

Placement and Transfer of Unaccompanied Alien Children into ORR Care Provider Facilities

**OMB Information Collection Request
0970 - 0554**

Attachment A - Summary of Public Comments and ORR Responses

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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, a few of the comments received relate to underlying policy and are thus outside the scope of the purpose for which comments on the information collection were solicited. As specified in 5 C.F.R. s. 1320.8(d), these purposes are: whether the form and the information it collects are necessary for what the agency is trying to accomplish through the form and whether the information collected will have practical utility; to evaluate the paperwork burden of filling out the form and whether the agency's estimate of the burden was correct; the usefulness of the information being collected on the form; and minimizing the form completion burden. Although some 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.

The two updated forms for which ORR received public comments, the Notice of Placement in a Restrictive Setting (NOP) and Notice of Administrative Review (NOAR), are critical to adherence to the Court deadlines set by the preliminary injunction in *Lucas R. v. Becerra*¹. ORR has incorporated several of the commenter's suggestions into the NOP and plans to conduct a deliberative review of the remaining suggestions and concerns. ORR also plans to solicit feedback from UC Program users (i.e., ORR grantee, contractor, and federal staff) to inform future revisions. ORR tentatively plans to submit nonsubstantive revisions in the second half of 2023 and any identified substantive revisions in the first half of 2024.

Topic 1: Placement and Transfer Process

1. One commenter, representing a federal child advocacy organization, raised concerns that the Notice of Placement invites ORR staff to "place children in restrictive settings without consideration of their needs or best interests."

ORR Response: ORR appreciates the commenter's remarks and affirms its commitment to the well-being and best interests of all children in its custody and care, as well as to its duty to ensure placement in the least restrictive placement that is in the best interest of the child, (See [UC Policy Guide Section 1.2](#)). The Notice of Placement in a Restrictive Setting (NOP) form does not purport to guide childcare professionals through ORR's thorough procedures for child placement and transfer, nor to exhaustively document the decision process. Instead, placement procedures are delineated within the [UC Policy Guide Section 1](#) and ORR internal procedures and documented in the evidentiary record within the child's case file. The NOP is completed after ORR's decision has been considered and finalized, and within 48 hours of a child arriving at their new placement and every 30 days of continuing placement (see [UC Policy Guide Section 1.4.2](#).) The NOP serves to summarize and communicate the reasons for the placement to the child, as well as their attorney, if they have one, and to their parents, if applicable. It also serves to provide information to the child about the processes available for administrative review of the placement, and other

¹ *Lucas R. v. Becerra*, No. 2:18-cv-05741-DMG-PLA, 2022 WL 3908829 (C.D. Cal. Aug 30, 2022).

safeguards for due process, as required by the *Lucas R. v. Becerra* preliminary injunction² and [UC Policy Guide Section 1.4.7](#).

2. One commenter, representing a federal child advocacy organization, suggests that a form direction within the NOP form to “[P]rovide a detailed summary of specific incidents related to the reason(s) for the restrictive placement” instructs ORR personnel to depend solely on Significant Incident Reports (SIRs) in determining placement decisions. The commenter believes that this purported reliance on SIRs also runs contrary to ORR’s mandate to place children with disabilities in the most integrated setting.

ORR Response: ORR appreciates this feedback on the form instructions and clarifies that the field is not requesting a summary of SIRs nor does ORR rely solely on SIRs when making placement and transfer decisions. In addition, ORR notes that all child placement and transfer decisions are finalized before the NOP form is filled out and provided to the child. These decisions are based in ORR’s policy mandates to place children in the least restrictive setting that is in the best interest of the child (see [UC Policy Guide Section 1.2.4](#)), and in the most integrated setting possible based on the child’s needs (see [UC Policy Guide Section 1.2.2](#)). After the transfer has occurred, the staff at the transfer placement complete the NOP to inform the child of the reasons for their placement in a restricted setting. The current request includes a revision to remove the phrase “specific incidents related to” from the instructions in the NOP form to avoid any potential misinterpretation that ORR is requesting a summary of SIRs.

3. One commenter, representing a federal child advocacy organization, states that the NOP form’s inclusion of a checkbox under each type of restrictive placement noting that the child is “pending transfer to a less restrictive placement” violates the requirement to place a child in the least restrictive placement that is in the best interests of the child because it allows a child to stay in a restrictive placement after stepdown has been deemed appropriate.

ORR Response: ORR appreciates this feedback and will take the recommendation under advisement. The “pending transfer” checkbox represents a way to notate when an appropriate stepdown transfer or release is being sought with all deliberate speed, and the NOP is due to the child before that transfer or release can operationally be finalized. ORR has many procedural safeguards in place to ensure children are stepped down to the least restrictive facility that is in their best interest as quickly as possible. ORR will reassess this checkbox option in the upcoming review.

Topic 2: Form Design and Instructions

4. A commenter, representing a federal child advocacy organization, believes that the instructions at the beginning of Section C will lead to confusion for both ORR personnel and recipient children. They suggest the instruction, “For each type of placement, check all reasons that apply for that placement only” should be replaced with “Check all reasons that apply for the current placement recommendation only.”

² Id.

ORR Response: ORR appreciates these comments and affirms the importance of clear instructions, especially where the form serves to inform children of their rights. The current request includes a revision to the NOP form reflecting the commenter's suggested rephrasing of the instruction.

5. A commenter representing a federal child advocacy organization shared their concern that the form should make clear that there is no negative inference from child's refusal to sign the Notice of Placement form.

ORR Response: ORR appreciates the commenter's remarks and affirms that no negative inference should be made regarding a child's signature on the NOP form. The child's signature or mark, or the box for refusal to sign, serves as additional evidence that the NOP has been received by and explained to the child as required by the UC Policy Guide and the Lucas R. preliminary injunction (see [UC Policy Guide Section 1.2.4](#)). The signature or lack thereof has no negative impact on the child's placement or any other aspect of their care in ORR custody. The current request includes a revision to the NOP form to clarify this.

Topic 3: The Child's Rights to Challenge Placement

6. One commenter, representing a federal child advocacy organization, believes that the Notice of Placement and Notice of Administrative Review misstate the appropriate role of child advocates and conflates that role with role of attorneys. They suggest clarifying the differences between the two roles and referencing them separately on the form.

ORR Response: This comment relates to underlying policy and not the information collection itself. Children in ORR legal custody receive a Know Your Rights (KYR) presentation within seven (7) to ten (10) business days of admission to an ORR care provider facility (see [UC Policy Guide Section 3.7.1](#)). The kinds of legal representation funded by ORR, as well as those allowed but not funded by ORR, are likewise outlined in [UC Policy Guide Section 3.7.2](#). The role of child advocates in serving children in ORR care is defined separately in [UC Policy Guide Section 2.3.4](#). ORR appreciates this feedback as it relates to the NOP form and will take this issue under advisement.

7. A commenter, representing a federal child advocacy organization, noted that the NOP form fails to clarify that the child has a right to legal representation "at no cost to the federal government," as stated in the Lucas R. preliminary injunction.

ORR Response: This comment relates to underlying policy and not the information collection itself. Nevertheless, ORR appreciates this feedback and has clarified this point in the NOP form for this current request.

8. One commenter, representing a federal child advocacy organization, requested that ORR should provide the Notice of Administrative Review at the same time as the Notice of Placement.

ORR Response: ORR will take this suggestion under appropriate consideration. Currently, the Notice of Administrative Review (NOAR) is provided after a request for a Placement Review Panel is received, because that request starts the clock for certain dates and times that are provided in the NOAR (please see [UC Policy Guide Section 1.4.7](#)). Currently, the NOP lists the options open to the child, which they may discuss in more detail with their case manager, attorney, parent(s), and/or child advocate.