee, will notify the State within 30 days after receipt of such a petition, of the time and location of the hearing to reconsider the issue.

(d) The hearing must be held not less than 30 days nor more than 60 days after the date the notice of the hearing is furnished to the State, unless the Director, or designee, and the State agree in writing on another time.

(e) The hearing procedures in part 213 of this title will be used except that:

(1) ''The Director'' is substituted where there is a reference to ''the Administrator,'' and

(2) ''ORR Hearing Clerk'' is substituted where there is reference to the ''SRS Hearing Clerk.''

(f) The Director will affirm, modify, or reverse the original decisions within 60 days of the receipt of the State's petition or, if a hearing is held, within 60 days after the hearing.

(g) The initial determination by the Director, or designee, that a plan or amendment is not approvable shall remain in effect pending the reconsideration.

(h) If the Director reverses the original decision, ORR will reimburse any funds incorrectly withheld or otherwise denied.

[51 FR 3913, Jan. 30, 1986]

§ 400.10 [Reserved]

AWARD OF GRANTS TO STATES

§ 400.11 Award of Grants to States.

(a) *Quarterly grants.* Subject to the availability of funds (and in accordance with the limitations of Subpart J of this part), ORR will make two types of quarterly grants to eligible States:

(1) *Grants for cash assistance, medical assistance, and related administrative costs (''CMA grants''),* for the following purposes: Cash assistance provided by a State or local public agency under the program of temporary assistance for needy families (TANF) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the Immigration and Nationality Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of the Pub. L.

93–66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State; and

(2) *Grants for social services, as set forth in this part.* ORR will compute the amount of the quarterly awards based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(b) *Form and manner of State application for grant award*—(1) *CMA grants.* For quarterly grants for cash assistance, medical assistance, and related administrative costs, including assistance and services to unaccompanied minors (''CMA grants''), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, and a justification statement in support of the estimates no later than 45 days prior to the beginning of the fiscal year in accordance with guidelines prescribed by the Director.

(2) *Grants for refugee social services.* For quarterly grants for refugee social services, a State must submit to the Director, or designee, an annual plan developed on the basis of local consultative process on a form and at a time prescribed by the Director.

(3) *Quarterly adjustments.* If a State revises its estimates required in paragraph (b)(1), it must submit to the Director, or designee, the revisions, accompanied by a justification statement, no later than 30 days prior to the beginning of the quarter in which the revision or adjustment applies.

(c) *Financial status report.* A State must submit to the Director, or designee, a financial status report described in § 74.73(a) of this title, no later than 30 days after the end of each quarter. Final financial reports must be submitted in accordance with the requirements described in § 400.210.

(d) *Review.* ORR will determine whether the State's description of services, estimates, other relevant information, and any adjustments to be made for prior periods meet the requirements under this part, and will compute the quarterly award.

(e) *Grant award.* (1) ORR will transmit to the State the grant award form showing, by type of assistance, the amount of the award.

(2) The State may draw funds, under the Department's Payment Management System (PMS), as needed, to meet the Federal share of disbursements.

(Approved by the Office of Management and Budget under control number 0960–0418)

[51 FR 3913, Jan. 30, 1986, as amended at 54 FR 5475, Feb. 3, 1989; 60 FR 33602, June 28, 1995; 65 FR 15443, Mar. 22, 2000]

§ 400.12 Adverse determinations concerning State grants.

(a) *Policy.* The Secretary has established a Departmental Grant Appeals Board for the purpose of reviewing and providing hearings on post-award disputes which may arise in the administration of certain grant programs by constituent agencies of HHS. Section 16.3(c) of this title mandates an appellant to exhaust any preliminary appeal process required by regulation before a formal appeal to the Board will be allowed. Paragraph (d) of this section provides an informal preliminary appeal process for resolution of such disputes within ORR prior to appeal to the Board.

(b) *Scope.* Adverse determinations to which this procedure is applicable are as follows:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project or program in accordance with applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) The disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant.

(4) A determination that a grant is void because the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

(c) *Notice of adverse determination.* If the Director, or his or her designee, makes an adverse determination with respect to a grant, he or she shall promptly issue a notice of adverse determination to the State which contains the reasons for the determination in sufficient detail to enable the State agency to respond and informing the State agency of the opportunity for review under paragraph (d) of this section.

(d) *Request for review of an adverse determination.* (1) If the State agency wants a review of the determination, it must submit a request for such review to the Director no later than 30 days after the postmark on the notice, unless an extension of time is granted for good cause.

(2) The request for review must contain a full statement of the State's position with respect to the determination being appealed and the pertinent facts and reasons in support of such position. The State agency must attach to the submission a copy of the notice.

(3) The Director may, at his or her discretion, invite the State to discuss pertinent issues and to submit such additional information as he or she deems appropriate.

(4) Based on his or her review, the Director will send a written response to the State. If the response is adverse to the State's position, the correspondence shall state the State's right to appeal to the Departmental Grant Appeals Board, pursuant to part 16 of this title.

(e) *Request for appeal of an adverse determination.* (1) To appeal an adverse determination, a State agency must file an appeal with the Departmental Grant Appeals Board, in accordance with requirements contained in part 16 of this title.

(2) The State's application for review must be postmarked no later than 30 days after the postmark on the Director's response to the State's request for review in paragraph (d)(4) of this section.

[51 FR 3914, Jan. 30, 1986]

§ 400.13 Cost allocation.

(a) A State must allocate costs, both direct and indirect, appropriately between the Refugee Resettlement Program (RRP) and other programs which it administers.

(b) Within the RRP, a State must allocate costs appropriately among its CMA grant, social services grant, and any other Refugee Resettlement Program (RRP) grants which it may receive, as prescribed by the Director.

(c) Certain administrative costs incurred for the overall management of the State's refugee program (e.g., development of the State plan, overall program coordination, and salary and travel costs of the State Refugee Coordinator), as identified by the Director, may be charged to the CMA grant. All other costs must be allocated among the CMA grant, social services grant, and any other Refugee Resettlement Program (RRP) grants.

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

(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.

[54 FR 5476, Feb. 3, 1989, as amended at 60 FR 33602, June 28, 1995; 65 FR 15443, Mar. 22, 2000]

Subpart C—General Administration

SOURCE: 51 FR 3914, Jan. 30, 1986, unless otherwise noted.

§§ 400.20–400.21 [Reserved]

§ 400.22 Responsibility of the State agency.

(a) The State agency may not delegate, to other than its own officials, responsibility for administering or supervising the administration of the plan.

(b) The State agency must have—

(1) Methods for informing staff of State policies, standards, procedures, and instructions; and

(2) Systematic planned examination and evaluation of operations in local offices.

§ 400.23 Hearings.

(a) A State must provide applicants for, and recipients of, assistance and services under the Act with an opportunity for a hearing to contest adverse determinations using hearing procedures set forth in § 205.10(a) of this title for public assistance programs unless otherwise specified in this part.

(b) If the issue is the date of entry into the United States of an applicant for or recipient of assistance or services, the State or its designee must provide for prompt resolution of the issue by inspection of the individual's documentation issued by the Immigration and Naturalization Service (INS) or by information obtained from INS, rather than by hearing.

[51 FR 3914, Jan. 30, 1986, as amended at 65 FR 15443, Mar. 22, 2000]

§ 400.24 [Reserved]

§ 400.25 Residency requirements.

A State may not impose requirements as to duration of residence as a condition of participation in the State's program for the provision of assistance or services.

§ 400.26 [Reserved]

§ 400.27 Safeguarding and sharing of information.

(a) Except for purposes directly connected with, and necessary to, the administration of the program, a State must ensure that no information about, or obtained from, an individual and in possession of any agency providing assistance or services to such individual under the plan, will be disclosed in a form identifiable with the individual without the individual's consent, or if the individual is a minor, the consent of his or her parent or guardian.

(b) The provision by a State to a local resettlement agency or by a local resettlement agency to a State, of information as to whether an individual has applied for or is receiving cash assistance and the individual's address and telephone number is to be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program during the first 36 months after such individual's entry into the United States.

[51 FR 3914, Jan. 30, 1986, as amended at 54 FR 5476, Feb. 3, 1989; 65 FR 15443, Mar. 22, 2000]

§ 400.28 Maintenance of records and reports.

(a) A State must provide for the maintenance of such operational records as are necessary for Federal monitoring of the State's refugee resettlement program in accordance with part 74, Subpart D, of this title. This recordkeeping must include:

(1) Documentation of services and assistance provided, including identification of individuals receiving those services;

(2) Records on the location, progress, and status of unaccompanied minor refugee children, including the last known address of parents; and

(3) Documentation that necessary medical followup services and monitoring have been provided.

(b) A State must submit statistical or programmatic information that the Director determines to be required to fulfill his or her responsibility under the Act on refugees who receive assistance and services which are provided, or the costs of which are reimbursed, under the Act.

(Approved by the Office of Management and Budget under control number 0960–0418)

Subpart D—Immigration Status and Identification of Refugees

SOURCE: 51 FR 3915, Jan. 30, 1986, unless otherwise noted.

§ 400.40 Scope.

This subpart sets forth requirements concerning the immigration status and identification of eligible applicants for assistance under title IV of the Act.

§ 400.41 Definitions

For purposes of this subpart—

Applicant for asylum means an individual who has applied for, but has not been granted, asylum under section 208 of the Act.

Asylee means an individual who has been granted asylum under section 208 of the Act.

DOCUMENTATION OF REFUGEE STATUS

§ 400.43 Requirements for documentation of refugee status.

(a) An applicant for assistance under title IV of the Act must provide proof, in the form of documentation issued by the Immigration and Naturalization Service (INS), of one of the following statuses under the Act as a condition of eligibility:

(1) Paroled as a refugee or asylee under section 212(d)(5) of the Act;

(2) Admitted as a refugee under section 207 of the Act;

(3) Granted asylum under section 208 of the Act;

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

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

(6) Admitted for permanent residence, provided the individual previously held one of the statuses identified above.

(b) The Director will issue instructions specifying the documentation that applicants for assistance must submit.

[51 FR 3915, Jan. 30, 1986, as amended at 65 FR 15443, Mar. 22, 2000]

§ 400.44 Restriction.

An applicant for asylum is not eligible for assistance under title IV of the Act unless otherwise provided by Federal law.

[51 FR 3915, Jan. 30, 1986, as amended at 65 FR 15443, Mar. 22, 2000]

Subpart E—Refugee Cash Assistance

SOURCE: 65 FR 15443, Mar. 22, 2000 unless otherwise noted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

233.31 Budgeting methods for AFDC.

233.32 Payment and budget months (AFDC).

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

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

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

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

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

235.110 Fraud.

GENERAL

§ 400.48 Basis and scope.

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

§ 400.49 Recovery of overpayments and correction of underpayments.

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

§ 400.50 Opportunity to apply for cash assistance.

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

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

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

§ 400.51 Determination of eligibility under other programs.

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

(b) Cash assistance to the aged, blind, and disabled. (1) SSI. (i) The State

agency or its designee must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration to apply for cash assistance under the SSI program.

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

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

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

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

§ 400.52 Emergency cash assistance to refugees.

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

§ 400.53 General eligibility requirements.

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

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

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

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

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

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

§ 400.54 Notice and hearings.

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

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

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

(b) *Hearings.* All applicants for and recipients of refugee cash assistance must be provided an opportunity for a

hearing to contest adverse determinations. States must ensure that hearings meet the due process standards in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

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

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

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

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

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

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

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

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

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

§ 400.55 Availability of agency policies.

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

PUBLIC/PRIVATE RCA PROGRAM

§ 400.56 Structure.

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

(b) The public/private RCA program must be administered by the State

through contracts or grants with local resettlement agencies or a lead resettlement agency that provides initial resettlement services under the terms of the Department of State Cooperative Agreement for Reception and Placement.

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

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

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

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

§ 400.57 Planning and consultation process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Other refugee services providers;

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

(10) If applicable, provisions for providing assistance to refugees resettling

in the State who are sponsored by a local resettlement agency in a bordering State which does not have an office in the State of resettlement;

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

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

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

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

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

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

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

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

§ 400.59 Eligibility for the public/private RCA program.

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

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

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

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

§ 400.60 Payment levels.

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

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

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

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

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

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

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

§ 400.61 Services to public/private RCA recipients.

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

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

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

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

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

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

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

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

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

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

§ 400.63 Preparation of local resettlement agencies.

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

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

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

PUBLICLY-ADMINISTERED RCA PROGRAMS

§ 400.65 Continuation of a publicly-administered RCA program.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 400.67 Non-applicable TANF requirements.

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

§ 400.68 Notification to local resettlement agency.

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

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

§ 400.69 Alternative RCA programs.

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

Subpart F—Requirements for Employability Services and Employment

SOURCE: 54 FR 5477, Feb. 3, 1989, unless otherwise noted.

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance under both the public/private RCA program and the publicly-administered RCA program concerning registration for employment services, participation in social

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

[60 FR 33602, June 28, 1995, as amended at 65 FR 15448, Mar. 22, 2000]

§ 400.71 Definitions.

For purposes of this subpart and Subpart I—

Appropriate agency providing employment services means an agency providing services specified under § 400.154(a) of this part which are specifically designed to assist refugees in becoming employed, which must include an established program of job referral to, and job placement with, private employers, and which must be determined acceptable by the State.

Employability plan means an individualized written plan for a refugee registered for employment services that sets forth a program of services intended to result in the earliest possible employment of the refugee.

Employability services means services, as specified in § 400.154 of this part, designed to enable an individual to obtain employment and to improve the employability or work skills of the individual.

Employable means not exempt from registration for employment services under § 400.76 of this part.

Employment services means the services specified in § 400.154(a) of this part.

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

Registrant means an individual who has registered for employment services under § 400.75 of this part.

[54 FR 5477, Feb. 3, 1989, as amended at 60 FR 33602, June 28, 1995; 65 FR 15448, Mar. 22, 2000]

§ 400.72 Arrangements for employability services.

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

(a) The State agency must make such arrangements as are necessary to enable refugees to meet the requirements of, and receive the employability services specified in, this subpart.

(b) If a State agency makes such arrangements with another agency or agencies, it must retain responsibility for meeting the requirements in this subpart.

(c) In order for an agency to qualify to receive referrals from the State agency of refugees required to register for employability services, such agency must agree to advise the State agency whenever such a refugee fails or refuses to participate in the required services or to accept an offer of employment.

[54 FR 5477, Feb. 3, 1989, as amended at 65 FR 15448, Mar. 22, 2000]

GENERAL REQUIREMENTS

§ 400.75 Registration for employment services, participation in employability service programs and targeted assistance programs, going to job interviews, and acceptance of appropriate offers of employment.

(a) As a condition for receipt of refugee cash assistance, a refugee who is not exempt under § 400.76 of this subpart must, except for good cause shown—

(1) Register with an ''appropriate agency providing employment services,'' as defined in § 400.71, and within 30 days of receipt of aid participate in the employment services provided by such agency, as defined in § 400.154(a) of this part.

(2) Go to a job interview which is arranged by the State agency or its designee.

(3) Accept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee.

(4) Participate in any employability service program which provides job or language training in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee; or if such a program funded under section

412(c) is not available or appropriate in the area in which the refugee resides, any other available and appropriate program in such area.

(5) Participate in any targeted assistance program in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee.

(6)(i) Accept an offer of employment which is determined to be appropriate by the local resettlement agency which was responsible for the initial resettlement of the refugee or by the appropriate State or local employment service;

(ii) Go to a job interview which is arranged through such agency or service; and

(iii) Participate in a social service or targeted assistance program which such agency or service determines to be available or appropriate.

(b) The State agency or its designee must permit, but may not require, the voluntary registration for employment services of an applicant or recipient who is exempt under § 400.76 of this part.

[54 FR 5477, Feb. 3, 1989, as amended at 60 FR 33602, June 28, 1995; 65 FR 15448, Mar. 22, 2000]

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

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

[65 FR 15448, Mar. 22, 2000]

§ 400.77 Effect of quitting employment or failing or refusing to participate in required services.

(a) As a condition of eligibility for refugee cash assistance, an employable applicant may not, without good cause, within 30 consecutive calendar days immediately prior to the application for assistance (or such longer period required by § 400.82(c)(2), if applicable), have voluntarily quit employment or have refused to accept an offer of employment determined to be appropriate by the State agency or its designee, using criteria set forth in § 400.81.

(b) As a condition of continued receipt of refugee cash assistance, an employable recipient may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of § 400.75(a).

[54 FR 5477, Feb. 3, 1989, as amended at 65 FR 15448, Mar. 22, 2000]

§ 400.79 Development of an employability plan.

(a) An individual employability plan must be developed as part of a family self-sufficiency plan where applicable for each recipient of refugee cash assistance in a family unit who is not exempt under § 400.76 of this part.

(b) If such a plan has been developed by the local resettlement agency which sponsored the refugee, or its designee, the State agency, or its designee, may accept this plan if it determines that the plan is appropriate for the refugee and meets the requirements of this subpart.

(c) The employability plan must—

(1) Be designed to lead to the earliest possible employment and not be structured in such a way as to discourage or delay employment or job-seeking; and

(2) Contain a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee in relation to job openings in the area.

[54 FR 5477, Feb. 3, 1989, as amended at 60 FR 33602, June 28, 1995; 65 FR 15448, Mar. 22, 2000]

Criteria for Appropriate Employability Services and Employment

§ 400.81 Criteria for appropriate employability services and employment.

The State agency or its designee must determine if employability services and employment are appropriate in accordance with the following criteria:

(a) The services or employment must meet the following criteria, or, if approved by the Director, the comparable

criteria applied by the State in an alternative program for TANF recipients:

(1) All assignments must be within the scope of the individual's employability plan. The plan may be modified to reflect changed services or employment conditions.

(2) The services or employment must be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health must be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health.

(3) The total daily commuting time to and from home to the service or employment site must not normally exceed 2 hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case the round trip commuting time must not exceed the generally accepted community standards.

(4) When child care is required, the care must meet the standards normally required by the State in its work and training programs for TANF recipients.

(5) The service or work site to which the individual is assigned must not be in violation of applicable Federal, State, or local health and safety standards.

(6) Assignments must not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin.

(7) Appropriate work may be temporary, permanent, full-time, part-time, or seasonal work if such work meets the other standards of this section.

(8) The wage shall meet or exceed the Federal or State minimum wage law, whichever is applicable, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market.

(9) The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation. And

(10) No individual may be required to accept employment if:

(i) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute; or

(ii) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which he or she has membership may be deemed appropriate.

(11) In addition to meeting the other criteria of this paragraph, the quality of training must meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the appropriate work criteria.

(b) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, provided that such training: Is approved as part of the individual's employability plan by the State agency, or its designee; does not exceed one year's duration (including any time enrolled in such program in the United States prior to the refugee's application for assistance); is specifically intended to assist the professional in becoming relicensed in his or her profession; and, if completed, can realistically be expected to result in such relicensing. This training may only be made available to individuals who are employed.

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

carried out as part of an approved employability plan.

[54 FR 5477, Feb. 3, 1989, as amended at 65 FR 15448, Mar. 22, 2000]

FAILURE OR REFUSAL TO ACCEPT EMPLOYABILITY SERVICES OR EMPLOYMENT

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

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

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

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

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

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

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

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

(c) *Sanctions.* (1) If the sanctioned individual is the only member of the filing unit, the assitance shall be terminated. If the filing unit includes other members, the State shall not take into account the sanctioned individual's needs in determining the filing unit's need for assistance.

(2) The sanction applied in paragraph (b)(3)(i) of this section shall remain in effect for 3 payment months for the first such failure and 6 payment months for any subsequent such failure.

[54 FR 5477, Feb. 3, 1989, as amended at 60 FR 33602, June 28, 1995; 65 FR 15448, Mar. 22, 2000]

§ 400.83 Mediation and fair hearings.

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

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

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

[65 FR 15448, Mar. 22, 2000]

Subpart G—Refugee Medical Assistance

SOURCE: 54 FR 5480, Feb. 3, 1989, unless otherwise noted.

§ 400.90 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee medical assistance (RMA), as defined at § 400.2 of this part.

§ 400.91 Definitions.

For purposes of this subpart—

Medically needy means individuals who are eligible for medical assistance under a State's approved Medicaid State plan in accordance with section 1902(a)(10)(C) of the Social Security Act.

Spend down means to deduct from countable income incurred medical expenses, thereby lowering the amount of countable income to a level that meets financial eligibility requirements in accordance with 42 CFR 435.831 (or, as applicable to Guam, the Virgin Islands, and Puerto Rico, 42 CFR 436.831).

APPLICATIONS, DETERMINATIONS OF ELIGIBILITY, AND FURNISHING ASSISTANCE

§ 400.93 Opportunity to apply for medical assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply for medical assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for medical assistance, the State agency must comply with regulations governing applications, determinations of eligibility, and furnishing Medicaid (including the opportunity for fair hearings) in the States and the District of Columbia under 42 CFR part 435, subpart J, and in Guam, Puerto Rico, and the Virgin Islands under 42 CFR part 436, subpart J, and 42 CFR part 431, subpart E.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for medical assistance.

(d) 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 must specify the program(s) to which the notice applies, clearly distinguishing between refugee medical assistance and Medicaid or the State Children's Health Insurance Program (SCHIP). For example, if a refugee applies for assistance, is determined ineligible for Medicaid or the State Children's Health Insurance Program (SCHIP) but eligible for refugee medical assistance, the notice must specify clearly the determinations with respect both to Medicaid or the State Children's Health Insurance Program (SCHIP) and to refugee medical assistance.

[54 FR 5480, Feb. 3, 1989, as amended at 65 FR 15449, Mar. 22, 2000]

§ 400.94 Determination of eligibility for Medicaid.

(a) The State must determine Medicaid and SCHIP eligibility under its Medicaid and SCHIP State plans for each individual member of a family unit that applies for medical assistance.

(b) A State that provides Medicaid to medically needy individuals in the State under its State plan must determine a refugee applicant's eligibility for Medicaid as medically needy.

(c) A State must provide medical assistance under the Medicaid and SCHIP programs to all refugees eligible under its State plans.

(d) If the appropriate State agency determines that the refugee applicant is not eligible for Medicaid or SCHIP under its State plans, the State must determine the applicant's eligibility for refugee medical assistance.

[54 FR 5480, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995; 65 FR 15449, Mar. 22, 2000]

CONDITIONS OF ELIGIBILITY FOR REFUGEE MEDICAL ASSISTANCE

§ 400.100 General eligibility requirements.

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

(1) Are ineligible for Medicaid or SCHIP but meet the financial eligibility standards under § 400.101;

(2) Meet immigration status and identification requirements in subpart D of this part or are the dependent children of, and part of the same assistance unit as, individuals who meet the

requirements in subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Provide the name of the resettlement agency which resettled them; and

(5) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part or a plan for an unaccompanied minor in accordance with § 400.112.

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

(c) The State agency may not require that a refugee actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance.

(d) All recipients of refugee cash assistance who are not eligible for Medicaid or SCHIP are eligible for refugee medical assistance.

[45 FR 59323, Sept. 9, 1980, as amended at 58 FR 46090, Sept. 1, 1993; 58 FR 64507, Dec. 8, 1993; 60 FR 33603, June 28, 1995; 65 FR 15449, Mar. 22, 2000]

§ 400.101 Financial eligibility standards.

In determining eligibility for refugee medical assistance, the State agency must use—

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

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

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

(b) In States without a medically needy program:

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

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

[54 FR 5480, Feb. 3, 1989, as amended at 65 FR 15449, Mar. 22, 2000]

§ 400.102 Consideration of income and resources.

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

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

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

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

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

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

[65 FR 15449, Mar. 22, 2000]

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

States must allow applicants for RMA who do not meet the financial eligibility standards elected in § 400.101 to spend down to such standard using an

appropriate method for deducting incurred medical expenses.

[65 FR 15449, Mar. 22, 2000]

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

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

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

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

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

[65 FR 15449, Mar. 22, 2000]

SCOPE OF MEDICAL SERVICES

§ 400.105 Mandatory services.

In providing refugee medical assistance to refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program, as delineated in 42 CFR Part 440.

§ 400.106 Additional services.

If a State or local jurisdiction provides additional medical services beyond the scope of the State's Medicaid program to destitute residents of the State or locality through public facilities, such as county hospitals, the State may provide to refugees who are determined eligible under §§ 400.94, only to the extent that sufficient funds are appropriated, or 400.100 of this part the same services through public facilities.

[54 FR 5480, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995]

§ 400.107 Medical screening.

(a) As part of its refugee medical assistance program, a State may provide a medical screening to a refugee provided—

(1) The screening is in accordance with requirements prescribed by the Director, or his or her designee; and

(2) Written approval for the screening program or project has been provided to the State by the Director, or designee.

(b) If such screening is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under §§ 400.94 or 400.100 of this part.

[54 FR 5480, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995; 65 FR 15449, Mar. 22, 2000]

Subpart H—Child Welfare Services

SOURCE: 51 FR 3915, Jan. 30, 1986, unless otherwise noted.

§ 400.110 Basis and scope.

This subpart prescribes requirements concerning grants to States under section 412(d)(2)(B) of the Act for child welfare services to refugee unaccompanied minors.

§ 400.111 Definitions.

For purposes of this subpart—

Child welfare agency means an agency licensed or approved under State law to provide child welfare services to children in the State.

Unaccompanied minor means a person who has not yet attained 18 years of age (or a higher age established by the State of resettlement in its child welfare plan under title IV-B of the Social Security Act for the availability of child welfare services to any other child in the State); who entered the United States unaccompanied by and not destined to (a) a parent or (b) a close nonparental adult relative who is willing and able to care for the child or (c) an adult with a clear and court-verifiable claim to custody of the

minor; and who has no parent(s) in the United States. *Limitation:* No child may be considered by a State to be *unaccompanied* for the purpose of this part unless such child was identified by INS at the time of entry as *unaccompanied*, except that a child who was correctly classified as *unaccompanied* by a State in accordance with Action Transmittal SSA-AT-79-04 (and official interpretations thereof by the Director) prior to the effective date of this definition may continue to be so classified until such status is terminated in accordance with § 400.113(b) of this subpart; and the Director may approve the classification of a child as *unaccompanied* on the basis of information provided by a State showing that such child should have been classified as *unaccompanied* at the time of entry.

Title IV-B plan means a State's plan for providing child welfare services to children in the State under part B of title IV of the Social Security Act.

§ 400.112 Child welfare services for refugee children.

(a) In providing child welfare services to refugee children in the State, a State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State's title IV-B plan.

(b) A State must provide child welfare services to refugee children according to the State's child welfare standards, practices, and procedures.

(c) Foster care maintenance payments must be provided under a State's program under title IV-E of the Social Security Act if a child is eligible under that program.

§ 400.113 Duration of eligibility.

(a) Except as specified in paragraph (b), a refugee child may be eligible for services under § 400.112 of this part during the 36-month period beginning with the first month the child entered the United States.

(b) An unaccompanied minor continues to meet the definition of ''unaccompanied minor'' and is eligible for benefits and services under §§ 400.115 through 400.120 of this part until the minor—

(1) Is reunited with a parent; or

(2) Is united with a nonparental adult (relative or nonrelative) willing and able to care for the child to whom legal custody and/or guardianship is granted under State law; or

(3) Attains 18 years of age or such higher age as the State's title IV-B plan prescribes for the availability of child welfare services to any other child in the State.

§ 400.114 [Reserved]

§ 400.115 Establishing legal responsibility.

(a) A State must ensure that legal responsibility is established, including legal custody and/or guardianship, as appropriate, in accordance with applicable State law, for each unaccompanied minor who resettles in the State. The State must initiate procedures for establishing legal responsibility for the minor, with an appropriate court (if action by a court is required by State law), within 30 days after the minor arrives at the location of resettlement.

(b) In establishing legal responsibility, including legal custody and/or guardianship under State law, as appropriate, the minor's natural parents should not be contacted in their native country since contact could be dangerous to the parents.

(c) Unaccompanied minors are not generally eligible for adoption since family reunification is the objective of the program. In certain rare cases, adoption may be permitted pursuant to adoption laws in the State of resettlement, provided a court finds that: (1) Adoption would be in the best interest of the child; and (2) there is termination of parental rights (for example, in situations where the parents are dead or are missing and presumed dead) as determined by the appropriate State court. When adoption occurs, the child's status as an unaccompanied minor terminates.

§ 400.116 Service for unaccompanied minors.

(a) A State must provide unaccompanied minors with the same range of child welfare benefits and services available in foster care cases to other

children in the State. Allowable benefits and services may include foster care maintenance (room, board, and clothing) payments; medical assistance; support services; services identified in the State's plans under titles IV-B and IV-E of the Social Security Act; services permissible under title XX of the Social Security Act; and expenditures incurred in establishing legal responsibility.

(b) A State may provide additional services if the Director, or his or her designee, determines such services to be reasonable and necessary for a particular child or children and provides written notification of such determination to the State.

§ 400.117 Provision of care and services.

(a) A State may provide care and services to an unaccompanied minor directly or through arrangements with a public or private child welfare agency approved or licensed under State law.

(b) If a State arranges for the care and services through a public or private nonprofit child welfare agency, it must retain oversight responsibility for the appropriateness of the unaccompanied minor's care.

§ 400.118 Case planning.

(a) A State, or its designee under § 400.117, must develop and implement an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor, to ensure that the child is placed in a foster home or other setting approved by the legally responsible agency and in accordance with the child's need for care and for social, health, and educational services.

(b) Case planning for unaccompanied minors must, at a minimum, address the following elements:

(1) Family reunification;

(2) Appropriate placement of the unaccompanied child in a foster home, group foster care, residential facility, supervised independent living, or other setting, as deemed appropriate in meeting the best interest and special needs if the child.

(3) Health screening and treatment, including provision for medical and dental examinations and for all necessary medical and dental treatment.

(4) Orientation, testing, and counseling to facilitate the adjustment of the child to American culture.

(5) Preparation for participation in American society with special emphasis upon English language instruction and occupational as well as cultural training as necessary to facilitate the child's social integration and to prepare the child for independent living and economic self-sufficiency.

(6) Preservation of the child's ethnic and religious heritage.

(c) A State, or its designee under section 400.117 of this part, must review the continuing appropriateness of each unaccompanied minor's living arrangement and services no less frequently than every 6 months.

(Approved by the Office of Management and Budget under control number 0960–0418)

§ 400.119 Interstate movement.

After the initial placement of an unaccompanied minor, the same procedures that govern the movement of nonrefugee foster cases to other States apply to the movement of unaccompanied minors to other States.

§ 400.120 Reporting requirements.

A State must submit to ORR, on forms prescribed by the Director, the following reports on each unaccompanied minor:

(a) An initial report within 30 days of the date of the minor's placement in the State;

(b) A progress report every 12 months beginning with 12 months from the date of the initial report in paragraph (a);

(c) A change of status report within 60 days of the date that—

(1) The minor's placement is changed;

(2) Legal responsibility of any kind for the minor is established or transferred; or

(d) A final report within 60 days of the date of that the minor—

(1) Is reunited with a parent; or

(2) Is united with an adult, other than a parent, in accordance with § 400.113(b) or § 400.115(c) of this part.

(3) Is emancipated.

(Approved by the Office of Management and Budget under control number 0960–0418)

Subpart I—Refugee Social Services

§ 400.140 Basis and scope.

This subpart sets forth requirements concerning formula allocation grants to States under section 412(c) of the Act for refugee social services.

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995]

§ 400.141 Definitions.

For purposes of this subpart—

Refugee social services means any service set forth in §§ 400.154 or 400.155 of this subpart.

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995]

APPLICATIONS, DETERMINATIONS OF ELIGIBILITY, AND PROVISION OF SERVICES

§ 400.145 Opportunity to apply for services.

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

(b) Except as otherwise specified in this subpart, a State must determine eligibility for and provide refugee social services specified in §§ 400.154 and 400.155 in accordance with the same procedures which it follows in its social service program under title XX of the Social Security Act with respect to determining eligibility, acting on applications and requests for services, and providing notification of right to a hearing.

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

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995]

FUNDING AND SERVICE PRIORITIES

§ 400.146 Use of funds.

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

[60 FR 33603, June 28, 1995]

§ 400.147 Priority in provision of services.

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

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

(b) Refugees who are receiving cash assistance;

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

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

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995]

PURCHASE OF SERVICES

§ 400.148 Purchase of services.

A state may provide services directly or it may purchase services from public or private service providers.

[54 FR 5481, Feb. 3, 1989]

CONDITIONS OF ELIGIBILITY FOR REFUGEE SOCIAL SERVICES

§ 400.150 General eligibility requirements.

Eligibility for refugee social services is limited to those refugees who—

(a) Meet immigration status and identification requirements in Subpart D of this part;

(b) Meet the other eligibility requirements and conditions in this subpart.

[54 FR 5481, Feb. 3, 1989]

§ 400.152 Limitations on eligibility for services.

(a) A State may provide the social services defined in § 400.154 to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, except that such a student may be provided services under § 400.154 (a) and (b) in order to obtain part-time or temporary (e.g., summer) employment while a student or full-time permanent employment upon completion of schooling.

(b) A State may not provide services under this subpart, except for citizenship and naturalization preparation services and referral and interpreter services, to refugees who have been in the United States for more than 60 months.

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995; 65 FR 15449, Mar. 22, 2000]

SCOPE OF REFUGEE SOCIAL SERVICES

§ 400.154 Employability services.

A State may provide the following employability services—

(a) *Employment services*, including development of a family self-sufficiency plan and an individual employability plan, world-of-work and job orientation, job clubs, job workshops, job development, referral to job opportunities, job search, and job placement and followup.

(b) *Employability assessment services*, including aptitude and skills testing.

(c) *On-the job training*, when such training is provided at the employment site and is expected to result in full-time, permanent, unsubsidized employment with the employer who is providing the training.

(d) *English language instruction*, with an emphasis on English as it relates to obtaining and retaining a job.

(e) *Vocational training*, including driver education and training when provided as part of an individual employability plan.

(f) *Skills recertification*, when such training meets the criteria for appropriate training in § 400.81(b) of this part.

(g) *Day care for children*, when necessary for participation in an employability service or for the acceptance or retention of employment.

(h) *Transportation*, when necessary for participation in an employability service or for the acceptance or retention of employment.

(i) *Translation and interpreter services*, when necessary in connection with employment or participation in an employability service.

(j) *Case management services*, as defined in § 400.2 of this part, for refugees who are considered employable under § 400.76 and for recipients of TANF and GA who are considered employable, provided that such services are directed toward a refugee's attainment of employment as soon as possible after arrival in the United States.

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

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995; 65 FR 15449, Mar. 22, 2000]

§ 400.155 Other services.

A State may provide the following other services—

(a) *Information and referral services.*

(b) *Outreach services*, including activities designed to familiarize refugees with available services, to explain the purpose of these services, and facilitate access to these services.

(c) *Social adjustment services*, including:

(1) *Emergency services*, as follows: Assessment and short-term counseling to persons or families in a perceived crisis; referral to appropriate resources; and the making of arrangements for necessary services.

(2) *Health-related services*, as follows: Information; referral to appropriate resources; assistance in scheduling appointments and obtaining services; and counseling to individuals or families to help them understand and identify their physical and mental health needs and maintain or improve their physical and mental health.

(3) *Home management services*, as follows: Formal or informal instruction to individuals or families in management of household budgets, home maintenance, nutrition, housing standards, tenants' rights, and other consumer education services.

(d) *Day care for children,* when necessary for participation in a service other than an employability service.

(e) *Transportation,* when necessary for participation in a service other than an employability service.

(f) *Translation and interpreter services,* when necessary for a purpose other than in connection with employment or participation in an employability service.

(g) *Case management services,* when necessary for a purpose other than in connection with employment or participation in employability services.

(h) *Any additional service,* upon submission to and approval by the Director of ORR, aimed at strengthening and supporting the ability of a refugee individual, family, or refugee community to achieve and maintain economic self-sufficiency, family stability, or community integration which has been demonstrated as effective and is not available from any other funding source.

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

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33603, June 28, 1995; 65 FR 15449, Mar. 22, 2000]

§ 400.156 Service requirements.

(a) In order to avoid interference with refugee employment, English language instruction and vocational training funded under this part must be provided to the fullest extent feasible outside normal working hours.

(b) In planning and providing services under §§ 400.154 and 400.155, a State must take into account those services which a resettlement agency is required to provide for a refugee whom it sponsors in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative.

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

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

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

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

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

[54 FR 5481, Feb. 3, 1989, as amended at 60 FR 33604, June 28, 1995]

Subpart J—Federal Funding

SOURCE: 51 FR 3916, Jan. 30, 1986, unless otherwise noted.

§ 400.200 Scope.

This subpart specifies when, and the extent to which, Federal funding (FF) is available under this regulation in expenditures for determining eligibility and for providing assistance and services to refugees determined eligible under this part, and prescribes limitations and conditions on FF for those expenditures.

FEDERAL FUNDING FOR EXPENDITURES FOR DETERMINING ELIGIBILITY AND PROVIDING ASSISTANCE AND SERVICES

§ 400.202 Extent of Federal funding.

Subject to the availability of funds and under the terms and conditions approved by the Director, FF will be provided for 100 percent of authorized allowable costs of determining eligibility and providing assistance and services in accordance with this part.

§ 400.203 Federal funding for cash assistance.

(a) To the extent that sufficient funds are appropriated, Federal funding is available for cash assistance provided to eligible refugees during the 36-month period beginning with the first month the refugee entered the United States, as follows—

(1) If a refugee is eligible for TANF, adult assistance programs, or foster care maintenance payments under title IV-E of the Social Security Act, FF is available only for the non-Federal share of such assistance.

(2) If a refugee is eligible for SSI, FF is available for any supplementary payment a State may provide under that program.

(b) Federal funding is available for refugees cash assistance (RCA) provided to eligible refugees during a period of time to be determined by the Director in accordance with § 400.211.

(c) To the extent that sufficient funds are appropriated, Federal funding is available for general assistance (GA) provided to eligible refugees during the 24-month period beginning with the 13th month after the refugee entered the United States.

[51 FR 3916, Jan. 30, 1986 as amended at 53 FR 32224, Aug. 24, 1988; 58 FR 46090, Sept. 1, 1993; 58 FR 64507, Dec. 8, 1993; 60 FR 33604, June 28, 1995; 65 FR 15450, Mar. 22, 2000]

§ 400.204 Federal funding for medical assistance.

(a) To the extent that sufficient funds are appropriated, Federal funding is available for the non-Federal share of medical assistance provided to refugees who are eligible for Medicaid or adult assistance programs during the 36-month period beginning with the first month the refugee entered the United States.

(b) Federal funding is available for refugee medical assistance (RMA) provided to eligible refugees during a period of time to be determined by the Director in accordance with § 400.211.

(c) To the extent that sufficient funds are appropriated, Federal funding is available for a State's expenditures for medical assistance under a general assistance (GA) program during the 24-month period beginning with the 13th month after the refugee entered the United States.

[51 FR 3916, Jan. 30, 1986, as amended at 53 FR 32225, Aug. 24, 1988; 58 FR 46090, Sept. 1, 1993; 58 FR 64507, Dec. 8, 1993; 60 FR 33604, June 28, 1995]

§ 400.205 Federal funding for assistance and services for unaccompanied minors.

Federal funding is available for a State's expenditures for service to unaccompanied minors under §§ 400.115 through 400.120 of this part until the minor's status as an unaccompanied minor is terminated as specified by § 400.113.

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

(a) Federal funding is available for refugee social services as set forth in Subpart I of this part, including the reasonable and necessary identifiable administrative costs of providing such services, in accordance with allocations by the Director.

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

[54 FR 5483, Feb. 3, 1989, as amended at 60 FR 33604, June 28, 1995]

§ 400.207 Federal funding for administrative costs.

Federal funding is available for reasonable and necessary identifiable administrative costs of providing assistance and services under this part only for those assistance and service programs set forth in §§ 400.203 through 400.205 for which Federal funding is currently made available under the refugee program. A State may claim only those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families. Such costs may include reasonable and necessary administrative costs incurred by local resettlement agencies in providing assistance and services under a public/private RCA program. Administrative costs may be

included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part.

[60 FR 33604, June 28, 1995, as amended at 65 FR 15450, Mar. 22, 2000]

§ 400.208 Claims involving family units which include both refugees and nonrefugees.

(a) Federal funding is available for a State's expenditures for assistance and services to a family unit which includes a refugee parent or two refugee parents and one or more of their children who are nonrefugees, including children who are United States citizens.

(b) Federal funding is not available for a State's expenditures for assistance and services provided to a nonrefugee adult member of a family unit or to a nonrefugee child or children in a family unit if one parent in the family unit is a nonrefugee.

[51 FR 3916, Jan. 30, 1986, as amended at 65 FR 15450, Mar. 22, 2000]

§ 400.209 Claims involving family units which include refugees who have been in the United States more than 36 months.

Federal funding is not available for State expenditures for cash and medical assistance and child welfare services (except services for unaccompanied minors) provided to any refugee within a family unit who has been in the United States

(a) More than 36 months if the family unit is eligible for TANF, SSI, Medicaid, GA, or child welfare services (except services for unaccompanied minors), or

(b) More than a period of time to be determined by the Director in accordance with § 400.211 if the family unit is eligible for RCA or RMA. A State agency must exclude expenditures made on behalf of such refugees from its claim.

[51 FR 3916, Jan. 30, 1986 as amended at 53 FR 32225, Aug. 24, 1988; 57 FR 1115, Jan. 10, 1992; 58 FR 46090, Sept. 1, 1993; 58 FR 64507, Dec. 8, 1993; 65 FR 15450, Mar. 22, 2000]

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

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

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

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

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

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

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

(2) A State 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.

[60 FR 33604, June 28, 1995, as amended at 65 FR 15450, Mar. 22, 2000]

§ 400.211 Methodology to be used to determine time-eligibility of refugees.

(a) The time-eligibility period for refugee cash assistance and refugee medical assistance will be determined by the Director each year, based on appropriated funds available for the fiscal year. The Director will make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, only if a reduction in the eligibility period is indicated, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The method to be used to determine the RCA/RMA eligibility period will include the following steps and will be applied to various RCA/RMA time-eligibility periods in order to determine the time-eligibility period which will provide the most number of months without incurring a shortfall in funds for the fiscal year.

(1) The time-eligibility population for the projected fiscal year will be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year will be estimated based on the best available historical and current refugee flow information that will most accurately forecast the refugee flow for the projected fiscal year. These arrival figures will then be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

(2) The average annual number of RCA and RMA recipients will be determined by multiplying the estimated time-eligible population established in paragraph (a)(1) of this section by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. Recipient data from quarterly performance reports submitted by States for the most recent 4 quarters for which reports are available will be used to determine the appropriate participation rates for various RCA/RMA time-eligibility periods.

(3) The average annual per recipient cost for RCA and RMA will be estimated separately, based on estimated per recipient costs for the most recent fiscal year, using available data, and inflated for the projected fiscal year using projected increases in per capita cash assistance costs for RCA and per capita Medicaid costs for RMA.

(4) The expected average number of RCA recipients will be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients will be multiplied by the expected RMA per recipient cost to derive estimated RMA costs.

(5) State administrative costs for the projected fiscal year for all States in the aggregate will be estimated based on total actual allowable expenditures for State administration for the most recent fiscal year. The variable portion of administrative costs will be adjusted for changes in program participation and inflated by the Consumer Price Index (CPI) for all items as estimated by the Office of Management and Budget (OMB). The fixed portion of administrative costs will be adjusted by the CPI inflator only.

(6) The total estimated costs for the projected fiscal year will equal the combined estimated costs for RCA, RMA, and State administration as calculated in paragraphs (a)(1) through (5) of this section.

(b) If, as the Director determines, the period of eligibility needs to be changed from the eligibility period in effect at the time, the Director will publish a final notice in the FEDERAL REGISTER, announcing the new period of eligibility for refugee cash assistance and refugee medical assistance and the effective date for implementing the new eligibility period. States will be given as much notice as available funds will allow without resulting in a further reduction in the eligibility period. At a minimum, States will be given 30 days' notice.

[58 FR 64507, Dec. 8, 1993, as amended at 65 FR 15450, Mar. 22, 2000]

§ 400.212 Restrictions in the use of funds.

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

[60 FR 33604, June 28, 1995]

§ 400.220 Counting time-eligibility of refugees.

A State may calculate the time-eligibility of a refugee under this part in either of the following ways:

(a) On the basis of calendar months, in which case the month of arrival in the United States must count as the first month; or

(b) On the basis of the actual date of arrival, in which case each month will be counted from that specific date.

[54 FR 5483, Feb. 3, 1989]

Subpart K—Waivers and Withdrawals

§ 400.300 Waivers.

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

[60 FR 33604, June 28, 1995]

§ 400.301 Withdrawal from the refugee program.

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

(b) To participate in the refugee program, a State is expected to operate all components of the refugee program, including refugee cash and medical assistance, social services, preventive health, and an unaccompanied minors program if appropriate. A State is also expected to play a coordinating role in the provision of assistance and services in accordance with § 400.5(b). In the event that a State wishes to retain responsibility for only part of the refugee program, it must obtain prior approval from the Director of ORR. Such approval will be granted if it is in the best interest of the Government.

(c) When a State withdraws from all or part of the refugee program, the Director may authorize a replacement designee or designees to administer the provision of assistance and services, as appropriate, to refugees in that State. A replacement designee must adhere to the same regulations under this part that apply to a State-administered program, with the exception of the following provisions: 45 CFR 400.5(d), 400.7, 400.51(b)(2)(i), 400.58(c), 400.94(a), 400.94(b), 400.94(c), and 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. Certain provisions are excepted because they apply only to States and become moot when a State withdraws from participation in the refugee program and is replaced by another entity. States would continue to be responsible for administering the other excepted provisions because these provisions refer to the administration of other State-run public assistance programs.

[60 FR 33604, June 28, 1995, as amended at 65 FR 15450, Mar. 22, 2000]

Subpart L—Targeted Assistance

SOURCE: 60 FR 33604, June 28, 1995, unless otherwise noted.

§ 400.310 Basis and scope.

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

§ 400.311 Definitions.

For purposes of this subpart—

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

§ 400.312 Opportunity to apply for services.

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

FUNDING AND SERVICE PRIORITIES

§ 400.313 Use of funds.

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

§ 400.314 Priority in provision of services.

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

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

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

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

§ 400.315 General eligibility requirements.

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

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

§ 400.316 Scope of targeted assistance services.

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

§ 400.317 Service requirements.

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

§ 400.318 Eligible grantees.

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

§ 400.319 Allocation of funds.

(a) A State with more than one qualifying targeted assistance county may allocate its targeted assistance funds differently from the formula allocations for counties presented in the ORR targeted assistance notice in a fiscal

year only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula.

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

PART 401—CUBAN/HAITIAN ENTRANT PROGRAM

Sec.

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

SOURCE: 47 FR 10850, Mar. 12, 1982, unless otherwise noted.

§ 401.1 [Reserved]

§ 401.2 Definitions.

For purposes of this part a *Cuban and Haitian entrant* or *entrant* is defined as:

(a) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(b) Any other national of Cuba or Haiti

(1) Who:

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with the Immigration and Naturalization Service; and

(2) With respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

§§ 401.3–401.11 [Reserved]

§ 401.12 Cuban and Haitian entrant cash and medical assistance.

Except as may be otherwise provided in this section, cash and medical assistance shall be provided to Cuban and Haitian entrants by the same agencies, under the same conditions, and to the same extent as such assistance is provided to refugees under Part 400 of this title.

(a) For purposes of determining the eligibility of Cuban and Haitian entrants for cash and medical assistance under this section and the amount of assistance for which they are eligible under this section, the same standards and critieria shall be applied as are applied in the determination of eligibility for an amount of cash and medical assistance for refugees under subparts E and G of part 400 of this title.

(b) Federal reimbursement will be provided to States for the costs of providing cash and medical assistance (and related administrative costs) to Cuban and Haitian entrants according to procedures and requirements, including procedures and requirements relating to the submission and approval of a State plan, identical to those applicable to the Refugee Program and set forth in Part 400 of this title.

(c) The number of months during which an entrant may be eligible for cash and medical assistance for which Federal reimbursement is available under this section shall be counted starting with the first month in which an individual meeting the definition of a Cuban and Haitian entrant in § 401.2 was first issued documentation by the Immigration and Naturalization Service indicating:

(1) That the entrant has been granted parole by the Attorney General under the Immigration and Nationality Act,

(2) That the entrant is in a voluntary departure status, or

(3) That the entrant's residence in a United States community is known to the Immigration and Naturalization Service.

The amendments are to be issued under the authority contained in section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

[47 FR 10850, Mar. 12, 1982, as amended at 65 FR 15450, Mar. 22, 2000]

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

Subpart A—Introduction

Subpart B—Use of Funds

Subpart C—Administration of Grants

Subpart D—State Allocations

Subpart E—State Applications

Subpart F—Recordkeeping and Reporting

AUTHORITY: 8 U.S.C. 1255a note, as amended.

SOURCE: 53 FR 7858, Mar. 10, 1988, unless otherwise noted.

Subpart A—Introduction

§ 402.1 General.

(a) These regulations implement section 204 of Pub. L. 99–603, the Immigration Reform and Control Act of 1986 (IRCA), as amended. This act establishes a temporary program of State Legalization Impact Assistance Grants (SLIAG) for States. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(b) Funds appropriated by section 204 may be applied by States with approved applications to certain State and local government costs incurred:

(1) In providing public assistance and public health assistance to eligible legalized aliens,

(2) For making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens,

(3) To provide public education and outreach to lawful temporary resident aliens concerning the adjustment to lawful permanent resident status and other matters,

(4) To make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status, and

(5) To administer the funds provided under this Part.

[56 FR 21246, May 7, 1991]

§ 402.2 Definitions.

As used in this part—

The Act means the Immigration Reform and Control Act of 1986, Public Law 99–603, as amended.

Allocation means an amount designated for a State, as determined under § 402.31, § 402.33, or § 402.34.

Allotment means the total amount awarded to a State, as determined under § 402.31, § 402.33, or § 402.34.

Department means the U.S. Department of Health and Human Services.

Educational Services means:

(1) For eligible legalized aliens regardless of age enrolled in elementary or secondary school, services allowable under section 607 of the Emergency Immigrant Education Act, 20 U.S.C. 4101, et seq. (Pub. L. 98–511), as in effect on November 6, 1986.

(2) For adult eligible legalized aliens:

(i) Services authorized under the Adult Education Act, 20 U.S.C. 1201 et seq. (Pub. L. 89–750, as amended), as in effect November 6, 1986, and

(ii) English language and other programs designed to enable eligible legalized aliens to attain the citizenship skills required by section 245A(b)(1)(D)(i) of the INA.

Eligible legalized alien means an alien whose status has been adjusted to lawful temporary resident under section 245A, 210, or 210A of the Immigration and Nationality Act, beginning on the effective date of such adjustment as established by the Immigration and Naturalization Service, and continuing until the end of the five-year period beginning on the effective date of such adjustment, provided that during that time the alien remains in lawful temporary or permanent resident status granted under the Act.

Employment discrimination education and outreach means education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

INA means the Immigration and Nationality Act, 8 U.S.C. 1101, et seq.

Local educational agency means—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

Local government has the same meaning as in 45 CFR part 92.

Nonpublic, as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

Phase II outreach means public education and outreach (including the provision of information to individuals) to inform temporary resident aliens under section 210, 210A, 245A of the INA and aliens whose applications for such status are pending with the Immigration and Naturalization Service regarding:

(1) The requirements of sections 210, 210A, and 245A of the INA regarding the adjustment of resident status;

(2) Sources of assistance for such aliens obtaining the adjustment of status described in paragraph (1) of this definition, including educational, informational, and referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence;

(3) The identification of health, employment, and social services; and,

(4) The importance of identifying oneself as a temporary resident alien to service providers.

Program administrative costs means those costs associated with administering public assistance, public health assistance, educational services, Phase II outreach, and employment discrimination education and outreach activities.

Public, as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

Public assistance means cash, medical, or other assistance provided to meet the basic subsistence needs or health needs of individuals.

(1) That is generally available to needy individuals residing in a State and

(2) That is provided with funds from units of State or local government.

As used in this definition, basic subsistence needs are minimal living requirements, including food, shelter and clothing. For purposes of this definition, assistance is considered to have

been provided to needy individuals if specified income or resource requirements are used to determine eligibility or the amount of a fee or other charges to be paid for services. *Other assistance* means assistance and services, other than cash or medical assistance, that are directed at meeting basic subsistence needs, and that meet all of the criteria in this definition. *Other assistance* also means assistance and services in which participation is required as a condition of receipt of cash or medical assistance.

Public health assistance means health services (1) that are generally available to needy individuals residing in a State; (2) that receive funding from units of State or local government; and, (3) that are provided for the primary purpose of protecting the health of the general public, including, but not limited to, immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services.

Recipient means grantee or subgrantee.

Secretary means the Secretary of the Department of Health and Human Services.

SLIAG administrative costs means the direct and indirect costs related to administration of funds provided under this part, including: planning and conferring with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

SLIAG-reimbursable activity means programs of public assistance, programs of public health assistance, educational services, employment discrimination education and outreach, Phase II outreach, program administrative costs, and SLIAG administrative costs, as those terms are defined in this part, that are included in a State's application approved pursuant to subpart E of this part.

SLIAG-related costs means expenditures made: To provide public assistance, public health assistance, or educational services, as defined in this part, to eligible legalized aliens; to provide public health assistance to aliens applying on a timely basis to become lawful temporary residents under sections 210, 210A, or 245A of the INA during such time as that alien's application with INS is pending approval; to provide employment discrimination education and outreach, as defined in this part; to provide Phase II outreach, as defined in this part; and for SLIAG administrative costs, as defined in this part. SLIAG-related costs include all allowable expenditures, including program administrative costs determined in accordance with §402.21(c), regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this part. SLIAG-related costs for educational services, Phase II outreach, and employment discrimination education and outreach are limited to the amount of payment that can be made under the Act for those activities, as described in §402.11 (e), (k) and (l), respectively. SLIAG-related costs exclude: (1) Expenditures by a State or local government for costs which are reimbursed or paid for by Federal programs other than SLIAG; and (2) program income (as defined in 45 CFR 74.42 or 45 CFR 92.25(b), as applicable) received from or on behalf of eligible legalized aliens receiving services or benefits for which payment or reimbursement may be made under this part.

State means the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

State educational agency means—

(1) The State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law; or

(2) The State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools; or if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then that agency or officer may be designated for the purpose of the Act by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, the term means an appropriate agency or officer

designated for the purpose of the Act by the Governor.

Unexpended funds means the amount by which allotments awarded to a State, as determined under § 402.31 and § 402.33 of this part, exceed the State's SLIAG-related costs, as defined in this part, reported in annual reports pursuant to § 402.51 and accepted by the Department as of March 15, 1995.

Unreimbursed SLIAG-related costs means the amount by which a State's total SLIAG-related costs, as defined in this part, reported in annual reports pursuant to § 402.51 and accepted by the Department as of March 15, 1995, exceed the allotments awarded to a State, as determined under § 402.31 and § 402.33 of this part.

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 19808, Apr. 30, 1991; 56 FR 21246, May 7, 1991; 59 FR 65726, Dec. 21, 1994]

Subpart B—Use of Funds

§ 402.10 Allowable use of funds.

(a) Funds provided under § 402.31 and 402.33 of this part for a fiscal year may be used only with respect to SLIAG-related costs incurred in that fiscal year or succeeding fiscal years, except that funds provided for FY 1993 and FY 1994 may be used for SLIAG-related costs incurred in FY 1990 or succeeding years. Funds provided under § 402.34 of this part may be used with respect to SLIAG-related costs incurred in any fiscal year of the program. Funds may be used, subject to §§ 402.11 and 402.26, for the following activities, as defined in this part:

(1) Public assistance;

(2) Public health assistance;

(3) Educational services;

(4) Employment discrimination education and outreach;

(5) Phase II outreach;

(6) SLIAG administrative costs; and

(7) Program administrative costs.

(b) Unless specifically prohibited by a statute enacted subsequent to November 6, 1986, a State may use SLIAG funds to pay the non-Federal share of costs allowable under (a) of this section incurred in providing assistance or services to eligible legalized aliens under Federal programs that have a matching or cost-sharing requirement, subject to the provisions of § 402.11(f) of this part.

(c) [Reserved]

(d) Except as provided for in § 402.11(n), funds awarded under this part may be used to reimburse or pay SLIAG-related costs incurred prior to the approval of a State's application or amendment to its application, pursuant to subpart E of this part, provided that such reimbursement or payment is consistent with the Act and this part.

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 19808, Apr. 30, 1991; 56 FR 21246, May 7, 1991; 59 FR 65726, Dec. 21, 1994]

§ 402.11 Limitations on Use of SLIAG Funds.

(a) Funds provided under this part may be used only for SLIAG-reimbursable activities that—

(1) Meet the definitions of § 402.2 of this part; and

(2) Are otherwise consistent with the rules and procedures governing such activities.

(b) Funds provided under this part may not be used for costs to the extent that those costs are otherwise reimbursed or paid for under other Federal programs.

(c) The amount of reimbursement or payment may not exceed 100% of SLIAG-related costs, as defined in this part, associated with SLIAG-reimbursable activites.

(d) A State must use a minimum of 10 percent of its allotment under this part in any fiscal year for costs associated with each of the following program categories: public assistance, public health assistance, and educational services. In the event that a State does not require use of a full 10% in one of the above categories, it must allocate the unused portion equally among the remaining categories listed in this paragraph.

(e) Payments for educational services in any fiscal year may not exceed the amounts described in (e) (3), (4) and (5) of this section, and are subject to the limitations in (e) (1), (2), and (6) of this section.

(1) Payments may be made to a local educational agency in a fiscal year for the purpose of providing educational

services to eligible legalized aliens enrolled in elementary or secondary school only if 500 eligible legalized aliens meeting the conditions in (e)(2) of this section, are enrolled in elementary or secondary public or non-public schools in that local educational agency's jurisdiction in that fiscal year or if such eligible legalized aliens represent at least 3 percent of the total number of students enrolled in elementary or secondary public or non-public schools within that local educational agency's jurisdiction in that fiscal year.

(2) In computing payments to local education agencies or to providers of educational services described in section 204(c)(3)(C) of the Act, State educational agencies may take into account only eligible legalized aliens who have been enrolled in elementary or secondary school, public or non-public school or in educational activities for adults described in § 402.2 in the United States for fewer than three complete academic years.

(3) The amount that may be paid in any fiscal year to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary public or non-public school may not exceed an amount equal to $500 (less, in States receiving Emergency Immigrant Education Act (EIEA) funds, the amount described in (e)(6) of this section) multiplied by the number of eligible legalized aliens meeting the criteria specified in (e)(2) of this section, who are enrolled in public or private non-profit elementary and secondary schools in the jurisdiction of that local educational agency in that fiscal year.

(4) The amount that may be paid in any fiscal year to a local educational agency or other provider of educational services for adults (who are not enrolled in elementary or secondary school), as described in section 204(c)(3)(C) of the Act, may not exceed an amount equal to $500 multiplied by the number of eligible legalized aliens meeting the criteria in paragraph (e)(2) of this section who receive educational services from that provider in that fiscal year.

(5) In no event may the amount paid to a local education agency or other provider of educational services exceed the actual costs of providing those services to eligible legalized aliens, as determined in accordance with 45 CFR part 74 (for grants awarded in FY 1988) or 45 CFR part 92 (for grants awarded in FY 1989 and succeeding fiscal years).

(6) The maximum amount of payment to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary school will be reduced from the amount described in (e)(3) of this section, by an amount equal to the amount of funds received by the local educational agency with respect to such eligible legalized aliens pursuant to section 606 of the Emergency Immigrant Education Act.

(f) Funds provided under this part may not be used to provide assistance under the programs of financial assistance from which eligible legalized aliens are barred by section 245A(h)(1), 210(f), or 210A(d)(6) of the INA. However, such funds may be used for the State and local share of the costs of providing such assistance to eligible legalized aliens who are excepted from the bar by section 245A(h) (2) or (3), 210(f), or 210A(d)(6) of the INA, provided that such individuals are otherwise eligible for benefits under such programs, and that the costs of providing those benefits are otherwise allowable under the Act, this regulation, and the State's approved application.

(g) Funds provided under this part shall not be used to perform abortions except where the life of the mother would be endangered if the fetus were carrier to term.

(h) Funds provided under this part shall not be used to reimburse or pay costs inurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i), 8 CFR 210.2(d), or 8 CFR 210a.6(f).

(i) Funds provided under this part shall not be used for client counselling or any other service which would assume responsibility for the adjustment of status of aliens to that of lawful temporary or permanent residence. This prohibition includes assisting an

alien to appeal INS decisions or representation of an alien before any administrative or judicial body.

(j) Funds under this part shall not be used to investigate or prosecute discrimination complaints beyond initial intake and referral, to pay legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination, or to represent such parties before any administrative or judicial body.

(k) A State may use funds to make payments for Phase II outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use for this purpose from a fiscal year's allotment is the greater of 1% of its allotment for that fiscal year or $100,000.

(l) A State may use funds to make payments for employment discrimination education and outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use from a fiscal year's allotment for this purpose is the greater of 1% of the State's allotment for that fiscal year or $100,000.

(m) [Reserved]

(n)(1) Except as provided for in paragraph (n)(2) of this section, a State may use SLIAG funds alloted to it for a fiscal year to reimburse or pay only those SLIAG-related costs for employment discrimination education and outreach activities which occurred after approval by the Department of an application or amendment describing those activities, as required by § 402.41(d).

(2) Costs incurred in FY 1990 prior to approval by the Department of an application or amendment containing the information required by § 402.41(d), but after December 18, 1989, for reproduction and dissemination of public information material certified by the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, Department of Justice (hereafter, ''Office of the Special Counsel''), pursuant to paragraph (o) of this section may be reimbursed with funds allotted under this part.

(o)(1) With respect to employment discrimination education and outreach, a State shall not use SLIAG funds to pay for the cost of producing or distributing materials prepared for public dissemination unless the Office of the Special Counsel has certified that those materials meet the criteria in paragraph (o)(2) of this section.

(2) Certification of materials described in paragraph (o)(1) of this section shall consist of a finding by the Office of the Special Counsel that information contained in such materials relating to the discrimination provision of the Act is legally accurate and that those materials include reference to the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin. Information regarding the Office of the Special Counsel shall include its address and telephone number, including the toll-free number and toll-free TDD number for the hearing impaired. The Office of the Special Counsel, in the exercise of discretion, may agree to the deletion of any portion of the information referenced in the previous sentence, in those instances where space limitations in printed materials, or time limitations in electronically recorded materials, make inclusion of all the required information impractical.

(p) Funds provided under this part may be used only for SLIAG-related costs submitted to the Department pursuant to § 402.51 and accepted as allowable costs by March 15, 1995.

(q) Funds made available to a State pursuant to § 402.34 shall be utilized by the State to reimburse all allowable costs within 90 days after such State has received a reallocation of funds from the Secretary, but in no event later than July 31, 1995.

[53 FR 7858, Mar. 10, 1991, as amended at 56 FR 19808, Apr. 30, 1991; 56 FR 21247, May 7, 1991; 59 FR 65726, Dec. 21, 1994]

§ 402.12 Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987.

(a) Except as indicated in (b) and (c) of this section, States may not use funds provided under this part of costs incurred prior to October 1, 1987.

(b) A State may use funds provided under this part for administrative

costs incurred prior to October 1, 1987, but after November 6, 1986, that are directly associated with implementation of this part. Such costs may include planning, preparing the application, establishing fund accounting and reporting systems, data development associated with the application, and other costs directly resulting from planning for implementation of this part.

(c) A State may use funds provided under this part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health assistance to eligible legalized aliens and to applicants for lawful temporary residence under sections 210, 210A and 245A of the INA, in conformity with the provisions of § 402.10(a).

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 21247, May 7, 1991]

Subpart C—Administration of Grants

§ 402.20 General provisions.

Except where otherwise required by Federal law, the Department rules codified at 45 CFR part 74 (for grants awarded in FY 1988) or 45 CFR part 92 (for grants awarded in FY 1989 and succeeding fiscal years), relating to the administration of grants, apply to funds awarded under this part. A State may, however, apply any or all provisions of part 92 to FY 1988 SLIAG funds.

[56 FR 19808, Apr. 30, 1991]

§ 402.21 Fiscal control.

(a) Fiscal control and accounting procedures must be sufficient to permit preparation of reports required by the Act, this regulation, and other applicable statutes and regulations.

(b) States must have accounting procedures in place which allow funds provided under this part to be traced from drawdown to allowable SLIAG-related costs. Allowability of the amount and purpose of expenditures must be established for each recipient of SLIAG funds. States must demonstrate that SLIAG-related costs, as defined in this part, incurred in SLIAG-reimbursable activities, equal or exceed the amount of SLIAG funds expended with respect to costs incurred in those activities. Documentation of the method of accounting and appropriate supporting information must be available for audit purposes and for Federal program reviews. To establish allowability of expenditures, States may use methods prescribed in (c) of this section. Alternatively, the State may use any other reliable method of cost calculation, subject to Federal review.

(c)(1) For public assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive assistance and/or services from the recipient, or by use of a statistically valid sampling of a recipient's public assistance caseload.

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens, or applicants for lawful temporary resident status under sections 210, 210A, or 245A of the INA, who qualify for and receive such assistance and/or services, by use of a statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

(3) For educational services, States must be able to demonstrate that:

(i) Funds provided under this part were used to provide educational services, as defined in this part, to eligible legalized aliens, as defined in this part; and,

(ii) Payments to local educational agencies or other providers of educational services, as described in section 204(c)(3)(C) of the Act, did not exceed the amounts described in § 402.11(e) of this part.

(4) With respect to Phase II outreach, as defined in this part, a State must demonstrate that the costs of activities that provide information directly to specific individuals are attributable only to lawful temporary residents under sections 210, 210A, or 245A of the INA, and applicants for such status whose applications were pending with the Immigration and Naturalization Service at the time information is provided. For Phase II outreach activities

that do not involve the provision of information directly to specific individuals, States must demonstrate that such activities are targeted predominantly to or intended primarily for lawful temporary residents under sections 210, 210A, or 245A of the INA or applicants for such status whose applications are pending with the Immigration and Naturalization Service at the time information is provided. The State must demonstrate that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(k) and was consistent with the limitations of § 402.11(i).

(5) With respect to employment discrimination education and outreach, as defined in this part, the State must demonstrate that funds were expended only for activities described in the State's approved application pursuant to § 402.41(d) and the limitations of § 402.11 (i), (n), and (o) and that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(l).

(6)(i) For program administrative costs, as defined in this part, a State may establish allowability by use of the proportion of eligible legalized aliens provided assistance and/or services allowable under this part by a recipient, as defined in this part, relative to all persons provided such assistance and/or services; by use of the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this part by the recipient; or by use of such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this part are allowable, allocable to SLIAG, and reasonable.

(ii) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this part.

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 21247, May 7, 1991]

§ 402.22 [Reserved]

§ 402.23 Repayment.

The Department will order a State to repay amounts found not to have been expended in accordance with Federal law, regulations, the State's approved application, or terms of the State's grant. If a State refuses to repay such amounts, the Department may offset the amount against any other amount to which the State is or may become entitled under this part.

§ 402.24 Withholding.

After notice and opportunity for a hearing, the Secretary may withhold payment of funds to any State which is not using its allotment in accordance with the Act, these regulations, 45 CFR part 74 (for grants awarded in FY 1988) or 45 CFR part 92 (for grants awarded in FY 1989 and succeeding fiscal years), and terms of the grant award.

[56 FR 19808, Apr. 30, 1991]

§ 402.25 Appeals.

Appeals under this Subpart will be subject to 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board.

§ 402.26 Time period for obligation and expenditure of grant funds.

(a) Any amount awarded to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to the State for obligation in subsequent fiscal years, but not after September 30, 1994. The funding period of a SLIAG grant begins on October 1 of the Federal fiscal year for which the allotment is made and ends on September 30, 1994.

(b) Obligations by the State of funds awarded under § 402.31 and § 402.33 must be liquidated within the time limit set by 45 CFR 92.23(b). This time limit will not be extended. The time limit established by 45 CFR 92.23(b) does not apply to funds awarded under § 402.34.

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 19808, Apr. 30, 1991; 59 FR 65727, Dec. 21, 1994]

Subpart D—State Allocations

§ 402.30 Basis of awards.

The Secretary will award funds in a fiscal year under § 402.31 or § 402.33 to States with approved applications for that fiscal year in accordance with the apportionment of funds from the Office of Management and Budget. The Secretary will award funds under § 402.34 to States whose annual reports submitted pursuant to § 402.51 establish that their allowable SLIAG-related costs exceed the total of their allotments, as determined under § 402.31 and § 402.33. The grant award constitutes the authority to draw and expend funds for the purposes set forth in the Act and this regulation.

[53 FR 7858, Mar. 10, 1988, as amended at 59 FR 65727, Dec. 21, 1994]

§ 402.31 Determination of allocations.

(a) *Allocation formula.* Allocations will be computed according to a formula using the following factors and weights:

(1) 50 percent based on the State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher-than-average ratios of eligible legalized aliens to total population relative to the average for all States, based on the proportional number of such aliens; and

(2) 50 percent based on the ratio of SLIAG-related costs in a State to the total of all such costs in all States.

(b) *Calculation of allocations.* (1) Each time the Department calculates State allocations, it will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State.

(2) For all years except fiscal years 1993 and 1994, the Department will determine each State's SLIAG-related costs to be included in the computation of its allocation for a fiscal year by adding to the sum of SLIAG-related costs reported for all previous fiscal years by that State, pursuant to § 402.51(e) (1) and (2), the total amount of estimated SLIAG-related costs included in the State's approved application for that fiscal year, pursuant to § 402.41(c) (1) and (2). For fiscal years 1993 and 1994, the Department will add to the amount of estimated SLIAG-related costs included in the State's approved applications for fiscal years 1993 and 1994, respectively, the sum of SLIAG-related costs for all previous years ending with FY 1991 (for FY 1993 applications) or FY 1992 (for FY 1994 applications), and the first and second quarters of FY 1992 (for FY 1993 applications) or FY 1993 (for FY 1994 applications), pursuant to § 402.52(e)(4). In the event that a State has not submitted an approved report for a fiscal year, the Department will include no costs for that fiscal year in its calculation.

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 21248, May 7, 1991; 57 FR 19386, May 6, 1992; 58 FR 31913, June 7, 1993; 59 FR 65727, Dec. 21, 1994]

§ 402.32 Determination of state allotments.

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) and the amounts previously awarded to those States.

[56 FR 21248, May 7, 1991]

§ 402.33 Allotment of excess funds.

If a State fails to qualify for an allotment in a particular fiscal year because it did not submit an approvable application by the deadline established in § 402.43 of this part, or is not allotted its designated allocation amount because it indicated in its application that it does not intend to use, in the fiscal year for which the application is

made or in any succeeding fiscal year before FY 1995, the full amount of its allocation, funds which would otherwise have been allotted to the State in that fiscal year shall be allotted among the remaining States submitting timely approved applications in proportion to the amount that otherwise would have been allotted to such State in that fiscal year.

[56 FR 19808, Apr. 30, 1991]

§ 402.34 Allocation of unexpended funds.

(a) Any unexpended funds, as defined in this part, from allotments awarded to States under § 402.31 and § 402.33 of this part, will be allocated to States with unreimbursed SLIAG-related costs, as defined in this part.

(b) To determine the allocations, the ratio of each State's unreimbursed SLIAG-related costs to the total of all such costs in all States will be calculated. The ratio for each State with unreimbursed SLIAG-related costs will be multiplied by total unexpended funds to determine the allocation for each State. The amount allotted to a State will be the amount of the State's allocation under this section or the amount of the State's unreimbursed SLIAG-related costs, whichever is less.

[59 FR 65727, Dec. 21, 1994]

Subpart E—State Applications

§ 402.40 General.

In order to be eligible for funds available under § 402.31 and § 402.33 of this part in a fiscal year, a State must submit an annual application. A State's application must be approved by the Secretary prior to the award of funds to that State. In order to be eligible for funds under § 402.34 of this part, a State must submit annual reports pursuant to § 402.51 which establish that the State has incurred SLIAG-related costs in excess of the amount of the allotments it received under § 402.31 and § 402.33 of this part.

[53 FR 7858, Mar. 10, 1988, as amended at 59 FR 65727, Dec. 21, 1994]

§ 402.41 Application content.

A State application must:

(a) Contain certifications by the chief executive officer or an individual specifically designated to make such certifications on behalf of the chief executive officer that, notwithstanding other contents of the application, the State assures that:

(1) Funds allotted to the State will be used only to carry out the purposes described in the Act and this part.

(2) The State will provide a fair method for the allocation of funds among State and local agencies (as determined by the State) in accordance with the information in the application as required under (b) and (c) of this section and in accordance with the provisions of § 402.11(d) of this part, which sets forth minimum funding levels for program categories.

(3) Fiscal control and accounting procedures used in the administration of SLIAG funds will be established that are adequate to meet the requirements established by the Act and this regulation.

(4) The State will comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, and on the basis of sex or religion under section 204(h)(1)(B) of the Immigration Reform and Control Act of 1986.

(b) Contain information on the number of eligible legalized aliens residing in the State. A State may either (1) adopt as its official State-level estimate the estimate of the State's number of eligible legalized aliens provided by the Department, or (2) provide its own estimate, including detailed information on the method and data used in deriving the estimate. If a State has previously provided this information to the Department, it need not be included in the application unless the information has changed.

(c) Contain an estimate of likely SLIAG-related costs for the fiscal year for which application is being made for each program or activity in which SLIAG-related costs will be incurred.

Programs and activities must be identified by the purposes listed in § 402.10(a). Such estimates for FY 1988 should include, as a discrete subset, costs incurred in FY 1987, pursuant to § 402.12.

(d) Contain the following information pertaining to the estimates required by paragraph (c) of this section (the application must include sufficient detail to permit assessment by the Department of the reasonableness of such estimates and the allowability of such costs under the Act and this part):

(1)(i) Descriptions of the programs and activities for which SLIAG-related costs will be incurred; and,

(ii) If a State elects to use its allotment for employment discrimination education and outreach, a description of the State's planned education and outreach activities, including: descriptions of the kinds of government or private agencies or other entities, if any, through which these activities will be conducted; brief descriptions of the targeted audience(s) for these activities; and, preproduction copies or the text of any material intended for distribution to the public to be produced or disseminated with SLIAG funds, if available at the time the application is submitted.

(2) Descriptions of the methodologies used to determine SLIAG-related cost. This description is to include (i) the methodology used in determining the proportion (or actual number) of eligible legalized aliens who are likely to participate in or benefit from the program or service, and (ii) a description of how a unit or other measure of the cost of providing services or benefits was calculated, or, if the estimate is based on actual cost data, a description of how the data were obtained. For SLIAG administrative costs, Phase II outreach, and employment discrimination education and outreach, the descriptions must instead include the basis for the estimate of SLIAG-related costs, as defined in this Part.

(e) Contain information on the criteria for and administrative methods of disbursing funds received under this part.

(f) Designate a single point of contact (SPOC) in the State responsible for securing and submitting information required by the Act and this regulation and provide the name, title, mailing address, and telephone number of such official. If the grantee agency is different from the SPOC, also provide the name, title, mailing address, and telephone number of the official in that agency responsible for State administration of funds available under this part. In either case, provide the employer identification number of the grantee agency. If the State elects to use SLIAG funds for employment discrimination education and outreach, it must also designate in its application a contact person for this activity, if different from the single point of contact.

[53 FR 7858, May 7, 1991, as amended at 56 FR 21248, May 7, 1991; 56 FR 49707, Oct. 1, 1991]

§ 402.42 Application format.

A State may determine the format of its application as long as it contains all the information required by § 402.41.

§ 402.43 Application deadline.

(a) An application from a State for SLIAG funds for any Federal fiscal year except fiscal years 1993 and 1994 must be received by the Department by October 1 of that fiscal year. Applications for fiscal years 1993 and 1994 must be received by July 1, 1992, and July 1, 1993, respectively. If a State fails to submit an application by this date, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this Part.

(b) In order to receive funds under this part, a State's application for any fiscal year except fiscal years 1993 and 1994 must be approvable by the Secretary by December 15 of that fiscal year. Applications for fiscal years 1993 and 1994 must be approvable by the Secretary by September 15, 1992, and September 15, 1993, respectively. This may necessitate a State's providing clarification, revision, or additional material, as required, to render its application approvable by the Secretary. If a State fails to render its application approvable by the Secretary by these dates, funds which it may otherwise have been eligible to receive shall be distributed among States which have

submitted approvable applications in accordance with § 402.32 of this part.

(Approved by the Office of Management and Budget under control number 0970–0079)

[53 FR 7858, Mar. 10, 1988, as amended at 54 FR 23984, June 5, 1989; 55 FR 26207, June 27, 1990; 56 FR 21248, May 7, 1991; 57 FR 19386, May 6, 1992; 58 FR 31913, June 7, 1993]

§ 402.44 Basis for approval.

(a) The Department will review each State's application to ensure that it contains all of the required assurances and information and otherwise is consistent with the Act and this part.

(b) The Department will assess the reasonableness of each State's estimates of SLIAG-related costs, as required by § 402.41(c) (1) and (2), based on the following:

(1) Are the activities for which estimates are included in the application allowable under the Act and this part?

(2) Are the rates of participation by eligible legalized aliens in the activities for which estimates of SLIAG-related costs are included in the application and other assumptions underlying the cost estimates based on reliable empirical data?

(3) To what extent are the estimates based on actual costs incurred? Are actual costs based on methodologies described in this part or other methodologies likely to result in valid measures of SLIAG-related costs?

(4) Do current estimates appear to be consistent with past estimates, known actual costs pursuant to § 402.41(c)(2), and current INS eligible legalized alien population data?

(5) Are revised estimates a result (all or in part) of changes in program activities?

(c) The Department will notify the State that (1) its application has been approved or (2) its application has been disapproved, together with the reasons for disapproval.

(d)(1) The Department will forward to the Office of Special Counsel information provided by a State pursuant to § 402.41(d).

(2) The Office of the Special Counsel will review information forwarded to it by the Department pursuant to paragraph (d) (1) of this section to determine whether the activities described therein conflict with or unnecessarily duplicate other employment discrimination education and outreach efforts. Certification to the Department by the Office of the Special Counsel that the State's submission meets this criterion is a prerequisite for approval by the Department.

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 21248, May 7, 1991]

§ 402.45 Amendments to applications.

(a)(1) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year prior to the due date for reports required by § 402.51 of this part.

(2) If a State plans to initiate employment discrimination education and outreach activities not described in its application pursuant to § 402.41(d), it must submit an application amendment, which shall be reviewed in accordance with procedures described in § 402.41(d) of this part. The Department's approval of such an amendment is a prerequisite for the initiation of such new activities, except as provided for in § 402.11(n) (2).

(b) Except as provided for in § 402.11(k) and (n), a State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG related costs for programs or activities described in paragraph (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d), except that funds received in FY 1992, if any, may be used for costs incurred on or after October 1, 1989. Costs incurred prior to October 1, 1987, are allowable only to the extent described in § 402.12.

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 21249, May 7, 1991]

Subpart F—Recordkeeping and Reporting

§ 402.50 Recordkeeping.

A State must provide for the maintenance of such records as are necessary:

(a) To meet the requirements of the Act and Department regulations relating to retention of and access to records.

(b) To allow the State to provide to the Department (1) an accurate description of its activities undertaken with SLIAG funds, and (2) a complete record of the purposes for which SLIAG funds were spent, and of the recipients of such funds; and

(c) To allow the Department and auditors of the State to determine the extent to which SLIAG funds were expended consistent with the Act and this regulation.

§ 402.51 Reporting.

(a)(1) After the end of each Federal fiscal year through FY 1994 for which it received or during which it obligated or expended SLIAG funds and by the due date indicated below, a State must submit annual reports containing the information identified in (c) and (e) of this section. The reports are due no later than 90 days after the end of a Federal fiscal year.

(2) A State which receives funds pursuant to § 402.31 and § 402.33 and which expends funds pursuant to § 402.26(b) must submit a report containing the information identified in paragraph (e) of this section. The report is due no later than December 29, 1994.

(b)(1) Failure to submit the annual report required in (a) of this section by the deadline, without prior written permission from the Secretary, constitutes a basis for withholding of SLIAG funds.

(2) Failure by a State to submit the required information prior to the calculation of allocations pursuant to Subpart D will result in the Secretary's including no SLIAG-related costs for the fiscal year for that State in the calculation of State allocations.

(c) A State's annual report must provide information on the status of each fiscal year's funds, as of September 30, for the fiscal year for funds received under § 402.31 and § 402.33, including:

(1) Identification of the amount obligated and the amount expended by the State grantee agency;

(2) Identification of any amount remaining unobligated at the end of the fiscal year which the State intends to carry over to succeeding fiscal years; and,

(3) Identification of any amount remaining unobligated at the end of the fiscal year which the State does not desire to carry over to the succeeding fiscal year.

(d) A State must use SF–269 in its reporting under paragraph (c) of this section, but it may determine the format of its annual report content under paragraph (e) of this section.

(e)(1) For all years except fiscal years 1992 and 1993, a State's annual report must also provide the actual SLIAG-related costs incurred during the fiscal year. The report must provide, for each program or activity identified in the State's application, the amount of SLIAG-related costs, as defined in this part, incurred in that program or activity, identified as public assistance, public health assistance, educational services, Phase II outreach, employment discrimination education and outreach, and SLIAG administrative costs, as defined in this part, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated.

(2) The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41 (d) (2) of this part.

(3) Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A (h) (2) and (3) of the INA) must be shown separately in States' reports.

(4) For fiscal years 1992 and 1993, a State must report actual SLIAG-related costs, pursuant to paragraphs (e) (1), (2) and (3) of this section, for the first and second quarters, along with its application for SLIAG funding for fiscal years 1993 and 1994, respectively, in accordance with § 402.43(a) of this

part, and for the third and fourth quarters in accordance with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0970–0079)

[53 FR 7858, Mar. 10, 1988, as amended at 56 FR 21249, May 7, 1991; 57 FR 19386, May 6, 1992; 58 FR 31913, June 7, 1993; 59 FR 65727, Dec. 21, 1994]

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