

Placement and Transfer of Unaccompanied Children into ORR Care Provider Facilities

**OMB Information Collection Request
0970 - 0554**

Attachment A - Summary of Public Comments and ORR Responses

July 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.

General Comments on Proposed Information Collection

1. Four comments reflecting eight organizations requested that ORR not collect the types of information the forms propose to collect. The commenters were concerned that collecting some of the information will have harmful effects on the health and well-being of youth in ORR custody. They stated that they do not believe the information sought serves the best interest of the youth, noting that the information gathered could prolong their time in government custody and affect their rights while in custody. One commenter stated that the information sought perpetuates racial biases against Latinx youth. Another specifically recommended that ORR take a more child-centered, trauma-informed approach to child placement and to not engage in law enforcement activities.

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

2. Two comments reflecting six organizations stated that the proposed information collection would violate the rights of unaccompanied children and is not compliant with state and federal privacy laws. The legal obligations and privacy laws noted by commenters include child-accessible Miranda warnings, the Flores Settlement Agreement, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Freedom of Information Act, the Fifth Amendment Due Process clause and protection against self-incrimination, and the *Flores* July 30, 2018 Order.

ORR Response: These comments relate 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 takes its obligations under federal and state law, including those related to privacy and confidentiality, seriously. ORR refers commenters to [ORR Policy Guide Section 3.4.7](#), which contains ORR policy on maintenance of health care records and confidentiality. ORR has also recently updated its policies and practices to ensure greater protection of the confidentiality of UC mental health records, see [ORR Policy Guide Section 5.8.8](#), and proposed revisions to the Form A-5 (Authorization for Release of Records), as published in OMB 0970-0547, which makes 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.

3. Two comments reflecting six organizations stated that given the change in administrations and ORR system being near capacity, ORR did not provide adequate time for review of the proposed information collection activities that have the potential to substantially affect children's safety and well-being. Another commenter requested that ORR give incoming officials sufficient time to review the proposed forms.

In a joint comment from four organizations, the commenters noted that they were unable to view or analyze predetermined menu options for some of the drop-down menus. After numerous attempts to contact agency staff to provide clarification, they stated that they have yet to receive any information and are therefore unable to fully comment on the forms. The signatories note this failure to provide all the relevant information is a violation of the Administrative Procedure Act (APA), so the proposed forms cannot be implemented.

ORR Response: While ORR appreciates the capacity constraints identified by the commenters, the request for public comment on this proposed information collection remains time-sensitive due to ORR's need to collect this information in order to fulfill its statutory obligations of accepting referrals from federal agencies within 72 hours and placing UC in the least restrictive setting. 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.

4. One commenter stated that the characterization of the youth as being gang- or cartel-involved has negative consequences for processing the cases of children in ORR custody. The commenter said such labels lack safeguards against false allegations and violate children's rights. They further stated that if children are labeled in such a way, they are transferred to more secure facilities, are unjustifiably delayed from reuniting with their families, are subjected to prolonged detention, and their immigration cases are undermined. The commenter said that these concerns are particularly applicable to proposed UC Referral Form P-7.

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. Nonetheless, ORR notes that the collection of this information is not new and that it collects information on suspected or confirmed gang or cartel activity or affiliation in order to carry out its statutory duty to place UC in the least restrictive setting in their best interest (see [ORR Policy Guide Section 1.2.1](#)), identify any trafficking indicators, and ensure that services meet the UC's needs while in ORR care and post-release. Additionally, collecting such information is also necessary for ORR to determine whether a child requires a *Saravia* hearing, such that ORR collects this information in compliance with a court-ordered settlement agreement. Finally, ORR notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with "UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff" in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting.

5. Two commenters raised concerns about other federal agencies accessing information in the forms about criminal history and mental health. One commenter noted that while this information is helpful in decisions about the placement and transfer of children, ORR should ensure this information is used for this specific purpose and not shared with any other agency, including the Department of Homeland Security (DHS) and the Department of Justice (DOJ). Both commenters recommended that ORR implement a firewall and cease information sharing between law enforcement agencies and agencies that serve children.

ORR Response: This comment relates to underlying policy regarding safeguarding and confidentiality of UC information, 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 notes that the 2021 Memorandum of Agreement (MOA) between ORR, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) narrowed the categories of information-sharing between ORR and DHS. Additionally, ORR updated [ORR Policy Guide Section 5.8.8](#) on June 7, 2021 to limit the categories of Significant Incident Reports (SIRs) that are reported to DHS. As part of this update, ORR removed Incidents of Violence by a Child as a type of incident that care providers must report to DHS. ORR also removed Alleged or Suspected Fraud and Gang-Related Activity as types of incidents that Federal Field Specialist (FFS) must report to DHS. [ORR Policy Section 5.8.8](#) also clarifies that care providers must not include clinical or mental health information in SIRs that are reported to DHS unless required by mandatory reporting laws. As this proposed information collection activity was published for public comment prior to these changes, ORR will consider whether updates to this proposed revision of information collection may be necessary.

6. One commenter stated that there was lack of context in the forms. First, they said the information sought regarding mental health and criminal history does not acknowledge the broader context of the challenges and trauma the children have experienced. Further, the commenter stated that the “checkbox” format does not allow for space to provide detail or the necessary context to understand a child’s history. They said that while such a format makes it easier to complete the form, it does not capture the needs of the children. Further, they said the child’s perspective is not included on the form, as they are completed without the participation of the child, their legal representative, or the relevant legal service provider (LSP). The commenter said that excluding the child’s perspective goes against ORR’s obligation to treat children with dignity and respect.

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 acknowledges and will consider the commenter’s suggestions. In addition, ORR notes that it uses checkbox fields to collect initial information prior to more comprehensive screenings, to make it easier to quickly find the information in the form (with text boxes added for further explanation when appropriate), and to create data points that facilitate tracking and reporting.

7. One commenter noted that ORR does not provide any guidance on how to identify someone as gang- or cartel-affiliated, yet the forms seek to collect and communicate such information. The commenter said these histories are unreliable and prone to error, as the information is subject to collection from varied sources and might be influenced by personal biases or stereotypes. For example, they said ORR might label a child as being involved or affiliated with gangs or cartels if

the child indicates he or she is fleeing forced gang involvement. They said that the course of that child's experience in ORR custody is then influenced by this alleged affiliation or criminal activity, potentially perpetuating false information about the child and infringing on their right to be placed in the least restrictive setting. The commenter also stated that characterizing children as dangerous criminalizes behavior that is to be expected from a traumatized child confined in federal custody.

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. Additionally, collecting such information is also necessary for ORR to determine whether a child requires a *Saravia* hearing, and ORR collects such information in compliance with a court ordered settlement agreement. Finally, ORR notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with "UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff" in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting.

8. One commenter said that the method of information collection influences the reliability of the information gathered. They noted that DHS conducts interviews within hours after a child crosses the border or is apprehended by ICE, a time when many children are tired, dehydrated, hungry, and afraid, in addition to often dealing with symptoms of severe trauma. Further, they said children are held in cold holding cells with strangers and report receiving little food or water. They state that the culmination of these factors can make the children's stories and details inaccurate and should not be the basis for making placement or release decisions. The commenter suggested that if ORR does still use this information in placement or transfer decisions, they should indicate the source of the information behind the decision to protect the children's due process rights and give them sufficient notice.

ORR Response: This comment relates to underlying policy concerning when and how DHS conducts interviews of UC and how ORR uses the information from those interviews to make placement decisions, 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.

9. One commenter stated that the proposed information collection activity will likely lengthen the amount of time a child is held and impact their rights to be placed in the least restrictive setting. Additionally, they mentioned that ORR is presently functioning under certain capacity constraints, so by not including measures to verify the information and potentially holding children in custody longer than needed based on inaccurate information related to alleged gang or criminal information, they said ORR is further diminishing its own capacity to process cases.

ORR Response: This comment does not relate to the information collection, as it does not comment on the burden of the collection or whether the information being collected serves the utility of the purpose of the form. Nevertheless, ORR notes that the proposed new and revised forms facilitate ORR's ability to perform its duty of accepting referrals from federal agencies within 72 hours and placing UC in the least restrictive setting in the best interest of the child.

The proposed forms are primarily revisions to existing approved forms. ORR also notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with “UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff” in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting.

10. Several comments highlighted the various impacts of labeling children as gang- or cartel-involved. One commenter said that such information can have severe implications for children’s immigration status, including denial of DACA renewal or U visas, or even of voluntary departure where UC wish to return to their home countries. They said immigration judges often accept such allegations as fact, despite the lack of reliability or factual basis of the information. Further, they said such affiliation makes it harder to win release from custody and introduces additional barriers to reunification with family, which is particularly important for immigrant children, as they are more likely to have physical and emotional well-being and stability when they live with family members.

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 agency updated [ORR Policy Guide Section 5.8.8](#) on June 7, 2021 to limit the categories of SIRs that are reported to DHS. As part of this update, ORR removed Gang-Related Activity as a type of incident that FFS must report to DHS. As this proposed information collection activity was published for public comment prior to these changes, ORR will consider whether updates to this proposed revision of information collection may be necessary. Finally, ORR notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with “UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff” in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting.

11. One commenter stated that there is a lack of youth-specific safeguards in these proposed forms and the conflation of juvenile delinquency with adult crimes. The commenter observed that the forms ask for “criminal history,” but stated that most child behaviors are not criminal. They said that framing of the forms perpetuates the harmful stereotype that equates immigrant children with criminals. The commenter recommended restructuring the forms in a more child-centric, nuanced, trauma-informed way that focuses on behavioral and health risk factors instead of criminality.

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 clarifies that it assesses and attempts to corroborate any disclosure of the child’s criminal or juvenile delinquency history made by the

child, their family, or their sponsor to ensure that the child is placed in the least restrictive setting that meets their individual needs, the child receives appropriate services, and that ORR is able to make a well-informed release decision.

12. One commenter said there is a heightened need for privacy protections for these children and the information sought by these forms. They said it is unclear whether ORR considers the forms subject to the broader state and federal laws that protect children's information and privacy, mentioning that sharing the information about children's alleged criminal or gang history outside of ORR goes against protections for juvenile information. They stated that children's law enforcement records are restricted, requiring a court order for outside agencies or personnel to access them. The commenter stated the importance of this protection, which will ultimately support children's efforts to find employment, housing, stability, and other opportunities.

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 agency updated [ORR Policy Guide Section 5.8.8](#) on June 7, 2021 to limit the categories of SIRs that are reported to DHS. As part of this update, ORR removed Incidents of Violence by a Child as a type of incident that care providers must report to DHS. ORR also removed Alleged or Suspected Fraud and Gang-Related Activity as types of incidents that FFS must report to DHS.

13. Two comments representing six organizations said that the forms, as presented, impermissibly position ORR in a law enforcement role. The commenters cited an alleged ICE-ORR memorandum that provides for DHS to train ORR staff on identifying gang colors and signs, how to report suspected gang affiliation, and how to become integrated into local anti-gang task forces. They said that this change presents a conflict of interest for ORR as a non-law enforcement agency, and the commenters said that ORR has yet to explain how or why its focus on collecting this information aligns with its mandate to provide for the welfare of the children in its care.

ORR Response: ORR is not a law enforcement agency and does not collect information about a UC for the purposes of law enforcement. Nevertheless, ORR will consider whether updates to this proposed revision are necessary in view of the updates to [ORR Policy Section 5.8](#) as noted above. ORR clarifies that it does not have a memorandum with ICE on identifying gang colors and signs, how to report suspected gang affiliation, and how to become integrated into local anti-gang task forces.

14. One commenter, the child advocate provider, requested that ORR promptly provide the forms with collected information to the child, the child's attorney, the Child Advocate, and the ORR-funded legal services provider for review to identify any concerns or offer additional contextual information. The commenter asked ORR to notify these same parties anytime ORR sends a form to another agency. Additionally, they asked ORR to modify the forms to allow for documentation of how and when it was shared with other parties.

ORR Response: Part of this comment relates to underlying information sharing policy and not the information collection itself. As such, that portion of the comment is outside the scope of the purpose for which comments on the information collection were solicited. ORR acknowledges and will consider the commenters' recommendation regarding the documentation of disclosures of the forms to other parties.

15. In a joint comment submitted by four organizations, the commenters expressed concern, stating that the language used across the forms is not child-centric, namely using the term “minor” instead of “child.” They also said the terms “juvenile offender” and “juvenile delinquent” do not acknowledge children’s full identities or their capacity to change. As such, they requested the forms use more humanistic terms, including “child” and “young person with justice system involvement.”

ORR Response: ORR appreciates the commenters’ concerns and will take their suggestions under consideration. ORR notes that these are terms used in the Flores Settlement Agreement.

Placement Authorization (Form P-1)

1. In one joint comment signed by four organizations, the commenters expressed concern, saying that Placement Authorization Form P-1 does not address applicable laws and regulations regarding consent to medical treatment for children in the child welfare system in states where children are in ORR custody, like California. Further, the parties stated concerns about ORR and its care providers having the right to consent to such medical care for children in the absence of the children’s parents or legal guardians. They said that they are concerned that proposed Forms P-1 and P-2 as drafted may put ORR in violation of the July 30, 2018 *Flores* order.¹ They requested that Placement Authorization Form P-1 be amended to account for both of these concerns.

ORR Response: This comment relates to the 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. Generally, care providers must follow applicable state laws regarding consent for medical treatment, though ORR consents for routine medical care per applicable ORR policy.

2. In one comment signed by four organizations, the commenters suggested that ORR add a provision to Placement Authorization Form P-1 informing care providers that children have the right to free and prompt access to their case files and any information ORR has collected about them. They requested that the following statement be added to paragraph 7 in Form P-1: “The care provider must inform children in its care of the right to request their ORR case file and any other information collected about them by ORR and provide them with the information on how to request their files from ORR and related documents and forms for doing so.”

ORR Response: This comment relates to the 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 notes that UC are entitled to receive copies of their health records upon release. ORR will consider the commenters’ suggested addition to Form P-1.

3. In one joint comment signed by four organizations, the commenters stated that ORR care providers are obligated by HIPAA to provide children a copy of their medical records and other

¹ See Order Re Pls.’ Mot., *supra* note 1.

health information upon request and within 30 days of the request. They suggested that Form P-1 be updated to reflect this legal requirement.

More generally, the commenters requested the form include a statement to remind providers that they must protect the privacy and confidentiality of children's medical information, per HIPAA's privacy guidelines and as a consequence of the creation of the new case management system and the digitization of medical records, as well as ORR's own policies. They stated that this includes not sharing children's health information for purposes not directly related to their care without permission. They stated that while ORR may not be a "covered entity" under HIPAA, the medical providers working with ORR are. The commenters expressed significant concern that notes from mandatory therapy sessions with children are being passed to ICE, which they said can then use that information against the children in court. In three comments submitted by seven organizations, the commenters asked that Placement Authorization Form P-1 include a statement indicating that care provider staff must adhere to the privacy and confidentiality policies under HIPAA. They suggested the statement could read: "The care provider must protect the confidentiality of children's medical information by complying with HIPAA and ORR Policy Guide section 3.4.7."

ORR Response: This comment relates to the 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 notes that it abides by all applicable federal, state, and local laws and regulations and will consider whether revisions to proposed Form P-1 may be necessary. ORR also notes that the agency is not a covered entity under HIPAA regulations.

4. One joint comment signed by four organizations highlighted an incomplete sentence on Placement Authorization Form P-1 that they stated leaves unclear the intended guidance on the release of information. The incomplete sentence on paragraph 7 of Form P-1 reads, "[u]nder penalty of law, the provider must not release information about the minor to any individual, organization or entity without the prior", which does not communicate guidance on when a care provider is authorized to release such information.

ORR Response: ORR will correct all typographical and semantic errors on the final version of the form.

5. In one joint comment signed by four organizations, the commenters requested that Placement Authorization Form P-1 include a statement clarifying that care providers must follow state confidentiality laws and regulations regarding the release of a child's file or information. The commenters said they were concerned with the potential linking of a child's ORR file with their A-File, or otherwise permitting DHS to access the child's information. They said such information might be used against a child to inhibit their access to immigration services or benefits or prolong their stay in ORR custody. The commenters said anything less than a full firewall between ORR and DHS violates children's privacy and confidentiality and fails to align with ORR's mission to protect and support child welfare. They suggested such a statement might read, "The care provider must follow applicable state laws and regulations regarding the release of information relating to a child (i.e., juvenile and dependency records) prior to the release of information about the child to any individual, organization, or entity, including any government entity."

ORR Response: This comment relates to the 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 notes that UC case file information maintained and stored by ORR and its care providers are separate from UC A-Files, which are maintained by DHS. ORR also references its previous response concerning the current proposed revision to the Authorization for Release of Records, Form A-5, as published in OMB 0970-0547, concerning protection of UC case file records.

Authorization for Medical, Dental, and Mental Health Care (Form P-2)

1. In one joint comment signed by four organizations, the commenters said that Authorization for Medical, Dental, and Mental Health Care Form P-2 does not address applicable laws and regulations regarding consent to medical treatment for children in the child welfare system in states where children are in ORR custody, like California. Further, the parties said they are concerned about ORR and its care providers having the right to consent to such medical care for children in the absence of the children's parents or legal guardians. They said that proposed Forms P-1 and P-2 as drafted may put ORR in violation of the July 30, 2018 *Flores* order.² They requested that Authorization for Medical, Dental, and Mental Health Care Form P-2 be amended to account for both of these concerns.

ORR Response: This comment relates to the 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. Generally, care providers must follow applicable state laws regarding consent for medical treatment, though ORR consents for routine medical care per applicable ORR policy.

2. In one comment signed by four organizations, the commenters identified missing language in Section 4 of Authorization for Medical, Dental, and Mental Health Care Form P-2. They noted that Section 4: Immunizations repeats information from Section 3: Medical and Dental Exams/Screening. The commenters recommended that Section 4 be updated with appropriate information collection fields related to immunizations.

ORR Response: ORR will correct all errors on the final version of the form.

Notice of Placement in a Restrictive Setting (Forms P-4/4s)

1. In one joint comment signed by four organizations, the commenters stated that the Notice of Placement in a Restrictive Setting Form P-4/4s, as drafted, violates a series of protections for children. First, they stated that the forms may violate the *Flores* Settlement Agreement and the Fifth Amendment Due Process Clause in instances where children who are placed in certain restrictive settings (specifically out-of-network residential treatment centers and therapeutic staff secure facilities) are not provided the forms. The commenters noted that while it is clear that in-network residential treatment center (RTC) placement requires giving children the Notice of Placement, language is less explicit with respect to out-of-network RTCs, even though the two have the same function. They suggested the forms make explicit that a Notice of Restrictive Placement is to be provided to children placed in restrictive settings including out-of-network residential treatment centers and therapeutic staff secure facilities.

² See Order Re Pls.' Mot., *supra* note 1.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection were solicited. ORR notes that its policies and procedures require the Notice of Placement be provided to children in RTCs regardless of whether they are an in-network or out-of-network facility.

2. In a joint comment from four organizations, the commenters stated that the Forms P-4 and P-4s violate notice requirements under the Flores Settlement Agreement and the Fifth Amendment Due Process Clause with respect to the basis for placing UC in a therapeutic staff secure facility. Specifically, they said the form does not indicate whether therapeutic staff secure placements have the same criteria as staff secure facilities, as therapeutic staff secure placements offer additional programs. Further, they said that if there are additional criteria, the forms do not identify what those criteria are. The commenters specifically requested that ORR outline what additional placement criteria exist for therapeutic staff secure facilities.

As an example of the lack of information regarding criteria for therapeutic staff secure placement, the commenters highlighted a therapeutic staff secure facility with a sex offender treatment program where ORR has previously placed UC. The commenters stated that children in ORR do not have court oversight regarding their placement or need for sex offender treatment, and the commenters stated that criteria like “inappropriate sexual behavior” leave such room for speculation that UC could be unnecessarily sent to such a treatment program. The commenters further said that “inappropriate sexual behavior” is too vague a criterion for placing a child in secure facilities, as currently permitted under [ORR Policy Guide Section 1.2.4](#), much less therapeutic staff secure facilities with sex offender treatment programs, given the lack of guidance on what constitutes behavior that is “sexual in nature” included in the definition in [ORR Policy Guide Section 4.1.4](#). The commenters recommended that any placement criteria for therapeutic staff secure placement with a sex offender treatment program require a court order or approval to ensure such placement is in the child’s best interest.

ORR Response: This comment relates not to the information collection, but to the underlying policy concerning placement of UC in a therapeutic staff secure facility. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. The comment also presents a misunderstanding of ORR policy and the nature of therapeutic staff-secure placements, which have identical placement criteria but have additional services to provide acute behavioral or mental health services to children who require them.

3. In one joint comment submitted by four organizations, the commenters said that Forms P-4 and P-4s do not comply with the July 30, 2018 Flores Order that requires a licensed psychologist or psychiatrist to determine that a child “poses a risk of harm to self or others” prior to placement in an RTC. As written (i.e., “ORR has determined...”), the commenters said the forms do not make clear that a licensed psychologist or psychiatrist must make the determination. They recommended ORR modify the form to read, “A licensed psychologist or psychiatrist has determined that you have serious psychiatric or psychological issues...” or add an “and” at the end of the third criterion under Residential Treatment Center to ensure the expert’s determination is required on the child’s risk to self or others.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR responds that prior to placement in an RTC, ORR policy

requires a determination that a UC be a danger to self or others by a licensed psychologist or psychiatrist. In assessing dangerousness, ORR uses the criteria for secure placement in [ORR Policy Section 1.2.4](#). ORR also directs commenters to [ORR Policy Guide Section 1.4.6](#).

4. In one joint comment submitted by four organizations, the commenters stated that the proposed Forms P-4 and P-4s violate the Flores Settlement Agreement and the Fifth Amendment's Due Process Clause by not adequately informing a child of their right to challenge their placement. While the commenters expressed their support for the reformatting that makes the forms more reader-friendly, they insisted on including an adequate explanation of the UC's constitutional rights to review and challenge their placement. The commenters stated that the periodic reviews and administrative review challenges referenced in the forms are constitutionally deficient for lack of due process safeguards such as the right to review, rebut, and present evidence, and the right to have a neutral decision maker, legal counsel, and interpretation. Another commenter expressed similar concerns. The joint commenters recommended that ORR include a new heading on the forms titled "Notice Regarding Right to Placement Review and Right to Challenge Placement Determination" that then explains the child's right to challenge their placement through the following means: (1) an immediate and automatic administrative review hearing process; (2) a periodic and automatic administrative review hearing process; (3) a Flores bond hearing; and (4) federal court district review.

ORR Response: This comment relates not to the information collection, but to the underlying policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR clarifies that the Notice of Placement states that ORR will review the child's placement at a minimum every 30 days, and that the child may appeal to the ORR Director to reconsider restrictive placement after 30 days. Additionally, there are instructions to indicate a child may ask a Federal District Court to review their case and may ask for a lawyer to assist them with their case. ORR also plans to add language to this form in the future concerning Placement Review Panels in reviewing placement decisions.

5. One commenter said that the Forms P-4 and P-4s contribute to unverified gang or cartel allegations against UC, allegations which they said can lead to those children being held in more restrictive settings. The commenter stated that ORR does not independently confirm such allegations made by children or ORR staff. The commenter mentioned their significant concern with the compounding detrimental effects of collecting information related to alleged criminal or gang histories or behaviors and said that restrictive placements are harmful to children's psychological and physical well-being, as well as their immigration relief prospects.

ORR Response: This comment relates not to the information collection, but to the underlying policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR clarifies that it assesses and attempts to corroborate any disclosure of the child's criminal or juvenile delinquency history made by the child, their family, or their sponsor to ensure that the child is placed in the least restrictive setting that meets their individual needs, the child receives appropriate services, and that ORR is able to make a well-informed release decision. ORR also notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with "UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff" in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription

and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting.

6. In a joint comment submitted by four organizations, the commenters said that the forms lack a definition of “sexual predatory behavior” or “inappropriate sexual behavior” in the sixth criterion for placing a child in a secure detention facility. The commenters are concerned the lack of a definition for “sexual predatory behavior” combined with what they said was a broad and ambiguous definition of “inappropriate sexual behavior” could result in arbitrary or discriminatory application of this criterion, resulting in children being sent to secure detention centers for innocent or misunderstood youth behaviors like exposure of genitalia or masturbation. They said that such inappropriate placements violate UC’s right to be placed in the least restrictive setting. The commenters recommended that ORR either remove the sixth criterion for secure care placement entirely or define “sexual predatory behavior” (as ORR does on the *Intakes Placement Checklist*) and replace “inappropriate sexual behavior” with a federally defined term, like “sexual abuse” or “nonconsensual sexual act” to eliminate speculation leading to erroneous placement.

ORR Response: This comment relates not to the information collection, but to the underlying policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR has issued guidance and ongoing technical assistance to care providers and ORR staff regarding the definitions used in the information collection. ORR refers commenters to [ORR Policy Section 1.2.4](#) for the placement criteria for secure settings.

7. In a joint comment from four organizations, the commenters said the sixth criterion on Form P-4 does not contain sufficient information to ascertain whether it complies with the requirements for secure placement under Paragraph 21 of the Flores Settlement Agreement and, by inference, the Ninth Circuit’s decision to uphold the injunction of the Flores regulations that sought to broaden secure placement criteria by impermissibly permitting a catch-all determination that a child is “otherwise a danger to self or others.” The commenters said that the sixth criterion for secure placement on Form P-4 referencing “sexual predatory behavior” or “inappropriate sexual behavior” lacks any specific indication that the child is a danger to others as required by the Flores Settlement Agreement. As such, the commenters recommended ORR either delete the sixth placement criterion under “Secure Care” or replace the language with the following: “have a history of or display sexual predatory behavior, or have engaged in a nonconsensual act, as defined under 18 U.S.C. § 2246(2), that makes the child a present danger to others.”

ORR Response: This comment relates not to the information collection, but to the underlying policy. As such, the comment is outside the scope of the purpose for which comments on the information collection were solicited. As noted above, ORR refers commenters to [ORR Policy Section 1.2.4](#) for the placement criteria for secure settings.

8. One commenter stated that the Form P-4/4s is not written in child-appropriate or trauma-informed language, making it difficult for a child to understand the reasons for their placement in a restrictive setting. The commenter said that the reasons set out in this notice form for UC essentially repeat verbatim the criteria set out in [ORR Policy Guide Section 1.2.4](#), which uses complicated and technical language. Additionally, they say they are concerned that the negative framing of the statements (*i.e.*, “You have a serious psychiatric or psychological issue..”) could

be potentially harmful to children's self-esteem and self-perception, especially as many of these children have traumatic histories. The commenter recommended that ORR revise the language on the form to be more appropriate for children, to be trauma-informed, and that ORR provide guidance and training on how to share the information in the form with children.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR clarifies that per [ORR Policy Guide Section 1.4.2](#), care providers are required to explain the Notice of Placement in a Restrictive Setting in a language he/she understands within a reasonable time before or after ORR's placement decision.

9. In a joint comment from four organizations, the commenters said that some of the Spanish translations on Form P-4s are inaccurate and misleading. This mistranslation risks confusion and inadequate notice for Spanish-speaking children regarding their restrictive placement, they said. The commenters offered the example of translating "secure facility" to "una entidad de protección," which means "protection entity," which does not accurately describe the facility. They offer the following revisions to translation errors and inaccurate translations:
 - a. Form P-4s Introductory Paragraph
 - i. Change the translation of a Secure and Staff Secure facility to "centro de detención de seguridad restrictivo /o máximo" and "centro de detención semi-restrictivo," respectively.
 - ii. Change "Nombre de al entidad proveedora de asistencia" to "Nombre de la entidad proveedora de asistencia" to correct what appears to be a typo ("al" instead of "la"); or change to a more accurate translation: "Nombre de la entidad a cargo del albergue."
 - iii. Change "Tip de Entidad" to "Tipo de Entidad" to correct what appears to be a typo ("tip" instead of "tipo"); or a more accurate translation: "Tipo de Centro."
 - b. "Asistencia de Protección" section
 - i. Change the section heading from "Asistencia de protección" to something more on point with "Secure Care" and the reasons for placement in a restrictive setting.
 - ii. Under the third criteria for "Asistencia de protección", change "incurrido en conductas graves de auto lastimares graves" to "participado en conductas de auto lastimarse graves" or "participado en comportamiento serio y autodestructivo." These modifications remove one unnecessary use of "graves" and use language more easily understood by children. It also fixes what appears to be a typo: "lastimares" to "lastimarse."
 - iii. Under the fourth criteria for "Asistencia de protection", change "incurrido" to "participado," and "inadmisiblemente" to "inaceptablemente." These modifications use language more easily understood by children.
 - iv. Under the fourth criteria for "Asistencia de protección", change "entidad de puertas abiertas," which is referring to "staff secure facility" to something else more on point. Staff secure does not translate to open door entity, which is the current translation. The current translation is inaccurate and confusing.
 - v. At the end of the fifth criteria for "Asistencia de protección", add in "y/o" to match the English version of the form, which includes "and/or" at the end of the fifth placement criteria for "Secure Care."
 - c. "Asistencia de Puertas Abiertas" section

- i. Change the section heading from “Asistencia de puertas abiertas” to something more on point with “Staff Secure Care.” The current translation is inaccurate and confusing, as well as an inaccurate description of a staff secure facility. Recommended translation: “centro de detención semi-restrictivo.”
- ii. Change all references to “asistencia de protección” (“secure care”) to a more on point translation throughout this section. As noted with respect to the “Asistencia de protección” section, the current translation for “secure care” is inaccurate and confusing. Recommended Translation: “centro de detención de seguridad restrictivo /o máximo.”
- iii. When referring to a “pandilla” or “pandillas” (gang or gangs) add “o mara” and “o maras.” Many Spanish speaking children in ORR custody are from Central America where gangs are referred to, generally, as “maras” rather than pandillas. To make sure children from different Spanish speaking countries understand this placement criteria, references to both ways of saying “gang” should be included.
- iv. Change “Podría ser dado de baja de una entidad de protección” to more accurately translate to “Could be stepped down from a secure facility”. The current translation is inaccurate and confusing. Recommended translation: “Podría ser bajado de nivel desde un centro de detención de seguridad restrictivo /o máximo”
- d. “Centro de Tratamiento Residencial” section
 - i. Consistently refer to “outpatient setting” as “entorno ambulatorio” or “albergue ambulatorio.” References to the same terms should be consistent throughout the document to avoid possible confusion.
 - ii. Under the fourth criteria, change “persistente” which means “persistent” to “continuo” which means “continued.” The English version of this criteria reads “[p]resent a continued and real...” not “[p]resent a persistent and real...”.
- e. “Summary of Placement Decision or Case Review” section
 - i. We recommend that ORR add “o reviso de caso” after “Resume de la decisión con respecto a la colocación” to accurately translate the entire heading from the English version of the form, which reads “Summary of Placement Decision or Case Review.” We also recommend that whatever change is made to “secure care” be implemented throughout the form, including the section informing the child of the placement review process and option to request reconsideration by the ORR Director.

ORR Response: ORR will re-translate the form to ensure that the Spanish version is clear and consistent with the English version.

Long Term Foster Care Placement Memo (Form P-5)

1. In a joint comment from four organizations, the commenters expressed concern that the drop-down options on the form include placements that are not types of long-term foster care. For the “Program type” field, should the options be the same as the current form’s options for “Placement Type”? The commenters recommended that “Residential Treatment Center” be removed, as it is not a type of long-term foster care. The commenters also said they were unable to comment on the options included in the “Type of Placement Requested” field, because they could not see the drop-down menu options.

ORR Response: The drop-down menu for the “Program type” field mentioned by the commenters is available in the proposed revised Form P-5 provided with this proposed information collection activity. The drop-down options are the same as the options for the “Placement Type” field in the current version of the form. ORR will consider removing the RTC option.

2. In a joint comment from four organizations, the commenters said that the “Foster Family or Group Home Recommended” section of the form does not have fields for “Phone” and “Staff responsible” and recommended that this information be included for these recommendations, as they said it will help with coordinating transfers for UC.

ORR Response: ORR will consider adding fields for phone number and staff responsible under the Foster Family or Group Home Recommended section of Form P-5.

UC Referral (Form P-7)

1. Two comments representing six organizations and one other commenter expressed general confusion on the use of Form P-7, including who will complete the form, how they will do so, and what information sources will they use. The commenters requested additional information so they can better understand the implications of the form and comment more fully on the proposed changes.

ORR Response: The purpose of UC Referral Form P-7 is to allow ORR to receive a referral from a federal agency and place the UC in an ORR care provider facility that is the least restrictive placement for the UC’s needs. The proposed instrument combines two current instruments - *Add New UC* and *Intakes Placement Checklist* - into one instrument. DHS (or another federal agency) refers the UC through the UC Portal or Intakes Hotline, and ORR Intakes staff creates a record for a “pending” UC and receives the information and documents (if any) submitted by DHS (or another referring federal agency). The referring agency provides biographical and apprehension information, including health-related information, biometrics, identifying information and contact information for a parent or legal guardian, whether the UC has been deemed an escape risk, or any criminal background information. If the UC has a juvenile or adult criminal history, including involvement in human trafficking or smuggling, prior acts of violence or threats in government custody, displayed a pattern of severity of behavior that requires increased supervision, mental health concerns, prior escape(s) or attempted escapes from government custody, or sexual predatory behaviors, ORR staff completes the *Intakes Placement Checklist* in the case management system and notifies the on-call FFS supervisor who must approve all *Special Placement Requests* and decides if the recommended care provider type is a suitable placement for the UC. Each placement is assessed on a case-by-case basis to meet the best interest of the child in the least restrictive setting.

2. One commenter said the information sought by proposed Form P-7 is unnecessary for ORR to perform its functions, noting the lack of Miranda warnings, the unreliability of the information gathered, and the fact that ORR is not a law enforcement agency. Further, the commenter said ORR violates its mandate when it shares any collected information with a law enforcement agency.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection

were solicited. Nevertheless, ORR notes that the information collected in Form P-7 is essential for ORR to perform its functions and meet its legal and statutory obligations. As noted above, the information documented in the proposed Form P-7 is collected by DHS (or another referring federal agency) and received through the UC Portal or Intakes Hotline during the referral process. ORR is not a law enforcement agency and does not collect or share information about the UC's criminal, medical, and other history for the purposes of law enforcement.

3. Two comments representing six commenters said they are concerned about Form P-7 violating children's due process rights, as they said that fields alleging incidents are related to gang/cartel activities and outlining criminal histories can impede a child's rights to family unity and placement in the least restrictive setting. They said the forms do not inform a child in custody or their adult caregiver/sponsor that the child is identified as being gang- or cartel-affiliated, nor do they ensure documented evidence for that designation or allow a child to challenge the designation. The commenters said ORR must develop a process to notify children and their sponsors of gang allegations and any attempts to gather information about alleged criminal history.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR refers to its previous responses noting that the information received is from the referring agency and that ORR is not directly asking these questions of the child. ORR clarifies that it assesses and attempts to corroborate any reported gang/cartel affiliation 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. ORR notes that collecting information on gang affiliation or involvement is necessary to comply with the *Saravia* Settlement Agreement (see [ORR Policy Guide Section 1.3.6](#)). ORR is not an immigration enforcement entity and does not collect or share information about UCs for the purpose of enforcing immigration law. Moreover and per ORR Policy Guide Section 1.4.2, care providers are required to explain the reasons for any placement or step-up of UC to a restrictive setting via the Notice of Placement in a Restrictive Setting in a language he/she understands within a reasonable time before or after ORR's placement decision. UC may request reconsideration of a secure or RTC placement designation by the ORR Director or his or her designee after 30 days (see [ORR Policy Guide Section 1.4.7](#)) or request a Flores Bond hearing pursuant to [ORR Policy Guide Section 2.9](#). Finally, ORR notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with "UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff" in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting.

4. Three comments representing seven organizations stated that Form P-7 potentially violates children's Miranda rights by asking for information beyond routine biographical questions during the referral intake process, such as information related to alleged gang affiliation or criminal concerns; arrests, charges and convictions; and inappropriate conduct in ORR custody. They said this information is often collected during initial arrests and interviews in which

children are not advised of their Miranda rights and might share incriminating information. Commenters said ORR should not rely on or include information collected in a way that violates children's rights against self-incrimination. Further, they said ORR should provide Miranda advisals before requesting potentially incriminating information from children, or else it cannot record or report any collected information.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR refers to previous responses noting that ORR does not collect this information directly from the child; rather, the information collected is received from the referring agency. ORR clarifies that it assesses and attempts to corroborate any reported criminal or juvenile delinquency history 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. ORR notes that collecting information on gang affiliation or involvement is necessary to comply with the *Saravia* Settlement Agreement (see ORR Policy Guide Section 1.3.6). Finally, ORR notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with "UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff" in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting. ORR is not an immigration enforcement entity and does not collect or share information about UC for the purpose of enforcing immigration law. entity and does not collect or share information about UC for the purpose of enforcing immigration law.

5. Two comments by six organizations expressed their concern about the privacy and confidentiality of alleged criminal and gang history information collected in proposed Form P-7. They stated that the "Entry Team Data Entry Window" could grant access to this information to unknown individuals. Commenters said that ORR needs to amend the form to ensure all information collection and recording on this form is protected from third-party access and complies with applicable state and federal law. They suggested adding the following language to the form: *"The Entry Team Data Entry Window is a new feature that allows case managers and ORR staff to give read and write access to other individuals. This feature is restricted to granting access to ORR staff or ORR grantee staff (e.g., care provider staff) who require access to make placement or release recommendations or decisions. This information, as well as access to this information, cannot be shared with any individual or agency outside of ORR, including but not limited to DHS, without a court order or compliance with applicable state and federal laws and policies."*

ORR Response: ORR takes its obligations regarding the privacy and confidentiality of UC records under federal and state law seriously. ORR established a system of records, published on July 18, 2016 at 81 FR 46682, to ensure the level of confidentiality pursuant to the Privacy Act, 5 U.S.C. § 552(a). ORR also references its previous response concerning the current proposed revision to the Authorization for Release of Records, Form A-5, as published in OMB 0970-0547, concerning protection of UC case file records. The instructions on the form indicate that ORR will not release any records that are clearly outside of the scope of the agency's investigation absent a court-issued subpoena or order.

6. Two comments representing six organizations said ORR should not request or collect information regarding gang affiliation or involvement. One commenter said that as ORR is part of a child welfare agency, it has no basis for requiring its staff to identify or label children as participants in gang activities. Further, commenters stated the collection of such information is often unreliable and collected without providing appropriate Miranda advisals. The commenters stated there are racial inequities perpetuated by reporting on gang or cartel allegations among these children, noting that Latinx children are disproportionately accused of gang affiliation, and such allegations are used against these children as a reason to deport them. Three comments reflecting seven organizations also said that alleged gang affiliation or criminal history has adverse consequences on the trajectory of children through immigration proceedings, like DACA renewal and U-visas, and their mental and physical well-being. The commenters stated that documenting, recording, and reporting gang allegations have serious consequences for these children, including family separation, deportation to countries where they are being persecuted, and death. They said such gang databases often have numerous errors and improperly label children and young adults, and they said that ORR staff in facilities do not have the expertise to determine whether a child has gang affiliations. Commenters expressed concern that Form P-7 will increase the likelihood that ORR will unnecessarily and unlawfully place children in overly restrictive settings that negatively affect their well-being and violate the Flores Settlement Agreement. One commenter recommended ORR reconsider adding questions to Form P-7 seeking information about a child's alleged membership or affiliation with a gang, particularly if such information is used to deny a child placement at its facility. Such questions, they said, are unaligned with ORR's child welfare mandate and present racial justice concerns.

ORR Response: This comment relates to underlying policy and not to the information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that collecting information on gang affiliation or involvement is necessary to comply with the *Saravia* Settlement Agreement (see [ORR Policy Guide Section 1.3.6](#)). Moreover, ORR refers to previous responses noting that ORR does not collect this information directly from the child; rather, the information collected is received from the referring agency. ORR assesses and attempts to corroborate any reported gang or cartel affiliation 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. ORR is not an immigration enforcement entity and does not collect or share information about UC for the purpose of enforcing immigration law. ORR references its previous response to clarify that Gang-Related Activity was removed as a type of incident that FFS must report to DHS. As noted above, the instructions on Form A-5 protect UC placement records from unauthorized disclosure. Finally, ORR notes that it is removing gang involvement as a criteria for placement in staff secure facilities and replacing it with "UC has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff" in forms P-4 Notice of Placement in a Restrictive Setting, P-7 UC Referral, and P-10A Transfer Request. ORR is making this change to reflect the fact that many UC have fled their home countries due to forcible gang conscription and such UC may not necessarily require increased supervision. The revised language is a more precise indicator of the reason a child may need the increased level of supervision provided in a staff secure setting.

7. Commenters stated that ORR does not have law enforcement responsibilities, and Form P-7 puts the agency in a law enforcement role by requesting information on SIRs. In doing so, they said ORR is violating its obligations to the children it cares for.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it is not a law enforcement agency and does not collect information about UC for the purposes of law enforcement.

8. One comment from four organizations and another commenter said they are unable to locate the single question on Parent/Legal Guardian Separation from the current *Add New UC* form to compare it with the new proposed five fields. They said that they are also unable to see the options in the drop-down menus for “Separated from Parents/Legal Guardian?” and “Reason for Separation,” so they are unable to provide full comments on these proposed changes.

ORR Response: ORR acknowledges the commenters’ concern regarding the absence of information about the drop-down menu options. ORR clarifies that in the upper portion on the current Add New UC Form P-13, *Add/Edit UC* includes the field “Separated from Parent/Legal Guardian” with a box for “No” and a box for “Yes”; the same drop-down options are available for the field in this form. The drop-down options for the “Reason for Separation” field are Parent Criminal History; Parent Criminal History and Immigration History; Parent Criminal History, Immigration History, and Cartel/Gang Affiliation; Parent Cartel/Gang Affiliation and Immigration History; Parent Cartel/Gang Affiliation; Referred for Prosecution; Communicable Disease; Health Issue/Hospitalization; Parent Fitness (other than for hospitalization)/Child Danger Concerns; Unverified Familial Relationship/Fraud; Separated from Other Adult Relative; Other-Warrant; Other; and Parent Cartel/Gang Affiliation and Criminal History.

9. A joint comment from four organizations raised concern about Form P-7 capturing information about enrollment in the Migrant Protection Protocol (MPP) Program. The commenters were concerned that the collection of such information will enable ORR to deny a child their rights under TVPRA, which prohibits the reinstatement of prior removal orders. They said they cannot comment on the specific “Current MPP” field because they are unable to view the drop-down menu. However, the commenters recommended that ORR not collect information regarding a child’s current or prior participation in MPP to deny a child’s rights under TVPRA. If the agency does collect this information, the commenters recommended that ORR share any MPP information with LSPs to guide decisions based on MPP proceedings.

ORR Response: This comment relates to underlying policy and not the information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that its priority is to reunify the child with the parent or legal guardian from whom they have been separated, whether pursuant to family separation or the MPP. If that is not possible, then ORR seeks another viable sponsor. 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).³ ORR acknowledges the commenters’ concern regarding the absence of information about the drop-down menu options. ORR clarifies that the drop-down options for the “Current MPP” field are Yes, No, and Pending.

³ See H.R. REP. No. 116-450, at 34 (2021).

10. A joint comment from four organizations said that they are unable to locate the “ORR Placement Information” and “Intakes Placement Checklist” on the proposed Form P-7, so were unable to offer specific comments on the changes. The commenters were also unclear on the purpose of the “Required Placement Request” field, so could not offer comments. They also were unsure if they can view all the options on the “Not Accepted Reason” menu, so could not comment fully. However, they did suggest this field should have an accompanying “Explain” text box to detail the reason for placement denial. The commenters requested that ORR provide a copy of the form that displays all the drop-down menus and clarification for the Required Placement Request field so they can offer more specific comments.

ORR Response: “Placement Request” is located in the *Details* Tab in Form-P-7, and the “Intakes Placement Checklist” is in the *Intakes Placement Checklist* Tab. “Requires Placement Request” field is where the ORR intakes staff indicates the program type, facility name, and date/time for the placement is being requested. ORR acknowledges the commenters’ concern regarding the absence of information about the drop-down menu options. ORR clarifies that the drop-down options for the “Not Accepted Reason” field are all visible in the screenshot of the form; the options are No Capacity for Gender; No Capacity for Age; No Mom/Baby Capacity; No Isolation/Quarantine Space; Medical Issues; Mental Illness; Licensing Issues; Internal Policy; Aggressive to Peers; Aggressive to Staff; Danger to Self; Escape Risk; Disruptive Behavior; Risk of danger to UC or other UC in care; Sexual Predatory Behavior; Inappropriate Sexual Behavior; Weather Event/Building Compromised.

11. Four commenters submitting their comments together stated that the proposed Form P-7 does not include all the same fields in the “Placement Determination” section of the “Intakes Placement Checklist.” Specifically, they said the form is missing “Intakes Staff,” “Approving FFS,” “FFS Decision,” and “Designated Placement.” They said including this information helps hold decision-making parties accountable. The commenters also recommended making clearer that the FFS Supervisor is the one making the final placement decision, instead of the intakes team member.

ORR Response: *Section D: Placement Determination* of the system-generated PDF of the Intakes Placement Checklist contains fields for “Intakes Staff Name”, “FFS Decision”, FFS Name”, “Date”, “Reason for Override (if applicable)”, “Final Placement Determination”, and “Designated Placement.” The field next to the FFS Name indicates “FFS Decision” which clarifies that it is the FFS, not Intakes Staff, making the placement decision.

12. Two comments representing six organizations asked for clarification on the “Criminal Information” and “Criminal Charges” section. For “Criminal Information,” one commenter said it was unclear if the following fields for “Behavioral Concerns,” “Gang Affiliation,” and “Foot Guide” should be related to criminal charges or convictions. In the “Criminal Charges,” “UC-Referral Page-Details Tab,” and “Charged and Adjudicated” sections, the group of commenters said they were unsure if all the possible fields are displayed, so they could not fully comment on them.

ORR Response: Under Criminal Information, there are fields for Notes so that additional information may be included, if available. Also, under the *Criminal Charges Data Entry Window* there are fields for providing details about the criminal charges, including whether charged and/or adjudicated. ORR acknowledges the commenters’ concern regarding the absence of information about the drop-down menu options. ORR clarifies that drop-down options for the

“Charged” field are Yes, No, and Pending and the options for the “Adjudicated” field are Yes, No, and N/A.

13. Three comments representing seven organizations said they have questions about privacy and confidentiality with proposed Form P-7. The comments raised concern about the “Entry Team Data Entry Window” allowing access to external individuals or agencies, as ORR has done in the past with DHS.

ORR Response: This comment does not relate to the information collection itself and is therefore outside the scope of the purpose for which comments on the information collection were solicited. Nevertheless, ORR notes that it takes its obligations regarding the privacy and confidentiality of UC records under federal and state law seriously. ORR established a system of records, published on July 18, 2016 at 81 FR 46682, to ensure the level of confidentiality pursuant to the Privacy Act, 5 U.S.C. § 552(a). ORR refers readers to its previous responses clarifying that per the instructions on Form A-5, UC placement documents are protected from unauthorized disclosure.

14. Three comments representing seven organizations said they are opposed to all questions in Form P-7 related to criminal charges, particularly those that have been dismissed or withdrawn. They stated the form does not allow for context or history of charges that may have been dismissed or had a “not guilty” verdict and said placement decisions based on these forms might result in more restrictive placements than necessary. In general, the commenters said ORR should not collect information regarding a child’s criminal and/or juvenile charges or arrests. If the agency decides to still do so, commenters said ORR should follow state laws and protocols for gathering the information and not share it with unauthorized third parties especially law enforcement agencies. Commenters said the general addition of alleged gang and criminal information on the form will result in longer child detention in ORR custody and, ultimately, worse outcomes.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that in the section under *Criminal Charges Data Entry Window, New Referral Related Record Criminal Charges*, there are fields for “Arrested Date”, “Arrested For”, “Charged”, “Charged Date”, “List of Charges”, “Adjudicated”, “Outcome of Criminal Case”, and “Summary of Events”. In addition, the proposed information collection has revised and expanded on the description of criminal fields to provide a more robust history of the UC’s background which may aid in a less restrictive placement. ORR complies with all applicable state and federal confidentiality and privacy laws. ORR is not an immigration enforcement entity and does not collect or share information about UC for the purpose of enforcing immigration law. Instead, ORR refers to previous responses noting that ORR receives criminal or juvenile delinquency history information from the referring agency, which ORR then assesses and attempts to corroborate 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.

15. Four comments representing eight organizations stated that Form P-7 criminalizes the behavior and histories of children who have experienced significant trauma in their lives. They said the “Behavioral Concerns?” drop-down on the form does not require context or additional information if someone enters “Yes,” and the lack of such context could result in an

inappropriate and overly restrictive placement for a child. Further, they said the information in the form seeks to document behavior without any consideration of the trauma or effects of prolonged detention on these children.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that in the Details Tab, under *Criminal Information*, “Behavioral Concerns?” has a drop-down menu and, to the right of that menu is another field that says “Behavioral Concerns Notes” which allows the input of additional information. Per [ORR Policy Guide Section 1.3.1](#), ORR requests background information from the referring federal agency in order to help determine an appropriate initial placement in the least restrictive setting in the best interest of the child according to the placement consideration factors set out in [ORR Policy Guide Section 1.2.1](#), which includes behavior. Placement decisions are made considering the totality of information and documents available.

16. Four comments representing eight organizations expressed concerns about the focus on alleged gang and cartel affiliation. Commenters said Form P-7 might violate due process rights, given that the information could be used to limit children’s rights to liberty and family unity. They stated the options for “Gang Affiliation Determined By” appears to permit staff to determine a child’s gang affiliation status based on allegedly affiliated family members instead of anything the child has done. They said it also does not allow for context or explanation if the child was coerced to engage in such activity, and such allegations affect a child’s future immigration relief prospects. Commenters said the children have no way to contest any information on these forms. If the agency does decide to collect this information, commenters recommended that ORR avoid incorrect characterizations of children as “criminal.”

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes the information on these forms is collected by DHS (or other referring federal agency) and transmitted to ORR Intakes. The *Criminal Information* section also includes a field for “Gang Affiliation Notes” where additional comments can be included. ORR clarifies that it assesses and attempts to corroborate any disclosure of the child’s criminal or juvenile delinquency history made by the child, their family, or their sponsor to ensure that the child is placed in the least restrictive setting that meets their individual needs, the child receives appropriate services, and that ORR is able to make a well-informed release decision. Placement decisions are made considering the totality of information and documents available. ORR is not an immigration enforcement entity and does not collect or share information about UCs for the purpose of enforcing immigration law.

17. One comment representing five organizations stated there is a lack of context in Form P-7 surrounding alleged gang cartel affiliation. They noted the update from “Criminal Charges?” to “Criminal Concerns?”, saying the edit broadens the scope for prompting an answer of “Yes,” and resulting in an inappropriate, overly restrictive placement. They requested that ORR clarify whether the “UC Referral Tab” is connected with the “Intakes Placement Form” so staff filling out the form can reference the “Intakes Placement Checklist” when filling out the “Criminal Concerns?” section. They also requested that ORR add additional fields next to the “Criminal Concerns?” field that list the following options: Has been charged with a crime? Is chargeable with a specified crime? Has been convicted of a crime? Is the subject of delinquency proceedings? Has been adjudicated delinquent? Is chargeable with a specified delinquent act?

Commenters said the second proposed field should provide “available options” and “selected options” with specific offenses (e.g., sexual assault, kidnapping, sexual assault, etc.).

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes a response of “Yes” to “Criminal Concerns?” will not, by itself, result in a more restrictive placement. ORR made significant revisions to Form P-7 to better understand the youth’s background. ORR created a new “Criminal Information” section that contains nine fields and replaces the two questions on criminal charges and acting as a foot guide on the current version of the *Add New UC* instrument. It also added a new section titled “Criminal Charges” to capture more detailed information if the UC has any criminal charges, which contains nine fields. These revisions will provide ORR with information to determine the most appropriate placement that will provide for the UC’s safety and well-being.

18. In a joint comment from four organizations, the commenters opposed the inclusion of questions regarding children as foot guides, as many migrant children are forced to engage in smuggling as part of their own trafficking. As such, they are victims, not perpetrators, of a crime, commenters said.

ORR Response: Per [ORR Policy Guide Section 1.3.1](#), ORR requests background information from the referring federal agency in order to help determine an appropriate initial placement in the least restrictive setting in the best interest of the child according to the placement consideration factors set out in [ORR Policy Guide Section 1.2.1](#), which include trafficking or other safety concerns. Placement decisions are made considering the totality of information and documents available. Moreover, the information collected is not used for a law enforcement purpose. Any indicators of potential trafficking would result in the UC being referred to the Office on Trafficking in Persons (OTIP) for further evaluation.

19. A joint comment representing four organizations recommended including a required “Source of Information” textbox on Form P-7 to detail where the information came from. They said if the information came from the child, the textbox entry should indicate whether the child was advised of their Miranda rights. If the information came from documents, the commenters said the textbox entry should note whether ORR had a court order to obtain the information. The commenters said such a measure offers accountability for information collection practices. The commenters also recommended adding a function for ORR staff to upload relevant documents, which also would provide children with the necessary information to challenge their placement determination if desired.

ORR Response: The *Documents Data Entry Window* in the Form P-7 has fields for uploading documents, including the “Record Type”, “Title” and “Document Type”. ORR will consider the recommendation to include a “Source of Information” textbox to detail the origins of information or documents.

20. In a joint comment from four organizations, the commenters expressed concern about who can be granted access to a child’s case management file, including information on Form P-7. They also said they were unable to view the drop-down menu in the “Type” field under the “Detention Facilities” section. They said the drop-down options should include all types of ORR placements, including but not limited to therapeutic staff secure, therapeutic group homes, and out-of-network RTCs. They stated they were also unable to view the drop-down menus of the

following fields, so were unable to offer comments: “Record Type,” “Document Type,” “Verified by Government Agency/Consulate,” “Team Member,” “Member Role,” “Entry Access,” and “Role.” They noted the “User” field is a search function, so were unable to see what populates the field based on various searches. As such, they said they could not offer comments on it.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that UC case file information is maintained and stored by ORR and its care providers separately from UC A-Files, which are maintained by DHS. In addition, ORR acknowledges the commenters’ concern regarding the absence of information about the drop-down menu options. ORR clarifies that the “Document Type” field is a subfield related to the “Record Type” field. The drop-down field options for the “Record Type” field and corresponding “Document Type” options are as follows:

- Proof of Relationship – Birth Certificate – UC; Baptismal Certificate; Birth Certificate – Sponsor; Birth Certificate – Other; Consulate Written Affirmation of Relationship; Verified by Government Agency/Consulate; Court Order – Adoption; Court Order – Guardianship; Court Order – Other; Government Issued Photo ID; Government Issued Ration Card; Hospital Record; Interview Notes; Land Deeds – Sponsor and UC’s Family; Letter of Designation for Care of a Minor; Marriage Certificate; Passport (including stamps); Photographs; Remittance Receipts; School Record/Diploma; Social Media Posts; Genogram; Other
- Background Check – FBI Criminal History and FBI Name Check
- Case Coordination and Discharge – Verification of Release; Release Request; Discharge Notification; ORR Notice to ICE; and Notice of Transfer to ICE
- Case Management – Verification of Release; Release Request; Discharge Notification; ORR Notice to ICE; New Placement Orientation; Safety Plan; Other; Medical Checklist; Transfer; Admission Assessment; Influx Transfer Facility Checklist; and LTFC Memo
- Compliance Document – Other; ORR Closed Corrective Action; ORR Closed Monitoring Report; ORR Site Visit Report; Program Licensing Investigation; and PSA Audit
- Compliance Forms – Privacy 101; ROB; and Cybersecurity
- Education – Other, Initial Education Intake Assessment; ESL Assessment; Progress Report Card; and Educational Reassessment Report
- FRP Forms – FRP 2 Authorization for Release of Information; FRP 3 Family Reunification Application; FRP 9 Letter of Designation for Care of a Minor; and FRP 10 Sponsor Declaration
- Facility Document – Other; Facility Intake List; Program Brief; Program Lease; Signed Cooperative Agreement; State Licensure; Fire Inspection; Emergency/Evacuation Plan; and Facility Floor Plan
- HS/PRS Document – Addendum; Other Supporting Documents; and Post Release Assessment Report
- Health Documentation – Public Health Investigation Form; Hospital Discharge Instructions; Hospital Discharge Summary; Image Study Reading (TB); Image Study Reading (Non-TB); Immunization Record; Initial Medical Exam Form; Initial Dental Exam Form; Lab Results; Medications; Health Evaluation Form; Office Notes; Specialist Notes; Supplemental TB Screening Form; and Other Health Document

- Legacy Document – All “Document Type” options available under other Record Types are available for this Record Type
- Legal Document – Birth Certificate – UC; Court Order (Flores Bond); Court Order (Other); Court Order (Removal); Court Order (VD); Decision (Administrative Review); Decision (Appeal of ORR Decision); Decision (Flores Bond Letter); Decision (Specific Consent); DHS Document (I-213); DHS Document (NTA); DHS Document (Other); Form (Attorney of Record); Form (Authorization for Release of Information); Form (Change of Venue); Form (Flores Bond Hearing Motion); Form (Legal Resource Guide Part II – Admission); Form (Legal Resource Guide Part III – Release); Form (Notice of Placement); Form (Specific Consent); Other Legal Document; OTIP Eligibility Letter; OTIP Interim Assistance Letter; Placement Identification Document; Records (Court); Records (Criminal/Delinquency Records); and Post Legal Status Plan
- Medical Document – DHS Docs and Medical Checklist
- Mental Health Documentation – Clinical Notes; Progress Notes; Discharge Summary; Psychiatric Evaluation Report; Psychological Evaluation Report; RTC Recommendation Letter; Developmental Assessment Report; and Other Mental Health Document
- Monitoring Visit – Behavior Management Plan; Care Provider Policies and Procedures; Community Partnerships/Services; Cost of Care; Education Documents; Emergency and Evacuation Plan; Fire and Safety Code Permits/Reports; Food Services; Foster Home Safety Checklist; Foster Parent Agreement; Foster Parent Files; Foster Parent Orientation Manual; Foster Parent Trainings; Full Staff List; Geographic Areas Served; Health/Sanitation Inspection Reports; Independent Living Resources; List of Current Foster Parents; List of Home Study Cases; Map of Facility; Memorandum of Understanding; Monitoring Schedule; Monitoring Tools and Instruments; Monitoring Visit Reports; Mosquito Control Inspection; Organizational Chart; Quality Assurance Resources; Respite and Retention Procedures; Site Visit Guide; Staff Trainings; Staffing Plan; State Licensing/CPS; UC Case Files; UC Orientation Packet; UC with G-28s; and Vehicle Inspections
- Operational Document – Other; Grantee Daily Schedule; Internal SOPs; Staff Training Curriculum; Educational Curriculum; Vocational Curriculum; Food Menu; UC Handbook/Orientation; Prevention of Sexual Abuse/Harassment SOPs; and Organizational Chart
- Other – DocGen; Placement Authorization; Medical Authorization; Notice of Placement; UC Assessments; New Placement Orientation; Other; and Manifest
- Policy Guidance Documents – Policy Memo; Field Guidance; Interim Guidance; Form or Related Material; Frequently Asked Questions; Procedure Manual; Other Guidance; Resource Material; and Training
- Profile Picture – Other
- Proof of Address – Current Lease or Mortgage Statement; Notarized Letter from Landlord; Utility Bill, Bank Statement; Payroll Check Stub; Official Mail; Other Similar Document; and Letter/Code
- Proof of Financial Stability – Proof of Financial Stability
- Proof of Identity – UC Passport; UC Passport Card; Foreign Passport; Permanent Resident Card; Alien Registration Receipt Card; Employment Authorization Document; US Driver’s License or Identification Card; US Certificate of Naturalization; US Military Identification Card; Birth Certificate; Court Order for Name Change; Foreign National Identification Card; Consular Passport Renewal

Receipt; Foreign Driver's License; Foreign Voter Registration Card; Canadian Border Crossing Card; Mexican Border Crossing Card; Refugee Travel Documents; Other Similar Government Document; and Marriage Certificate

- Proof of Immigration Status or U.S. Citizenship – US Passport; Valid Visa; Legal Permanent Resident Card; Notice to Appear; Other Federal Government Document Providing Immigration Status; US Birth Certificate; US Naturalization Papers; Court Order; and Other Government Issued Document Proving US Citizenship
- Referral Documents – Birth Certificate – UC; Baptismal Certificate; DocGen; FRP 2 Authorization for Release of Information; FRP 3 Family Reunification Application; FRP 9 Letter of Designation for Care of a Minor; and FRP 10 Sponsor Declaration; US Passport; US Passport Card; Foreign Passport; Permanent Resident Card; Alien Registration Card Receipt; Employment Authorization Document; US Driver's License or Identification Card; US Certificate of Naturalization; US Military Identification Card; Birth Certificate; Court Order for Name Change; Foreign National Identification Card; Consular Passport Renewal Receipt; Foreign Driver's License; Foreign Voter Registration Card; Canadian Border Crossing Card; Mexican Border Crossing Card; Refugee Travel Documents; Valid Visa; Legal Permanent Resident Card; Notice to Appear; Other Federal Government Document Providing Immigration Status; US Birth Certificate; US Naturalization Papers; Court Order; and Other Government Issued Document Proving US Citizenship; Birth Certificate – Sponsor; Birth Certificate – Other; Consulate Written Affirmation of Relationship; Verified by Government Agency/Consulate; Court Order – Adoption; Court Order – Guardianship; Court Order – Other; Death Certificate; Family Session Case Note; Government Issued Photo ID; Government Issued Ration Card; Hospital Record; Interview Notes; Land Deeds – Sponsor and UC's Family; Letter of Designation for Care of a Minor; Marriage Certificate; Passport (including stamps); Photographs; Remittance Receipts; School Record/Diploma; Social Media Posts; Genogram; Current Lease or Mortgage Statement; Notarized Letter from Landlord; Utility Bill, Bank Statement; Payroll Check Stub; Official Mail; Other Similar Document; Letter/Code; Proof of Financial Stability; Self-Disclosed Criminal History; Verification of Release; Release Request; Discharge Notification; ORR Notice to ICE; Referral Documents; and Other
- Release Request – Best Interest Recommendation Letter; R-4 Release Request; ORR Denial Letter; Parent Denial Letter; Program Acceptance Letter; Recommendation to Deny Release; Referral Services COO; Safety Plan; Travel Document; Travel Itinerary; and Other
- SIR/PLE Report Document – Police Report; State Licensing Documentation; Fraud Documentation; CPS Documentation; Significant Incident Report; PLE Report; Other; DOJ/FBI Documentations; and HHS OIG Documentation
- Self-Disclosed Criminal History – Self-Disclosed Criminal History
- Sponsor Assessment – Initial and Final

The drop-down options for the other fields the commenter mentioned are as follows:

- Team Member – Auto-populates with the name of the system user selected in the "User" field.
- Entry Access – Read Only and Read/Write
- Role and Member Role – Assistant Lead Case Manager; Assistant Lead Clinician; Attorney; Case Coordinator; Case Manager; Clinician; Contractor Field Specialist;

Direct Care Worker; Direct Operations Coordinator; Federal Field Specialist; Federal Field Specialist Supervisor; HS/PRS Primary Provider; Lead Case Manager; Lead Clinician; Medical Coordinator; Program Support Staff; Read Only; Supervisor; and Supervisory Case Coordinator

21. Two comments representing six organizations requested that ORR remove “sexual predation” as a criterion for secure placement, as the Secure Criteria on the Intakes Placement Checklist does not make any reference to what qualifies a child as being a danger to others, as the other sections like “Criminal History” or “Conduct in ORR Custody” that clearly indicate a child’s actions present a danger to others. The commenters said that without requiring a reference to dangerousness, the criterion does not meet the Flores Settlement Agreement’s conditions for secure care. If ORR does keep this criterion, the commenters recommended listing specific circumstances that make an individual a danger to others.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that the *Intakes Placement Checklist* defines “Sexual Predation” as any positive indication or history of sexual predatory behavior or engaging in inappropriate sexual behavior that meets the minimum requirement for placement into a therapeutic or secure facility. Sexual predatory behavior refers to a UC with (1) a history of sexual assault or sexual harassment, (2) that is part of a pattern of behavior with the goal of committing a sexually based crime, and (3) that is based on a mental disorder or impulse. ORR may consider case history, e.g., law enforcement or court records, ORR custodial documents such as SIRs, and/or self-disclosures related to the UC’s history to determine whether their conduct is predatory in nature.

22. In a joint comment from four organizations, the commenters agreed with ORR’s decision to remove a child’s age from the escape risk criteria, as age is not an indication of a child’s escape risk.

ORR Response: ORR agrees with the commenter that age is not a reliable indicator of a child’s escape risk.

23. Commenters said they are concerned about how the “danger to self” criterion is used to determine the best interest of a child in custody. Commenters said the “danger to self” criterion could be helpful in referring a child to an RTC, as long as it is a present danger to self, instead of a past danger to self. They recommended reincorporating a “Danger to Self” section under Residential Treatment Center placement, along with a criterion that a licensed psychologist or psychiatrist has made the determination that the child is a danger to him or herself. Although they said ORR can continue to hold a child in custody if they determine a child is a danger to him or herself, regardless of whether the child has a sponsor, the commenters stated that a child has no way to appeal such a designation. Commenters also said that the options on the “Criminal History” drop-down menu includes items like “shoplifting” or “soliciting a prostitute,” which they said a child would not even have the opportunity to engage in as they are in ORR custody. They recommended removing these options from the list to prevent unnecessary placement of a child in a staff secure facility.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited.

Nevertheless, ORR notes that pursuant to [ORR Policy Guide Section 1.4.6](#), and in compliance with the July 30, 2018 *Flores* order,⁴ a UC may only be placed into an RTC if the youth is determined to be a danger to self or others by a licensed psychologist or psychiatrist. Only after a full evaluation of the UC can a licensed clinical psychologist or psychiatrist make the determination that the UC needs placement in an RTC because his or her best interests cannot be met in another placement. While at the RTC, clinicians continue weekly or biweekly counseling sessions that focus on the UC's behaviors and progress. Information collected or reported by the clinician includes clinical and psychological reports and documents, including those by medical and/or mental health providers, and clinical notes maintained by the clinician, documented in accordance with ORR policy and procedure. Sometimes information may also be gathered from interviews with the UC's family or other caregivers. If the UC has resided in a RTC facility for more than 90 days, the FFS consults with supervisory ORR staff on the case regarding the reasons for the UC's continued placement, and thereafter following every 30-day restrictive placement case review (unless the UC is stepped down or discharged). ORR has a responsibility for the health and well-being of all children in its custody and care, and a step-down or release from an RTC occurs when the clinicians and other medical professionals determine that the UC is no longer a danger to him/herself.

In addition, the options under "Criminal History" refer to past behaviors, not the absence of present conditions for engaging in criminal activities. The options reflect ORR policy governing secure or staff secure placement as described in [ORR Policy Guide Section 1.2.4](#). The responses also help the care provider determine the most appropriate and beneficial services for the UC while in care.

24. A joint comment representing four organizations stated that the addition of an "other" category on the list of violent crimes on Form P-7 is too ambiguous and does not clearly define the types of behavior that are prohibited. Such ambiguity leaves the category up for discretionary use by ORR staff, the commenters said.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that in cases where a child or youth may present a danger to self or others, ORR staff use the standardized checklist forming part of proposed UC Referral Form P-7, the Intakes Placement Checklist, to input all available information on the UC's history and condition.

25. A joint comment representing four organizations stated that Form P-7 does not provide placement criteria for settings other than secure and staff secure placements, even though staff can recommend placement into other types of facilities. Commenters said this lack of options could lead to children being placed only in the listed settings, which might be more restrictive than is in their best interest. Commenters recommended the Intakes Placement Checklist includes options for all placement types that staff can recommend for placement.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Placement consideration for other types of placement are for those that do not meet the criteria for a restrictive placement (and are routinely used for the vast majority of ORR

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placements). This form is only used in consideration of use for children being considered for initial placement in a restrictive setting.

26. The joint commenters said that the “Medication Details” field should capture medication dosage, prescriber’s name, contact information for the prescriber, and date of prescription to allow ORR to develop an individualized care plan that takes medication details into account. They said the field presently only collects prescription name. Commenters recommended that ORR develop instructions on what information should be captured in this field.

ORR Response: The field of “Medication Details” is able to capture the details that the commenter lists. After the child is placed in a care provider program, care provider medical staff attempt to verify the medical details provided, obtain any missing information, and document these details into the health section of the ORR case management database.

27. One commenter provided multiple comments on definitions relating to intake questions. The commenter stated that the form does not indicate what constitutes “a pattern or practice of criminal activity,” what is considered a “chargeable” non-violent criminal offense, or how to define gang membership or affiliation. In all instances, the commenter said the interpretation is left up to the ORR staff member conducting intake, a determination that the commenter stated is outside of ORR’s scope of expertise.

ORR Response: These comments relate to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that the intake questions reflect ORR policy governing secure or staff secure placement as defined in [ORR Policy Guide Section 1.2.4](#). As described in proposed Form P-7 under *Section B: Staff Secure Criteria, 4. Criminal History*, criminal history meets the minimum requirements for placement in a staff secure facility if it involved multiple incidents of the same incident (showing a pattern or practice of criminal behavior) or involved different incidents of separate offenses. ORR acknowledges and will consider the commenter’s suggestions.

Care Provider Checklist for Transfers to Influx Care Facilities (Form P-8)

1. Multiple commenters recommended that the “Care Provider Checklist for Transfers to Influx Care Facilities” include the “Care Provider Family Reunification Checklist”. They said this helps providers ensure that all criteria have been met for the transfer of a UC to an influx care facility (ICF) and avoid delays. The commenters recommended that ORR reinstate this checklist in the form.

ORR Response: The Care Provider Family Reunification Checklist, which ORR discontinued in 2018, was never part of the Care Provider Checklist for Transfers to Influx Care Facilities. Rather, it was a separate checklist specifically related to family reunification services. The Care Provider Checklist for Transfers to Influx Care Facilities, when used in combination with the Medical Checklist for Transfers to Influx Care Facilities (Form P-9A), and Influx Transfer Manual and Prescreen Criteria Review (Form P-17), contains all fields required to ensure that all criteria have been met for the transfer of a UC to an influx care facility. However, ORR will consider creating a tool similar to the Care Provider Family Reunification Checklist to assist providers in tracking reunification requirements.

2. The commenters said that there is a typographical error in the “Case Manager Affirmation” section, where the field reading “save in” should read “saved in”. However, the commenters appreciated the addition of the field “Case Manager Name” to improve transparency.

ORR Response: ORR will correct any typographical errors in the final instruments.

Medical Checklist for Non-Influx Transfers (Form P-9A)

1. One joint comment representing four organizations expressed concern about the proposed removal of language stating that the provider should not transfer the child without consulting the ORR medical team. The commenters recommended that this language be reinstated to ensure that UC are medically cleared for transfer.

ORR Response: All UC must be medically cleared for transfer. The proposed revision clarifies that “If “No” is checked for any of the below questions [Section C: Checklist] and you believe the minor should be transferred, please justify the exemption in a written request to DCSMedical@acf.hhs.gov for approval.” As with the current form, the instructions require that the FFS must also be consulted in accordance with ORR policies and procedures.

2. The commenters also said that the proposed forms may not adequately ensure that the receiving facility is equipped to provide continuity of care for the child. They opposed the proposed removal of a question asking if the UC is free from medical conditions requiring specialty care. The commenters said that providers must ensure that the facility from which the child is transferred has documented all needs for specialty care and that the transfer has been approved by the ORR medical team if such needs exist to ensure continuity of specialty care. In addition, the commenters recommended that ORR add three questions to the checklist, focusing on the child’s medical, dental, and mental health needs, to ensure that the facility receiving the child is aware of any such needs. The commenters stated that these questions should ask whether the new provider is aware of the treatment/care necessary and is able to ensure care for the condition.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that non-influx transfers are initiated when the UC’s Case Manager has assessed the needs of the UC and determined that the UC would be better served at a different placement. Transfer decisions are made only when it is the least restrictive placement that serves the UC’s best interest, including any medical care required. Health records in the transfer request file include medical, dental, and mental health, as well as a list of current medications and dosages.

3. The commenters stated that the examples included in the checklist question asking about contagious symptoms are not sufficient for understanding child’s needs and offering potential courses of action. Specifically, commenters recommended adding additional examples of contagious conditions or symptoms that reflect common conditions/symptoms that they may experience during their journey, similar to what is on the current version of the form (e.g., fever, rash, cough, diarrhea, vomiting, scabies, and lice). They objected to the use of “isolation” as the only precaution for children with contagious symptoms, as they stated that isolation can cause psychological, physical, and developmental harm to a child. They recommended offering other

examples to make sure providers are aware of other options for taking precautions to prevent the spread of contagious symptoms.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that isolation for medical reasons not only protects others from the contagious condition, but also protects the child who is ill and whose immune system has been compromised. Any isolation practice by ORR care providers is implemented only when determined to be absolutely medically necessary, recommended by a medical professional, and always with a child-centered focus, to lessen as much as possible any psychological, physical or developmental harm. ORR will consider expanding the list of contagious conditions/symptoms in Section C: Checklist, Q5 to include those on the current form.

4. The commenters stated that one reference to UC Path is fully capitalized (i.e., “UC PATH”) and recommended ensuring consistent capitalization for UC Path.

ORR Response: ORR will correct all typographical and formatting errors in the final instrument.

5. The commenters recommended that the “Identifying Information” section contain a signature area, in addition to a printed name, for the individual completing the form, to ensure accountability.

ORR Response: Over the years, ORR has not encountered accountability challenges related to names and titles on forms that have been created and filed electronically by ORR staff, and/or provider facilities or other responsible parties.

6. The commenters provided a table to document the inconsistencies between Form P-9A and Form P-9B. The commenters said that there are differences in the instructions between Forms P-9A and P-9B, and that the reason for these differences is unclear. They noted the different timing requirements for Form P-9A, which must be completed within three business days, and Form P-9B, which must be completed within 24 hours. In addition, they observed that the instructions on Form P-9A state that if a child does not meet the transfer criteria, there is an override process, whereas Form P-9B states that if a child does not meet the criteria, they cannot be transferred. They recommended either standardizing the timing and override process for both forms to avoid confusion or providing a justification for the differences.

ORR Response: An ICF is a type of care provider facility that opens temporarily to provide emergency shelter and services for UC during an influx or emergency. When there is a shortage of available beds in the care provider network, the ICF allows children to be transferred more quickly out of the custody/care of DHS and into the custody/care of ORR. Because of the emergency nature of the situation and the need to move children quickly into care, ICFs may operate under certain procedural differences than those under normal operations of receiving and transferring UCs, including those related to time allowed for certain processes to take place or decisions that must be made in an expeditious manner. ORR continues to provide child-centered services at the ICF to meet the UC’s best interest until transfer or release.

Medical Checklist for Transfers to Influx Care Facilities (Form P-9B)

1. One commenter representing four organizations said that the proposed form includes a narrower version of the question asking whether lab tests or medical consultations have been

received, by replacing “imaging studies” with “medical consultations”. They recommended that the question be rephrased to include “medical consultations” or supplemented with a second question about medical consultations to ensure all necessary information is received prior to transfer and included suggested language.

ORR Response: Item 15 on the Medical Checklist for Transfers to Influx Care Facilities Form P-9B requires the staff to indicate if all the following documentation has been uploaded into the Health tab, including the Initial Medical Exam form, which would include any medical consultations that have occurred.

2. The commenters noted multiple typographical errors with the immunizations on the form, including a missing word and misspelling of “flu” as “flue”. They also stated that the parentheticals associated with the different types of immunizations are unclear as to which immunization they apply; they stated that the parenthetical about seasonal availability suggests it relates to the flu vaccine, but the second parenthetical after that suggests it may apply either to varicella specifically or all other vaccinations, rather than the flu vaccine. However, they said it would not be appropriate for this parenthetical to be applied to the reference to the flu or all vaccines. They recommended clarifying or removing this parenthetical and fixing all typographical errors.

ORR Response: ORR will review Q8(i) on Form P-9B and will consider clarifying and/or rewording Q8(i). ORR will correct all typographical and formatting errors on the final instrument.

3. The commenters stated that it is unclear why the question asking whether the UC received the first dose of all immunizations more than 72 hours before the physical transfer applies only to Department of Defense (DOD) sites. Citing the ORR Policy Guide Section 7.2.1, they stated that all UC are required to be cleared and vaccinated by the ICF, so there should be no difference between what is required by DOD sites and all other sites. They also expressed concern regarding the apparent change from requiring full to partial vaccination. They recommended providing justification for the limitation to DOD sites and the change from requiring full vaccination to partial vaccination or standardizing the requirements for all influx facilities. They also stated that there is a typographical error in the word “dose” and recommended fixing this.

ORR Response: Influx Care Facilities located on DOD-owned sites have additional transfer criteria as requested by the DOD. One such additional criterion is that children receive the first dose of all immunizations more than 72 hours before the scheduled physical transfer. The current version of this checklist is silent on whether children must receive all doses of the listed immunizations, or if partial vaccinations meet the transfer criteria. The revised version of the checklist seeks to clarify that ORR only requires that children receive the first dose of the listed immunizations; there was no change in practice to ORR’s immunization requirements for transfer. ORR will correct all typographical and formatting errors on the final instrument.

4. The commenters identified a typographical error in Item 13. They recommended changing “know” to “known”.

ORR Response: ORR will correct all typographical and formatting errors on the final instrument.

5. The commenters recommended that the “Identifying Information” section contain a signature area in addition to a printed name for the individual completing the form, to ensure accountability.

ORR Response: Over the years, ORR has not encountered accountability challenges related to names and titles on forms that have been created and filed electronically by ORR staff and/or provider facilities or other responsible parties.

6. The commenters stated that there are differences in the instructions between Forms P-9A and P-9B, and the reason for these differences is unclear. They noted the different timing requirements for Form P-9A, which must be completed within three business days, and Form P-9B, which must be completed within 24 hours. In addition, they observed that the instructions on Form P-9A state that if a child does not meet the transfer criteria, there is an override process, whereas Form P-9B states that if a child does not meet the criteria, they cannot be transferred. They recommended standardizing the timing and override process for both forms to avoid confusion or provide a justification for the differences.

ORR Response: An ICF is a type of care provider facility that opens temporarily to provide emergency shelter and services for UC during an influx or emergency. When there is a shortage of available beds in the care provider network, the ICF allows children to be transferred more quickly out of the custody/care of DHS and into the custody/care of ORR. Because of the emergency nature of the situation and the need to move children quickly into care, ICFs may operate under certain procedural differences than those under normal operations of receiving and transferring UCs, including those related to time allowed for certain processes to take place or decisions that must be made in an expeditious manner. ORR continues to provide child-centered services at the ICF to meet the UC's best interest until transfer or release.

Transfer Request (Form P-10A)

1. One commenter expressed concern about the "Good Cause Exists to Change Venue" field under the COA-COV section by noting that the drop-down menu options erroneously suggest to care providers that such reasons are necessary to justify a request for change of venue. The commenter also noted a field prompting the care provider to "Specify UC Special Needs". The commenter stated that in the context of a transfer request, the reason for a change of venue request is the change in the child's placement location, which is sufficient to establish good cause for change of venue. The commenter stated that because these fields are unnecessary and could have an unanticipated negative impact on UC's immigration cases, ORR should remove these questions from the proposed form revision.

ORR Response: ORR will take the comments under advisement and work with agency partners to determine if revisions are necessary.

2. In one joint comment representing four organizations, the commenters observed that ORR removed the "Requested Date" field while adding several new fields including "High Priority". They objected to the removal of "Requested Date", as it is necessary for documenting the date on which the case manager makes their recommendation and is therefore necessary for tracking the decision-making process timeframe. The commenters said that no explanation or justification was provided for the new "High Priority" field. The commenters recommended that ORR reinstate the "Requested Date" field and provide a justification for the inclusion of the "High Priority" field. If the "High Priority" field is not removed, the commenters recommended that the form include instructions or guidance on what constitutes a "High Priority".

ORR Response: The “Requested Date” field was removed because it was no longer needed. The new case management system has a “Most Recent Activity” panel to the right of the form that automatically captures changes made to the Transfer Request, including when the request was initiated by the Case Manager. The “High Priority” field is used any time a transfer needs to happen quickly and should be prioritized over the transfer of other children. For example, the transfer of a child stepping down from a restrictive setting to a shelter would take priority over the lateral transfer of a child from one shelter program to another shelter program.

3. In one joint comment representing four organizations, the commenters said that the “Standard Program Type” field lacks clarity and could generate confusion, as they said it combines reasons to transfer UC to a non-restrictive setting as well as to a restrictive setting. The commenters recommended separating the reasons for transfers to restrictive and non-restrictive settings into two fields and ensure that bases for restrictive placements are not included under “Standard Program Type”. They also recommended that the “Case Manager Recommendation Comment”, “Case Coordinator Recommendation Comment”, and “ORR Comment” fields be required, rather than optional, in order to ensure that the reasons for the transfer request are explained.

ORR Response: ORR notes that the menu options under “Standard Program Type” on the proposed revision to the Transfer Request Form P-10A are the same as those on the current version of the Transfer Request Form P-10 under the heading of “Any Program Type”. These options for transfer reasons in proposed Form P-10A also track ORR policy with respect to the factors considered in placement and transfer decisions, as set out in [ORR Policy Guide Section 1.2](#), [ORR Policy Guide Section 1.3](#), and [ORR Policy Guide Section 1.4](#). ORR will take the commenters’ suggestions under consideration.

4. In one joint comment representing four organizations, the commenters stated that the “FFS Authorization to Proceed” field under the Case Coordinator Recommendation section does not provide sufficient information to document the full decision-making process, including when the authorization occurred, the contact information for the FFS, and the authorized program type. They recommended adding a “Yes/No” field to this section as well as separate fields to include the information described above. The commenters further recommended that FFS Authorization to Proceed should be separated into its own section in the form to clearly indicate the initial approval to send a transfer request rather than the final decision as reflected in the “ORR Decision” section. The commenters also said they were unable to view the drop-down options in the “Pending Information” field, leaving them unable to comment. The commenters requested more information on this section.

ORR Response: The Case Coordinator completes the “FFS Authorization to Proceed” after the FFS indicates that they concur with the transfer recommendation and proceeds to submit a referral to the identified program. The identity of the FFS authorizing the transfer is captured in the “ORR Decision Maker” field in the “ORR Decision” section, while the drop-down menu options for the “FFS Authorization to Proceed” field are “Yes” and “No”. The drop-down menu options for the “Pending Information” field are also “Yes” and “No”. By virtue of completing the “ORR Decision” section, the FFS confirms that they authorized the Case Coordinator to make the program referral.

5. In one joint comment representing four organizations, the commenters appreciated the addition of the “Transfer Designation” section for its documentation of information about UC transfers. However, the commenters stated that further information is necessary. They recommended

adding fields to document to which facilities the transfer packet was sent, the date on which the request was sent to each facility, whether each facility accepted or denied the request and the accompanying explanation, and the date each facility made their determination.

ORR Response: Per [ORR Policy Guide Section 1.4](#), the Case Coordinator identifies the most appropriate care provider based upon the individual UC's needs and the bed capacity within the ORR network. The proposed receiving care provider must accept the transfer request within one business day unless the proposed receiving care provider is unable to accept the transfer because of state licensing requirements. In that case the sending Case Coordinator re-refers the transfer to an alternative care provider. Transfer Request Form P-10A facilitates the performance and documentation of this process. As mentioned in the Supporting Statement accompanying the proposed information collection, ORR has also added the new "Program Referrals" section to Form P-10A in which care providers can search for programs that fit the UC's transfer criteria and make referrals.

6. In one joint comment representing four organizations, the commenters expressed concern about the new "Entry Team" section and its function of granting read/write access to individuals who do not typically need access privileges for a referral record in the absence of information on who can access this form. The commenters said that since the proposed Form P-10A contains private and confidential information, ORR could potentially violate applicable state laws by granting read/write access without a court order granting ORR authorization to share this information with DHS or other third parties. The commenters recommended adding language similar to the following language recommended by the commenters for addition to UC Referral Form P-7: "The Entry Team Data Window is a new feature that allows case managers and ORR staff to give read and write access to other individuals. This feature is restricted to granting access to ORR staff or ORR grantee staff (e.g., care provider staff) who require access to make placement or release recommendations or decisions. This information, as well as access to this information, cannot be shared with any individual or agency outside of ORR, including but not limited to DHS, without a court order or compliance with applicable state and federal laws and policies."

ORR Response: Level of access throughout the new case management system is defined by user role. DHS does not have access to the Transfer Request Form P-10A and, therefore, could not be granted read/write access using the Entry Team Data Entry window. Except for UC Referral Form P-7, UC Profile Form P-13, and ORR Transfer Notice Form P-14, the forms contained in this proposed information collection activity are internal ORR workflow documents not subject to routine disclosure. UC Referral Form P-7 and UC Profile P-13 are used by federal agencies to refer UC to ORR for placement, while ORR Transfer Request - Notice of Transfer to ICE Chief Counsel - Change of Address/Change of Venue Form P-14 is used by care providers to notify DHS of the transfer of a UC within the ORR care provider network. For the other forms in this proposed information collection activity including Transfer Request Form P-10A, ORR would only consider disclosure on a case-by-case basis in response to a request for records. In the current proposed revision to the Authorization for Release of Records, Form A-5, as published in OMB 0970-0547, ORR makes clear in the form instructions that Discharge/Release Information records will not be released to government agencies without the signature of the UC (or their caregiver or parent/legal guardian as applicable), a court-issued subpoena or order, or an official statement describing the scope of the investigation with a case reference number. ORR further clarifies that the agency will not release any records that are clearly outside the scope of the agency's investigation absent a court-issued subpoena or order.

7. One commenter, the child advocate provider, recommended adding under the Casefile Summaries section fields related to the Child Advocate, including whether the Child Advocate has been notified of the transfer request and an option to upload a Best Interest Determination (BID). The commenter stated that the Child Advocate should be notified of the transfer request and be permitted to upload their BID to ensure that ORR considers the Child Advocate's BID when they are considering the transfer request. The commenter further recommended the addition of a field collecting information on the BID regarding the transfer request, such as "If appointed Child Advocate, what is the Child Advocate's Best Interest Determination regarding transfer?"

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that as described in [ORR Policy Guide Section 2.3.4](#), Child Advocates formally submit their recommendations to ORR in the form of BIDs. ORR considers BIDs when making decisions regarding the care, placement, and release of UC, which would include the consideration of a transfer request. In addition, [ORR Policy Guide Section 1.4](#) on transfers provides that care providers take into consideration information from stakeholders, including the child's Child Advocate, when making transfer recommendations. ORR further notes that relevant stakeholders including a UC's Child Advocate are notified by email prior to a child's physical transfer. ORR acknowledges and will consider the commenter's suggestions.

8. In one joint comment representing four organizations, the commenters said there is a need for additional fields in both Forms P-10A and P-10B. First, they recommended adding fields about the contact with the child's attorney, including the date the attorney was contacted, the name and title of the person contacting the attorney, and the information conveyed to the attorney to ensure that the attorney received adequate information about the transfer request. In addition, the commenters appreciated the addition of the "Remand for Further Information" field to the "ORR Decision" section of the form and recommended that a "Remand Date" field be added to document the timeline for when the remand was made and the actions that followed.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that as described in [ORR Policy Guide Section 1.4](#), care providers take into consideration information from stakeholders, including the child's LSP or attorney of record where applicable, when making transfer recommendations. In addition, once the FFS approves a transfer request, the referring care provider notifies all designated stakeholders of the transfer, including the child's attorney. ORR acknowledges and will consider the commenter's suggestions.

Influx Transfer Request (Form P-10B)

1. In one joint comment representing four organizations, the commenters stated that the "Standard Program Type" field lacks clarity, as it includes options related to restrictive placements that are not relevant to influx facilities. They recommended removing these options. The commenters said that no explanation or justification was provided for the new "High Priority" field. The commenters recommended that ORR provide a justification for the inclusion

of the “High Priority” field. If the “High Priority” field is not removed, the commenters recommended that the form include instructions or guidance on what constitutes a “High Priority”.

ORR Response: ORR notes that the menu options under “Standard Program Type” on the proposed Influx Transfer Request Form P-10B are the same as those on the current version of the Transfer Request Form P-10 under the heading of “Any Program Type”. These options for transfer reasons in proposed Form P-10B also track ORR policy with respect to the factors considered in placement and transfer decisions, as set out in [ORR Policy Guide Section 1.2](#), [ORR Policy Guide Section 1.3](#), and [ORR Policy Guide Section 1.4](#). ORR will take the commenters’ suggestions under consideration. The “High Priority” field would be used any time a transfer needs to happen quickly and should be prioritized over the transfer of other children. For example, the transfer of a child stepping down from a restrictive setting to a shelter would take priority over the lateral transfer of a child from one shelter program to another shelter program.

2. In one joint comment representing four organizations, the commenters said that, while Form P-10B has the field “Identification Marks”, other forms in the proposed information collection activity, such as Transfer Summary and Tracking Form P-11, use the term “Identifying Marks”. They recommended changing the field in Form P-10B to “Identifying Marks” to ensure consistency and coherence with the other forms.

ORR Response: ORR will take the commenters’ suggestion under consideration.

3. In one joint comment representing four organizations, the commenters said that the drop-down options in the “Case Manager Recommendation” field were not provided, leaving them unable to comment on the fields. The commenters requested that ORR provide further information on the drop-down menu options for this field. In addition, the commenters observed that there is no “Case Manager Name” field and recommend its addition to promote accountability.

ORR Response: The Case Manager initiates the transfer request, so their name would appear in the “Created By” field at the bottom of the form under the “System Fields” section. ORR acknowledges the commenters’ concern regarding the absence of information about the drop-down menu options. ORR clarifies the drop-down options for the “Case Manager Recommendation” field are Transfer Recommended, Transfer Not Recommended, and N/A.

4. In one joint comment representing four organizations, the commenters observed that the Case Coordinator Recommendation in Transfer Request Form P-10A is not present in Influx Transfer Request Form P-10B and recommended aligning these forms by adding this section to the Influx Transfer Request Form P-10B, because case coordinator or third-party review would be required if the transfer to an influx facility was a step down. The commenters also recommended the addition of instructions that the section needs to be completed only if the transfer is from a more restrictive setting to an influx facility (*i.e.*, a step-down).

ORR Response: Although Case Coordinator/third party review is required for step downs, ORR would not place a child being stepped down from a restrictive setting into an ICF.

5. In one joint comment representing four organizations, the commenters said there is a need for additional fields in both Forms P-10A and P-10B. First, they recommended adding fields about the contact with the child’s attorney, including the date the attorney was contacted, the name and title of the person contacting the attorney, and the information conveyed to the attorney to

ensure that the attorney received adequate information about the transfer request. In addition, the commenters appreciated the addition of the “Remand for Further Information” field to the “ORR Decision” section of the form and recommended that a “Remand Date” field be added to document the timeline for when the remand was made and the actions that followed.

ORR Response: ORR notes that as described in [ORR Policy Guide Section 1.4](#), care providers take into consideration information from stakeholders, including the child’s LSP or attorney of record where applicable, when making transfer recommendations. Once the FFS approves a transfer request, the referring care provider notifies all designated stakeholders of the transfer, including the child’s attorney. ORR acknowledges and will consider the commenter’s suggestions.

Transfer Summary and Tracking (Form P-11)

1. In one joint comment representing four organizations, the commenters recommended changes to ensure that information is conveyed adequately to children throughout the transfer process. The commenters recommended that ORR add, under the UC Profile section, the following fields: “Language(s) Child Understands” and “Child’s Preferred Language”.

ORR Response: Per [ORR Policy Guide Section 3.3](#), care providers must deliver services in a manner that is sensitive to the age, culture, native language, and needs of each unaccompanied child. The child’s primary language and other languages spoken are documented in the child’s case file. As explained in the [ORR Policy Guide Section 3.3.7](#), all ORR-required documents provided to UC must be translated in the UC’s preferred language, either written or verbally. Care providers are further directed to use translation services when no written translation or on-site staff or interpreters are available. ORR acknowledges and will consider the commenter’s suggestions.

2. In one joint comment representing four organizations, the commenters recommended that information on the Requester, including Requester Title and Requester Phone, that was available in the previous version of Transfer Summary and Tracking Form P-11 be reinstated. The commenters stated that these fields help promote accountability and clear communication regarding the transfer of the child.

ORR Response: ORR notes that these fields are available in the new proposed Transfer Request Form P-10A in the Transfer Request Page - Details Tab under the Transfer Request section, as well as in the proposed Influx Transfer Request Form P-10B in the Influx Transfer Request Page - Details Tab under the Influx Transfer Request section. The proposed Transfer Summary and Tracking Form P-11 is used by care providers to track the physical transfer of the UC and their belongings, rather than to request a transfer.

3. In one joint comment representing four organizations, the commenters said they are concerned with the removal of the Case Coordination section in the proposed revision to the form. The commenters recommended its reinsertion because they state it allows the case coordinator to indicate the care provider’s recommendation, whether the case coordinator agreed, and if not, the reason for their disagreement and the case coordinator’s recommendation, and the ORR/FFS final decision on the transfer. The commenters state that this information is necessary to fully summarize the relevant recommendations and final decision.

ORR Response: As indicated in the Federal Register Notice, ORR moved the information collection described by the commenters regarding the recommendations of the care provider and the case coordinator to the proposed revision to the Transfer Request Form P-10A. The Form P-11 to which the commenters refer is the Transfer Request and Tracking Form, which ORR proposes to revise and rename as the Transfer Summary and Tracking Form P-11 through this proposed information collection activity. Proposed Form P-10A is an instrument used by care provider facilities, ORR contractor staff, and ORR federal staff to process recommendations and decisions for transfer of a UC within the ORR care provider network. Proposed Form P-11 is used by care providers to track the physical transfer of the UC and their belongings.

4. In one joint comment representing four organizations, the commenters observed that the field containing the date of the transfer decision has been removed in the proposed revision to Form P-11. The commenters recommended its reinsertion to ensure the documentation of the timeline for placement decisions and the child's time in ORR custody.

ORR Response: ORR has included the information collection described by the commenters regarding the date of the transfer decision in the proposed revision to the Transfer Request Form P-10A. The Form P-11 to which the commenters refer is the Transfer Request and Tracking Form, which ORR proposes to revise and rename as the Transfer Summary and Tracking Form P-11 through this proposed information collection activity. Proposed Form P-10A is an instrument used by care provider facilities, ORR contractor staff, and ORR federal staff to process recommendations and decisions for transfer of a UC within the ORR care provider network. Proposed Form P-11 is used by care providers to track the physical transfer of the UC and their belongings.

5. In one joint comment representing four organizations, the commenters said they are concerned with the removal of the section on "Transporting Staff Comments" that was available in the previous version of the form. The commenters recommended that these fields be reinserted in both the "Departure Information" and "Arrival Information" sections, after the affirmation and signature, and require an initial or signature to accompany the comment. The commenters said that this section is important for the documentation of anything noteworthy that occurred during transportation and arrival.

ORR Response: The previous version of the form does not have fields for "Transporting Staff Comments." However, ORR will take the commenters' suggestion under consideration.

6. In one joint comment representing four organizations, the commenters expressed concern that form distribution includes the DHS and EOIR. They stated that this form should not be shared with DHS or EOIR and that the UC's ORR file should not be a part of the child's Alien File. The commenters also cited the Flores Settlement Agreement requirement that agencies preserve the confidentiality of client information, including from unauthorized use or disclosure. As such, the commenters said that a child's ORR file should not be available to third parties, including DHS and EOIR, as sharing this information could impede sponsorship and family reunification. The commenters stated that no justification has been provided for sharing this information, including medical information, with DHS and EOIR, and recommended removing the references to DHS and EOIR in Form P-11.

ORR Response: Except for UC Referral Form P-7, UC Profile Form P-13, and ORR Transfer Notice Form P-14, the forms contained in this proposed information collection activity are internal ORR

workflow documents not subject to routine disclosure. ORR would only consider disclosure of Transfer Summary and Tracking Form P-11 on a case-by-case basis in response to a request for records. ORR references its previous clarification regarding the protections of UC case file documents from disclosure as noted on Form A-5.

Program Entity (Form P-12)

1. One joint comment representing four organizations stated that sections of Form P-12 lack the necessary information to ensure licensing, monitoring, and follow-up actions, which guarantees children are accepted into facilities with the proper licensing. They state that the form as proposed does not focus on specific incidents and instead threatens to waste resources by tracking all UC in the program. The commenters recommended adding a field that requires the upload of a state license, citing Government Accountability Office (GAO) research that many ORR grant applications do not include copies of state licenses. In addition, they recommended that the form include fields inquiring whether the specific facility named on the form is covered by the program license; a field to verify that the license is current; and file history of previously granted state licenses in order to identify any gaps in licensure. The commenters also said that the monitoring section does not track sufficient information to ensure that ORR meets its monitoring goals. They cited findings from GAO on ORR monitoring reports finding that ORR has failed to meet its monitoring goals and ensure compliance in the past. They recommended that the fields related to monitoring be more detailed and include the following: monitoring dates for each facility or program; the date of issuance of all past and current corrective actions, uploads of the corrective action, the date by which the facility or program addressed the corrective action, and if the facility or program did not take corrective actions, ORR's actions against the facility, if any, as well as the date of these actions.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that licensing and key monitoring details for all care providers are required and documented in the Program Entity Form P-12. This includes fields that capture whether the program is licensed, the licensing entity and type of licenses, license issued date and expiration date. Users are also able to upload a copy of the current and past licenses. Moreover, the pending proposed information collection activity under OMB 0970-0564 contains new and revised instruments that will be used by ORR Monitoring Team staff (including Federal and contractor staff) to compile comprehensive notes and information related to biennial monitoring visits. All information relating to licensure, reporting, compliance and other critical areas of concern, such as those listed by the commenters, are documented in the information collection related to Monitoring and Compliance and stored in the new case management system database where the information serves to guide ORR's oversight responsibilities.

2. Two commenters, including one joint comment representing four organizations, said there is a lack of sufficient clarification on the "Events" and "SIRs" sections of Form P-12 and posed several questions related to what types of forms from the instruments from Administrative and Oversight of the Unaccompanied Alien Children Program (OMB #0970-0547) this section refers to. They said that without this clarification, resources might be wasted providing unnecessary information through this form and that necessary information and/or documentation, especially that related to the facility, may not be sufficiently documented.

ORR Response: As published in the Federal Register Notice, the new proposed instruments (cleared as separate instruments in OMB #0970-0547) are Event (Form A-9), Program-Level Event (PLE) Report and Addendum (Form A-10D) and other proposed forms for SIR reporting (See [86 FR 545](#) dated January 6, 2021). The Event and SIR tables in Form P-12 are auto-populated; therefore, no resources are wasted reentering related information in this form.

UC Profile (Form P-13)

1. One joint commenter representing four organizations noted that the UC Profile Data Entry Window does not have as many fields as the UC Profile Page. The commenter also requested clarification when certain fields should be completed.

ORR Response: The data entry window aligns with the Details Tab in the UC Profile Page with the addition of some auto-populated fields covering basic UC information. Any information included in the referral will also auto-populate. The rest of the fields should be completed as information is learned. Other areas on the UC Profile are either auto-populated or entered using other data entry windows.

2. The joint commenters said there is a lack of clarity regarding when information on “Apprehended Relationships” and “Other Relationships” should be entered into the system. They requested an explanation for when ORR staff would fill these sections out. Similarly, they recommended that ORR ensure that ORR staff fill out all information related to parents, guardians, and potential sponsors on the front end of the form, similar to the current version, rather than leaving ambiguity about when this information should be completed.

ORR Response: This instrument is used by referring Federal agencies and care providers to create a profile for a UC from which all information related to their case can be accessed. The fields in the UC Profile Form P-13 are auto-populated from assessments and other information collections beginning with the UC Referral Form P-7 and through the course of the child’s custodial time with ORR. If provided by DHS, “Apprehended Relationships” and “Other Relationships” would be entered during referral and intakes. If this information, or additional information, is learned later (during child assessments), it would be entered at the time it was learned. Instructions on when to complete forms are communicated through procedures or via the form itself. In general, care providers are instructed to enter information as soon as it is learned, but not all information is known or complete on the front end.

3. The commenters stated that the information that is supposed to go into certain fields is unclear, particularly the “Common Child Information (not in ORR)” and the “Admission Assessment” field in “System Information”. They recommended providing instructions to clarify what they mean.

ORR Response: The Common Child Information (not in ORR) section is completed when the friend/family member listed in the Other Relationships table had a child in common with another individual listed in the table. The Admission Assessment field allows users to link the record to the Initial Intakes Assessment, UC Assessment, and/or UC Case Review, all of which also contain the Family and Friends table. This feature ensures that the table contains the same information across all relevant forms without the need to enter the information more than once.

4. The commenters said they are very concerned about the “DNA Testing Details” section. They recommended that this section and any reference to DNA testing of UC should be removed. They noted that HHS’s proposed regulation related to DNA testing was withdrawn on February 23, 2021 and stated therefore there is no need to reference DNA testing in ORR forms. Moreover, the commenter enumerated the legal, ethical, and moral implications of requiring DNA testing of immigrant children. They described concerns related to voluntary consent, prolonging UC’s time in detention, privacy violations, and cultural and humanitarian concerns. Citing these concerns and the lack of justification for DNA testing, the commenters strongly recommended removing all references to DNA testing.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR notes that it has applied 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 cases involving children separated from parents at the border. DNA testing is used by ORR only in exceptional circumstances and with the consent of all parties involved. ORR is prohibited from accessing, using, or storing any genetic material, data, or information collected in reunification efforts for other purposes, including criminal or immigration enforcement.⁵

5. The commenters noted that several drop-down options for several fields are not visible and therefore they could not comment. These fields include “Related to Other UC(s)”, “Specific Consent Status”, and others.

ORR Response: ORR acknowledges the commenters’ concern regarding the absence of information about the drop-down menu options. ORR clarifies that the drop-down options for the “Related to Other UC(s)” field are Yes and No. The options for the “Specific Consent Status” field are Requested, In Progress, Granted, Denied, and Appealed.

6. The commenters observed that the “Legal-Immigration” section is new and recommended that ORR add an “Attorney of Record” field. They said this information is important for legal immigration purposes.

ORR Response: ORR acknowledges and will consider the commenters’ recommendation.

7. The commenters also noted that the “Legal-Administrative” section is new and said it is unclear what certain fields are designed to address (“Specific Consent Status, Specific Consent Decision Date, “State/Family Court”, “Good Faith Letter Received”, and “Is UC a Material Witness?”).

ORR Response: “Specific Consent Status”, “Specific Consent Decision Date”, and “State/Family Court” are fields relating to Special Immigrant Juvenile Status and Specific Consent to Juvenile Court Jurisdiction by ORR and the request process (see ORR Policy Guide [Key Documents](#) for the Unaccompanied Children’s Program). “Good Faith Letter Received” refers to the good faith letter requested by ORR from the relevant LSP when evaluating a UC for long-term foster care placement. As provided in [ORR Policy Guide Section 1.2.6](#), a child is a candidate for long-term foster care where, among other considerations, a LSP has identified the child or youth as potentially eligible for immigration relief (unless waived by ORR). “Is UC a Material Witness” facilitates the tracking of UC who may present special safety issues as described in [ORR Policy Guide Section 1.2.3](#), where ORR collaborates with law enforcement officials on the placement of

⁵ See H.R. Rep. No. 116-450, at 40 (2021)

a child who has information that may be relevant to a criminal proceeding (e.g., “material witness”).

8. The commenters stated that the “System Information” section is new and said it’s unclear what the fields are supposed to capture, and therefore, they could not comment on the section. In addition, they stated that it is unclear what the “UC Access Level” field means in the “Entity Team Data Window”. They recommended that ORR provide explanations and justifications for these fields.

ORR Response: “System Information” fields are metadata fields auto-populated by the new case management system. “Entity Access Level” is access level to records associated with the care provider program. “Entry Access Level” is access level to this specific record (UC Profile), and “UC Access Level” is access level to all records associated with the UC.

ORR Transfer Notice – Notice of Transfer to ICE Chief Counsel – Change of Address/Change of Venue (Form P-14)

1. Three commenters, including one joint comment representing multiple organizations, expressed concern that including a field for a reason justifying the transfer of UC could disclose information about the child which could potentially be used against the child in their immigration case, such as whether the child has special needs or requires a more restricted level of care. One commenter also said that this violates the UC’s right to privacy for their personal and medical information. The commenters also stated that fields related to justifying the transfer are unnecessary to include and that the request itself is sufficient justification. Another commenter said that options related to whether the UC is suitable for a less or more restrictive level of care are unnecessary unless a bond hearing is taking place, and for this reason, nondiscriminatory options should be included instead.

ORR Response: ORR staff and care providers are prohibited from sharing non-essential information with the immigration court.⁶ ORR also notes that a bond hearing is used for a determination of a UC’s danger as assessed for purposes of release, not for transfer between ORR care providers. Nevertheless, ORR acknowledges the commenters’ concerns and will review whether revisions to the proposed form may be appropriate.

2. Two commenters, including one joint comment representing four organizations, recommended that the “Next Court Appearance” section should include the court for which the child has a scheduled appearance and its location. They stated this is relevant to indicate where the UC will need to be transported and to ensure the location is appropriate for their court proceedings.

ORR Response: ORR will take the commenters’ recommendation under consideration.

Form P-15: Family Group Entity

1. One joint commenter representing four organizations said that the purposes of the “Parent Entity” and “Entity Owner” fields in Form P-15 are unclear. Therefore, they said they could not comment on them and recommended that ORR provide the definitions and purposes for the public’s understanding of these fields.

⁶ See H.R. Rep. No. 116-450, at 28 (2021).

ORR Response: ORR clarifies this form is used by the ORR Intakes Team to associate UC who are members of the same family with each other. Also, “Entity Owner” is the auto-populated name of the user who created the record. “Parent Entity” is an extraneous system field. The new case management system 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 new case management system.

Influx Transfer Manifest (Form P-16)

1. One joint commenter representing four organizations noted that the “Transfer Requests” section on the case management page of Form P-16 does not appear in the “Data Entry Window”, and they said it was unclear why this is the case. They recommended that ORR include the information from the “Transfer Request” section in the “Data Entry Window” or provide justification for why it is not included.

ORR Response: “Transfer Requests” is a table that auto-populates with information about a UC linked to the manifest. Users can also click on any UC in the table to view the Influx Transfer Request Form P-10B associated with that UC.

2. The commenters also said that the drop-down menus for the “Status” and “Entry Origin” fields were not provided and therefore they could not comment on this section.

ORR Response: The options under “Status” are “Closed,” “Draft,” “Initial Manifest,” and “Final Manifest.” “Entry Origin” is an extraneous system field that ORR will consider removing in the future.

3. The commenters also stated that the purpose of the fields in “System Information” is unclear and, as a result, they could not comment. They requested that ORR provide the fields as well as an explanation of the fields in the “System Information” section.

ORR Response: ORR clarifies that the fields in “System Information” are metadata fields auto-populated by the new case management system.

4. The commenters stated that the information designed to be contained in the “Files” section of the “Transfer Requests” section is not clear. They recommended that ORR provide information on why this section is included here as well as examples of files.

ORR Response: Users can generate a manifest that can be printed out and accompany UC during their transfer (see page 6 of the screenshot document). That generated manifest is automatically saved under “Files”. ORR does not require any other files to be uploaded, but users have the ability to do so if needed.

5. The commenters stated that it is unclear whether the “Individual” field, which has a search function, should refer to the child. If so, they stated that the field should be relabeled as “Individual UC Profile”.

ORR Response: This field is included in all data entry windows when a file is uploaded. It could be used to link a file uploaded under the UC to a sponsor or, conversely, it could be used to link a file uploaded under a sponsor's profile to a UC.

6. The commenters said that the "Files Data Entry Window" is a standard entry window for adding documents. They recommended that ORR maintain a uniform file-uploading process for all forms in the new case management system.

ORR Response: ORR maintains a uniform file-uploading process for all forms in the new case management system.

Influx Transfer Manual and Prescreen Review (Form P-17)

1. One joint comment representing four organizations stated that the criteria offered in the "Prescreen Criteria" is ambiguous about whether a positive or negative response indicates whether a child "passes" or "fails". They recommended that clarification is provided and suggest using "Yes/No" rather than "Pass/Fail", along with detailed instructions. They also recommended that the form include fields to identify the individual authorizing or denying the override, an area for their signature, and a place for them to document the reason for their decision.

ORR Response: The form is a review of criteria that UC must meet to be considered in a transfer to an ICF, so the appropriate responses are "pass" or "fail".

2. The commenters also stated that the criterion related to whether the child is a danger to themselves or others, including whether the child has been charged with or convicted of a criminal offense, is problematic. They stated that a past criminal offense does not mean the child is a danger to themselves or others, and inquiring into past charges, convictions, and dispositions introduces privacy concerns. They recommended alternate wording for the question to focus on current charges or recent convictions and focusing only on violent offense.

ORR Response: This comment relates to underlying policy and not information collection itself and is therefore outside the scope of the purpose for which comments were solicited. Nevertheless, ORR clarifies that, as listed in the [ORR Policy Guide Section 7.2.1](#), a UC who has been assessed to be a danger to themselves or others (including having been charged with or convicted of a criminal offense) does not qualify for placement in an ICF, which is why the field is included on the form.