

Administration and Oversight of the Unaccompanied Children Program

**OMB Information Collection Request
0970 - 0547**

Attachment A - Summary of Public Comments and ORR Responses

September 2021

Submitted By:
Office of Refugee Resettlement
Administration for Children and Families
U.S. Department of Health and Human Services

ORR expresses its appreciation to the public for the thoughtful and detailed comments in response to this information collection request. In addition to comments specific to the information collection, many of the comments received relate to underlying policy and are thus outside the scope of the purpose for which comments on the information collection were solicited. As specified in 5 C.F.R. s. 1320.8(d), these purposes are: whether the form and the information it collects are necessary for what the agency is trying to accomplish through the form and whether the information collected will have practical utility; to evaluate the paperwork burden of filling out the form and whether the agency's estimate of the burden was correct; the usefulness of the information being collected on the form; and minimizing the form completion burden. Although many of the comments summarized below are outside of the scope for this specific information collection, ORR extends its thanks to the public and will consider these comments in our future work.

In addition, ORR notes that the below responses reference ORR's new case management system, UC Path. ORR is in the process of developing the UC Path system. The majority of the instruments in this collection will be incorporated into UC Path. The *Care Provider Facility Tour Request and Authorization for Release of Records* are completed by stakeholders who do not have access to ORR's case management system. Therefore, the instruments are completed in PDF format and emailed to ORR for processing. The *Notice to UC for Flores Visits* is completed in PDF format, printed, and posted in care provider facilities to allow UC to sign up if they are willing to speak with *Flores* counsel.

UC Path is critical to program operations and it is important that rollout of the new system not be delayed. Therefore, revisions based on public comments that are within the scope of the purpose for which comments on the information collection were solicited will be considered after initial launch of the UC Path case management system. ORR plans to conduct a deliberative review of commenters' suggestions and concerns and submit a request for revisions to this information collection request in January 2022. The upcoming information collection request will also include revisions based on feedback from UC Path system users (i.e., ORR grantees, contractors, and federal staff).

General Comments on Proposed Information Collection

1. One commenter called on ORR to extend the public comment period for an additional 60 days. The commenter based this request on confusion around the applicability of the "Regulatory Freeze Pending Review" Memorandum of White House Chief of Staff Ron Klain from January 20, 2021, as well as capacity constraints related to the transition between presidential administrations and the ongoing COVID-19 pandemic. The commenter also asked for clearer and more concise guidance on the purpose of the proposed changes as well as information on the interaction of the proposed changes with concurrent proposed information collections.

ORR Response: While ORR appreciates the capacity constraints related to the COVID-19 pandemic identified by the commenter, the request for public comment on this proposed information collection remains time-sensitive due to ORR's need to collect this information in order to fulfill its statutory obligations.

2. All five commenters noted the following about the proposed instruments:
 - The newly added questions regarding alleged gang or cartel involvement or criminal activity will have a harmful impact on the most vulnerable unaccompanied children (UC) and present numerous concerns, including lack of safeguards against false allegations and error, self-incrimination, harmful custody, reunification and immigration consequences, as well as Fifth Amendment due process violations;
 - The collection and recording of gang, cartel, and/or criminal information, which triggers reporting requirements to law enforcement, including the Department of Homeland Security (DHS), raise concerns that ORR is impermissibly turning into a law enforcement agency rather than focusing on its child welfare duties and mandate;
 - These instruments will result in the criminalization of events or activities related to the trauma histories the majority of children in ORR custody have experienced;
 - The proposed instruments raise state and federal privacy and confidentiality concerns;
 - The new Authorization for Release of Records imposes new restrictions on a UC's access to counsel, and does not go far enough to protect UC information by not requiring either a subpoena or court order for a records request by a state or federal agency; and,
 - There are also other specific issues with specific forms.

The commenters recommended that ORR seek additional feedback, especially from legal service providers working with UC, and revise its proposed forms.

ORR Response: ORR has read and carefully considered the comments and concerns submitted and refers the commenters to the following responses.

Care Provider Facility Tour Request (Form A-1A)

1. Two commenters requested clarification regarding who is required to submit Form A-1A. They requested confirmation that it is only required for facility tours, and not required for legal counsel for meetings with individual children for purposes of representation, either for individual cases or for class members regarding conditions of confinement in detention facilities.

ORR Response: This comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR responds that it is for facility tours per [ORR Policy Guide Section 5.2](#).

Notice to UC for Flores Counsel Visits (Form A-4)

1. Three commenters asked that ORR confirm that Flores counsel has the right to request a meeting with any child in ORR custody and that a UC need not affirmatively request the meeting. Three commenters noted that the proposed form was not clear on this point, and one recommended that the form be modified to clarify.

ORR Response: This comment relates to underlying policy and not the information collection. Nevertheless, ORR responds that meetings with Flores counsel are voluntary for

UC; counsel may request a meeting with any child but not obligate a child to meet with them.

Authorization for Release of Records (Form A-5)

1. Commenters requested that ORR *not* incorporate *Section G: ORR-Funded Legal Service Provider (LSP) Certification* into Form A-5 stating that they believe that requiring LSPs to certify that they are representing the UC inappropriately restricts some legal service providers from providing certain legal services to UC. They noted that this is a heightened requirement compared to the current Authorization for Release of Records, which permits LSPs to request records prior to entering an appearance, and they noted that neither the Executive Office for Immigration Review (EOIR) nor DHS limit access to records to attorneys of record if the subject of the file request provides consent. They further explained that LSPs have unique access to detained children, to whom they provide legal screenings and follow-up assessments prior to placement with in-house or pro bono counsel. Commenters noted that because at present ORR has not funded LSPs to enter representation for every child they encounter, requiring them to certify representation in each case would interfere with LSPs' ability to find counsel for children they screen, undermining ORR's mandate. They stated that the requirement ignores the scope of services LSPs provide, such as information to investigate an issue or advise a child whose reunification is pending outside the LSP's jurisdiction.

ORR Response: This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR responds that request for proof of representation in Form A-5 does not in any way interfere with LSPs' provision of legal screenings and Know Your Rights presentations. Nor does it inhibit LSPs from electing to represent individual children at no cost to the Government or assisting in the location of such counsel. This provision allows LSPs to commit to limited representation of children per the LSP's request. Further, ORR notes that it plans to revise Form A-5 to remove Section G and, instead, ask that ORR-funded LSPs submit a Notice of Attorney Representation (Form L-3, cleared under OMB #0970-0565) with their request. Form L-3 is a new ORR form that replaces submission of the EOIR G-28 form. Form L-3 asks LSPs to indicate the scope of representation but does not require LSP to have already entered into representation with the court. Any LSP planning to represent a child will complete Form L-3, therefore, submission of Form L-3 will not present additional burden for LSPs.

2. Multiple commenters commended ORR's clear language limiting the information it will provide to government agencies without an authorizing signature or a court-issued subpoena or order; however, they stated their objection to ORR's proposal to accept *either* a statement on the agency's official letterhead that verifies the requesting party's affiliation and includes a case reference number *or* a court-issued subpoena or order. They stated that permitting a state or federal agency to define the scope of an investigation on letterhead should not replace a court-order or subpoena, as this grants ORR broad discretion to release children's files to those agencies, including clinical notes, confidential juvenile records, and incident reports. They recommended that UC information that may be shared with outside agencies, including all entities within DHS and DOJ, should be limited to basic, directory-type information (name, address, age) and limited to the duration of a child's custody in ORR. They stated that ORR should not share any documents that contain reasons for placement

or any other sensitive information, including health information or behavior histories, with any government agency without a court-issued subpoena or order.

ORR Response: This comment relates to underlying policy and who may request information, not the information collection itself. Nevertheless, ORR notes that since proposing this information collection, ORR has taken additional steps to enhance the protection of private UC records and limit the records released to government agencies without an authorizing signature. On June 7, 2021, ORR updated its Policy Guide [Section 5.8.8](#), limiting the categories of Significant Incident Reports (SIR) reported to DHS. Moreover, in this proposed Form A-5, Instructions for *Section E: Records Requested*, ORR does not release internal correspondence, internal incident reports, and certain information related to sponsors and family members. Medical and clinical records, as well as Incident Reports, are also not released without the signature of the UC, their parent/legal guardian, or caregiver, as specified in the Instruction Authorization table. Additionally, ORR may release information to other agencies in accordance with its System of Records Notification, 09-80-0321 ORR Division of Children's Services Records. See [81 FR 46682](#). ORR implements this limited information sharing in part through the records request process.

3. One commenter observed that even though a parent/legal guardian or other caregiver under some circumstances would need to provide consent to release a UC's records, they may not understand their options, including the option to refuse to authorize the release of records, if they are illiterate or not able to access information in their native language. Commenters also noted an additional accessibility issue exists with ORR requiring the electronic completion and submission of the form, which they said unfairly prejudices families who do not have the resources or skills to use the internet. They recommended that ORR allow for hand completion and filing by mail.

ORR Response: ORR notes that this form is rarely completed by parents/legal guardians or caregivers of UC on their own. The vast majority of individuals who complete and submit this form are attorneys of record or UC legal service providers who would be able to explain the options to the parents/legal guardians or UC caregivers. These providers are proficient in English, able to explain the form to their client and/or their client's family in a language that they understand and have the resources to complete the form electronically. If still in ORR custody, the UC case manager would also be available to provide assistance, using interpreter services, if needed. ORR plans to translate the form into Spanish. ORR has and will continue to accept handwritten submissions of the form, although typed submissions are still strongly preferred to prevent potential delays in processing a request due to unclear handwriting.

4. The commenters observed that the proposed form may contravene state confidentiality laws. Commenters noted that, by allowing inclusion of state records under the category of Legal Information under *Section E: Records Requested* (page 5), ORR is permitting government agencies to obtain records without an authorizing signature from the UC or parent/legal guardian, or for a child under 14 or with a disability, which violates state records confidentiality laws.

ORR Response: This comment relates not to the information collection itself, but to the underlying policy and who may request information. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

Nevertheless, ORR clarifies that it complies with applicable state records confidentiality laws. ORR notes that it cooperates with investigations performed by other government agencies, such as state licensing agencies, child protective services, local law enforcement, the National Center for Missing and Exploited Children, and other federal agencies, as appropriate. ORR does not provide these agencies with unmitigated access to children's records. Please see Form A-5, which limits categories of documents ORR will provide without authorization from the child or the child's parent/legal guardian.

5. Commenters noted that by expanding the list in *Section D: Requesting Party* of individuals and agencies authorized to seek access to a child's records, local law enforcement could gain access to children's files without the authorization of the child and/or legal guardian or other critical safeguards. Commenters requested that ORR create a firewall between ORR and other federal agencies, and one gave the example of DHS sharing with an immigration judge private confidences made by UC during clinical session. They recommended that the broad category of "representative of a federal or state agency" be removed.

ORR Response: This comment relates not to the information collection itself, but to the underlying policy and who may request information. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it cooperates with investigations performed by other government agencies, such as state licensing agencies, child protective services, local law enforcement, the National Center for Missing and Exploited Children, and other federal agencies, as appropriate. ORR does not provide these agencies with unmitigated access to children's records. Please see Form A-5, which limits categories of documents ORR will provide without authorization from the child or the child's parent/legal guardian; this includes safeguarding clinical information. In addition, ORR notes that expanding the list in Section D does not represent an expansion of the parties with whom ORR may share information; rather, the list was expanded for accuracy and to reduce the need for requesters to use the "other" field.

6. All commenters asked ORR to explain the document entitled, "Notice of Attorney Representation", listed in *Section F: Supporting Documents* on Form A-5.

ORR Response: The *Notice of Attorney Representation* (Form L-3, cleared under OMB #0970-0565) provides proof of attorney representation.

7. Commenters noted that the signature of a child is an insufficient safeguard for privacy and confidentiality, as a child may feel pressure to sign an authorization to release his or her record. They recommended that when signing, children have an adult for support and/or or legal counsel to explain the process to them.

ORR Response: ORR notes that the vast majority of individuals who complete and submit this form are attorneys of record or legal service providers for UC. If the UC has legal counsel, the counsel can guide the UC through the process. If the UC does not have legal counsel, it is the care provider's responsibility to explain to the UC what forms they may be asked to sign and whether they are required to sign. As listed in the instructions under Authorization, copies of the UC's clinical/mental health records require a witness to the signature for all UC, whether in custody or not in custody, and the witness could be the parent/legal guardian, caretaker, LSP, ORR staff, or other adult who would be able to

provide support and/or explain the process. The body of the proposed form and the instructions provide guidance for completing the form with details on who is requesting the information, what records are being requested, what is included in specific category of records, and the reason for the request.

8. Noting that ORR retains ample discretion to process claims for tender-age children and children with disabilities, commenters stated that without more guidance on the boundaries of that discretion, a record request could be met with a denial, leading ORR to violate constitutional due process for these UC.

ORR Response: This comment relates not to the information collection, but to the possibility of a denial of a record request for a tender-age child or a child with a disability. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

9. Commenters noted a lack of clarity on whether legal services would be included in the services described in Section G of the Instructions, which states that ORR normally presumes consent for UC in ORR custody who are unable to consent due to age or a diagnosed developmental disability and will release records needed for provision of services as described in the [ORR Policy Guide Section 3.3](#).

ORR Response: If ORR determines that the records are needed to support the provision of legal services, ORR will consider the release of the requested documents.

10. Commenters noted that ORR's refusal to release certain records under any circumstances without exception, such as internal correspondence and incident reports, sponsor assessments, family reunification packets, and background check results, raises serious due process concerns and is likely unlawful. They stated that it is central for a UC's representative to have the opportunity to assess the reasons for any ORR delay in reunifying with a sponsor, or if ORR has deemed the parents/custodians unfit, or if the child is placed in a restrictive setting. Commenters stated that denying children and their representatives the right to inspect evidence is a blatant violation of procedural due process rights for children and their sponsors, and that restricting the release of records violates children's rights and interferes with the attorneys' representation of children.

ORR Response: This comment relates not to the information collection, but to the underlying policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

11. Commenters stated their appreciation for the addition of medical and educational needs as qualifying for expedited processing of file requests but noted that processing time for file requests often fails to account for detained children's urgent need to evaluate their legal eligibility. Commenters proposed that *Section C: Type of Request* consider additional factors to qualify as "urgent", such as a Flores bond hearing. Another commenter recommended that either the form or the instructions indicate a specific time by which ORR must give a child or their legal representative access to the child's complete file and requested that such access may not be delayed more than five business days following a request. Commenters mentioned that the Freedom of Information Act (FOIA) requires federal agencies to disclose any information within 20 days of a request, unless the request falls under one of nine

exemptions. Commenters requested that ORR comply in a timely manner, whether through the submission of an Authorization for Release of Information or a FOIA request, unless there are unusual circumstances.

ORR Response: ORR responds to requests for records only through the submission of the Form A-5, Authorization for Release of Information. Under certain circumstances, as listed in the proposed form, the requester may mark the request as urgent in the subject line of the email. The example that the commenters provide, a Flores bond hearing, would fall under the existing Section C, sub-category: UC has a court or administrative hearing scheduled within 30 days. If the urgent matter is not included in the form's expedited processing list, ORR has provided a box for "Other", and those requests are subject to approval at ORR's discretion after consideration of the exigent circumstances. Private case files are not requested via FOIA.

12. Two commenters recommended a clear provision in Form A-5 stating that UC have a right to free and prompt access to their own case files and any information collected about them by ORR. They noted that although the ORR website explains how released UC can access their records, the instructions do not provide guidance about how a child would request their own case file information while still in custody. They recommended that care providers both notify children of this right and also assist them if they want to request their files themselves.

ORR Response: This comment relates not to the information collection, but to the right that a UC may have to access their own case files. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

13. Commenters stated that if ORR declines to release a UC's records to a child's legal representative, including if the child is under 14, ORR should be required to provide a written explanation as to why the request was denied, and why the denial is in the child's best interest. They further proposed that the attorney be allowed to address those concerns and obtain some or all of the records, and that ORR provide a mechanism by which children may seek an administrative review of ORR's decisions to withhold files.

ORR Response: This comment relates not to the information collection, but to the possibility of a denial of a records request. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

14. One commenter recommended that in Section G instructions, the form include a safeguard by establishing limitations on the disclosure of clinical/mental health information, particularly so government agencies would not be able to obtain sensitive records absent authorization from the UC.

ORR Response: *Section G: Authorization* in the Instructions of Form A-5 already reflects the commenter's suggestion (UC's clinical/mental health records will not be released without the signature of the UC and a witness, whether the UC is in ORR custody or not, if the UC is 14 years or older). There are special rules for release of information for UC who are younger than 14 or developmentally disabled. In these cases, release of information requires the signature of the UC's caregiver, typically the UC's sponsor or a parent/legal guardian, and a witness.

15. Commenters stated that the form runs afoul of ORR's obligations to provide for language accessibility for non-English speakers by failing to provide for any translation or interpretation. Additionally, commenters noted that there are no requirements for language accessibility for those with Limited English Proficiency (LEP), even though the form may require the signature of the UC or parent/legal guardian. They also observed that the [ORR Policy Guide Section 4.2.2](#) requires UC who are LEP or disabled to have access to "effective communication", and that ORR-required documents in [Section 3.3.7](#) provided to UC must be translated in the preferred language, written or verbally. Title VI of the Civil Rights Act and the Affordable Care Act both require federal agencies to prepare a plan to improve access to federally conducted programs and activities by eligible LEP persons. Commenters also noted that neither the form nor the supporting statement contains language about language accessibility or services for LEP. Commenters recommended that ORR amend the form to include a written requirement that language services be provided specifically to LEP who are asked to sign the form.

ORR Response: This comment relates not to the information collection, but to the underlying policy of language translation. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. ORR refers to its previous comment about the A-5 form, noting that this form is rarely completed by parents/legal guardians or caregivers of UC on their own, but rather attorneys of record or UC legal service providers who would be able to explain the options to the parents/legal guardians or UC caregivers. Nevertheless, ORR plans to translate the form into Spanish. ORR has and will continue to accept handwritten submissions of the form, although typed submissions are still strongly preferred to prevent potential delays in processing a request due to unclear handwriting.

16. In *Section E: Records Requested*, commenters recommended adding check boxes for the following:

- *Complete Case File:* Commenters stated this will promote clarity, rather than requiring requestors to check all the boxes or simply write "complete case file" in the "Other" section.

ORR Response: As noted in the form instructions for Section G, there are certain case file documents that are not released to protect the privacy and safety of UC and sponsors. In addition, not all records may be requested without certain authorizing signatures, such as clinical/mental health records. In order to more easily identify when those authorizing signatures are required and to process requests expeditiously, ORR determined that it is best for a requestor to check the appropriate box(es) and specify "Other", if necessary, and indicate the document(s) requested.

- *Sponsorship/Reunification Records:* Commenters noted that a request box specifically for information related to reunification appears to be missing, adding that this information is essential for a child's rights to be promptly placed with appropriate sponsors, and a child's attorney should have access to a home study report, for example, without a sponsor's signature, as that information is critical to advocating for the child's safe and prompt release.

ORR Response: This comment relates not to the information collection, but to the permissible scope of a record request. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR responds that per the Instructions, it does not release *Sponsor Assessments*, Family Reunification Packets, or background check results. This safeguard and the requirement of a sponsor signature for release of the *Home Study* and sponsor information contained in other records are not new.

- **Sponsor Contact Information:** Commenters noted that this information is essential for providing services related to reunification advocacy. Commenters recommended that, with the child's consent, ORR share basic sponsor contact information with attorneys representing children to facilitate representation and enable attorneys to request signatures required for release of any sponsor information.

ORR Response: This comment relates not to the information collection, but to the permissible scope of a record request. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

17. One commenter recommended that ORR update its Policy Guide to reflect that all government agencies are required to use the Form A-5, Authorization of Release of Records.

ORR Response: This comment relates not to the information collection, but to policies concerning the use of the form by government agencies to request records. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

18. One commenter noted several typos in the form and also pointed out that what is indicated in the Instructions as Section G: Authorization (page 7), should instead be listed as Section H, to correspond with Section H: Authorization in the body of the form.

ORR Response: ORR will correct all typos and/or format issues in its final instrument.

Notification of Concern (Form A-7)

1. Two commenters requested clarification about who completes Form A-7.

ORR Response: The Notification of Concern (Form A-7) is completed by the home study and post-release service (PRS) caseworkers, care provider case managers, and the ORR National Call Center (ORRNCC).

2. Four commenters stated that Form A-7 raises significant concerns about what they consider to be inappropriate post-release surveillance when it is not clear if ORR has either the authority or capacity to respond to the events documented. The commenters noted that while they understand ORR's concern with certain categories, such as child abuse and neglect, abduction or disappearance of a UC, trafficking concerns and other safety issues, the purpose of other proposed categories is less clear. The commenters noted the documenting of alleged criminal activity, gang involvement and other such behaviors to be invasive to the lives of post-release children. Three commenters said that Form A-7 also raises serious concerns about privacy protections for children, sponsors, and caregivers, especially because they are not the ones providing the information to ORR themselves. The

commenters stated that if ORR insists on including these actions, despite the commenting parties' concerns, they request that ORR provide possible outcomes that may result from a Notification of Concern for children and for sponsors and caregivers, how ORR will use the information collected, steps that would be taken once a concern is identified, and justifications and explanations for including information that is not reported by a child seeking help.

ORR Response: This comment relates not to the information collection, but to the underlying policy of what the PRS provider reports. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR explains that as described in the ORR Policy Guide, [Section 6.2.4](#), Post Release Service (PRS) providers are grant-funded by ORR, and they are required to document all communication with the released UC and sponsor and provide ORR with reports of all service areas accessed as well as any concerns about a released child's safety and well-being. PRS case workers, the ORR National Call Center (ORRNCC), and other ORR care provider staff are mandated reporters and must report any concerns of alleged child maltreatment to appropriate investigative agencies such as the local Child Welfare agency. Likewise, when ORRNCC is made aware of any danger to the well-being of a UC who has been released to a sponsor, ORRNCC contacts the appropriate investigative agency. As part of a required record keeping process, the information from Form A-7, Notification of Concern and the more detailed list of potential concerns/behaviors collected in the UC Path database, serve to document the actions and responses of the PRS and the ORRNCC as well as the types of cases where special assistance may have been required. This data collection also helps identify areas where the PRS case workers might need to focus additional supports and services to the children and families they serve.

Event (Form A-9)

1. Three commenters requested clarification on the proposed field "Event Occurred in ORR Care." The commenters observed that it remains unclear whether this field refers to events that occur while a child is in ORR custody as a legal matter or those that occur while a child is physically in an ORR facility, as opposed to being on a doctor's visit, etc. Two of the commenters noted that part of the need for clarification arises from the lack of information provided on the drop-down menu options for the "Event Occurred in ORR Care" field.

ORR Response: This field collects information on whether an event occurred while a UC was in the legal custody of ORR pursuant to its statutory authorities and is a Yes/No field. If "Yes" is selected, the drop-down menu options are Care Provider Facility, Foster Home, Community, and Out-of-Network Placement. If "No" is selected, the drop-down menu options are Country of Origin, Journey to the U.S., DHS Custody, and U.S. Interior.

Comments Directed at the Significant Incident Report and Program-Level Event Report Forms (Forms A-10A, A-10B, A-10C, A-10D and Addenda)

1. Multiple commenters stated their opposition to the proposed revisions to the SIR and Program-Level Event (PLE) forms for their extensive increased proposed information collection related to alleged gang or cartel involvement or criminal history. The commenters noted that such information collection is not justified and instead is likely to result in significant harm to

unaccompanied children (UC) by subjecting them to more restrictive settings, delaying or denying their release from ORR custody, and by adversarial use against them in their immigration cases.

ORR Response: As explained in [ORR Policy Guide Section 5.8](#), ORR requires that care providers and staff report incidents involving a UC's safety and well-being. This helps to ensure that significant incidents involving UC are documented and responded to in a way that protects the best interests of children in ORR care, along with their safety and well-being. ORR also notes that these instruments are primarily meant as internal records for immediate awareness. The information contained in an SIR or PLE may prompt a reassessment of service provision, placement, or readiness for release, but these decisions are not made solely on the basis of the SIR. ORR takes into account all available information to make holistic decisions regarding the care of children in its custody that are made with the best interest of the child in mind. Nevertheless, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of "gang or cartel-related crimes/activity and "gang affiliation" from the SIR (Form A-10B).

2. Two commenters stated that the use of SIR forms both for incidents that occurred prior to and during ORR custody is confusing and potentially misleading for placement, reunification, and immigration relief purposes. One commenter requested justification for the use of SIRs for pre-ORR custody events. Both commenters recommended revising the information collection to clearly indicate when the event occurred, whether in the initial sections of the form or the addition of a form with a different heading.

ORR Response: It is important for ORR to be able to quickly elevate incidents of past abuse or neglect, regardless of where they occurred. As noted in [ORR Policy Guide Section 5.8.9](#), this is standard information that must be reported according to child welfare safety laws. ORR must be in position to identify children who are or potentially are victims of past abuse in order to better provide for their care. Furthermore and as described in [ORR Policy Guide Section 5.8.2](#), other incidents occurring prior to a UC's time in ORR may also require elevation to ensure the UC's safety, well-being, and best interests. Collecting information about past events of abuse or neglect prior to entering ORR custody helps the case manager and clinician assess the child's eligibility for certain services and benefits under the TVPRA, including a TVPRA-mandated home study and post-release services.¹ There are fields on the SIR that allow the care provider to indicate whether an event occurred in ORR care or whether it occurred outside of ORR care. Incidents that occurred outside of ORR care are recorded under "Past Abuse/Neglect Not in ORR Care." All other fields reflect events that occurred in ORR care.

3. Four commenters observed that the distinction between the Emergency SIR Form A-10A and SIR Form A-10B -- what constitutes an immediate threat to safety or well-being versus a significant incident not rising to that level -- is unclear. The commenters asked that ORR clarify with examples the types of behavior covered by each respective SIR category, as well as provide examples of behavior not requiring capture in an SIR.

ORR Response: [ORR Policy Guide Section 5.8.1](#) and [ORR Policy Guide Section 5.8.2](#), respectively, describe, using examples, what constitutes an emergency incident as opposed to a significant incident. The purpose of significant incident reporting is to ensure that a broad range of issues

¹ 8 U.S.C. § 1232(c)(3)(b)

involving UC safety and well-being are elevated to ORR, and to ensure that all incidents and responses to such incidents are documented and resolved in a way that protects the best interests of children in ORR care. Incident reporting of this nature is standard practice in child welfare systems.

4. Two commenters stated that the criteria for whether multiple categories in the proposed Significant Incident Report Form A-10B would apply to a single incident are not clear. The commenters provided the example of whether, for a child who has an arrest for criminal charges, the care provider would complete both the “Criminal History” and “Incidents involving law enforcement” fields, or whether alternatively separate SIRs would be generated for each. The commenters requested further information on this question, as well as what the category and field of “Incidents involving law enforcement” is meant to capture.

ORR Response: Users are able to select more than one category checkbox if applicable to the event. In addition, all SIRs include a section in which to document information about reports made to law enforcement. This section includes contact the child may have had with law enforcement before coming into ORR custody and while in ORR custody.

SIRs capture whether the incident was reported to law enforcement, date and time of the report, the name and badge number of the officer receiving the report, whether the incident was investigated and the date notified of investigation, the case/confirmation number, a text box to provide an explanation/details, the results/findings of any investigations, and a place to upload any related documents. The majority of incidents reported under this category are not the result of a behavioral issue that required de-escalation (e.g., a previous arrest, child is interviewed as a material witness). However, should a behavioral incident result in a call to law enforcement, all actions taken to address or de-escalate the situation would be captured in the “Staff Response and Intervention” or “Follow-Up and/or Resolution” fields of the SIR.

5. Multiple commenters stated that the use of the term “Criminal History” is inaccurate, confusing, and contrary to a trauma-informed, child-centric approach, given that most child behaviors are not criminal. The commenters referenced the distinction between juvenile delinquency and adult crimes as recognized across state and federal law, including immigration law. Several commenters noted that the child behaviors typically marked as Criminal History on the SIR forms have not been adjudicated as criminal by a neutral factfinder. Several commenters recommended that ORR eliminate the “Criminal History” category and field altogether. The commenters requested in the alternative that ORR include a drop-down or narrative option to record how the criminal history determination was made, including a required field for “Source of Information” with an accompanying text box and a function or field to add related documents. Three commenters further recommended that a “Source of Information” field note whether the information was provided by the child or documents, whether the child was Mirandized or ORR obtained a court order for the documents.

ORR Response: ORR collects criminal history information in order to inform the most appropriate placement for child as mentioned in [ORR Policy Section 1.2.1 Placement Considerations](#). ORR attempts to corroborate and understand any disclosure of the child’s criminal or juvenile delinquency history made by the child, their family, or their sponsor to ensure that the child is placed in the least restrictive setting that meets their individual needs, the child receives appropriate services, and that ORR is able to make a well-informed release decision. Care providers are trained to include all relevant information in the SIR, including the

source of the information and whether charges were adjudicated. ORR will consider the commenters' suggestions of a change in terminology and additional fields.

6. Multiple commenters requested that ORR dispense with the use of the designation "Perpetrator" as an inappropriate and misleading categorization of child behavior in light of decades of research in child development demonstrating the lack of clear culpability of children. The commenters recommended that ORR instead replace the designation "Perpetrator" with more nuanced, child-centric framing of events.

ORR Response: This comment relates not to the information collection, but to the appropriateness of the use of the term "perpetrator" in discussing a child's behavior. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

7. One commenter related experiences of UC they had represented who had been written up for SIRs for non-threatening behavior such as clothing violations and refusing to engage in leisure activities, among others. The commenter reported other UC they represented having received SIRs for unverified statements unrelated to physical threats of harm. The commenter recommended that ORR not generate SIRs where there is no physical threat of harm or unverified statements. Relatedly, the commenter requested that ORR better define "harm to others" under "Behavioral incidents that do not threaten immediate safety", possibly by breaking it down into further categories such as bullying, physical harm, emotional harm, etc.

ORR Response: As explained in [ORR Policy Guide Section 5.8](#), ORR requires that care providers and staff report incidents involving a UC's safety and well-being. This helps to ensure that significant incidents involving UC are documented and responded to in a way that protects the best interests of children in ORR care, along with their safety and well-being. ORR also notes that these instruments are primarily meant as internal records for immediate awareness and are not intended to provide a complete or comprehensive record of a UC's time in care. In addition, ORR notes that the forms already provide the following subcategory options: Possession of a Weapon; Use of a Weapon; Harm to Others, Self-Harm with medical intervention; Self-Harm without medical intervention; Past Self-Harm; Suicidal Ideation; Suicide Attempt/Gesture; Past Suicide Attempt/Gesture; Verbal Aggression; Physical Aggression; Destruction of Property; Use of Drugs and/or Alcohol in ORR Custody; Other. ORR will consider the commenter's suggestion to not report via SIR behavioral incident where there is no physical threat of harm or unverified statements.

8. Three commenters recommended that ORR revise the section relating to family separation on Significant Incident Report Form A-10B. All three recommended that ORR expand the information collection beyond separation from a parent. One commenter recommended adding the category of "separation from a family member or primary caregiver". Two other commenters recommended changing the category from separation from a parent to "separation from family" and including a separate field with numerous options such as separation from a parent, separation from a primary caregiver, separation from sibling(s), separation from other family members. The commenters noted that this information is relevant to the trauma experienced by UC at the border and informs not only their care needs but the reunification process.

ORR Response: Separation from any family member, including a parent/legal guardian, another family member, or unrelated adult acting as the primary caregiver is documented in the child assessments conducted upon admission to an ORR care provider program so that appropriate services may be rendered to the child (e.g., reunification, facilitating communication, counseling).

- Multiple commenters noted that Congress purposely placed the responsibility of caring for UC with a non-law enforcement agency to ensure a child protection rather than law or immigration enforcement focus. The commenters stated that the direct impact of SIRs related to alleged gang or criminal behavior on the immigration cases of UC erodes the divide between child protection and law enforcement and creates conflicts of interest for ORR with respect to its statutory mandate to care for UC.

ORR Response: This comment relates not to the information collection, but to the possible later use of the information. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it updated [ORR Policy Guide Section 5.8.8](#) on June 7, 2021 to limit the categories of SIRs that are reported to DHS. In addition, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of “gang or cartel-related crimes/activity and “gang affiliation” from the SIR (Form A-10B).

- Multiple commenters stated that the absence of information on the criteria used by ORR for identifying a UC or incident involving UC as gang or cartel related or affiliated was a concern. The commenters noted that neither law enforcement nor scholars agree on a uniform definition of “gang”, nor do the immigration statutes define gang or cartel membership or association. Several commenters mentioned the ICE-ORR Memorandum directing DHS to train ORR staff on identifying MS-13 gang colors and signs, with such information in turn providing the basis for ORR’s determinations regarding gang or cartel relation or affiliation. Several commenters observed that the training and expertise of ORR care provider staff does not prepare them to elicit the information on gang or cartel affiliation sought for collection and that instead, the ICE training has resulted in Central American UC being mislabeled as gang members and erroneously placed in secure facilities.

ORR Response: This comment relates not to the information collection, but to the common understanding of the term “gang” or cartel membership. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of “gang or cartel-related crimes/activity and “gang affiliation” from the SIR (Form A-10B). Additionally, ORR notes that gang membership cannot be used as justification for placement in a secure facility per [ORR Policy Guide Section 1.2.4](#).

- One commenter noted that the lack of justification or explanation for the collection of information on gang affiliation across the SIR and Program-Level Event forms and why such information collection is necessary for ORR to perform its duties was concerning. The commenter noted the inclusion of and lack of explanation and justification for questions eliciting information on whether a sexual abuse, sexual harassment, or inappropriate sexual behavior incident is related to “gang/cartel crimes, activities, or affiliation”. The commenter also noted

this same concern for inclusion of if the incident is related to “gang/cartel crimes, activities, or affiliation” on the Program-Level Event Form A-10D.

ORR Response: ORR will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of “gang or cartel-related crimes/activity and “gang affiliation” from the SIR (Form A-10B).

12. Several commenters stated that the gang and cartel-related and other incriminating information ORR collects and purports to collect through the proposed forms is not necessarily reliable. The commenters noted that ORR primarily relies on self-disclosures by UC and stated that such self-disclosures are frequently unreliable due to factors related to child development, past trauma, and elicitation in coercive contexts such as CBP border facilities. The commenters noted that ORR has admitted in legal proceedings that it does not inquire into the accuracy of information on UC submitted by law enforcement. In addition to self-disclosures, the commenters stated that ORR relies on subjective assessments of whether personal appearance or effects are gang- or cartel-related. The commenters stated that such subjective criteria is similar to gang identification protocols used by schools and law enforcement that have been criticized not only for inaccuracy but also racial profiling and bias. The commenters stated that ORR’s reliance on DHS information regarding gang or cartel affiliation was concerning given DHS’s law enforcement motives and documented practice of adversely using gang allegations regardless of reliability or veracity. Several commenters cited U.S. Border Patrol statistics showing that 0.03% of persons with suspected or confirmed gang affiliations apprehended at the southwest border between 2011 and 2017 were UC. Two commenters requested that ORR provide clarity that untested allegations of gang or cartel affiliation cannot be used to (1) deny a child release nor (2) transfer a child to a more restrictive placement, while those and two additional commenters recommended that ORR ensure that untested allegations of gang or cartel affiliation are not reportable to third parties, particularly under [ORR Policy Guide 5.8](#).

ORR Response: This comment relates not to the information collection, but to the reliability of allegations of gang or cartel affiliation. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of “gang or cartel-related crimes/activity and “gang affiliation” from the SIR (Form A-10B). ORR also notes that under ORR policy, gang membership is not used as a justification to place a child in a secure facility, nor to deny release to a sponsor.

13. Several commenters stated that the proposed information collection adding and expanding fields relating to gang or cartel affiliation and criminal history will violate UC’s right to due process under the Fifth Amendment of the U.S. Constitution. The commenters noted that UC and their sponsors have fundamental rights to liberty and family unity. Moreover, the commenters observed that Fifth Amendment procedural due process requires notice and a fair opportunity to rebut government assertions before a neutral decision maker. Using the *Mathews v. Eldridge*, 424 U.S. 319 (1976) analysis, two commenters noted that the proposed forms fail to (1) provide notice to a UC or her legal representative or adult caregiver of the gang or cartel affiliation; (2) ensure the reasoning underlying the designation is documented with the evidence relied upon; and (3) provide an opportunity to challenge the designation. Two other commenters stated that the proposed information collection suffers from the same procedural

due process deficiencies enjoined by a federal court and upheld by the Ninth Circuit Court of Appeals in *Saravia v. Sessions*, 905 F.3d 1137, 1144-45 (9th Cir. 2018). The commenters also noted the lack of means for a UC to challenge an allegation of gang or cartel involvement made in an SIR form despite the significant adverse consequences, including prolonged detention and separation from a sponsor, of such a designation and the implication of those consequences for UC's fundamental and constitutional rights. The commenters recommended that ORR develop a process for providing UC and their sponsors and legal representatives meaningful notice of any and all gang allegations, as well as an opportunity for children and their sponsors and legal representatives to challenge them before the information is shared outside ORR or used to change UC placement.

ORR Response: This comment relates not to the information collection, but legal arguments as to whether notice regarding gang allegations is needed and potential opportunities to challenge them. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of "gang or cartel-related crimes/activity and "gang affiliation" from the SIR (Form A-10B).

14. Several commenters stated that the proposed information collection adding and expanding fields relating to gang or cartel affiliation and criminal history will violate UC's privilege against self-incrimination under the Fifth Amendment of the U.S. Constitution. The commenters noted that Miranda warnings are required in civil investigations that may result in criminal prosecutions, and that the "booking exception" is inapplicable in the immigration context where questions are designed to elicit incriminating information. The commenters stated that should ORR seek to rely or report on incriminating information they elicit, then ORR must provide a Miranda warning to UC prior to eliciting such information and specifically advise the child that information divulged can result in criminal or immigration consequences, as well as impact their ORR placement.

ORR Response: This comment relates not to the information collection, but constitutional legal arguments as to whether warnings are needed when ORR elicits information about criminal or gang activity from UC. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of "gang or cartel-related crimes/activity and "gang affiliation" from the SIR (Form A-10B).

15. Several commenters observed the lack of clarity regarding whether ORR considers the information proposed for collection to be subject to state and federal laws governing the protection of children's information and privacy, especially in light of mandatory information-sharing with DHS pursuant to [ORR Policy Guide 5.8](#). The commenters stated that legislatures have chosen to protect children's confidentiality in light of their inherent vulnerability and to promote rehabilitation. The commenters then requested that ORR ensure the adequate safeguarding of collected information and compliance with state and federal laws governing the protection of children's criminal information.

ORR Response: This comment relates not to the information collection, but questions concerning the applicability of state and federal privacy laws. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

16. Several commenters recommended that the proposed information collection forms clearly indicate that they are to be maintained separately from the UC's "Alien File." The commenters noted that as ORR is bound by the Flores Agreement's provision for children to have a "reasonable right to privacy" and as ORR's website states that "HHS has strong policies in place to ensure the confidentiality of [UCs] personal information", it follows that UC must have the right to privacy of their own records and ultimately all information they provide to ORR. The commenters noted that the Flores Agreement requires agencies and organizations to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure. As a result, the commenters stated that UC ORR files should not be accessible by third parties without UC authorization. The commenters noted that the proposed restriction of read/write access to UC Path in the "Collaborators Data Entry Window" neither mitigates the harms of mandatory information-sharing with DHS per [ORR Policy Guide Section 5.8](#) nor similar harms posed by government agency access to these files via records requests.

ORR Response: UC case file information is maintained by ORR care providers and is stored in the ORR case management database and with the care provider. These files are maintained separately from UC A-Files, which are maintained by DHS. We also refer readers to [ORR Policy Guide Section 5.8](#) and changes made to [Section 5.8.8](#), as discussed above.

17. Several commenters noted the adverse consequences for UC that are likely to result from the proposed information collection identifying children's behavior as gang- or cartel-related or criminal and the lack of justification provided by ORR for the necessity of such information collection for the fulfillment of its duties. The commenters mentioned four major harms: (1) restrictive placements; (2) delay or denial of family reunification; (3) prolonged detention; and (4) undermining of UC immigration cases.
- *Restrictive Placements:* The commenters noted the interaction of the proposed expanded information collection on alleged criminal history and gang or cartel affiliation with [ORR Policy Guide Section 1.2.4](#) and its requirement that ORR agency and care provider staff assess restrictive placement where SIRs evidence criminal history or a pattern and practice of criminal activity. Furthermore, two commenters who are also plaintiff class counsel in the pending litigation *Lucas R. v. Azar*, No. 2:18-CV-05471 (C.D. Cal.), cited data analysis from expert witness Dr. Emily Royo that found (1) UC who spent time in a restrictive placement waited more than three times as long as UC solely placed in shelter facilities for reunification; and (2) UC who spent time in a restrictive placement had worse case outcomes than UC solely placed in shelter facilities, from ability to achieve release through sponsor reunification to obtaining immigration relief to remain in the U.S.

ORR Response: As explained in [ORR Policy Guide Section 5.8](#), ORR requires that care providers and staff report incidents involving a UC's safety and well-being. ORR attempts to corroborate and understand any disclosure of the child's criminal or juvenile delinquency history made by the child, their family, or their sponsor to ensure that the child is placed in the least restrictive setting that meets their individual needs, the child receives appropriate services, and that ORR is able to

make a well-informed release decision. The information contained in an SIR or PLE may prompt a reassessment of service provision, placement, or readiness for release, but these decisions are not made solely on the basis of the SIR. Additionally, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of “gang or cartel-related crimes/activity and “gang affiliation” from the SIR (Form A-10B).

- *Immigration Cases:* The commenters noted that once gang activity is reported, Homeland Security Investigations (HSI) places gang memoranda in individuals’ Alien files and explicitly directs the denial of any and all future immigration services, benefits, or relief. The commenters noted the significantly greater statistical likelihood of Central Americans being designated as dangerous by an immigration judge and deported from the U.S. as reflective of structural racism and racial inequality to which commenters stated that ORR contributes by alleging, recording, and reporting gang involvement and criminal history.

ORR Response: This comment relates not to the information collection, but the potential for information about reported gang activity to be placed in individuals’ Alien files and lead to a denial of immigration benefits and relief, including activities undertaken by non-ORR actors. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it will remove the question asking if the incident was related to gang/cartel crimes, activities, or affiliation from all incident reports (Forms A-10A through A-10D) as well as the subcategories of “gang or cartel-related crimes/activity and “gang affiliation” from the SIR (Form A-10B). For underlying policy ORR refers readers to [ORR Policy Guide Section 5.8](#), and changes made to [Section 5.8.8](#) as discussed above.

18. Four commenters noted that there is little to no oversight of what does or does not get labeled as gang-, cartel-, or crime-related and stated concern for this lack of oversight in light of mandatory DHS reporting under [ORR Policy Guide Section 5.8](#). The commenters recommended that ORR develop internal oversight over issuing and reporting the allegations.

ORR Response: This comment relates not to the information collection, but an alleged lack of oversight over reporting of gang or cartel-related activity. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. For underlying policy, ORR refers readers to [ORR Policy Guide Section 5.5.1](#) for ORR’s policy on monitoring activities and the revised [ORR Policy Guide Section 5.8](#), as discussed above.

19. Multiple commenters noted the likelihood that the proposed SIR revision will result in the generation of SIRs for more children, as the form requires the identification of any children “involved” in an incident and the linking of those children’s profiles to the SIR in UC Path.

ORR Response: As explained in [ORR Policy Guide Section 5.8](#), ORR requires that care providers and staff report incidents involving a UC’s safety and well-being. Care providers must ensure that each report includes sufficient detail regarding the incident or event to accurately describe it, identifies the individuals involved, and records all follow-up actions. Additionally, associating

the SIR with each child involved in the event does not differ from current practice. This is not a change to the SIR reporting policy and will not generate more SIRs from current practice.

20. Several commenters requested clarification as to whether any video, audio, or photo footage will be archived in addition to being described through these forms. Two commenters requested that ORR make any such footage, to the extent it is used to document an incident involving a child, available to the child and his/her representative for inspection if the child is challenging an ORR decision made in reliance on the information captured in the SIR or footage.

ORR Response: This comment relates not to the information collection, but rather the potential archiving of video, audio, or photo footage as described in the forms. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

Sexual Abuse Significant Incident Report and Addendum (Form A-10C and Addendum)

1. Four commenters requested that ORR re-title the proposed instrument given the significant risk for confusion and prejudice to UC of having information related to behavior that does not rise to the level of sexual abuse collected and memorialized on this form. The commenters observed that the Sexual Abuse Significant Incident Report Form A-10C (SA/SIR) is intended to collect information not only relating to sexual abuse, but also sexual harassment, inappropriate sexual behavior, and code of conduct violations. The commenters stated that UC could be prejudiced and penalized--despite their executive functioning skills still being in development--for impulsive and ill-advised but developmentally typical behavior not rising to the level of sexual abuse.

ORR Response: Per the interim final rule on the Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children at 45 C.F.R. § 411.61, care provider staff who become aware of alleged sexual abuse or sexual harassment must immediately follow ORR reporting requirements. ORR sets out these reporting requirements in [ORR Policy Guide Section 4.10.2](#), which provides, among other things, that care providers must report to ORR any knowledge, suspicion, or information regarding an incident of sexual abuse, sexual harassment, inappropriate sexual behavior, or staff code of conduct violation; retaliation; or staff neglect/violation of responsibilities that may have contributed to an incident or retaliation that occurs in ORR care via the SA/SIR. As stated in [ORR Policy Guide Section 4.10](#), the ability of UC, staff, volunteers, and contractors to freely and immediately report sexual abuse, sexual harassment, inappropriate sexual behavior, and staff code of conduct violations is essential for the protection and safety of all children at a care provider. ORR also notes that the SA/SIR form has checkboxes to clearly indicate what type of incident the SA/SIR is recording: sexual abuse, sexual harassment, inappropriate sexual behavior, or staff code of conduct violations. Per [ORR Policy Guide Section 4.10.5](#), care providers must ensure that any information related to a sexual abuse, sexual harassment, inappropriate sexual behavior, or staff code of conduct violation is protected and kept confidential within the care provider facility and is only disclosed to the extent necessary.

2. Several commenters noted the lack of information available on the definition of "code of conduct". The commenters recommended that ORR either (1) move all material terms and

definitions to the [ORR Guide to Terms](#), or, at minimum, (2) include all material terms and definitions in the [ORR Guide to Terms](#) and continue to define them through its [Policy Guide](#).

ORR Response: As set out in [ORR Policy Guide Section 4.10](#), “code of conduct” refers to Staff Code of Conduct, which is defined in [ORR Policy Guide Section 4.3.5](#).

3. Multiple commenters noted the lack of clarity and guidance and excess of discretion for care providers on how to determine whether behavior constitutes “inappropriate sexual behavior”. The commenters noted that the definition of “inappropriate sexual behavior” is negative and only provides that such behavior is “sexual in nature” but does not rise to the level of sexual abuse or sexual harassment. Two commenters provided examples of typical child behavior inappropriately categorized as “inappropriate sexual behavior” resulting in an SA/SIR. The commenters further noted the imperative need for precision of language and guidance given that an SA/SIR for inappropriate sexual behavior can result in secure facility placement.

ORR Response: This comment relates not to the information collection, but rather the definition of “inappropriate sexual behavior.” As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that, consonant with the concurrence of the Administration of Children and Families (ACF) with the recommendations of the Department of Health and Human Services HHS OIG in its June 2020 report *The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure The Safety Of Minors In HHS Custody (OEI-09-18-00430)*², it has updated its training materials related to the identification and reporting of incidents of sexual abuse, sexual harassment, and inappropriate sexual behavior, and increased the number of in-person and online trainings on the SA/SIR reporting process. The PSA team maintains a mailbox where care providers can direct questions regarding SA/SIR reporting policies.

4. Several commenters recommended that ORR clarify that “code of conduct violation” as a category of behavior that could ever alone result in an SA/SIR only applies to the “Staff Code of Conduct” in [ORR Policy Guide Section 4.3.5](#). The commenters stated that this clarification is necessary given the serious and unfounded prejudice that would result for a UC issued an SA/SIR for a mere “code of conduct violation”. Moreover, two commenters noted that ORR does not make any definition of “code of conduct” available, while other commenters stated that the designation refers to care provider codes of conduct that vary by facility and will therefore result in disparate application to UC.

ORR Response: As set out in [ORR Policy Guide Section 4.10](#), “code of conduct” refers to the Staff Code of Conduct, which is defined in [ORR Policy Guide Section 4.3.5](#). The SA/SIR reporting policy does not have a category for UC code of conduct violations and is only designed to report staff violations of the ORR Staff Code of Conduct excluding physical or verbal abuse of a child by a staff member as noted in [ORR Policy Section 4.10.2](#).

² HHS OIG Report: *The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody*. (June 2020). Retrieved from: <https://www.oversight.gov/sites/default/files/oig-reports/oei-09-18-00430.pdf> OEI-09-18-00430

Program-Level Event Report and Addendum (Form A-10D and Addendum)

1. Four commenters noted a lack of clarity on the intended use of Form A-10D, including whether the form is intended to document group behavior by children, such as food fights or larger fights between multiple children. Two of these commenters requested clarification on whether the form will duplicate individual SIR information for any children involved. Three commenters requested that ORR provide further information on the types of events that are meant to be captured by the form beyond active shooters or natural disasters. Two commenters recommended that should ORR proceed to implement the form without providing further information, ORR provide clear guidance on when this instrument is to be used in lieu of the other SIR instruments in Forms A-10A, A-10B, and A-10C.

ORR Response: This proposed revision to an information collection activity was submitted to OMB prior to the posting of [ORR Policy Guide Section 5.8.3](#) on June 7, 2021, which sets out the policy guidance on what constitutes a PLE, which is defined as a situation that affects the entire care provider facility and/or UC and staff within and requires immediate attention. The PLE is not intended to duplicate an SIR report.

2. Two commenters noted that no information was provided in proposed information collection activity explaining what the available “roles” are for any given individual involved in a program-level event.

ORR Response: ORR acknowledges the commenters’ concern regarding the absence of information about the “Role” field. This field identifies the role of the individuals involved in the PLE report, which could include UC, program staff, non-UC child, or non-staff adult. If a UC was specifically identified in the PLE, there would be a corresponding Emergency SIR to document the UC’s concern. The drop-down menu options available in this field are Victim, Witness, Alleged Perpetrator, and Reporter.