

Procedures to Request Waiver of Regulatory or Policy Requirements

PURPOSE:

To advise care provider facilities, including Emergency Intake Sites (EISs), Influx Care Facilities (ICFs), and licensed providers, including Transitional Foster Care (TFC), of the procedures for processing waiver requests related to the Office of Refugee Resettlement (ORR) regulations, policies, and cooperative agreement requirements governing grantees and contractors serving unaccompanied children (UC). This new waiver process streamlines and expedites the submission, tracking, and processing of waiver requests and offers flexibility when possible to meet the needs of UCs and providers. ORR does not have the authority to waive federal statute, state statute, or state regulations and may only waive certain provisions of federal regulations where specified by the regulation. Case-specific approval requests to Federal Field Specialists (FFS) are not considered waivers for purposes of this procedure.

DISCUSSION:

This new process addresses operational and administrative changes necessary to streamline waiver requests. ORR will review and consider waiver requests submitted under the regulatory requirements, policies, and cooperative agreements applicable to the entity making the request, specifically:

- Federal regulations where explicit that the requirement can be waived
- [The ORR Guide: Children Entering the United States Unaccompanied and UC Manual of Procedures \(UC MAP\)](#)
- Field Guidance
- Cooperative Agreements, excluding waiver of qualifications for the hiring of key personnel which requires submission of the Key Personnel Minimum Qualifications Checklist and Attestation

ORR does not have the authority to waive federal statute, state statute, state regulations, or federal regulations, except where explicitly allowed in the regulation. Care provider facilities must remain compliant with state licensing requirements if ORR approves a waiver for a related federal regulation or policy.

Each waiver request will be reviewed considering individual facility or agency conditions. In determining whether to issue a waiver, ORR will consider the relevant federal statutes, ORR policy, and federal regulations; Congressional and other oversight inquiries; grantee/contractor performance; and child welfare best practices.

The steps to submit a waiver request to ORR are as follows:

1. The grantee or contracted agency program leadership will submit a waiver request after completion of the first section of the ORR Request for Waiver form (Appendix A).
2. After completion of the first section of the form, the grantee or contracted agency program leadership will submit the ORR Waiver Request Form to DUACO_POInfoRequests@acf.hhs.gov, copying their respective Project Officer (PO) or Contracting Officer's Representative (COR).
3. ORR's processing time for waiver requests will depend on the urgency of the request, as well as the submission of all necessary information. ORR will acknowledge receipt of all waivers within one (1) business day from receipt of the fully complete submission of the waiver request. The timing for a final decision will be dependent on the type of waiver request and required analysis but will not exceed five (5) business days.

- a. In the event the request involves complexities requiring extensive policy and/or legal analysis rendering a decision impracticable within five (5) business days, ORR will send the requestor an update to include the expected time frame for a final determination.
4. The assigned PO or COR will review the waiver request and supplemental documentation if applicable and develop a recommendation. The recommendation will be reviewed with the respective PO Supervisor or COR Supervisor for concurrence prior to issuing a final determination.
5. Upon determination of the waiver request, the response will be documented on the ORR Waiver Request form and emailed to the requesting provider, copying DUCO_POInfoRequests@acf.hhs.gov.

Additional considerations include:

- Multiple waiver requests can be submitted at the same time and on the same form for consideration.
- Approved waivers will be for a specified period of time to be notated on the waiver response.
 - o Waivers may be granted for a time-limited period of 60 days or up to one fiscal year at the PO/COR's discretion and can be extended for up to the end of the period of performance.
 - o A waiver request should be submitted for extension no later than 30 days prior to the expiration date of the existing waiver.
- Waivers may also be approved contingent on specific conditions being met.
ORR reserves the right to rescind the waiver if it is determined that a care provider is not in compliance with the conditions specified in the waiver or if there are other operational concerns that arise after issuance of the waiver.

Questions regarding this procedure should be submitted to DUCO_POInfoRequests@acf.hhs.gov.