



ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of Refugee Resettlement | 330 C Street, S.W., Washington, DC 20201
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Waivers and Flexibilities for Capacity Management

Policy Letter 23-01

January 25, 2023
Revised August 16, 2023¹

The Office of Refugee Resettlement (ORR) is issuing this policy letter (PL) in response to challenges raised by the influx of ORR-eligible individuals² from multiple groups, including newly eligible populations, arriving to the United States within a short timeframe.³ This PL provides states⁴ with the ability to apply for specific waivers and delineates flexibilities; waivers and flexibilities are effective October 1, 2021, through September 30, 2023.

Except for Section IV., Procurement, the waivers and flexibilities described within this PL apply to all Cash and Medical Assistance (CMA) and Refugee Support Services (RSS) administration and programming, including those funded by (a) the Afghanistan Supplemental Appropriations Act 2022 and the Additional Afghanistan Supplemental Appropriations Act 2022 (ASA) and (b) the Additional Ukraine Supplemental Appropriations Act 2022 (AUSAA). Section IV., Procurement, applies only to ASA- and AUSAA-funded administration and programming.

The waivers are consistent with refugee policy objectives and will allow ORR-eligible populations to receive critical assistance and services.

I. Eligibility Determinations for ORR Benefits and Services

States must continue to ensure that ORR-eligible populations can apply and that eligibility determinations for cash assistance are made pursuant to 45 CFR § 400.50 and medical assistance pursuant to 45 CFR § 400.93.

Section 400.43 of 45 CFR and **ORR PL 16-01** require states to ask the applicant for a written declaration of immigration status and to review documentation of immigration status or category

¹ August 16, 2023 revisions are footnoted

² For information on eligible populations and their dates of eligibility for ORR benefits, refer to ORR Policy Letters, **PL 16-01**, *Documentation Requirements for The Refugee Resettlement Program*, **PL 22-01**, *Afghan Humanitarian Parolees and Unaccompanied Afghan Minors Eligible for ORR Benefits and Services*; and **PL 22-13**, *Ukrainian Humanitarian Parolees Eligible for ORR Benefits and Services*.

³ Challenges may result from a variety of factors, including high volumes of arrivals, the arrival of new groups, populations arriving through novel resettlement pathways (such as Operation Allies Welcome and Uniting for Ukraine), and resettlement in non-traditional resettlement sites that require time and assistance to enhance their capacity to meet the needs of arrivals.

⁴ “States” throughout this PL refers to states and replacement designees.

in making an eligibility determination. Due to the influx of ORR-eligible individuals, including newly eligible groups, and its impact on local systems, ORR will waive these requirements, upon request and as described below, to provide states time to increase their capacity to serve higher arrival numbers.

States should find a safe and secure means of confirming the applicant's eligibility. If a state or agency's intake worker is unable to meet in person with an applicant due to the impact of arrivals, including insufficient capacity for face-to-face meetings, the applicant's eligibility can be confirmed virtually through a database or other electronic means without first having to check documentation to confirm the applicant's status. Further, eligibility determinations may be conducted over the phone. Eligibility workers may ask the applicant for a written declaration, under penalty of perjury, containing name, date of birth, alien registration number, immigration status or category, date of entry, and most recent address. If a written declaration is not possible given the circumstances, a verbal declaration must be supported with a subsequent written declaration as soon as possible. If the declaration indicates that the applicant is within an immigration status or category that confers eligibility for ORR benefits and services, the eligibility worker may conclude that the applicant is eligible for ORR benefits and services. Applicants must follow a written or verbal declaration with documentation of immigration status within 90 days.

II. Refugee Cash Assistance (RCA) Eligibility Determinations and Conditions for Receipt

- a. Upon request, ORR will waive 45 CFR § 400.51(a) and § 400.53(a) that require states to determine an individual is ineligible for Temporary Assistance for Needy Families (TANF) prior to providing RCA, as described herein. To the extent that Social Security applications (a pre-requisite for TANF) or TANF applications are pending or delayed due to Social Security Administration (SSA) or TANF office closures and/or restrictions (e.g., the online SSA system will not process certain Social Security applications and in person appointments are limited) or delays related to the impact of arrivals (e.g., backlogs, waitlists), ORR will allow states to issue interim RCA payments where an agency can document that a client has not been able to successfully apply for a Social Security number (SSN) or for TANF.

Prior to issuing an interim RCA payment, states should ensure that a client acknowledges that, if he or she is subsequently approved for TANF and receives a retroactive TANF payment, the state must recoup RCA payments issued to the client to ensure that there is no dual receipt of federal assistance. Upon the removal of a barrier that caused delay or wrongful denial, TANF eligibility should be redetermined for clients categorically eligible for those benefits and services. States are advised to coordinate with TANF agencies as necessary; states must ensure that RCA is discontinued if a client is subsequently approved for TANF prior to the expiration of RCA eligibility.

- b. As required by 8 U.S.C. § 1522(e)(2)(A), except for good cause shown, all RCA recipients must be enrolled in and referred for employment services. To facilitate compliance with this provision even with the influx of arrivals, states may use virtual

(e.g., web-based, telephonic) means to provide services, as described in ORR PL 22-04, *Virtual Refugee Service Delivery and Elements of Program Administration*.

III. Timing of Medical Screenings

State Letter 12-09 recommends that ORR-eligible populations complete their domestic medical screenings within 30 days and up to 90 days from their date of eligibility for ORR benefits.⁵ This aligns with the Department of State Bureau of Population, Refugees, and Migration (PRM) Reception and Placement requirements and the Centers for Disease Control and Prevention's (CDC) medical screening **guidance**. Per 45 CFR 400.107(b), if the screening occurs within the first 90 days from the date of eligibility for ORR benefits, it may be provided prior to RMA or Medicaid eligibility determination. However, ORR recognizes that the high volume of ORR-eligible individuals seeking domestic medical screenings and other challenges make it difficult for states to connect individuals to the screenings within the recommended timeframe.

Upon request, ORR will waive the 90-day requirement of 45 CFR § 400.107(b) to allow the provision of medical screening beyond the first 90 days from the date of eligibility for ORR benefits without prior determination of eligibility for Medicaid, CHIP, or RMA. ORR clarifies that screenings funded by RMA may not be provided beyond the 12 months RMA time-eligibility period.

IV. Procurement

ORR continues to authorize its recipients⁶ to bypass standard procurement guidelines regarding competition for ASA-funded RSS and RSS set-aside funding, as addressed in ORR PL 22-03. ORR extends this authorization to AUSAA-funded RSS and RSS set-aside funding. ORR bases the authorization on the urgency of providing services and programming that can quickly respond to the needs of the ORR-eligible Afghans and Ukrainians arriving and being resettled in the United States in high volume during a short timeframe (see also 45 CFR § 75.329(f)(2)).

V. Fiscal Years (FY) 2020, 2021, 2022, and 2023 RSS Grant Obligation and Liquidation Deadlines

Per ORR PL 21-08, ORR has authorized applications for waivers of 45 CFR § 400.210(b) regarding the obligation and liquidation deadlines for FY 2020 and FY 2021 RSS grants for up to 1 year. Per ORR Dear Colleague Letter 23-25, ORR has extended the obligation and liquidation deadlines for all FY 2022 and FY 2023 RSS grants by one year due to the amount, timing, and overall complexity of these awards; this process does not require a state

⁵For details on the dates of eligibility for ORR benefits, refer to the following ORR policy letters: **PL 16-01**, *Documentation Requirements for The Refugee Resettlement Program*; **PL 22-01**, *Afghan Humanitarian Parolees and Unaccompanied Afghan Minors Eligible for ORR Benefits and Services*; and **PL 22-13**, *Ukrainian Humanitarian Parolees Eligible for ORR Benefits and Services*.

⁶ States must follow their own procedures, but ORR encourages them to use their non-competitive procedures to ensure timely and effective use of ORR funding. For replacement designees and for non-profit subrecipients of states and replacement designees, ORR authorizes non-competitive procedures for the same purpose.

application.⁷ As such, this chart shows the state obligation and liquidation deadlines for FY 2020, FY 2021, FY 2022, and FY 2023 RSS grant years.

RSS Grant	Project Period Began	Obligation Deadline	Obligation Deadline + Waiver	Liquidation Deadline	Liquidation Deadline + Waiver
FY 2020	10/1/2019	9/30/2021	9/30/2022	9/30/2022	9/30/2023
FY 2021	10/1/2020	9/30/2022	9/30/2023	9/30/2023	9/30/2024
FY 2022	10/1/2021	9/30/2024 ⁸		9/30/2025 ⁹	
FY 2023	10/1/2022	9/30/2025 ¹⁰		9/30/2026 ¹¹	

If ORR has already approved a state’s application to waive the obligation and/or liquidation deadlines for RSS FY 2020 and/or RSS FY 2021, the state does not need to request a waiver for those funds again. If a state has not applied to waive the FY 2021 liquidation deadline, the state may still apply to do so before September 30, 2023. ORR encourages states to use prior year funding before using subsequent funds.

VI. Other ORR Refugee Programs

Other ORR refugee programs (e.g., Preferred Communities, Refugee Family Childcare Microenterprise Development) can implement some flexibilities to guidelines and eligibility requirements when authorized by the ORR Director. Any guidance related to flexibilities within these ORR refugee programs due to the influx of ORR-eligible individuals from multiple groups, including newly eligible populations, will be shared with discretionary grantees.

VII. Applying for a Waiver

A state can apply for one or more of the waivers listed herein by sending one email titled, “ORR PL 23-01 waiver applications” to the relevant points of contact listed below in Section VIII, specifying the waivers for which it is applying. ORR will review all waiver applications and automatically approve all waiver applications consistent with the allowances within this PL. ORR will notify states within 120 days if their application is inconsistent with the PL and therefore not accepted.

VIII. Points of Contact

Direct your waiver applications to the following ORR staff:

- **Eligibility Determinations, Refugee Cash Assistance, and Refugee Support Services :** Your Regional Representative/Analyst, with copy to ORR’s Division of Refugee Assistance, at draprograms@acf.hhs.gov

⁷ August 16, 2023: Sentence added.

⁸ August 16, 2023: Changed from 9/30/2023 to 9/30/2024

⁹ August 16, 2023: Changed from 9/30/2024 to 9/30/2025

¹⁰ August 16, 2023: Changed from 9/30/2024 to 9/30/2025

¹¹ August 16, 2023: Changed from 9/30/2025 to 9/30/2026

- **Refugee Medical Assistance and Medical Screening:** Your ORR Division of Refugee Health (DRH) Health Liaison, with copy to ORR's Division of Refugee Health, at drhprograms@acf.hhs.gov

Direct questions on the following topics to the following ORR staff:

- **ORR Health-Related Discretionary Grants:** Your DRH Health Liaison, with copy to ORR's Division of Refugee Health, at drhprograms@acf.hhs.gov
- **All Other ORR Discretionary Grants and Matching Grant:** Anastasia Brown, Director of the Division of Refugee Services, at Anastasia.Brown@acf.hhs.gov
- **Eligibility for Benefits or Services:** ORR's Refugee Policy Unit at RefugeeEligibility@acf.hhs.gov

If you have questions about the information contained in this PL, contact ORR's Refugee Policy Unit at RefugeePolicy@acf.hhs.gov.

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