

ORR Employment Outcomes: Refugee as Employee and Refugee as Self-Employed

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TO: STATE REFUGEE COORDINATORS
NATIONAL VOLUNTARY AGENCIES
OTHER INTERESTED PARTIES

FROM: Martha E. Newton S/S
Director
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SUBJECT: ORR Employment Outcomes: Refugee as Employee and Refugee as Self-Employed

Purpose

This ORR State Letter clarifies the meaning of refugee employment to assist Refugee Service Providers in correctly reporting successful refugee employment outcomes. A refugee¹ employed by an employer in a job that meets the criteria of 45 C.F.R. § 400.81 generally fulfills the definition of a successful refugee employment outcome. A self-employed refugee may also meet the definition of a successful refugee employment outcome, depending on criteria discussed below.

Refugee as Employee Meets the Definition of Successful Refugee Employment Outcome

The Refugee Resettlement Program is designed to assist refugees to reach early economic self-sufficiency by directing refugees toward employment, as an employee, soon after arrival in the U.S. A refugee who is a) employed by an employer in a legitimate job that meets the criteria of 45 C.F.R. § 400.81 and b) can document that employment, meets the definition of employment for ORR reporting purposes.

ORR prefers that the refugee find and hold a job in which the refugee is employed by an employer rather than be self-employed. Refugees who are employed as an employee of a business or organization, have a life structure with a regular work schedule, on-the-job direction and training, steady compensation (sometimes with benefits), possible prospect for advancement within the organization, and transferable work experience.

This regularity and structure in a refugee's life affords him/her time to focus on social and cultural integration, language development, and on his/her family. Further, in a standard job in the U.S., the employer automatically deducts the designated income and social security taxes and other required amounts from the employee's paycheck, relieving the employee of this burden.

Reflected in 45 C.F.R. Part 400 is a concept of refugee employment that makes a distinction between the employer and employee because they are separate entities. This by definition presumes the existence of employers, and the existence of a (prospective) employee who conducts a job search, identifies employer prospects, participates in employment interviews, and eventually accepts an offer of employment. ORR-funded Refugee Service Providers assist in this process.

Refugee as Self-Employed May Count as Successful Refugee Employment Outcome

Depending on factors and criteria discussed herein, a self-employed refugee may meet the definition of a successful refugee employment outcome for ORR purposes.

As a general rule, refugee self-employment is not the preferred objective of ORR's program for refugees within their first eight months in the U.S. Self-employment can be unstructured, impermanent, variable, and not appropriate to a refugee at the vulnerable, critical early stages of his/her resettlement in the U.S. On the path to refugee economic self-sufficiency, self-employment can ordinarily be expected to happen later on the continuum of resettlement.

However, ORR recognizes there are cases where the only employment available for the refugee, or the most suitable arrangement for an individual refugee at a specific time, is through self-employment. Refugee self-employment may be counted as a successful employment outcome if certain criteria and common sense guidelines are followed. In certain cases, the refugee's age, education, experiences, skill, language ability, social integration, self-discipline, and personality, combined with the dynamics of the local labor market, point to self-employment as an appropriate work status. In such cases the Refugee Service Provider may ask the self-employed refugee about indicators of the legitimacy of his job, using 45 C.F.R. § 400.81 as guidance. The provider may ask about the nature and degree of effort expended, including hours worked; commuting time and travel; output measured by the standards for that field; number of customers, clients, or transactions; income or income after expenses; health and safety standards at the job site; whether any discriminatory practices are encountered by the refugee; and a realized or expected positive trend over time.

For example, a taxi driver should be able to show trip reports from his daily ledger including mileage and receipts. A delivery person should cover a certain route, or perform a number of deliveries, per day, with corresponding receipts, mileage, or income. Day laborers, including gardeners, painters, or construction workers, paid in cash, should receive the same compensation as U.S. citizens doing the same work. A haircutter or others in the field of personal care should have some record of each client or transaction, or at least a daily or weekly total. Child caregivers or nannies paid by the hour or block of time should be able to roughly match their income to hours worked times hourly rate of pay. Ask the question, "Considering the totality of the factors, is the employment situation of this self-employed refugee compatible with the goal of the refugee's eventual economic self-sufficiency?"

Responsibilities of Self-Employed Refugees

Self-employment carries with it responsibilities for legal compliance that are more complex than those for employees. Refugee service providers should remind refugees of their obligation to pay taxes. Self-employed refugees paid in cash have earned income just as if paid with a paycheck, which must be reported to the Internal Revenue Service. The self-employed person is solely responsible for timely filing and payment of taxes, and for registration with the state or locality as a business. Self-employed refugees, like all self-employed persons, must pay to the Internal Revenue Service both the employer's and the employee's share of Social Security and Medicare taxes. Refugee Service Providers should assist refugees with these complex matters when possible.

If you have questions, please contact Thomas Pabst at 202-401-5398

Appendix

Title 45: Public Welfare

PART 400—REFUGEE RESETTLEMENT PROGRAM [Visit disclaimer page](#)

Subpart F—Requirements for Employability Services and Employment

General Requirements

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]

“Refugee” will be used throughout this document to refer to all ORR-eligible populations. For more details on ORR-eligible populations, see ORR State Letter 00-17 and ORR State Letters on victims of severe forms of trafficking.

Last Reviewed: May 20, 2019