

**Release of Unaccompanied Children  
from ORR Custody**

**OMB Information Collection Request  
0970 - 0552**

**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 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. All of the instruments in this collection will be incorporated into UC Path.

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 grantee, contractor, and federal staff).

## General Comments on Proposed Information Collection

1. In one joint comment, three organizations stated that several of the proposed information collection forms raise serious privacy and confidentiality concerns. These commenters recommended that ORR not promulgate proposed Forms R-2 (Discharge Notification), R-4 (Release Request), or R-6 (Well-Being Call). Another commenter stated their concerns regarding several of the proposed forms and the possibility of their resulting in detrimental changes to the conditions of custody for unaccompanied children (UC), prolonging their time in ORR custody, and adversely impacting their immigration cases because of insufficient limitations on the use of information collected by ORR. This commenter requested that ORR withdraw the proposed forms and re-issue a revised notice of proposed information collection activity should ORR deem it appropriate to move forward.

**ORR Response:** These comments relate to underlying policy and not the information collection itself. Nevertheless, ORR states that the purpose of Form R-2 is to inform DHS of the child's location to facilitate future immigration proceedings; however, Form R-2 does not disclose sensitive information about the sponsor such as immigration status. Form R-4 documents the release recommendations of the case manager, Case Coordinator, other stakeholders, and the final release decision of the ORR Federal Field Specialist. As noted in [ORR Policy Section 2.7](#), only ORR has the authority to make a final decision on release. Per the Unaccompanied Children

Manual of Procedures (UC MAP) Section 2.7.1., while the case manager notifies DHS when a release request is pending, Form R-4 is not shared with the Department of Homeland Security (DHS) in this notification. ORR refers readers to [ORR Policy Section 6.1](#) for the purpose of the Safety and Well Being Call (Form R-6), and clarifies this call is performed 30 days after the child's release to sponsor to determine whether the child is still residing with the sponsor, is enrolled in or attending school, is aware of upcoming court dates, and is safe. Forms R-4 and R-6 are internal ORR workflow documents not subject to routine disclosure. ORR only discloses these forms in response to a request for records. In the proposed revision to the Authorization for Release of Records, Form A-5, see OMB 0970-0547, Discharge/Release Information records will not be released to government agencies without the signature of the UC (or their caregiver or parent/legal guardian as applicable), a court-issued subpoena or order, or an official statement describing the scope of the investigation with a case reference number.

2. One commenter referred to what they view as the current urgent priorities of ORR--its use of not only influx facilities but emergency intake sites at the border--and the impact of the proposed forms on UC in support of its call to withdraw the proposed information collection activity in order to allow officials that have recently joined ORR staff sufficient time to review them and consider whether to move forward with a revised proposal for the information collection activity. In one joint comment, three organizations stated that the proposed forms should not be implemented because ORR failed to provide sufficient notice under the Administrative Procedure Act (APA).

**ORR Response:** This comment relates not to the information collection itself, but to ORR's policy priorities. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited -- under the PRA, not the APA.

## **Comments Directed at Multiple Forms (Forms R-2 Discharge Notification, R-4 Release Request, and R-6 Safety and Well-Being Call Report)**

1. In one joint comment three organizations stated that proposed Forms R-2, R-4 and R-6 violate the Flores Settlement Agreement, the Trafficking Victims Protection Reauthorization Act (TVPRA), and the Fifth Amendment Due Process Clause. The commenters stated that the proposed forms request and allow ORR to share irrelevant and unnecessary information about sponsors with other government agencies, which they believed will likely lead to a severe chilling effect on potential sponsors and unnecessarily prolong UC time in ORR custody. The commenters also stated that the proposed forms fail to provide constitutionally required protections to UC, including requiring ORR case managers to notify a UC's attorney about release decisions.

**ORR Response:** This comment relates not to the information collection itself, but to ORR's compliance with the Flores Settlement Agreement, the TVPRA, and the U.S. Constitution. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that a new Memorandum of Agreement (MOA) between ORR, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) was finalized in March 2021 (2021 MOA). The previous MOA from 2018 that allowed for sponsor information to be shared with DHS was terminated on March 12, 2021 and replaced with the 2021 MOA, which does not allow for sharing of sponsor information with DHS.

Also, ORR refers to the discussion above regarding the purpose and intent of Forms R-2, R-4 and R-6.

2. Another commenter stated that the proposed changes will elicit information likely to impact ORR's obligation to place UC in the least restrictive setting. This commenter further stated that ORR failed to outline steps it would take to ensure that the information collected would be limited to promoting UC safety and well-being. Absent this information, the commenter opposed the adoption of the Forms R-2, R-4 and R-6 in their proposed form. The commenter recommended that ORR withdraw the proposed forms and review them for potential revision in consideration of the significant concerns raised.

**ORR Response:** This comment relates not to the information collection itself, but to ORR's compliance with the TVPRA's requirement to place children in the least restrictive setting. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR refers to the discussion concerning the purpose of Forms R-2, R-4, and R-6, above.

3. In one joint comment three organizations recommended that ORR ensure that information or documents from a UC's ORR file cannot be included with the child's A-File. The commenters recommend that ORR may achieve this by preventing third party access to UC files absent authorization pursuant to applicable state and federal laws and policies. The commenters stated that allowing DHS to access UC's ORR files may allow a UC's confidential information to be used to prejudice the UC's immigration case without their consent or understanding.

**ORR Response:** This comment relates not to the information collection itself, but to whether a child's ORR file is maintained separately from the child's A-File. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR states that ORR has taken steps to protect the confidentiality of children's case file records related to discharge and release, as discussed above. Further, ORR notes it is not the custodian of the child's A-File (which is maintained by DHS), and that the child's case file with ORR is maintained separately from DHS's A-Files.

4. In one joint comment three organizations stated that proposed Forms R-2, R-4 and R-6 would allow ORR and care provider personnel to elicit and document information about UC medical, criminal and other history without providing protections required either against self-incrimination or related to privacy and confidentiality under state and federal law. The commenters expressed concern and stated that the sharing of information collected through these forms, whether by ORR or DHS components with access to the information, impermissibly turns ORR into a law enforcement agency; may result in the violation of state laws and policies; and can carry severe consequences for UC's placement, reunification and immigration cases. The commenters recommended that ORR revise Proposed Forms R-2, R-4 and R-6 to clearly oblige ORR to comply with its obligations under the Flores Settlement Agreement, state confidentiality laws, the U.S. Constitution, and other laws, regulations and policies, including ORR's Policy Guide.

**ORR Response:** This comment relates not to the information collection itself, but to ORR's compliance with the Flores Settlement Agreement, state confidentiality laws, the U.S. Constitution, and other laws, regulations, and policies. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited.

Nevertheless, ORR refers to the discussion above concerning the purpose and intent of Forms R-2, R-4, and R-6, as well as proposed revisions to the Form A-5 to protect the confidentiality of UC records related to discharge and release. ORR is not a law enforcement agency and does not collect information about the UC's criminal, medical, and other history for the purposes of law enforcement or immigration enforcement.

5. One commenter expressed concern about ORR's proposed collection regarding UC need for gang prevention services, stating that such recommendations would imply that ORR believed the UC to be gang affiliated. The commenter, referring to their comments on other recent proposed information collection activities, stated that they opposed all questions in ORR forms that label UC as gang-affiliated or gang members, stating that these questions lead ORR astray from its child welfare mandate and fail to align with the roles and responsibilities of staff; and raise serious racial justice concerns and criminalize UC. The commenter stated the information collection format primarily consisting of checkboxes will promote the labeling of UC in a summary fashion, based on a staff member's individual viewpoint or prior DHS "determination" with no provision for consideration of UC maturity or developmental capacity, whether gang involvement was forced or whether the UC was trafficked. The commenters opposed such questions eliciting or reflecting viewpoints and opinions on UC affiliation or involvement in gangs that the commenters believed to be vulnerable to racial bias. One commenter also stated that such information collection fails to serve a legitimate child welfare purpose and instead impermissibly reflects error-ridden law enforcement gang database processes.

**ORR Response:** ORR acknowledges the commenters' concern and clarifies that ORR will be removing references to gang prevention services from the following forms: Release Request (Form R-4), PRS Event (Form S-22) and HS-PRS Referral (Form S-19). ORR also refers readers to the discussion concerning the purpose and intent of Form R-4, as well as confidentiality protections of the Form R-4, above. Further, ORR notes that it assesses and attempts to corroborate 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.

6. In one joint comment three organizations objected to the adoption of the Proposed Forms R-2, R-4 and R-6 in light of ORR's failure to provide the drop-down menu options that were not accessible in the forms made available in the proposed information activity for review. The commenters described three separate attempts they made by email over the course of a month to solicit the drop-down menu options through request to [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). The commenters stated that ORR's failure to provide all relevant information necessary to comment violates the APA and cited to 5 U.S.C. § 553(b)(3), which provides that the notice of proposed rulemaking "shall include either the terms or substance of the proposed rule or a description of the subjects and issues involved."

**ORR Response:** ORR acknowledges the commenters' concern regarding the absence of information about the drop-down menu options. However, the present proposed information collection activity is subject to the Paperwork Reduction Act (PRA) rather than APA rulemaking requirements.

## Discharge Notification (Form R-2)

1. The commenters expressed concern that the proposed Form R-2 (Discharge Notification) contains private and confidential information about the UC that they stated should be protected, but that many “stakeholders” and/or third parties may ultimately receive or access. They stated that they were particularly concerned about allowing DHS access to the child’s ORR file. To protect access to confidential information from the child’s ORR file, the commenters recommended that ORR change their policies and procedures to limit which stakeholders have access to the information, or that ORR modify the form to include the following language: *This form is restricted to ORR staff or ORR grantee staff (e.g., care provider staff) who require access to make placement or release recommendations or decisions. This information, as well as access to this information, cannot be shared with any individual or agency outside of ORR, including but not limited to DHS, without a court order or compliance with applicable state and federal laws and policies.*

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR states that the Discharge Notification (Form R-2) notifies DHS (ICE Field Office Juvenile Coordinator and Office of Chief Counsel) and stakeholders (e.g., Executive Office for Immigration Review (EOIR) Immigration Court Administrator, UC’s attorney of record or legal service provider, UC’s child advocate) of the UC’s release from ORR custody. ORR is required to provide such notice to DHS. The form does not grant DHS access to the child’s case file and only provides minimal information to DHS in order to ensure that the child is present for future immigration court proceedings.

2. The commenters also stated that ORR should clarify that UC information shared with outside agencies be limited to basic information such as name, address, and age, and that the information should also be limited in duration to a UC’s custody in ORR, except to the extent that name, address, and age information is necessary post-release to facilitate the transfer of any immigration court case to the proper venue and for the provision of post-release services, as appropriate.

**ORR Response:** This comment relates not to the information collection itself, but to underlying policy concerning the disclosure of UC’s confidential information. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. ORR refers the reader to the discussion of the purpose and intent of Form R-2 above, as well as of ORR policies and procedures that protect UC records related to release and discharge found above.

3. One commenter stated that sponsors should be advised of potential consequences of disclosing personal information.

**ORR Response:** This comment relates not to the information collection itself, but to underlying policy concerning disclosures to sponsors. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR clarifies that the Family Reunification Packet (FRP) contains multiple privacy notices. In Privacy Notice For Sponsors ([FRP-11A](#)), Privacy Notice For Parents and Legal Guardians ([FRP-11B](#)), and Authorization for Release of Information ([FRP-2](#)), ORR advises sponsors of the potential consequences of disclosing personal information.

ORR also notes, as stated above, that a new Memorandum of Agreement (MOA) between ORR, ICE and CBP was finalized in March 2021 (2021 MOA). The previous MOA from 2018 that allowed for sponsor information to be shared with DHS was terminated on March 12, 2021 and replaced with the 2021 MOA, which does not allow for sharing of sponsor information with DHS. Also, ORR refers to the discussion above regarding the purpose and intent of Form R-2.

4. A commenter strongly recommended deleting the question regarding gestational period week, stating that this information is highly confidential and may inadvertently be included in documents given to the UC upon discharge which may be seen by the sponsor.

**ORR Response:** This information is specifically *not* included in the Discharge Notification PDF generated by UC Path that is shared with stakeholders. However, per [ORR Policy Guide Section 3.4.8](#), pregnant UC must be cleared for travel by most airlines, generally after 36 weeks of pregnancy, and making travel arrangements for the UC is an important part of the discharge planning process so Gestational Period Week is included in the *Transportation Detail* section of the form, which is internal to ORR. Stakeholders only receive a copy of the generated PDF which does not include this information.

5. Both commenters stated that they could not see the preselected drop-down menu options for several fields in Form R-2, and that they had submitted numerous requests to ORR for the information, but ORR had not responded. They stated that the public needs access to all the information on the proposed forms to effectively comment on them, and ORR's failure to provide the information in the drop-down menus constitutes a violation of the APA.

**ORR Response:** ORR acknowledges the commenters' concern regarding the absence of information about the drop-down menu options. However, the present proposed information collection activity is subject to the Paperwork Reduction Act (PRA) rather than APA rulemaking requirements.

## Release Request Form R-4

1. In one joint comment, three organizations stated that although the names of the Case Manager, Case Coordinators and Federal Field Specialist are not requested in their respective recommendation sections, these individuals are identified in the "Release Request Routing" section. The commenters recommended that the name of the Child Advocate be provided either in the Child Advocate or Release Request Routing section.

**ORR Response:** ORR acknowledges and will consider the commenter's suggestions.

2. In one joint comment, three organizations stated that the new Child Advocate section is missing important and necessary information not captured in the two fields currently in this section of the proposed form. The commenters stated that the missing information was the basis and date of the recommendation, as well as the name and contact information of the Child Advocate. The commenters stated that this missing information is captured elsewhere in the form for the Case Manager, Case Coordinator and Federal Field Specialist, but that ORR does not explain or justify the absence of this information for the Child Advocate recommendation. The commenters recommended that ORR incorporate this information into the proposed form.

**ORR Response:** ORR acknowledges and will consider the commenter's suggestions.

3. In one joint comment three organizations stated that the Federal Register notice failed to acknowledge or explain the removal of a field that is present in the current version of Form R-4: “Is Attorney Contacted?”. The commenters stated that the UC’s attorney must be notified if a Case Manager makes a release recommendation and that this ensures that the UC’s Fifth Amendment due process rights are protected, any denial of release can be appropriately challenged, and any legal case, immigration or otherwise, involving the UC can proceed in an orderly fashion. The commenters recommended that ORR re-insert this field in Proposed Form R-4 or otherwise document whether the UC’s attorney was notified of the release request.

**ORR Response:** Although the proposed revision to Form R-4 no longer contains the “Is Attorney Contacted?” field, the revised form includes a new field under a new section “Legal” that queries “Is there attorney of record?” In accordance with [ORR Policy Guide Section 2.3.2](#), Case Managers inform relevant stakeholders including local legal service providers and attorneys of record of the progress of a child’s case, including any final release decision. UC MAP Section 2.7.1 directs the case manager to notify the LSP or attorney of record via email when a release request is pending. ORR acknowledges and will consider the commenter’s suggestions.

4. While one commenter expressed support for information collection related to family separation and Migrant Protection Protocols (MPP), they stated that they were concerned by a lack of explanation for how ORR will use this information generally and in particular as part of the release process. The commenter stated that in the absence of information from ORR on how ORR plans to collect and use information related to family separation or MPP, they cannot assess whether it is appropriate or necessary for ORR to add these two queries to the Proposed Release Request Form R-4. The commenter specifically stated that there is an absence of information on the following: (a) ORR policies and procedures for staff upon determining that a UC was subject to family separation or MPP; (b) how staff will determine whether a UC was subject to family separation or MPP.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR responds that the fields on Form R-4 are auto-populated based on information documented in the proposed UC Profile Form P-13 (OMB 0970-0554). The Consolidated Appropriations Act of 2021 also outlines certain data tracking and reporting requirements for ORR once it receives information that a UC is or may have been subject to MPP, including providing notification to a UC’s legal service provider, including any information regarding court proceedings arising from prior processing under MPP.<sup>1</sup>

5. In one joint comment, three organizations stated that the “ORR Decision” section lacks sufficient information to allow for adequate comment, particularly as eight of the eleven fields have pre-populated drop-down menus that were not accessible in the forms provided for review and comment. The commenters cited the field “waive third party review” as an example of insufficient information to allow for adequate comment, as they stated that ORR provided neither the pre-populated drop-down menu options nor an explanation for the meaning of third party review, the implication of its waiver, or other information that would allow the commenters to assess potential impact on UC rights, whether pursuant to due process, the

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<sup>1</sup> See H.R. REP. No. 116-450, at 34 (2021).

TVPRA, the Flores Settlement Agreement, or other applicable law. The commenters recommended that ORR provide an explanation, justification or sufficient information for them to understand the purpose of the proposed forms and their questions. The commenters also recommended that ORR add the following fields to this section: (a) date of case remand to Case Manager or Case Coordinator in order to provide a clear timeline for release recommendations and decision-making; and (b) date of FFS decision on home study request in order to document the response to Case Manager and Case Coordinator home study requests as already documented in Proposed Form R-4.

**ORR Response:** ORR clarifies that the dropdown menus for fields in the “ORR Decision” section are as follows:

- **ORR Decision** – Approve Straight Release, Approve with Post-Release Only Services, Deny Release, Conduct Home Study-TVPRA, Conduct Home Study-ORR-Mandated, Conduct Home Study-Discretionary, Approve Release Pending Completion of Condition, Conduct Home Study, Sponsor Withdrawal-Household members unwilling to be fingerprinted, Withdrawal-Unwilling to reunify due to undocumented status, Withdrawal-Failed to pick up UC, Withdrawal-Lacks interest and no longer calls the UC (did not formally inform staff of withdrawal), Withdrawal-Not willing to complete home study/post-release services process, Withdrawal-Refused to travel to pick up UC, and Withdrawal-Other
- **ORR Decision-HS** – Approve with Post-Release Services-After ORR Mandated, Approve with Post-Release Services-After Discretionary, Approve with Post-Release Services-TVPRA, Deny Release, Approve with Post-Release Services, Approve with Post-Release Services pending completion of conditions, and Recommendation Pending-Additional Information Needed
- **Reason for Denial** – Sponsor not willing or able to provide for child’s physical or mental well-being, Physical home environment presents risk to safety or well-being, Release of child presents risk to self, sponsor, household, or community, Sponsor’s criminal history, Household member’s criminal history, Sponsor’s substantiated adverse child welfare findings, Household member’s substantiated adverse child welfare findings, Flight risk (removal imminent), and Other
- **Outcome of Home Study** – Positive and Negative
- **Remand for further Information, Home Study Addendum, Court Ordered Release, and Waive Third Party Review** – Yes and No

In addition, ORR clarifies for the “waive third party review” field that third party reviews are not required for release to a program/entity (e.g., Unaccompanied Refugee Minor (URM) Program). In such cases, the Case Manager bypasses the Case Coordinator and emails the FFS directly.

Regarding the proposed fields, ORR acknowledges and will consider the commenter’s suggestions.

6. All of the commenters expressed concern with information collection on Proposed Form R-4 regarding the sponsor’s legal status and recommended that ORR remove the question. Three of the four commenting organizations referred to HHS and DHS’s joint acknowledgement on March 12, 2021 of the chilling effect on sponsors from HHS’s practice of sharing sponsor information with DHS pursuant to the April 2018 Memorandum of Agreement. The commenters further stated that this information is irrelevant, along with the other proposed question regarding the

sponsor's country of birth, to the family reunification and release process as well as sponsor suitability. One commenter stated that if ORR is concerned about the possibility of a sponsor having to leave the country, then ORR can indicate the need for and existence of a Sponsor Care Plan in the Release Request Form without having to provide the sponsor's legal status. In one joint comment, three organizations stated that although the 2018 MOA as relates to sponsors is no longer in effect, it remains unclear whether ORR will provide sponsor information to DHS through other means, including through requests made through Proposed Form A-5, Authorization for Release of Records.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR refers readers to the discussion above regarding the purpose and intent of the Form R-4, and ORR's protection of UC case file records related to discharge and release as noted above.

Additionally, ORR clarifies, as noted above, that the new MOA between ORR, ICE and CBP, finalized in March 2021 does not allow for sharing of sponsor information with DHS. ORR Policy Guide Section 2.5.3 describes the restrictions<sup>2</sup> on any immigration enforcement action by DHS against confirmed or potential sponsors, which will remain in force until September 30, 2021 under the Consolidated Appropriations Act of 2021.<sup>3</sup> ORR acknowledges and will consider the commenter's suggestions.

7. One commenter expressed concern that the questions eliciting the Case Manager's opinion on whether a UC needs post-release services (PRS) could exacerbate delays in UC release from custody to the detriment of UC health, safety and permanency. The commenter shared their experience of seeing UC denied release until PRS were in place, despite the insufficiency and inadequacy of existing PRS, as well as the previous administration's reduction of post-release case management services to 90 days for most of the minority of UC who qualify for PRS. The commenter, the ORR-funded Child Advocate provider, further stated that there are ongoing long wait lists for PRS, overwhelmed PRS providers, and difficulty locating specialized services like gang prevention and substance abuse treatment in rural areas. The commenter stated that while ORR policy requires the Case Manager to document the specific and individualized reasons why PRS must be in place prior to the UC's release, Proposed Form R-4 does not ask ORR staff to indicate whether PRS must be in place prior to release.

**ORR Response:** ORR acknowledges the commenters' concern and clarifies that ORR will be removing references to gang prevention services from the following forms: Release Request (Form R-4), PRS Event (Form S-22) and HS-PRS Referral (Form S-19). ORR also refers readers to the discussion concerning the purpose and intent of Form R-4, as well as confidentiality protections of the Form R-4, above. ORR also clarifies that per [ORR Policy Guide Section 6.2.3](#)

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<sup>2</sup> **Q7: Can DHS use information gathered from the ORR background check process to enforce immigration policies against potential sponsors or others?**

A7: Until September 30, 2021, DHS is restricted from using a background check subject's information for immigration enforcement actions such as placing a subject in detention, removal, referring the individual for a decision on removal, or starting removal proceedings. Generally stated, they include: certain felonies; an association with a business that employs minors and does not pay a legal wage or prevents the minor from going to school; or an association with prostitution. The felonies include: (A) an aggravated felony as defined in 8 U.S.C. 1101(a)(43)); (B) child abuse; (C) sexual violence or abuse; or (D) child pornography. An aggravated felony, is defined at 8 U.S.C. § 1101(a)(43), and includes a listing of 21 different kinds of crimes.

<sup>3</sup> See Consolidated Appropriations Act, 2021, Pub. L. 116-260, Division F, Title II, § 217. Please note that DHS is restricted from using this information through September 31, 2021.

ORR does not delay release of a child if PRS are not in place prior to release, absent a Case Manager's individualized assessment documenting specific reasons that PRS must be in place in the release request.

8. One commenter stated that they were significantly concerned with the inclusion of Gang Prevention and Substance Use options for PRS on Proposed Form R-4 and that there are the potential adverse impacts on UC and likelihood that such information collected on this form would be used against UC interests. The commenter listed various ways they believed this information could prejudice UC, from barriers to placement in the least restrictive setting, transfer to long-term foster care, delay of release, heightened risk of transfer to ICE custody upon turning 18, or adversarial use in legal proceedings. The commenter stated that staff may receive insufficient training on the purpose and use of ORR-required forms and lack an understanding of how the collected information could be used against UC in the future. The commenter also recommended that ORR remove the drop-down menu question on types of PRS given the lack of nuance, context, and potential for such sensitive but uncontextualized information to be used against UC.

**ORR Response:** These comments relate not to the information collection itself, but underlying policy related to UC's post-release services needs involving gang prevention and substance use. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR refers the reader to the previous discussion of the purpose and intent of Form R-4 as well as ORR policies and procedures that protect UC records related to release and discharge. ORR also clarifies, as discussed above, that it will be removing gang prevention as one of the menu options for PRS Services on the R-4 form.

9. One commenter stated that ORR facility staff lack the necessary expertise and are not sufficiently trained to make the nuanced assessment of whether a UC is gang affiliated or requires gang prevention or substance use services. The commenter called on ORR to eliminate all questions eliciting opinions on gang affiliation from its release forms, including the proposed documentation of the Case Manager's opinion on a UC's need for Gang Prevention PRS as selected from a pre-populated drop-down menu. Furthermore, the commenter asked ORR not to permit the unavailability of gang prevention PRS to delay release. The commenter also recommended ORR require Case Managers to consult with the lead clinician and medical and therapy providers who have treated UC regarding whether to recommend Substance Use PRS. Finally, the commenter recommended that ORR prioritize training staff to approach every aspect of their work through the prism of child welfare and trauma-informed care, rather than law enforcement.

**ORR Response:** These comments relate not to the information collection itself, but underlying policy related to UC's post-release services needs involving gang prevention and substance use. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, as discussed above, ORR acknowledges the commenters' concerns and clarifies that ORR will remove gang prevention as one of the menu options for PRS Services on the R-4 form.

## Safety and Well-Being Call Report (Form R-6)

1. Commenters stated that they have serious concerns about what they considered inappropriate post-release surveillance by ORR, especially as they stated that ORR has not adequately explained how they will use the information gathered, what purpose it will serve, or what action ORR will take if the sponsor indicates that a child has behavioral issues, or if the case manager believes the child has participated in alleged criminal activity. They stated that this clarification and explanation by ORR are needed so stakeholders may fully assess the potential impact of this information collection.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. 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 [ORR Policy Guide Section 2.8.4](#), the primary purpose of the follow up call is to determine whether the child is still residing with the sponsor, is enrolled in or attending school, is aware of upcoming court dates, and is safe. This safety and well-being call also helps ORR ensure that the child is not being trafficked, abused, or neglected after release. If the follow-up call suggests that the sponsor and/or the child would benefit from additional support or services, the care provider refers them to the ORR National Call Center for assistance. If the care provider believes that the child is in danger or at risk, then, as required by mandatory reporting laws, the care provider would make a report to local child protective agencies and/or law enforcement.

2. Commenters emphatically did not approve of the question that asks the sponsor if the UC “demonstrates behavioral concerns”, as commenters stated it is irrelevant, invasive, and unreliable to the extent it is based solely on reports by sponsors and not corroborated by any documentation or firsthand observation by ORR. The commenters questioned whether ORR has either the authority to ask these questions about a UC post-release or the capacity to respond, other than to record and potentially share the information with other agencies. They recommended that ORR either remove this question or provide justification and explanation for requesting information that is not being affirmatively reported by a child seeking help.

**ORR Response:** As explained above, the purpose of the call is to assess the safety and well-being of the UC. Once released, UC are no longer in ORR custody. However, ORR recognizes that the transition from Federal custody to a home in the community may create many challenges for UC and their families, and the care provider is able to listen and refer, as needed, to community resources via the ORR National Call Center. Information is only shared with other agencies when it is determined that the health and well-being of the child is at risk.

3. One commenter recommended that ORR remove or reword any questions that elicit information about a child’s allegedly bad acts, as they stated that any such information should be safeguarded and not shared with third parties, except the child’s counsel and Child Advocate, absent the child’s fully informed consent. They further recommended that ORR eliminate information-sharing with DHS and DOJ and instead implement a “clear firewall between the agencies that prosecute and the agencies that care for children”.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR responds that, as previously stated, the purpose of the call is to check on the safety and well-being of the child, and information is shared with third parties (for example, a child welfare agency) only when the care provider

determines that the child may be at risk. ORR also refers readers to the confidentiality protections around the child's discharge and release records, as noted above.

4. A commenter was concerned about what they stated is ORR's lack of adequate interpretative services provided in the child's and the sponsor's primary language when conducting safety and well-being interviews. As a result, the commenter stated that information that is communicated by or to the case manager may be misunderstood. For example, the commenter referenced situations where the sponsor and/or child speak an indigenous language. The commenter has heard from UC who have been released that ORR will often use a Spanish interpreter in these situations. Since Spanish is not the child's and/or sponsor's primary language, miscommunications or misunderstandings may occur, increasing the risk of inaccurate information being collected.

**ORR Response:** This comment relates not to the information collection itself, but the underlying policy concerning the availability of interpreter services for safety and well-being interviews. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR clarifies that the child and sponsor's primary language and other languages spoken are documented in the child's case file, and care providers will make every effort for the appropriate interpreter services to be provided for the Safety and Well-Being Call.