

# **Services Provided to Unaccompanied Children**

**OMB Information Collection Request  
0970-0553**

## **Attachment A - Summary of Public Comments and ORR Responses**

**April 2022**

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, except one, will be incorporated into UC Path. The *Child Advocate Recommendation and Appointment* will be converted from a Word to a PDF form; it will be incorporated into UC Path at a later time.

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 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. One commenter, representing a state child welfare agency, stated they strongly support the proposed information collection activity and the approval of the forms. The commenter noted that the proposed forms will provide information to UCs that may aid in the assistance of obtaining legal counsel, which is a crucial and critical protection to the UC population.

**ORR Response:** ORR appreciates the commenter's remarks and affirms its commitment to the well-being and best interests of all children in its custody and care, as well as to its statutory duty to ensure to the greatest extent practicable that UC have legal counsel.

2. One joint comment, representing three organizations, asked ORR not to promulgate the proposed forms as published for public comment, asserting that they raise serious privacy, confidentiality, and self-incrimination concerns. Another commenter, a child advocacy organization, also stated they have significant concerns that the information collection may have a potentially harmful impact on the health and well-being of unaccompanied children in ORR custody, stating that the proposed forms could result in prolonged UC time in government custody and adversely impact their immigration cases due to insufficient limitations and

safeguards on the use of the information gathered by ORR. They stated that these proposed forms do not represent minor changes but significant policy ones which will elicit information that would likely impact children's right to be placed in the least restrictive setting. Pointing to the significant concerns they set forth in their comments, the commenters all stated their strong opposition to the adoption of the proposed information collection in its present form and asked ORR to withdraw and review the instruments, provide further explanation for the information sought, delineate the measures for how the information will be used, and reissue revised notices with a reasonable time for public comments.

**ORR Response:** Most forms in this collection are not new. The proposed revisions are minor, do not represent policy changes, and will not affect children's length of care or their right to be placed in the least restrictive setting. In addition, ORR notes that since the publication of this information collection process, there have been several significant revisions to the ORR Policy Guide (See [Record of Posting and Revision Dates](#), particularly Section 5.8) as well as the implementation of a new Memorandum of Agreement ([2021 MOA](#)) between ORR, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), which replaced the now-rescinded 2018 MOA. The responses below reflect some of the changes created by these actions. ORR has read and carefully considered the comments and concerns submitted and refers the commenters to the below responses.

## Comments Applicable to Multiple Forms

### UC Information (Forms Sponsor Assessment S-5, Home Study Assessment S-6, Initial Intakes Assessment S-8, Assessment for Risk S-9, UC Assessment S-11, UC Case Review S-12, HS-PRS Referral S-19, PRS Event S-22)

1. One commenter, a child advocacy organization, stated they were particularly alarmed at ORR collecting information from UC about gang membership or affiliation (UC Assessment Form S-11 and UC Case Review Form S-12), or even that it appeared that ORR assumes a UC's potential need for gang prevention services (Home-Study/Post Release Service Referral Form S-19 and Post-Release Service Event Form S-22), which they said implied to them that ORR believes the child has a history of gang affiliation or membership. They pointed out that many UC are themselves fleeing home countries due to threats from gangs. The commenter also stated that they considered that the care provider staff recording the information might be making assumptions based on a prior Department of Homeland Security (DHS) "determination" about gang membership, and they noted that in labeling children as gang or cartel members, DHS frequently overlooks plausible questions regarding the UC's ability to consent, maturity and developmental capacity, as well as whether participation in gang activity was forced, or whether trafficking was involved. The commenter said they were concerned that such assumptions could lead ORR away from their child welfare focus, criminalize children in ORR custody, and also raise serious racial justice concerns.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that it is removing the "gang affiliation" field from Forms S-11 and S-12 and that it is removing the gang prevention post-release service from Forms S-19 and S-22. In addition, ORR is revising the question asking about gang involvement in S-6 to clarify that it only seeks that information if the history of gang involvement will require additional support or strength-based services after the UC is released from ORR custody.

2. One commenter, a child advocacy organization, asked ORR to remove or limit the Significant Incident Reports (SIRs) in a child's ORR case file and asked that the proposed UC Case Review Form S-12 and the proposed Home Study Assessment Form S-6 not elicit information regarding SIRs. In their experience as child advocates, they said they have found that the information in SIRs, particularly those that relate to alleged behavioral problems, is often documented by ORR staff/contractors who commenters said have limited training and without the broader context of the many challenging circumstances each UC confronts and the significant trauma many have endured, which are important context for the events constituting an alleged SIR. The commenters also noted that when the incident involves more than one child, they have found that ORR files SIRs for all, whether alleged perpetrator or victim, regardless of the extent of involvement. Commenters said they were concerned that ORR staff may sometimes rely on the sheer number or existence of SIRs to step up a child to a more restrictive placement or delay or deny release to long-term foster care. As a result, commenters said that information in SIRs often creates unjustified impediments to a child's efforts to achieve permanency. The commenters stated that as they noted dangers of the information in the SIRs being inaccurate, incomplete or being misused, the commenters recommended that ORR remove broad requests for information about SIRs in these forms and limit questions about behavioral incidents to those necessary to ensure safety, permanency and well-being of the UC and other children in custody.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that as explained in the ORR Policy Guide [Section 5.8](#), ORR requires that care providers and staff report incidents involving a UC's safety and well-being. SIRs are primarily meant as internal records whose purpose is to document and communicate incidents for ORR's immediate awareness. ORR provides SIR completion training to care provider staff and is working towards the creation of a training system in conjunction with the launch of the new database, UC Path.

ORR does not base placement or release decisions on the number of SIRs in a UC's file, but reviews their content for incidents that may suggest the UC's needs would be better served in a different level of care, or if special supports or resources might be helpful post-release. For long-term foster care (LTFC) placement, [ORR Policy Section 1.2.6](#) clarifies that a child may be placed in LTFC when 1) the child is expected to have a protracted stay of four months or more in ORR custody because he or she does not have a viable sponsor, 2) a legal service provider has identified the child or youth as potentially eligible for immigration relief (currently waived under [Field Guidance 18](#)), and 3) the child is under the age of 17 and 6 months at the time of placement. A child is ineligible for LTFC placement if the child has a moderate to high escape risk, the child has a history of significant criminal activity or violence who may pose a threat of harm to self, others (including the foster family), or community, or if the child is seeking voluntary departure.

Additionally, ORR recently updated the Addendum to the Cooperative Agreement for LTFC care providers to require the care provider to have internal policies and procedures that address procedures for reviewing, accepting, and denying referrals for LTFC placement, based on the state licensing requirements for the program, type of legal relief available in the state, and group and/or foster homes available for placement. Grantees with sub-recipients must develop internal oversight procedures for reviewing sub-recipient decisions for denying referrals and compliance mechanisms to ensure sub-recipients are accepting referrals according to their

placement criteria, and regularly monitor sub-recipient performance in reviewing and accepting referrals from the LTFC referral waitlist. In addition, a provision was added to require LTFC care providers to make a timely decision on LTFC referrals within 10 business days of receiving the initial referral.

3. One joint comment submitted by three parties, and two other commenters all noted their concern about questions in multiple proposed forms that they said may elicit incriminating information from either the UC or their sponsors, without a prior Miranda advisal that the information they divulge could result in criminal and/or immigration consequences. They noted that many forms seek information about criminal history, substance abuse and gang involvement, and go far beyond routine biographical questions, particularly in the Sponsor Assessment Form S-5, Home Study Assessment Form S-6, Adult Contact Profile Form S-7, Initial Intakes Assessment Form S-8, UC Assessment Form S-11 and UC Case Review Form S-12. They stated they were concerned that the information, though they said it may be inaccurate or incomplete, could be used by ORR care provider staff to seek a transfer of the UC to a more restrictive setting, which would negatively impact a child's timely release or prolong detention in a restrictive setting. One commenter noted that their concern extended to the sponsor information, as certain details could be referred to law enforcement or immigration authorities.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR care providers assess and attempt 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.

In reference to sponsor protections, the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) prohibits DHS to "place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child... based on information shared by the Secretary of Health and Human Services..." absent certain felony convictions or charges or trafficking concerns. In addition, the [2021 MOA](#) limits the information sharing between DHS and HHS/ORR while maintaining the safeguards for a safe and timely release of UC to properly vetted sponsors. Through the documents provided to, and signed by, the sponsor, as well as any communications the sponsor may have with the UC case managers, sponsors are made aware of how their information may be used and shared.

In addition, ORR notes that it is removing the "gang affiliation" field from Forms S-11 and S-12 and that it is removing the gang prevention post-release service from Forms S-19 and S-22. ORR is also revising the question asking about gang involvement in S-6 to clarify that it only seeks that information if the history of gang involvement will require additional support or strength-based services after the UC is released from ORR custody.

4. One commenter and a joint comment from three parties all stated that they firmly opposed the collection of information on "criminal charges", as they said ORR care provider staff are not, and should not be trained to decode or decipher complicated criminal records, annotations and notes. For ORR to avoid collection of unnecessary information that commenters said could be used against a child's interest, one commenter recommended that ORR revise the questions to elicit only information that is relevant and necessary to provide services in keeping with the

least restrictive placement and the UC's best interest. They asked ORR not to consider criminal charges that have not resulted in adult convictions and noted that very few children are charged in adult, criminal court proceedings, and when they are, it is not necessarily for actions that suggest a risk to others while in ORR custody.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that as described in the ORR Policy Guide [Section 3.3.4](#), ORR care providers create Individualized Safety Plans for UCs for whom such plans are appropriate so that the services provided are in the best interests of the child and to ensure that the child is placed in the least restrictive setting that meets their individual needs. ORR notes that this proposed revision to an information collection activity was submitted to OMB prior to the finalization of the [2021 MOA](#). Subsequently, ORR updated ORR Policy Guide [Section 5.8](#) on June 7, 2021 to reflect the 2021 MOA and other policy changes. In accordance with longstanding assessment criteria, it is important that ORR have this information so that it can ensure the safety and well-being of all children in ORR care, which includes, but is not limited to, ensuring placement in the least restrictive setting that meets the child's individual needs, provision of appropriate services, the ability for ORR to make a well-informed individual service planning, and appropriate post-release service provision. 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.

**Sponsor Information (Forms Sponsor Assessment S-5, Home Study Assessment S-6, New Sponsor S-7, Initial Intakes Assessment S-8, Assessment for Risk S-9, UC Assessment S-11, UC Case Review S-12)**

5. One joint commenter representing three organizations noted their concern that certain forms seek highly sensitive information, and they said they considered some of it to be irrelevant and unnecessary information about sponsor applicants, a collection of information which they believe is motivated more by immigration enforcement concerns rather than child welfare. They questioned why country of birth is required (Sponsor Assessment Form S-5, Home Study Assessment Form S-6 and Adult Contact Profile Form S-7), which they said has no relevance to a sponsor's current ability to care and provide for a child. They further noted that this and other requested information has a chilling effect on sponsors, resulting in a prolonged detention of UC and a delay in family reunification, especially if there is no firewall between ORR and other federal immigration agencies. The commenters asked ORR to remove these questions, and they noted that there is nothing in the Trafficking Victim Protection Reconciliation Act (TVPRA) or the Flores Settlement Agreement (FSA) that requires HHS to collect immigration status information on parents, other sponsors, or adult members of the household, only that they be "capable of providing for child's physical and mental well-being". Another commenter wrote that they thought the proposed collection is invasive and creates a restrictive environment for sponsorship which is not in the best interest of the UC. The commenter also recommended requiring a sponsor's written authorization prior to releasing information about them to third parties without an applicable court order.

**ORR Response:** ORR has historically collected standard biographic information from all potential sponsors, including country of birth. ORR is charged with the UC's safe and timely release, which includes verifying that the potential sponsor's home is a safe and supportive environment for the child. With respect to sponsor information protections, ORR notes its previous response concerning the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) as discussed

above<sup>1</sup> and the 2021 [MOA in terms of steps ORR has taken to reduce potential chilling effects on sponsors](#). ORR acknowledges the commenters' concerns regarding collection of information on the sponsor's immigration status and is taking steps to remove related fields from its information collections. A [Federal Register Notice](#) related to this effort was published on March 22, 2022.

In addition ORR clarifies that the Authorization for Release of Records Form A-5 instructions include a section for the sponsor to provide authorization for release of their records to third parties stating: "**For Release of Sponsor Information:** I hereby authorize ORR to provide copies of the records requested in Section E to the organization entered in Section D or any of its duly authorized representatives, including the individual named in Section D without redacting any of my information. I further authorize ORR to provide the organization entered in Section D with records created after submission of this initial request that fall into the categories of records requested in Section E upon receipt of a request for updated records without redacting my information. I understand that this information cannot be disclosed without my authorization and the law requires this notice. I further understand that this consent expires one year from the date of my signing, and I may withdraw my consent at any time."

Finally, ORR notes that it is a child welfare agency; it is not an immigration enforcement agency and has no immigration enforcement authorities.

#### **DNA Testing (Forms New Sponsor S-7, Initial Intakes Assessment S-8, UC Assessment S-11, UC Case Review S-12)**

6. One commenter representing three parties noted serious privacy and security concerns associated with DNA testing referred to in Adult Contact Profile Form S-7, Initial Intakes Assessment Form S-8, UC Assessment Form S-11 and UC Case Review S-12, which, without substantial safeguards, are particularly pronounced for vulnerable populations like children in ORR custody. They stated that ORR has not provided any clarity about when, how or why testing will be used, or what the consequences will be, if any, for refusing, and that by considering DNA testing, ORR discounts the complexity of the meaning of family, particularly for people in crisis. The commenters also noted that a UC in custody cannot provide informed consent to DNA testing and that any testing performed would most likely prolong a UC's detention and delay family reunification. They recommended ORR remove DNA fields from all forms, but that if ORR does proceed, it should provide adequate notice of their intent to do so and include responses to the specific concerns articulated by these comments.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that DNA testing is used only in exceptional circumstances and with the consent of all parties involved. ORR has historically used DNA testing in limited cases to confirm parentage when documents from the UC and family member were not available. Recently, ORR has used DNA testing to more quickly verify relationships and proceed with reunification in 1) cases involving children separated from parents at the border and 2) cases eligible for expedited release under [Field Guidance 10](#). Pursuant to the [House Report 116-450](#), ORR is prohibited from accessing, using, or storing any genetic material, data, or information collected in reunification efforts including for the purpose of criminal or immigration enforcement.<sup>2</sup>

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<sup>1</sup> See Consolidated Appropriations Act, 2022, Pub. L. 117-103, Division F, Title II, § 218.

<sup>2</sup> See H.R. REP. No. 116-450, at 40 (2021)



**Confidentiality/Information Sharing (Forms Sponsor Assessment S-5, Home Study Assessment S-6, Adult Contact Profile S-7, Initial Intakes Assessment S-8, Assessment for Risk S-9, UC Assessment S-11, UC Case Review S-12, UC Authorized/Restricted Call List and Call Log S-20, Sponsor Application S-24)**

7. One commenter, a child advocacy organization, said they respectfully request that for every case, ORR provide a copy of the forms to the child, the child's attorney (if they have one), Child Advocate (if they have one) and the local ORR-funded Legal Service Provider (LSP), so they can identify concerns, object to its content, propose changes, or submit missing or contextualizing information. They also recommended that anytime ORR sends a form to DHS or another agency, it should notify the child, attorney, Child Advocate and the LSP, and that all forms should be modified to document how and when information contained in forms is shared with third parties.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that a UC and/or their attorney, Child Advocate and LSP may request documents from the UC case file by submitting an Authorization for Release of Records Form A-5. If a particular form is not listed, the requestor may indicate it under "Other" in *Records Requested*. Information sharing between ORR and DHS has been significantly changed by the implementation of the 2021 MOA, as well as revisions to the [ORR Policy Guide Section 5.8.8](#) and the proposed revised Request for Records Form A-5.

8. A joint commenter submitting for three parties asked ORR to create a robust firewall between ORR and other federal agencies to protect private/confidential information. The commenter said that such information should not be accessible nor shared with third parties without a court order and only shared if in compliance with state and federal laws and policies. The commenters recommended that ORR include the following text on the forms: *This form is restricted to ORR staff or ORR grantee staff (e.g., care provider staff) who require access to make placement, release, or services-related 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 notes that UC case file information is maintained and stored by ORR care providers separately from UC Alien Files, which are maintained by DHS. ORR abides by all applicable federal and state laws governing the confidentiality of juvenile records. ORR established a system of records, published at 81 FR 46682, to ensure the level of confidentiality pursuant to the Privacy Act, 5 U.S.C. § 552(a). In addition, ORR updated [ORR Policy Guide Section 5.8.8](#) on June 7, 2021 to limit the categories of SIRs that are reported to DHS. Moreover, in the current proposed revision to the Authorization for Release of Records Form A-5, the form instructions make clear that certain case file records, including clinical and mental health records, will not be released to requesting parties, including government agencies, without the signature of the UC, their caregiver, or their parent/legal guardian as applicable. The proposed Form A-5 expands protections to UC and sponsor information, with certain record requests requiring a court order or subpoena, and other records requiring the signature of the UC and/or the sponsor.



With respect to sponsor information protections, ORR notes its previous response concerning the Consolidated Appropriations Act of 2021 ([Public Law 116-260](#)) as discussed above<sup>3</sup> and the 2021 [MOA](#), which replaced the now-rescinded 2018 MOA.

### **HIPAA Considerations for Medical/Mental Health Information**

9. Another commenter specifically mentioned Health Insurance Portability and Accountability Act of 1996 (HIPAA) considerations, and they stated that health information should be protected and not used for any purpose not directly related to the UC's care without their permission.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. ORR notes that it is not a covered entity for purposes of HIPAA regulations. Nonetheless, ORR complies with all applicable state and federal laws regarding the protection of health information and takes privacy and due process concerns seriously. [ORR Policy Guide Section 3.4.7](#) requires care providers to have written policies, procedures and practices that protect the confidentiality of medical information. Moreover, ORR updated [ORR Policy Guide Section 5.8.8](#) on June 7, 2021, to clarify that care providers must not include clinical or mental health information in SIRs that are reported to DHS unless required by mandatory reporting laws. Further, the instructions to the current proposed revision to the Authorization for Release of Records Form A-5, as published in OMB 0970-0547, make clear that Clinical/Mental Health records will not be released to requesting parties, including government agencies, without the signature of the UC, their caregiver, or their parent/legal guardian as applicable.

### **Disability (Forms Assessment for Risk S-9, UC Assessment S-11, Admission S-18)**

10. One commenter, a child advocacy organization, stated they supported ORR's screening of children for disabilities to ensure they receive services and are placed in the least restrictive setting, but they said they had concerns that ORR unnecessarily elicits information about a child with disabilities in Assessment of Risk Form S-9, UC Assessment Form S-11, and UC Case Review Form S-12. The commenter claimed that ORR has not provided information on how ORR care providers screen or plan to screen children for developmental, mental, physical or learning disabilities and is not aware of any ORR policies that detail specific procedures that ORR staff must comply with to identify, assess and provide services to children with disabilities. Without proper assessment tools and services in place, they noted that the collection of information on children with disabilities is likely to be inaccurate and increases the risk that information is used against the child's best interests. The commenter was not recommending that ORR cease to gather this information, but rather that ORR provide policy and procedures as to disability assessment and provision of services so stakeholders may assess propriety of these questions in the ORR forms.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. It is not clear from the comment what specific questions the commenter considers unnecessary for a child with a disability, so we are unable to target our response. Nonetheless, ORR notes information on the child's individual needs, including disability-related needs, is important for ensuring children receive appropriate care and supportive services while they are in ORR custody. Information about the child's needs is documented in Forms S-9, S-11, and S-12 and provision of services is documented in the Individual Service Plan (Form S-13) (see [ORR](#)

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<sup>3</sup> See Consolidated Appropriations Act, 2022, Pub. L. 117-103, Division F, Title II, § 218.

[Policy Guide Section 3.3.1](#) and [4.8](#)). In addition, care providers are required to create individualized in-care safety plans for UC who have special needs, disabilities or medical or mental health issues (see [ORR Policy Guide Section 3.3.4](#)). Finally, ORR notes that it is obligated to follow provisions related to disabilities found in the TVPRA.

### **Information Collection Procedure (Use of Check Boxes or Other Concerns)**

11. One commenter, a child advocacy organization, noted that checkboxes with auto-populated responses were being used for many forms and that this method was insufficient for fully reporting on a child's background or needs.

**ORR Response:** ORR has drafted these and other information collections with the goal of capturing the most vital and useful information necessary to make informed decisions on the provision of services that promote UC safety and well-being in the least restrictive setting and in their best interest. Through the many assessment instruments implemented during the first five days of a UC's stay in care, and the many follow-up assessments over the course of the UC's time with the care provider, ORR is able to compile a significant amount of information about a child's background and needs. This information is used to create and update the UC's case plan, with an aim toward a prompt reunification with a sponsor. As the commenter did not identify which auto-populated responses would benefit from a more robust information collection, ORR is unable to provide a more targeted response.

### **Administrative Procedure Act (APA) (Forms S-5 to S-20, S-21A to S-21D, S-22, S-23, S-24)**

12. One joint comment from three organizations, and another commenter listed several concerns about the comment process. They stated that ORR has not provided proper notice and has failed to facilitate easy access to the proposed forms by requiring the commenters to proactively request copies, creating a longer, more arduous comment process. They said that when they did receive the new versions of the forms, it was not clear which parts were revised, since they needed both the current and proposed forms for review. The commenters also stated that the forms sent to them via email were in an unreadable format, and not all responses were available because the drop-down menu field was not available. Commenters stated that ORR has not provided any significant input as to why changes have been made and provided no more than a paragraph of detail for each new form, with little to no rationale for why forms are necessary. The stakeholders also noted that they are unable to effectively evaluate the intentions behind the proposed changes and what concerns may exist since the information provided is vague, with only a single sentence or two. The joint commenter recommended that ORR extend the comment period, provide the public with a link to the forms, and clearly state what was specifically amended.

**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.

### **Use of term "Alien" in Forms**

13. One commenter recommended that ORR remove the term “alien” from all Proposed Collections, referring to the Biden Administration’s directive that asked ICE and CBP to change the term “unaccompanied alien children” to “noncitizen unaccompanied children”.

**ORR Response:** ORR will be implementing the Administration’s directive and will be removing “unaccompanied alien child (UAC)” from the Proposed Collections and will instead refer to unaccompanied children (UC) in all documents.

## Sponsor Assessment (Form S-5)

1. One joint commenter submitting for three parties, and two other commenters stated they had concerns about what they deem to be unnecessary questions eliciting information about the Sponsor’s legal status that are likely to be used against both the child and the potential sponsor. Specifically, they pointed to the Sponsor Assessment Form S-5 that includes a field requiring the sponsor to provide proof of their legal status, and ORR is asked to indicate if they have verified the “non-expired documents”. One commenter stated that in their experience, the collection of this information creates unnecessary barriers to a child’s release from ORR custody as they said it invites immigration enforcement action against sponsors and leads to extended detention of children and prolonged separation from parents and other family members. They stated that as they note that the child welfare goal is to place a child in an appropriate family setting as quickly as possible, commenters stated they believe sponsors should be evaluated on their relationship to the child and the child’s immediate safety and not on their legal status.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. ORR acknowledges the commenters’ concerns regarding collection of information on the sponsor’s immigration status and is taking steps to remove these related fields from its information collections. A [Federal Register Notice](#) related to this effort was published on March 22, 2022.

With respect to sponsor protections, ORR notes the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) and the 2021 [MOA](#), as discussed above.

Finally, ORR notes that it is a child welfare agency; it is not an immigration enforcement agency and has no immigration enforcement authorities.

2. The joint commenters proposed that ORR remove the fields under *Proof of Stability* (List Proof of Documents Provided, Proof of Financial Stability Document Type, and Date Document Issued). If ORR does not remove them, the commenters recommended that ORR clarify on the form that they are nonmandatory fields for purposes of sponsorship, as they said documentation of financial stability is difficult to provide, especially so for sponsors who are often paid in cash. Commenters stated that a family’s inability to provide documentation of financial stability should not be a barrier to sponsorship.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that it is responsible for the safe and timely reunification of UC with their families and for their continued well-being. The Family Reunification Packet (FRP) has always required the sponsor to provide evidence of their financial ability to provide for and support the minor, and case managers have extensive experience working with sponsors to identify documents that satisfy this requirement. ORR has not found the requirement to be a

barrier to sponsorship. This information is also used to determine whether the sponsor and child would benefit from post-release services. ORR does not disqualify potential sponsors based solely on their income.

3. The joint commenter stated they have concerns about how information on Self-Disclosed Criminal History (items on the form asking about convictions and to list any child abuse and neglect history) will be shared, if at all, with third parties. Also, commenters asked ORR to clarify the type of information the Conviction field is intended to capture, i.e., whether a conviction occurred, or rather seeking detailed information about conviction type, length of sentence, or length of imprisonment, or other, as there are concerns about privacy, confidentiality, self-incrimination, and immigration enforcement. The commenter noted that any information should be consistent with state and federal privacy and confidentiality laws and protections against self-incrimination.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that it abides by all applicable state and federal privacy and confidentiality laws. As indicated in the ORR Policy Guide [Section 2.2.4](#) under Criminal History, if a potential sponsor has been charged with or convicted of any crime or investigated for the physical abuse, sexual abuse, neglect, or abandonment of a minor, he or she must provide all related court records and police records, as well as governmental social service records or proof of rehabilitation related to the incident. ORR's Policy Guide [Section 2.5.2](#) and [Section 2.7.4](#) provide detailed information about the results of background checks, convictions, and the impact of a potential sponsor's criminal history on release decisions. In cases where the proposed sponsor or an adult household member has been charged with but not convicted of, a crime, the policy explains that ORR may postpone a final release decision until the legal issue is resolved.

ORR notes its previous response concerning the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) and the [2021 MOA](#) for protection of sponsor information. ORR will consider revising some of the sponsor questions.

4. Another commenter recommended removing other fields from the form that they said appear geared toward immigration enforcement rather than child welfare concerns such as requiring "Country of Birth" and "Country of Residency", and they recommended replacing those queries with a single field asking for a proposed sponsor's "Address" or "U.S. State of Residency".

**ORR Response:** ORR has routinely collected standard biographical information from sponsors and does not agree that those fields are geared toward immigration enforcement. ORR has not found that collecting this information deters sponsors from completing the FRP or providing the required supporting documents and forms. ORR also notes that the [2021 MOA \(which replaced the now-rescinded 2018 MOA\)](#) limits the information shared between DHS and ORR and the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) restricts DHS from taking immigration enforcement action against confirmed or potential sponsors using information obtained from ORR. Finally, ORR notes that it is a child welfare agency; it is not an immigration enforcement agency and has no immigration enforcement authorities.

5. In the field of *Family Relationships*, the commenter recommended removing the questions, "Did any of your children come to the U.S. with you?" (If not born in the U.S.), and "Have you ever

been involved in a Dissolution of Marriage case?” because they said those fields appear to be geared toward immigration enforcement rather than child welfare concerns. The commenter suggested that the fields be replaced with a question asking whether the proposed sponsor has children living with them currently or children living in their home country. The commenter also noted that they thought the relevance of a proposed sponsor’s involvement in a dissolution of marriage is unclear, especially since ORR had already removed another marriage-related field from Sponsor Assessment Form S-5 (“Are you married to your partner?”).

**ORR Response:** ORR asks those specific questions for clarification and to help ORR assess for child welfare issues (to determine any children the potential sponsor is currently responsible or formerly responsible for). The questions are not based on immigration enforcement matters, as ORR has no immigration enforcement authorities. The [2021 MOA \(which replaced the now-rescinded 2018 MOA\)](#) limits the information shared between DHS and ORR and the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) restricts DHS from taking immigration enforcement action against confirmed or potential sponsors using information obtained from ORR. ORR also notes that the marriage-related field the commenter references was removed because it was duplicative of another field in the form.

6. Under the heading “UC Journey and Apprehension”, the joint commenters noted their questions about the relevance of the entire section, specifically noting, “If there is a debt still owed for the UC’s journey, please explain.” Commenters also stated their concerns about the notation on the form that “This section...should be compared against the UC Assessment responses” and would like clarification on why such knowledge is relevant to the sponsor’s ability to care and provide for the child. The joint commenters also noted their concern about the addition of specific fields (“If you have travelled back to your country of origin since your arrival in the U.S., please explain.”, and “Were you ever restricted from quitting or leaving the work?”) for the purpose of documenting “any trafficking concerns in the sponsor’s country of origin and in the U.S. and to determine if additional services or referrals are needed.” They recommended that the section be removed or, at a minimum, that ORR provide additional detail concerning the relevance of the section and how it intends to protect this information from third parties, including DHS. Commenters stated that it is insufficient to inform the sponsor that the information is not being collected for immigration purposes if there is not a robust firewall between ORR and third parties like DHS.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. ORR notes its previous response concerning the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) and the [2021 MOA](#) concerning protection of sponsor information. ORR has reviewed the concerns of the commenters and will consider revising some of the sponsor questions.

7. Commenters pointed out that Sponsor Assessment Form S-5 contains more than 50 drop-down menus. As ORR did not provide the list of options for each field, the commenting parties said they were unable to assess or comment on the fields. They said that this is 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.

## Home Study Assessment (Form S-6)

1. One commenter, a child advocacy organization, and three organizations submitting a joint comment stated they have concerns that the proposed Home Study Assessment Form S-6 elicits extensive negative information about a child, including SIRs, mental health information, criminal history, substance abuse, and gang involvement, which they say is unnecessary to evaluate a child's present needs. The commenters noted that this information is often documented without the broader context of the child's circumstances and trauma history, and they said it will likely paint an incomplete and skewed portrait of a child, particularly since the form fails to elicit any positive information regarding a child's positive development and growth while in ORR custody. They quoted ORR policy that the focus of a Home Study should be on "assess[ing] the potential sponsor's ability to meet the child's needs and "educat[ing] and prepar[ing] the sponsor for the child's release." The commenters stated that ORR should revise the form to elicit the information necessary for these purposes. The joint commenter added their concerns about information included in the Home Study that originates from the UC, as they stated that sharing such information may violate the UC's privacy.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that, as explained in the [ORR Policy Guide Section 5.8](#), care providers and staff are required to report incidents involving a UC's safety and well-being. SIRs are primarily meant as internal records. ORR does not base placement or release decisions on the number of SIRs in a UC's file, but reviews their content for incidents that may suggest the UC's needs would be better served in a different level of care.

When assessing the appropriateness of a potential sponsor, it is critical to determine if the sponsor is able to care for the health, safety and well-being of the child. One of the reasons a [Home Study](#) is conducted is to help educate the sponsor about the child who has been identified as having special needs or a significant trauma history, and also to assess the potential sponsor's ability to meet the child's needs and prepare the sponsor for the child's release.

In light of recent policy updates about SIRs and the commenters' concerns, ORR will consider making revisions to the form to ensure coherence, consistency and compliance with policy. ORR will also review how and where incident reports are documented in the information collection instruments. In addition, ORR is revising the question asking about gang involvement in S-6 to clarify that it only seeks that information if the history of gang involvement will require additional support or strength-based services after the UC is released from ORR custody.

ORR abides by all applicable federal and state laws governing the confidentiality of juvenile records.

2. A joint comment submitted by three organizations recommended removing certain fields related to the sponsor:
  - *Sponsor's Identifying Information*, which commenters say appears geared toward immigration enforcement rather than child welfare concerns.
    - o COB (Country of Birth)

**ORR Response:** Country of birth is standard biographical information that ORR has routinely collected on a potential sponsor. ORR is not an immigration enforcement



entity and does not collect or share information about UCs or sponsors for the purpose of enforcing immigration law. In addition, the [2021 MOA \(which replaced the now-rescinded 2018 MOA\)](#) limits the information shared between DHS and ORR and the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) restricts DHS from taking immigration enforcement action against confirmed or potential sponsors using information obtained from ORR.

- *Sponsor Motivation and Relationship to the UC*, which commenters stated are questions irrelevant to sponsor's ability to care and provide for minor but more geared toward immigration enforcement rather than child welfare concerns.
  - Was sponsor aware or involved in UC's plan to migrate to the USA? Please include sponsor's awareness of any financial obligation for travel, and
  - Was sponsor aware of UC's apprehension by border authorities? Yes or No. Is the sponsor aware of the whether the UC experienced any challenges on their journey or trauma along the way?

**ORR Response:** The purpose of these questions is to assess and determine the validity of the relationship between the sponsor and the UC, and to protect children from smugglers, traffickers, or others who might seek to victimize or otherwise engage the child in criminal, harmful or exploitative activity. Thus, these and other questions seek to confirm, to the greatest extent possible, that the placement would be safe and in the child's best interest.

- *Sponsor Background - Sponsor's Parenting Ability*, which commenters stated are intrusive questions, and they asked how a home study provider should assess whether children's needs are being met. Commenters stated that the second question may violate privacy and confidentiality laws instead of just confirming whether or not the sponsor will be able to support the child in light of any known behavioral issues or past trauma.
  - If there are any other children in the home, are their needs being met?
  - Is the sponsor aware of UC's current behavior issues (if any), criminal history of significant trauma?

**ORR Response:** It is the responsibility of the Home Study social worker to assess the potential sponsor's home to determine if it is a safe environment for the UC, to learn how the potential sponsor plans to meet the child's physical and emotional needs, and to help the sponsor understand what those needs might be. Since home studies are only required under specified circumstances, as detailed in the [ORR Policy Guide Section 2.4.2](#), it is critical to learn if the sponsor will be able to provide the appropriate support for the child's special needs. Further, social workers are trained to assess home environments in relation to how they perceive whether the other children in the home are safe and cared for.

- *Home and Community*, which commenters requested clarification on why a sponsor applicant would need to seek landlord approval, which they consider to be an unnecessary obstacle to sponsorship that could result in prolonging a child's stay in ORR custody.
  - If renting: has the landlord approved the UC living in the residence?  
Note reason for not informing landlord and plan to confirm approval.



**ORR Response:** This question is used to determine whether the sponsor is able to provide a stable living situation for the UC. Under certain circumstances, landlords may have restrictions on the number of residents who can live in a single apartment or housing unit, though sometimes such restrictions stand in conflict with federal and state discrimination laws. ORR does not bar release of a child to their sponsor based solely on the response to this question.

3. A joint comment submitted by three organizations noted that the Home Study Assessment Form S-6 contains more than 20 drop-down menus, including responses to critical fields/questions such as: (1) "Major Medical Issues", (2) "Mental Health Issues", (3) "Substance Use", and (4) "How equipped is the sponsor to advocate for the UC to receive necessary services?" As ORR did not provide the list of options for each drop-down menu, the commenters said they were unable to assess or comment on the totality of the form and claimed that this is 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.

## Adult Contact Profile (Form S-7)

1. The joint comment submitted by three organizations noted that the expanded Adult Contact Profile Form S-7 now requires all household members and alternate caregivers to provide the same detailed information as proposed sponsors, which the joint commenters said did not seem reasonable. They stated that ORR's information collection activities should be tailored to the expected role of the adult in the child's life.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that the Adult Contact Profile Form S-7 is not a new instrument, although it has been expanded to act as a hub where the provider can access all records related to a sponsor, adult household members, and/or alternate caregiver.

Moreover, ORR vets potential sponsors and all adult household members to verify that they have *not* engaged in any activity that would be a potential risk to the child. The sponsor's relationship, if any, with the child, determines the type of background checks performed on a potential sponsor and the adults in the home per [ORR Policy Guide Section 2.5](#) and [ORR Policy Guide Section 2.5.1](#).

2. The joint commenter noted that three fields reference background checks required by Federal Field Specialists (FFS) that are checkboxes with no options to list the basis or rationale for requiring such background checks - *FFS Requires FBI Background Check*, *FFS Requires State/Local Check*, and *FFS Requires CA/N check*. They suggested that the FFS be required to memorialize the rationale for each background check ordered.

**ORR Response:** Per [ORR Policy Guide Section 2.5.1](#), ORR may require additional background checks for sponsors and others if there are any unresolved issues or questions related to the well-being of the child. The rationale for additional background checks is documented by the case manager in Release Request Form R-4.

3. The joint commenter asks ORR to comply with all applicable confidentiality and privacy laws and provide a Miranda warning before asking proposed sponsors or other adult caregivers to provide information on self-disclosed criminal history such as in the *Contact Flag Information* field. They noted that it is critical for ORR to put in place protections and firewalls to ensure that information that is private, confidential, and potentially self-incriminating is not shared with third parties, including DHS, or else they said sponsors are likely to be deterred from coming forward to sponsor a child, thereby prolonging a child's detention in ORR custody.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes its previous response concerning the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) and the [2021 MOA](#). Moreover, the current proposed *revision* to the Authorization for Release of Records Form A-5 expands protections for UC and sponsor information, with certain record requests requiring a court-issued subpoena or information on the scope of an investigation with case reference number.

4. The joint commenters also requested clarification on the additional information intended to be included in Associated UC's table that was not previously collected in connection with the "UC Basic Information" section, which this table is apparently intended to replace. Without additional information, the commenting parties said they were unable to fully assess the impact of this new field.

**ORR Response:** There is no "UC Basic Information" section in the Adult Contact Profile. There is a "Basic Information" section, but it contains the adult contact's information not the child's. The Associated UC's table documents children the adult contact previously sponsored or attempted to sponsor.

5. The joint commenters stated that it is unclear under what authority, regulation or policy ORR can request DNA testing, and for what purpose. Without additional information, the commenting parties said they were unable to fully assess the impact of such fields, but they hold that there are significant ethical, privacy and confidentiality concerns about DNA testing of UC and proposed sponsors, especially since such testing would risk prolonging a child's time in ORR custody.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that DNA testing is used only in exceptional circumstances and with the consent of all parties involved. ORR has historically used DNA testing in limited cases to confirm parentage when documents from the UC and family member were not available. Recently, ORR has used DNA testing to more quickly verify relationships and proceed with reunification in 1) cases involving children separated from parents at the border and 2) cases eligible for expedited release under [Field Guidance 10](#). Pursuant to the [House Report 116-450](#), ORR is prohibited from accessing, using, or storing any genetic material, data, or information collected in reunification efforts including for the purpose of criminal or immigration enforcement.<sup>4</sup>

6. One joint commenter representing three organizations noted that Adult Contact Profile Form S-7 contains more than 10 drop-down menus, including several in response to critical fields/questions such as (1) "Conviction", (2) "Conviction Type", (3) "Declined Reason" and

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<sup>4</sup> See H.R. REP. No. 116-450, at 40 (2021)

others. As such, the commenters said they are unable to assess or comment on the totality of the form, which they said violates 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.

## Initial Intakes Assessment (Form S-8)

1. One joint commenter submitting comments for three parties and one other commenter noted that ORR added many questions to this assessment, including whether the child was previously subjected to the Migrant Protection Protocols (MPP) and whether the child has experienced "Parent/Legal Guardian Separation". The commenters all said they approved of this information collection to ensure that children receive services and protections to which they are entitled. They also supported the tracking of family separation for ORR to ensure that a separated child is reunited with their family as expeditiously as possible, and tracking of a child's prior placement in MPP, to ensure that the child receives TVPRA protections to which the child is entitled as an unaccompanied child and to prevent unsafe repatriation. However, the commenters stated that they were concerned that ORR has not explained how the information gathered will be used, specifically in provision of services to children, nor has ORR provided policies and procedures for ORR staff to follow when a staff determines a child in ORR custody was previously subjected to MPP or if the child has been separated from a parent/legal guardian. They asked how ORR staff will gather the information, whether from other forms, or from DHS, or will ORR staff make independent inquiries? The commenters recommended that ORR provide them with this information so that stakeholders can assess the collection of this information and provide feedback to ensure ORR properly and accurately collects/utilizes this information in the best interest of the child. The joint commenter stated that it would be improper for ORR to collect information from this sunsetted program (MPP) if the purpose is to deny children rights under the TVPRA, but good if information is collected for good purposes. They recommended that ORR implement a process to notify LSPs immediately when they learn that a child is in MPP proceedings and if, or when, any action is being taken against child based on those proceedings, so a child is not inappropriately removed from the United States based on prior MPP proceedings.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that its priority is to reunify the child with the parent or legal guardian from whom they have been separated, whether due to family separation or the MPP. Whether the case is a family separation or MPP case is typically determined during the referral and intake process, and other forms are subsequently auto-populated based on information documented in the UC Profile Form P-13. The fields serve as a flag for the FFS who must ensure that internal ORR processes were followed before approving the release. ORR must provide prompt notice and information to a UC's legal service provider upon learning that the child is or was previously subject to MPP, including any information regarding court proceedings arising from prior processing under MPP.<sup>5</sup>

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<sup>5</sup> See H.R. REP. No. 116-450, at 34 (2021).

2. One commenter stated their concern about the DNA fields and thought ORR had not clarified through policy or regulation what authority ORR has to collect DNA, nor had ORR explained how the results of the testing will be utilized and for what purpose. Without additional information, the commenter said they were unable to fully assess the impact of this process, but they stated they had significant concerns that such testing risk prolonging a child's time in custody and presented serious ethical concerns related to privacy and confidentiality for all tested.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that DNA testing is used only in exceptional circumstances and with the consent of all parties involved. ORR has historically used DNA testing in rare cases to confirm parentage when documents from the UC and family member were not available. Recently, ORR has used DNA testing to more quickly verify relationships and proceed with reunification in 1) cases involving children separated from parents at the border and 2) cases eligible for expedited release under [Field Guidance 10](#). Pursuant to the [House Report 116-450](#), ORR is prohibited from accessing, using, or storing any genetic material, data, or information collected in reunification efforts including for the purpose of criminal or immigration enforcement.<sup>6</sup>

3. One commenter recommended that the two fields deleted from the former *Family Information Section* be reinserted - "Do you know anybody in the U.S.? Include relative and non-relative contacts in this section" and "Is there someone we can contact to let them know you are here?"

**ORR Response:** This information is collected on the Initial Intakes Assessment Form S-8 via the Family and Friends table. ORR removed these questions because it was determined to be duplicative with the table included in the Initial Intakes Assessment.

4. Two commenters stated their concerns about self-incriminating information regarding questions in the mental health fields, which may necessitate a Miranda warning, such as, "Thoughts of hurting yourself or others?" and "Taking anything other than prescribed?" If the intent of the second question is to gather non-incriminating information about over-the-counter medications, then the commenters noted that the question should be narrowed to focus on that information. The commenters stated that any information pertaining to a child's health must be adequately safeguarded in compliance with all applicable federal and state laws concerning privacy and confidentiality.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, [ORR Policy Guide Section 3.4.7](#) requires care providers to have written policies, procedures and practices that protect the confidentiality of medical information. Moreover, ORR has recently updated its policies and practices to ensure greater protection of the confidentiality of UC mental health records, including updates to [ORR Policy Guide Section 5.8.8](#) and the current proposed revision to the Authorization for Release of Records Form A-5, as noted above. ORR complies with all applicable state and federal laws concerning the protection of sensitive juvenile information.

5. The joint comments submitted by three organizations stated a concern about the UC providing information for the Initial Intakes Assessment Form S-8, since the purpose of the information collection is to screen for trafficking or other safety concerns, special needs, danger to self and others, medical conditions and mental health concerns. Commenters said they had concerns

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<sup>6</sup> See H.R. REP. No. 116-450, at 40 (2021).

that the questions are intended to elicit incriminating information about a child's risk of abusing others while in ORR custody, and they said it was critical that a child be provided a Miranda warning before being asked these questions and that the answers be adequately safeguarded in compliance with all applicable federal and state laws concerning privacy and confidentiality.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that it complies with all applicable federal and state laws concerning privacy and confidentiality. In addition, ORR Policy Guide, [Section 3.2.1](#) requires care providers to deliver an admissions advisal to UC. ORR also notes that it is not an immigration enforcement agency and does not collect or share information for the purpose of immigration enforcement.

6. All the commenters stated their concern over the multiple but inaccessible drop-down menus, and as ORR did not provide a list of options, they were unable to assess the information or comment on it. Commenters said this was a violation of the APA which requires all information to be made available to the public if comments are being requested.

**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.

## Assessment for Risk (Form S-9)

1. One joint comment submitted by three organizations and another commenter stated they had concerns that ORR added highly detailed and invasive questions regarding the UC's sexual history and activities to the Assessment of Risk Form S-9 when the previous instrument asked only questions that focused on topics that were necessary to protect children. The commenters stated that these new questions are problematic. First, commentators said that they did not believe that the questions, such as detailed questions regarding specific sexual encounters, were necessary to meet the assessment's goals of reducing risk that the UC is abused in custody or abuses another child. Second, the commenters stated that asking UC some of these questions risk re-traumatizing children who may have suffered unwanted sexual contact or previously suffered sexual assault. Third, the commenters said the questions appear to shift the blame for sexual assault in ORR custody onto the UC. The commenters stated that this broad collection of information regarding all sexual activity in the context of assessing risk of sexual abuse may stigmatize or pathologize normal behavior, particularly for adolescents. The commenters recommended amending the language to be less invasive and worded in a more child-sensitive manner, as they said words like consensual and non-consensual activity may not be understood, and they suggested removing other words and reframing questions to be understandable to children of all ages.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that there is a zero-tolerance policy for all forms of sexual abuse, sexual harassment, and inappropriate sexual behavior at all care provider facilities, including secure care provider facilities and long-term foster care providers. The intent of these questions is not to stigmatize the child's sexual behavior but rather to assess the child's risk for sexual abuse. The assessment is required under applicable regulation (see [45 CFR § 411.41](#)) and is based on recommendations made by a congressionally appointed commission. In addition, ORR

notes that staff regularly receive training on child welfare best practices to ensure that these kinds of assessments are non-invasive, child-friendly, and as comfortable as possible. Finally, ORR is revising the form so that questions related to sexual history are only asked of children ages 10 and older, which aligns with the age at which pregnancy tests are administered to UC during the initial medical examination.

2. One commenter noted that the privacy of the information shared by UC with care providers in response to this form is unclear, and the commenter said it was not obvious what ORR will do with the information or with whom ORR intends to share the information. They noted that the form does not provide any instructions to case managers that the information should be kept confidential, and they said that UC are not provided with any reassurance that such information will not be shared with their parents or other family members without their consent or knowledge.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that per [ORR Policy Guide Section 4.8.1](#), the purpose of the proposed Assessment for Risk Form S-9 is to assess all children and youth for risk of being a victim or a perpetrator of sexual abuse while in ORR care and custody and use the results of the assessment to inform the minor's housing, education, recreation, and other service assignments. The confidentiality of UC medical/mental health information and records is an ORR priority, and ORR requires the care provider to have written policies, procedures, and practices, including within the care environment, that protect the confidentiality of medical information as noted in [ORR Policy Guide Section 3.4.7](#).

3. The joint commenters noted that ORR did not provide the list of options for each drop-down menu contained in the form, so the commenting parties were unable to assess or comment on the fields. They said that this is 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.

## UC Assessment (Form S-11)

1. One joint commenter composed of three organizations, and two other commenters said they had concerns about the new section that includes *Concern with UC's Age or Identity?* All said they opposed the addition of this question as it suggests to them that the child and/or family has not been truthful about child's age or identity and that ORR staff suspect them of fraud. They noted that it is not clear how this information will be used or shared in the context of providing services, including case management to children, and they stated that is critical for ORR not to share this information with third parties, including DHS. They said they would urge ORR to implement confidentiality and privacy protections consistent with federal and state laws. One commenter noted that the question improperly suggests to ORR staff that ORR should routinely consider whether the child is truthful about age or identity, but the commenter pointed out that the language of the FSA starts with a child's claim and provides a mechanism to override that claim only when it would be reasonable to do so.

**ORR Response:** Under certain circumstances, it may be necessary for the ORR care provider to question the age or identity of the youth being assessed during Intakes or during the initial UC Assessment because there are insufficient evidential documents available, and the youth's physical appearance raises questions. As appropriate, this follows requirements of the TVPRA of 2008 which supersede the Flores Settlement Agreement regarding age determinations, and in fact require a joint age determination policy between HHS and DHS. See [8 U.S.C. §1232\(b\)\(4\)](#). When there is a reasonable suspicion that a youth in custody is 18 years or older, per ORR Policy Guide [Section 1.6](#), ORR will make an age determination using policies jointly developed with DHS. Until the age determination is made, the unaccompanied child is provided all services provided to UC in ORR care and custody. As with all UC information, this information is confidential. ORR notes that the form does not improperly suggest that ORR should routinely consider whether the child is truthful about age or identity, but captures the information that reasonably leads to the need to consider claims with respect to age. The language of the FSA provides a mechanism for overriding a claim that the UC is a minor when it is reasonable to do so.

2. The joint commenter said they were not clear about what the new *Family and Friends* field is intended to capture, and they ask if it was the removal of family now in the country of origin? Or if they have family in the United States? Is it just family and friends in the United States? Or both the United States and Country of Origin? How broadly do the family and friends' categories extend? The commenters stated that the field is ambiguous and risks wasting time and resources to the extent that a child is asked to provide unnecessary information, such as every single acquaintance in home country.

**ORR Response:** The current Form S-11 has two tables, "Family in Country of Origin" and "Family and Friends in the U.S." In the proposed form, these two tables have been merged into one table, "Family and Friends". The "Type" dropdown field was added to distinguish whether the individual is in the U.S. or Country of Origin (aka Country of Birth (COB)). The options for the "Type" dropdown are Family/Friend in U.S., Family/Friend in COB, and Caregiver in COB. The purpose of the information collected in this table remains the same: to identify potential sponsors, understand the minor's relationships, and inform services, including phone contact and/or visitation. ORR only collects information for individuals that fall within this purpose and does not collect every single acquaintance in home country.

3. The joint commenter asked for clarification on the new Previous Sponsor Application which intends to document prior applications to sponsor the specific child in Form S-11 or children in ORR custody generally. The commenter recommended that ORR limits the field to prior applications for a specific child at issue, as they noted that anything else is unnecessary, irrelevant, and likely to violate privacy rights of other children who neither have access to nor control over this particular document.

**ORR Response:** This table documents previous applications to sponsor the specific child documented in Form S-11. This information is important element is assessing potential trafficking indicators and ensuring the child is released into a safe environment.

4. The joint commenter stated they had concerns about questions seeking information about substance abuse, domestic violence, child abuse, immigration and criminal history, all of which they said raise privacy, confidentiality, and self-incrimination concerns. The commenter also asked ORR to remove fields from the *UC Assessment Page - Criminal Tab* (Criminal Concerns,



Gang Affiliation, Foot guide), and it noted serious concerns about ORR collecting *Criminal Charges Data*, with fields for charges and outcomes of criminal cases. The commenters stated that all these fields also raise privacy, confidentiality, and self-incrimination concerns, and that ORR must comply with all applicable state and federal confidentiality and privacy laws and provide a Miranda warning before asking children to provide this information. The commenter said it is critical that ORR put in place protections and firewalls to ensure that such information is not shared with third parties, including DHS.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that it abides by all applicable state laws governing the confidentiality of juvenile records. ORR established a system of records, published at 81 FR 46682, to ensure the level of confidentiality pursuant to the Privacy Act, 5 U.S.C. §552(a). In addition, the proposed Authorization for Release of Records Form A-5 also significantly expands protections for UC and sponsor information, with certain record requests requiring a court-issued subpoena or information on the scope of an investigation with case reference number. ORR further references updates to [ORR Policy Section 5.8.8](#) as noted above. In addition, ORR notes that it is removing the gang affiliation question from Form S-11. ORR also notes that the [2021 MOA \(which replaced the now-rescinded 2018 MOA\)](#) limits the information shared between DHS and ORR and the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) restricts DHS from taking immigration enforcement action against confirmed or potential sponsors using information obtained from ORR. Finally, ORR also notes that it is not an immigration enforcement agency and does not collect or share information for the purpose of immigration enforcement.

5. The joint commenter stated they had concerns about specific questions: “Did the UC mention any U.S. immigration policy or practice as a factor in his/her decision to travel to the U.S.?”, “Who planned/organized your journey?”, “Did a family member or family friend pay for your travel to the U.S.?”, and “Does your family or family friend owe money to anyone for the journey?” They recommended the first two questions be removed from the proposed form, and the third and fourth be rephrased to: “Did someone pay for your travel to the U.S.?” and “Does someone owe money to anyone for the journey?” The commenter noted that answers to rephrased questions would still provide necessary information regarding trafficking concerns without implicating the criminal or immigration liability of a specific individual.

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

6. One joint commenter stated that the new fields referencing family separations and the sunsetted MPP program is improper to include, if ORR’s purpose is to deny children their rights under the TVPRA; however, they said that if ORR intends to collect this information for a proper purpose, ORR should implement a process to notify LSPs immediately whenever it learns that a child was previously in MPP proceedings, and if, or when, any action is being taken against a child based on those proceedings. Another commenter applauded ORR for tracking information about family separation and the MPP program and hopes that the information promotes expeditious reunification and ensures that a child who is in MPP proceedings receives TVPRA protections and unsafe repatriations are prevented. However, the commenter asked if the information will be used to provide services to children. Currently, they noted that ORR does not appear to have any policy or procedure for ORR staff to follow when it is determined a child is separated from a parent/legal guardian or in MPP proceedings. They asked how staff will gather this information, whether through other forms or from DHS, or will ORR make independent

inquiries? The commenter said they ask ORR to provide more information so that stakeholders have what is necessary to assess a child for legal services as part of the provision of services to UC, and also so the commenters can provide feedback to ORR to ensure ORR properly and accurately collects and utilizes the information in the best interest of the child.

**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 Release Request Form R-4 are auto-populated based on information documented in the proposed UC Profile Form P-13 (OMB 0970-0554). The House Report 116-450 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>7</sup> The case manager sends the notification to the legal service provider as soon as ORR confirms the UC was subject to MPP.

ORR has similar tracking and reporting requirements for UC who were subject to family separation, as stipulated under *Ms. L. v. U.S. Immigration and Customs Enforcement*<sup>8</sup>. Notification is also provided to the child's legal service provider as soon as ORR confirms separation from a parent or legal guardian.

7. A joint comment submitted by three organizations requested that ORR clarify under what authority, regulation or policy the DNA fields will be utilized and for what purpose. Without additional information, the commenters said they were unable to fully assess the impact of this information collection, though they stated they have significant concerns that any DNA testing with US and proposed sponsors risks prolonging child's time in custody and presents serious ethical concerns related to privacy and confidentiality.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nonetheless, ORR notes that DNA testing is used only in exceptional circumstances and with the consent of all parties involved. ORR has historically used DNA testing in rare cases to confirm parentage when documents from the UC and family member were not available. Recently, ORR has used DNA testing to more quickly verify relationships and proceed with reunification in 1) cases involving children separated from parents at the border and 2) cases eligible for expedited release under [Field Guidance 10](#). Pursuant to the [House Report 116-450](#)<sup>9</sup>, ORR is prohibited from accessing, using, or storing any genetic material, data, or information collected in reunification efforts including for the purpose of criminal or immigration enforcement.

8. The joint comment with three parties noted the addition of a documents section where documents directly related to case management can be uploaded into the database. They asked ORR to shield those documents from third party access, as they said they may include information that could impact a child's or sponsor's immigration case or criminal or civil liability.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that UC case file information is maintained and stored by ORR care providers and is stored in the ORR case management database and with the care provider.

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<sup>7</sup> See H.R. REP. No. 116-450, at 34 (2021).

<sup>8</sup> See *Ms. L. v. U.S. Immigration and Customs Enforcement*, Case No. 3:18-cv-428-DMS (S.D. Cal.)

<sup>9</sup> See H.R. REP. No. 116-450, at 40 (2021).

These files are maintained separately from UC A-Files, which are maintained by DHS (ORR does not have copies or custody of a child's A-file). These documents are protected under the same policies and procedures that safeguard other confidential and private UC information and records. ORR complies with all applicable federal and state laws and regulations governing the protection of confidential information. ORR also notes that the [2021 MOA \(which replaced the now-rescinded 2018 MOA\)](#) limits the information shared between DHS and ORR and the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) restricts DHS from taking immigration enforcement action against confirmed or potential sponsors using information obtained from ORR. Finally, ORR notes that it is not an immigration enforcement agency and does not collect or share information for the purpose of immigration enforcement.

9. One joint commenter submitted by three organizations pointed out that the proposed form has numerous drop-down menus where the options cannot be accessed, including some in response to critical fields/questions such as (1) Declined Reason and (2) Based on the most recent screening for disabilities, does the child have a disability as defined in the ADA? As currently provided, the commenter said it was not clear if the Declined Reason field is intended to capture the reasons the sponsor was rejected by ORR or whether the field relates to reasons the sponsor withdrew their own application. As the agency did not provide the list of options for each drop-down menu, the commenters said they are unable to comment on totality of the form. They stated this is an APA violation.

**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. In addition, ORR notes that "Declined Reason" is used to document the reason a potential sponsor declined to pursue sponsorship of a child, if applicable. The available drop-down options for this field are "no interest," "lack of financial/residential stability," "immigration fears," and "not available at this time." The field "Based on the most recent screening for disabilities, does the child have a disability as defined in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102(1)?" is used to determine if a home study is required under the TVPRA. The available drop-down options are "yes" and "no."

## UC Case Review (Form S-12)

1. One comment submitted by three organizations and another commenter stated they are concerned with a new section with eleven fields including, Concern with UC's Age or Identity? They noted that it is not clear how the information will be used or shared in the context of providing services, including case management. They stated that it is critical that this information not be shared with third parties.

**ORR Response:** Under certain circumstances, it may be necessary for the ORR care provider to question the age or identity of the youth being assessed during Intakes or during the initial UC Assessment because there are insufficient evidential documents available, and the youth's physical appearance raises questions. As appropriate, this follows requirements of the TVPRA of 2008 which require a joint age determination policy between HHS and DHS. See [8 U.S.C. §1232\(b\)\(4\)](#). When there is a reasonable suspicion that a youth in custody is 18 years or older, per ORR Policy Guide [Section 1.6](#), ORR will make an age determination using policies jointly developed with DHS. Until the age determination is made, the unaccompanied child is provided all services provided to UC in ORR care and custody.

2. One comment submitted by three organizations pointed out that the new *Additional UC Information* section has a field for UC Case Review Type, but it lacks an explanation for what that means so the commenters said they were unable to assess the impact of the new field. The commenters also noted that the *Case Plan* section contains seven new fields, but they said they were unable to access the drop-down menus.

**ORR Response:** This drop-down field replaces the radio button fields in the UC Portal version of the UC Case Review. The available options in both versions are 30-Day Case Review, Discharge, and Transfer. Programs are required to complete a Case Review a minimum of every 30 days, before a transfer, and before discharge from ORR custody.

3. The joint commenter noted that the revised form no longer shows fields for medication history and the medication table, but they note that ORR does not provide a justification in the Federal Register for removing them. The commenter recommended that those fields be reinserted into the proposed form, as they note documenting changes in the UC medical history and to medication is helpful information to include in a 30-day review.

**ORR Response:** ORR removed these fields from the UC Case Review, as it was duplicative with information already collected in the Medical Module of the ORR case management database.

4. The joint commenter requested clarification about the *Sponsor Information*, “Previous Sponsor Applications”, as they said it was not clear to them if the new selection is intended to document prior applications to sponsor the specific child documented in Form S-12, or children in ORR custody generally. The commenters recommended that the field be limited to prior applications for the specific child at issue, and they said that anything else is likely to violate the privacy rights of the other children who neither have access to nor control over this particular document.

**ORR Response:** This table documents previous applications to sponsor the specific child documented in Form S-12. This information is important element is assessing potential trafficking indicators and ensuring the child is released into a safe environment.

5. In a joint comment three organizations stated their concern about questions that are seeking information about substance abuse, domestic violence, child abuse, immigration and criminal history, all of which raise privacy, confidentiality, and self-incrimination concerns. The commenter also asked ORR to remove fields from the *UC Case Review Page - Criminal Tab* (Criminal Concerns, Gang Affiliation, Foot guide) and they noted their concerns about ORR collecting *Criminal Charges Data*, with fields for charges and outcomes of criminal cases. The commenters stated that all these fields also raise privacy, confidentiality, and self-incrimination concerns. The commenters noted that ORR must comply with all applicable state and federal confidentiality and privacy laws, and they said that ORR should provide a Miranda warning before asking children to provide this information. The commenter said it is critical that ORR put in place protections and firewalls to ensure that such information is not shared with third parties, including DHS.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR responds that it abides by all applicable state laws governing the confidentiality of juvenile records. ORR established a system of records to ensure the level of confidentiality pursuant to the Privacy Act, 5 U.S.C. §552(a). In addition, the proposed

Authorization for Release of Records Form A-5 also significantly expands protections for UC and sponsor information, with certain record requests requiring a court-issued subpoena or information on the scope of an investigation with case reference number. ORR further notes that the agency updated the ORR Policy Guide [Section 5.8.8](#), as noted above. ORR also notes that it is removing the gang affiliation question from Form S-12. In addition, ORR notes that the [2021 MOA \(which replaced the now-rescinded 2018 MOA\)](#) limits the information shared between DHS and ORR and the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) restricts DHS from taking immigration enforcement action against confirmed or potential sponsors using information obtained from ORR. Finally, ORR notes that it is not an immigration enforcement agency and does not collect or share information for the purpose of immigration enforcement.

6. The joint commenter raised concerns about specific questions: “Who planned/organized your journey?”, “Did a family member or family friend pay for your travel to the U.S.?”, and “Does your family or family friend owe money to anyone for the journey?” They recommended the first question be removed from the form, and the second and third be rephrased to: “Did someone pay for your travel to the U.S.?” and “Does someone owe money to anyone for the journey?” The commenters said that answers to rephrased questions would still provide necessary information regarding trafficking concerns without implicating the criminal or immigration liability of a specific individual.

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

7. The joint commenter asked ORR to shield any uploaded documents from third-party access, as they said the documents may include information that could impact a child’s or sponsor’s immigration case or criminal or civil liability.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that UC case file information is maintained by ORR care providers and is stored in the UC Portal and with the care provider. These files are maintained separately from UC A-Files, which are maintained by DHS. ORR complies with all applicable federal and state laws and regulations governing the protection of confidential information. In addition, ORR notes that the [2021 MOA \(which replaced the now-rescinded 2018 MOA\)](#) limits the information shared between DHS and ORR and the Consolidated Appropriations Act of 2022 ([Public Law 117-103](#)) restricts DHS from taking immigration enforcement action against confirmed or potential sponsors using information obtained from ORR. Finally, ORR notes that it is not an immigration enforcement agency and does not collect or share information for the purpose of immigration enforcement.

8. The joint commenter noted that the proposed form contains numerous drop-down menus, including in response to critical field/questions, “Declined Reason” and (2) “Based on the most recent screening for disabilities, does the child have a disability as defined in section 3 of the Americans with Disabilities Act of 1990?” As currently provided, for example, the commenter said it is not clear if the “Declined Reason” field is intended to capture the reasons the sponsor was rejected by ORR or whether the field relates to reasons the sponsor withdrew their own application. The commenting parties said they were unable to assess or comment on the totality of the form because ORR did not provide the list for each drop-down menu. The commenter stated this is 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. In addition, ORR notes that "Declined Reason" is used to document the reason a potential sponsor declined to pursue sponsorship of a child, if applicable. The available drop-down options for this field are "no interest," "lack of financial/residential stability," "immigration fears," and "not available at this time." The field "Based on the most recent screening for disabilities, does the child have a disability as defined in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102(1)?" is used to determine if a home study is required under the TVPRA. The available drop-down options are "yes" and "no."

### **30-Day Restrictive Placement Case Review (Form S-16)**

1. One commenter recommended adding a field to provide recommendations from the Child Advocate (if appointed one) asking whether a placement is in the child's best interest, and also a field that asks, "What is the Child Advocate's Best Interest Determination (BID) regarding current placement?" They stated that the Child Advocate should also be permitted to upload the BID to be included with the case review, which they said would ensure that ORR staff can consider the Child Advocate's BID when they review a child's restrictive placement.

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

2. A commenter noted that the fields for Case Manager Recommendation, Case Coordinator Recommendation and FFS Decision should contain associated date fields to provide an accurate timeline for the 30-day placement review. The commenters also recommended that if the UC is placed in an out-of-network Residential Treatment Center (RTC), ORR should also include a field that lists the name of the "base" care provider.

**ORR Response:** ORR acknowledges and will consider the commenter's recommendations for adding associated date fields. In regard to the recommendation to add a field for the base care provider, ORR notes that for out-of-network placements the name of the base care providers is entered in the "Care Provider" field and the name of the out-of-network provider is entered in the "Out-of-Network RTC Provider [if applicable]" field.

3. The commenter noted that there is a missing footnote in the Care Provider field which is on the current form, and they recommended it be added back to the proposed form, i.e., If a Treatment Authorization Request RTC, list name of "base" care provider first followed by the name of the RTC provider.

**ORR Response:** There are two fields on the form, one for "Care Provider" which would reflect the base care provider, and "Out-of-Network RTC Provider [if applicable]" which would reflect the name of the RTC provider. ORR views this footnote is no longer necessary given there are two distinct fields on the form for this information.

### **UC Authorized or Restricted Call List and Log (Form S-20)**

1. A commenter stated their concern that creating such a restrictive mandate as requiring an approved list of individuals that a UC may call violates ORR's statutory authority requiring UC to be placed in the least restrictive setting, because they said it limits the ability of UC to

communicate freely. The commenter also noted that the definition of what made someone an authorized contact was vague, without a workable definition as to who may be approved and who not, providing case managers with discretion to make arbitrary decisions that limit who UC may contact without any set of standards. They stated that ORR counteracts its own goals to ensure safe communication, because if the UC is not able to contact whomever they want, ORR limits a UC's reporting incidents or unsafe conditions to advocates, attorneys, or outside organizations that seek to protect the interests of children in custody. The commenter also stated a concern that it may even limit the UC in seeking counsel, thus threatening to make the number of UC without representation higher. The commenter asked ORR not to adopt the form.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that, as outlined in the ORR Policy Guide [Section 3.3.10](#), care providers are required to create a list of approved and prohibited persons that a UC may contact and may only prohibit telephone calls if they can document valid reasons for concern (for example, suspected smuggler or trafficker or past trauma with a particular individual). Attorneys representing unaccompanied children have unlimited telephone access to unaccompanied children and the child or youth may speak to other appropriate stakeholders, such as their consulate, the case coordinator, or child advocate.

2. A commenter stated that if case managers are documenting details about calls, then calls are not private, which is a violation of the child's right to privacy and confidentiality.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that care providers must ensure both the privacy and safety of children by having internal policies and procedures for telephone calls, such as verifying the identity of telephone callers and the recipient of outgoing telephone calls. For safety reasons, the details of calls that are documented by case managers are limited to information about the callers and their relationship to the UC, and not details about the content of the call itself. These are safety procedures that protect the UC while allowing them to speak with family members, both here and abroad, and sponsors, but protect children from individuals seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

## Post-Release Services Event (Form S-22)

1. One commenter stated that there was not sufficient information to comment on the fields contained in the new form because the agency failed to provide adequate details or explanation about the purpose of the fields or options contained in drop-down menus. They note that Post-Release Services Event Form S-22 contains name and address information for a "caregiver" yet fails to explain who that person is. The commenter stated that this seeks irrelevant and unnecessary information, such as a sponsor's country of birth, which is completely unrelated to child welfare.

**ORR Response:** ORR clarifies that the caregiver is the person who is currently providing care for the released child. This is typically the approved sponsor, although sometimes the sponsor may later be unable to care for the child and the child is placed under the care of another individual (i.e., an alternate adult caregiver identified in a sponsor care plan). It is important that the post-release service provider know who is taking care of the child and where the child lives in order to provide appropriate supportive services. ORR does not ask for the caregiver's country of birth in Form S-22.



## Sponsor Application (Form S-24)

1. One joint comment submitted by three organizations stated that there was insufficient information to comment on the fields in the new form because they said ORR failed to provide adequate detail or explanation about the purpose of the fields or the options contained in the drop-down menu fields. For example, the commenter noted that it is unclear what date ORR will use for the “Application Completion Date” or what the “Assign using active assignment rule” means for case management and sponsor assessment purposes. The commenters noted that the form also appears to be missing critical case management information, including, but not limited to (1) names/contact information for ORR and care provider staff working on the child’s case and the assessments document in the form, and (2) home study information including details concerning home study recommendations decision and completion dates. The commenters said they were unable to assess or comment on the totality of the form because ORR had not provided sufficient information on this new proposed form. They said this was 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. In addition, ORR notes that “Application Completion Date” is the date the Family Reunification Application and all supporting documentation is received by the case manager. “Assign using active assignment rule” is an extraneous system field. UC Path was built using a platform that uses predefined database objects that include standard system fields. The predefined database objects make building a database quicker but can include fields that cannot be removed without customization. ORR chose to focus its limited development time on creating more database functionality rather than time-consuming customization to remove these system fields, which are harmless and may be removed in future iterations of the UC Path system. Finally, ORR notes that the information the commenter states is missing from the form is found in other ORR forms. The purpose of this form is solely to document certain milestones in the application process.

## Ohio Youth Assessment System Reentry Tool

The following provides the comments received related to the Ohio Youth Assessment System (OYAS) Reentry Tool and responses to those comments, but ORR notes that it plans to discontinue use of the OYAS Reentry tool, effective immediately, and has removed it from this information collection.

1. One commenter and another joint commenter submitting for three organizations noted that the Federal Register does not provide any information on the Ohio Youth Assessment (OYAS) Reentry Tool, other than to say that no changes have been made to the instrument. The commenter pointed out that the assessment elicits extensive information likely to be used against the child, including information about the child’s history of interaction with the juvenile justice system, questions on criminal behaviors including selling drugs, the child’s commission of violent offenses and those involving weapons, substance abuse, gang affiliation and involvement, and any discipline or consequences imposed on child. The commenters noted that the questions posed seem to assume that the child has committed a criminal offense, is in a prison or juvenile detention facility, and the commenters said they had concerns that it was not

appropriate for children who are in ORR custody, as the questions reflect a law enforcement correctional purpose inconsistent with ORR's child welfare role. The commenters also noted the negative, criminalizing nature of the questions and the absence of any questions eliciting information about the child's strengths and positive growth while in ORR custody. Commenters asked ORR to provide this critical information to stakeholders before proposing and requesting comments on these forms, as the commenters stated concerns that the OYAS instrument appears to be designed for use with juvenile offenders, and they said it does not appear appropriate for use with children in ORR custody.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that prior to administering the instrument, the UC is informed that self-disclosures of previously unreported criminal history or violent behavior to any other children, care provider staff, ORR, or others may result in the UC's transfer to another care provider facility and may affect their release. While the UC is in a secure or staff-secure setting, clinicians continue weekly or biweekly counseling sessions. The information collected or reported by the clinician includes clinical and psychological reports and documents, including those by medical and/or mental health providers. Decisions to step-up or step-down a placement take into consideration many factors, not only the OYAS assessment. Case managers work closely with the UC's clinicians and the FFS to review the UC's current behaviors and progress, and most definitely also consider and encourage the UC's strengths and any evidence of positive changes and growth. In addition, ORR notes that it is not an immigration enforcement agency and does not collect or share information for the purpose of immigration enforcement.

The following are responses to specific questions raised by the commenters:

- What is the purpose of the form?

**ORR Response:** The OYAS is a dynamic risk/needs assessment designed to reassess youth after being in a residential program for an extended period of time. ORR uses the tool to inform services and assist in reevaluating whether staff secure/secure program placement is still in the best interest of the child.

- Which children in ORR custody will be required to undergo this assessment?

**ORR Response:** The assessment is for UC in staff secure and secure programs.

- When will it be administered? Upon release or for placement?

**ORR Response:** It is administered within 30 days of referral to the staff secure or secure program and every 30 days following the initial assessment.

- Who is responsible for implementing it, and are they qualified?

**ORR Response:** Care provider clinicians implement it. The University of Cincinnati requires individuals to be trained on the use of OYAS prior to use. All clinicians at staff secure and secure programs receive the training and are certified in use of the assessment system.

- How will the information be used to provide services to children?

**ORR Response:** The assessment identifies areas to be addressed during counseling sessions and identifies areas where the child and sponsor may need assistance after release, such as developing a safety plan which may include ORR post-release services. It also assists in reevaluating whether staff secure/secure program placement is still in the best interest of the child.

- Is it evidenced based and validated as a screening tool for use with non-English speaking immigrant children?

**ORR Response:** It is a validated, evidence-based tool for youth, but not specifically for non-English speaking immigrant youth.

2. One joint commenter submitting questions from three parties stated a concern that ORR case providers could use the tool to arbitrarily deny release and/or step-down to a less restrictive placement in violation of the PLA, TVPRA and Fifth Amendment due process. The commenters note that questions involve the UC's prior involvement with the law, drug use, criminal activity, and gang involvement, all which, commenters said, raise privacy, confidentiality and self-incrimination concerns that must be addressed and protected against before implementation.

**ORR Response:** This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR notes that, as explained in the response to the comment above, prior to administering the instrument, the UC is informed that self-disclosures of previously unreported criminal history or violent behavior to any other children, care provider staff, ORR, or others may result in the UC's transfer to another care provider facility and may affect their release. This assessment tool is only one source of information about the youth. Official records and collateral sources, such as family members or other professionals, are consulted, and the youth's responses are corroborated as much as possible. ORR does not use the tool to arbitrarily deny release and/or step-down to a less restrictive placement, rather, the tool helps ORR assess the level of readiness of the youth to do well in a less restrictive setting, consistent with our legal responsibility. ORR also notes that it implemented Placement Review Panels (PRPs) for children in secure and RTC placements who wish to challenge their placement.